

✓

BEFORE:

TESTIMONY OF LAMA S. MARTIN  
March 2, 1983

BODYFELT, MOUNT & STROUP  
By: Peter R. Chamberlain and  
Kathryn R. Janssen  
Attorneys at Law  
222 S.W. Morrison, Room 229  
Portland, OR. 97204  
502/243-1022

SCHWABE, WILLIAMSON, WYATT,  
MOORE & ROBERTS  
By: James Huegli, Local Counsel and  
Robert Spurling, Corporate Counsel  
1200 Standard Plaza  
Portland, OR. 97204  
503/222-9981

**FEDERAL COURT REPORTERS**  
UNITED STATES COURTHOUSE  
PORTLAND, OREGON 97205  
221-3113

PLAINTIFFS' WITNESS INDEX

<u>Witness</u>	<u>D</u>	<u>X</u>	<u>ReD</u>	<u>ReX</u>
Lama S. Martin	1	62	101	112

PLAINTIFFS' EXHIBIT INDEX

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>RECEIVED</u>
33	Sheriff's Report	23
44	Rifle	46
45	Rifle	62
46	Rifle	46
47	Photograph	12
48	Photograph	12
49	Photograph	12
50	Photograph	12
59A	Drawing	16
59B	Drawing	16
111	Rifle	37
112	Rifle	37

DEFENDANT'S EXHIBIT INDEX

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>RECEIVED</u>
206	Remington Hunters Pocket Guide	27

1                    PORTLAND, OREGON - WEDNESDAY, MARCH 2, 1983

2  
3            MR. CHAMBERLAIN: At this time the plaintiffs will call  
4 Mr. L. S. Martin.

5  
6                    LAMA S. MARTIN,  
7 called as a witness on behalf of the plaintiffs herein, having  
8 been sworn, testified as follows:

9  
10            THE CLERK: Please state your name and spell it for the  
11 record.

12            THE WITNESS: Lama S. Martin, Lama, L-a-m-a, middle initial  
13 S., last name Martin, M-a-r-t-i-n.

14                    DIRECT EXAMINATION

15  
16 BY MR. CHAMBERLAIN:

17            Q        Mr. Martin, could you tell the jury a little bit  
18 about your education, please.

19            A        I have a two-year Associate Degree in Engineering,  
20 with a major in Electronics. In addition to that, I have  
21 several years of night school, primarily scientific courses,  
22 mathematics, chemistry, physics, engineering, drawing, and  
23 additional electronics. I have more than enough credits for  
24 a bachelor's, but I don't have them in the prescribed  
25 curriculum, since I chose to take primarily scientific courses,

1 college level courses.

2 In addition, I have attended Massachusetts Institute  
3 of Technology three summers, taking specialized courses there  
4 related to ballistics testing. The first I took was high-speed  
5 photography. The second and third, second was so-called Strain  
6 Gauge Theory. The third was Strain Gauge Application.

7 Strain gauge is an electronic technique for measuring  
8 stresses and strains on anything. We were interested in  
9 measuring stresses and strains on firearms.

10 That's all the formal education I have. I have  
11 attended various seminars at ammunition manufacturers, gun  
12 manufacturers, and military seminars on gun systems, or ammuni-  
13 tion systems, testing for the military.

14 Q Did you mention the time at the Maryland Institute?

15 A Oh, yes, I did have one year at the Maryland  
16 Institute in Baltimore, taking mechanical arts there.

17 Q And have you taken high-speed photography courses in  
18 ballistics?

19 A I did mention that. That was taken at MIT.

20 Q Could you tell the jury, then, trace for them your  
21 employment history, if you would.

22 A Beginning, well, the first ten years after getting  
23 out, I got out of the Army in '45, went to school three years  
24 in electronics; then went to work in electronics, worked in  
25 electronics for ten years; then I went to work for a ballistic

1 testing laboratory near my home that does nothing but test guns  
2 and ammunition.

3 Q What year was that?

4 A 1958.

5 Q Okay.

6 A They do nothing but test guns and ammunition and  
7 related items, such as test bulletproof vests, test armor that  
8 requires guns to be fired, anything that requires gun protection.

9 Q Could you give the jury a flavor for the kind of  
10 clients; did you say it was H.P. White Laboratory?

11 A Yes, from 1958 to 1978, I worked for H. P. White  
12 Laboratory. Since 1978, I have been self-employed in the same  
13 field. During my employment at the H. P. White Laboratory, I  
14 conducted tests for all of the military agencies, the Army,  
15 the Navy, Air Force, Marines, CIA, Treasury Department, State  
16 Department, and many agencies was in each of those.

17 I conducted tests for the vast majority of the gun  
18 manufacturers in this country, and, in fact, in the world. I  
19 conducted tests for the vast majority of ammunition manu-  
20 facturers in this country and the world. All of those clients  
21 would total several thousand during that 20-year period.

22 Since that time, since 1978, when I became self-  
23 employed, I have also conducted tests for several gun manu-  
24 facturers, Mosburg, Ithica, Interarms, Sterling Arms, CVA,  
25 Savage, Colt. There may be others. I don't recall.

1 Q Did your testing work, both with H. P. White, and  
2 since then, include accident cause investigation?

3 A Yes, I began in 19 -- the early 1960's assisting the  
4 Manager at the H. P. White Laboratory in the investigation of  
5 accidents involving firearms and ammunition. The manager left  
6 the laboratory in 1965, I think, and I assumed those duties,  
7 and another of my duties, and I began testifying in 1965 in a  
8 few cases, and have testified several times a year since that  
9 time.

10 My work now is primarily that concerned with accident  
11 investigation, although I do quite a bit of testing that is  
12 not related to accidents.

13 Q In your experience as a tester, if you will, has  
14 some of your testing related to determining design adequacy?

15 A Yes, one of the things that I did a great deal of  
16 after becoming a specialist in high-speed photography was  
17 design evaluation for various manufacturers, especially where  
18 they were developing new designs and they encountered  
19 difficulties with them, they would ask us to do high-speed  
20 photographic studies of their design to see if they were  
21 functioning as they were supposed to, and if not, why not.

22 I have conducted high-speed photographic studies on  
23 the vast majority of the guns now in use.

24 Q And have you designed some gun parts yourself?

25 A Very few. I have never functioned as a designer,

1 per se, only a tester of designs. There are some few components  
2 I have designed, yes.

3 Q For instance, you have designed some safety mecha-  
4 nisms?

5 A Yes, a few safety mechanisms recently for adding to  
6 existing firearms.

7 Q Did you design one for the Model 700 Remington?

8 A Yes, I did. Designed what I call an automatic  
9 safety for Remington 700.

10 Q It's at your own instance; is that correct? Not  
11 Remington's request, is that correct?

12 A Yes, it was.

13 Q Can you tell the jury a couple of your experiences  
14 while at H. P. White, in particular, the things that were  
15 more interesting about your work.

16 A Yes. One of the more notable things I was involved  
17 in there was the week following the assassination of President  
18 Kennedy, we were asked to test the rifle involved for the FBI.  
19 I did conduct that test for the FBI.

20 Subsequent to the Warren Commission findings, CBS  
21 then hired us to reproduce the shooting aspect of President  
22 Kennedy's assassination. We built a tower representing the  
23 School Book Depositor, had people fire from the window at a  
24 moving target to see if one person could fire three shots, I  
25 think within 5 3/4 seconds.

1           We also did what we call would ballistic firing to  
2 determine if the one-bullet theory was correct.

3           The first bullet that struck the President was the  
4 same bullet that struck Connolly. Those tests showed it was, in  
5 all probability, That's generally what we did on that parti-  
6 cular thing.

7           Q     Is there any other case that comes to mind that you  
8 are particularly notable for?

9           A     Another one that received a lot of publicity, yes, I  
10 examined the gun involved in the Caludine Longet murder trial  
11 in Aspen, Colorado; participated in that investigation and  
12 testified in that trial.

13          Q     Now, at the present time, what do you call yourself?  
14 A consultant, or what is your title, if you will?

15          A     A consultant is good enough, I guess.

16          Q     And, typically, who do you work for in your consulting  
17 capacity?

18          A     I work on a first call, first serve basis. The  
19 majority of the work I do is for manufacturers, because they  
20 know they need an expert first.

21                 However, I do some work for defendants, as well. I  
22 presently do more than three-fourths of my work for plaintiffs.  
23 The other one-fourth would be for defendants.

24          Q     When you say defendants, are you referring to other  
25 gun manufacturers?

1 A Yes.

2 Q Did you mention some of the gun manufacturers that  
3 you have done that kind of work for?

4 A Yes, I did. I'm presently doing that kind of work  
5 for Ithica, Mosburg, Inc., Colt, Sterling Arms.

6 Q And through me, you are charging my clients for your  
7 time here, testifying in this trial, are you not?

8 A Yes, sir, I am.

9 Q Why don't you tell the jury what your charges are and  
10 what you are going to bill me.

11 MR. HUEGLI: Objection. I don't see any relevance how  
12 much he's getting paid. That makes no difference to us.

13 MR. CHAMBERLAIN: Fine. I'll withdraw the question.

14 THE COURT: All right.

15 Q (By Mr. Chamberlain) Did you at my request, before  
16 we get to that, are you in general familiar with the rifle  
17 known as the Remington Model 700?

18 A Yes, sir.

19 Q And that's manufactured by Remington Arms Company,  
20 right?

21 A It is, yes.

22 Q And have you, at my request, studied and reviewed the  
23 design of the trigger assembly, the bolt, and the safety  
24 mechanism on that rifle?

25 A I have.

1 Q And you were in general familiar with it before this--  
2 before this case came to you, were you not?

3 A Yes, sir, I was.

4 Q And at my request, have you studied and reviewed  
5 Remington product literature, including the Owner Manual that  
6 Remington tells us came with this rifle and the Field Service  
7 Manual that applies to this rifle?

8 A I have studied the Owner's Manual that came with this  
9 model rifle. I have looked briefly at the Field Service  
10 Manual, but not very thorough.

11 Q And have you reviewed, I believe, it's Exhibit 206,  
12 the Remington Peters Hunters Pocket Guide, I think it's called?

13 A Yes, I have reviewed that.

14 Q You have? Good.

15 And at my request, you have examined Exhibit 2, the  
16 accident rifle?

17 A Yes, sir.

18 Q Is there anything --

19 What else have you reviewed at my request, if  
20 anything?

21 A That's all that I recall.

22 Q Okay.

23 MR. CHAMBERLAIN: Might the witness be handed Exhibit 2,  
24 please (provided to the witness by the bailiff).

25 Q (By Mr. Chamberlain) Now, is that the rifle that we

1 had delivered to you for examination?

2 A Yes, sir, it is.

3 Q Would you please describe for the jury your examina-  
4 tion and your findings?

5 A I received the rifle in September of -- on September  
6 27, 1980. However, I did not examine it that date other than  
7 to record the serial number and caliber.

8 I began examining it in December of 1980. I simply  
9 examined it externally. I noted that certain natural surfaces  
10 reflected a lot of handling. I did not necessarily --

11 Q Let me interrupt you for a moment.

12 When you say the external surfaces reflected a lot of  
13 handling, can you point to the jury or tell the jury what you  
14 are talking about?

15 A Well, there are a lot of nicks and indentations on  
16 the wood to indicate that it's been handled a lot.

17 Q Okay. Go ahead.

18 A I then functioned the rifle to see if it functioned  
19 as designed. I found that it did.

20 I noted that the rifle had a scope mount but no  
21 scope. I measured the overall length, found it to be 43 1/2  
22 inches; measured the barrel length to be 24 inches.

23 The empty rifle weight was measured and found to be  
24 9 1/4 pounds. The trigger pull was measured and found to be  
25 5 1/2 pounds.

1 I measured the force required to engage the safety,  
2 found it to be 4 1/2 pounds, and found that 5 pounds were  
3 required to disengage the safety.

4 I noted that the safety on this is the usual 700  
5 safe, in that, one, engaged, it locks the bolt, prevents it  
6 from opening; the safety must be disengaged to open the bolt  
7 and unload the gun.

8 And I noticed that the stock was equipped with a  
9 Pachmayr's recoil pad. I noticed that the sling swivels were  
10 missing from the stock.

11 And, generally, that was my visual examination.

12 I then functioned the bolt and the safety mechanism  
13 fifty times to see if it functioned normally. Each time I did  
14 it, I pulled the trigger, disengaged the safety, I found that  
15 the safety did function normally.

16 I removed the stock and examined the safety and  
17 trigger assembly without removing or disassembling any of the  
18 trigger part.

19 The trigger housing has a hole in the side through  
20 which you can see the sear engagement. The sear engagement  
21 looked to be good, and I didn't notice anything unusual, other  
22 than there was a fair amount of oil and grease residue on the  
23 mechanism.

24 This is not unusual. Actually, I've seen many that  
25 were worse than that. I have seen many that were better than

1 that.

2 Q When you say on the mechanism, what mechanism are  
3 you referring to?

4 A The trigger mechanism.

5 Q Now, you are familiar with what a brand new Model 700  
6 looks like. You bought one in time when this gun was purchased,  
7 and you had done nothing to it, never used it, you know what  
8 that gun would look like, don't you?

9 A Yes, sir.

10 Q And can you tell the jury, do a comparison between  
11 that gun and this gun, and tell them about any changes that  
12 there are from a brand new unused gun.

13 A Other than the things already mentioned, indentations  
14 on the wood and the oil on the trigger mechanism, there was  
15 no difference that I could observe between this gun and the  
16 newer one.

17 Q Do you have an opinion based upon your experience  
18 in the gun manufacturing industry, or the gun industry, I mean,  
19 and upon your, based upon your education and training as to  
20 whether or not this rifle, design-wise, the design of this  
21 rifle is in substantially the same condition as it was when it  
22 left Remington's hands on the date of manufacture and sale?

23 A Yes, I have an opinion.

24 Q What is your opinion in that regard?

25 A That it is. I examined it visually and microscopically.

1 I could find no indication of alterations or modifications or  
2 wear, for that part.

3 Q How about adjustments?

4 A No, the trigger adjusting screws have a sealer on  
5 them. The sealer is still in place. I photographed that. There  
6 have been no adjustments made to the rifle.

7 Q Let me get some of the large exhibits for you and I'll  
8 ask you some more questions.

9 MR. CHAMBERLAIN: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 Q (By Mr. Chamberlain) Mr. Martin, in part of your  
12 examination of this rifle, did you take some photographs of the  
13 trigger mechanism?

14 A Yes, sir, I did.

15 Q I'll show you Exhibits 48, 49, 50, and 47, and ask  
16 you if those accurately reflect the condition of the trigger  
17 mechanism on Exhibit 2 at the time that you examined and  
18 photographed it?

19 A Yes, sir, they do.

20 MR. CHAMBERLAIN: We would offer Exhibits 47, 48, 49, and  
21 50.

22 MR. HUEGLI: No objection.

23 THE COURT: They are received.

24 Q (By Mr. Chamberlain) I'm going to be asking you  
25 some more questions about these, Mr. Martin, so I'm going to be

1 leaving them on the easel here for you.

2 Turning your attention again to Exhibit 2, based  
3 upon your experience, education in the gun field, do you have  
4 an opinion as to whether or not the condition of Exhibit 2 is  
5 in a foreseeable condition for a rifle that was manufactured  
6 in December of '76?

7 A Yes, I have an opinion.

8 Q What is that opinion?

9 A That it is in a condition that might be expected of  
10 a rifle of that age. There is really nothing unusual about its  
11 condition for having been used for that period of time.

12 I have seen some rifles that were in much worse  
13 condition; I have seen a few that were in better condition.

14 Q When you use the word worse and the word better, what  
15 are you talking about, what aspect of the rifle?

16 A More wear, more abuse, and misuse, a great deal more  
17 dirt inside the action, and more grease, greasy dirt.

18 MR. CHAMBERLAIN: All right.

19 Might the witness be handed Exhibits 59A and B,  
20 please. They are back behind the table (exhibits provided to  
21 the witness by the bailiff).

22 Q (By Mr. Chamberlain) Could you identify Exhibits 59A  
23 and B for the jury, please.

24 A Yes, Exhibit 59A is an outline drawing of the  
25 trigger mechanism, the right side view and the rear view.

1           59B is a drawing of the internal components of the  
2 trigger mechanism, showing the trigger, the sear, and the  
3 various trigger adjusting screws.

4           Q     All right. Now, Mr. Martin, I'm going to ask you to  
5 explain the operation of the trigger assembly safety and bolt  
6 lock feature on the Model 700 to the jury. And would Exhibits  
7 59A and B be helpful to you in explaining your testimony?

8           A     Yes, sir, it would.

9           Q     All right. I would ask you, then, to step down to  
10 the easel, maybe bring it forward some and sue whatever exhibits  
11 you need to. Please do that, if you would.

12                Also, if you need to use Exhibit 2, I'd like you to  
13 use that as well.

14           Q     Exhibit 47 will be helpful, also. Exhibit 47 shows a  
15 right side view of the trigger mechanism and a portion of the  
16 trigger with the stock removed.

17                This lever is the safety lever. The top of it is  
18 cut off the picture. When moved rearward, it moves this end of  
19 the safety lever upward; this end engages a slot cut into the  
20 bolt, which locks the bolt closed.

21                This Exhibit 59A shows essentially the same thing,  
22 but in drawing form. It shows the components from a right side  
23 view and a rear view. It shows the internal components in  
24 dotted lines, but I doubt that you can see them from there, so  
25 for that, I'll go to Exhibit 59.

1           The internal components here are the trigger, and  
2 this black line is called the trigger connector, and this is  
3 the sear, and then we have the three screws, and we have the  
4 sear spring not shown as the safety.

5           When the safety is engaged, an arm inside the  
6 mechanism applies an upward pressure on the sear at this point  
7 and lifts it free of the top of the trigger, the trigger  
8 connector; so, when the safety is engaged, the sear is not  
9 engaged on the connector, on the trigger connector.

10          You can pull the trigger, nothing will happen,  
11 because the sear is being held upward by the safety.

12          Now, if something, gummy residue or dirt, or something  
13 gets into this and holds the trigger forward, when you disengage  
14 the safety, it will fire, as has been described earlier, but  
15 that is basically the operation of the mechanism.

16          Q       You said holding the trigger forward, you can show  
17 the jury how the trigger pivots.

18          A       When you apply pressure at this point, where your  
19 finger pulls it rearward, it pivots on this pin, the top then  
20 will move forward and slip off of the sear engagement, normally.

21          Q       So, as the trigger moves back, or as the operator  
22 pulls the trigger, the top of the trigger moves forward?

23          A       Yes. One thing I did not explain is that the firing  
24 pin engages this top corner of the sear. Let's assume that is  
25 the striker and the top spring loaded striker and firing pin,

1 when you pull the trigger, move into the trigger, out from  
2 underneath the sear, the sear drops, and the firing pin goes  
3 forward under its own spring pressure.

4 Q Let's see. I asked you to explain the trigger,  
5 assembly and bolt lock; have you done all three?

6 A I believe so.

7 MR. CHAMBERLAIN: We offer 59A and 59B.

8 MR. HUEGLI: May I take a look at 59A, please?

9 THE COURT: Yes.

10 MR. HUEGLI: No objection.

11 THE COURT: They are received.

12 Q (By Mr. Chamberlain) Do you want to assume the stand,  
13 Mr. Martin (the witness complies).

14 Mr. Martin, in your experience as a product tester  
15 and design tester for firearms, have you had an opportunity to  
16 become familiar with the habits and customs and practices of  
17 rifle owners?

18 A Yes, sir, I have.

19 Q And user?

20 A I have.

21 Q Will you explain to the jury how you gained that  
22 experience?

23 A I have made it a habit to interview rifle owners and  
24 gun owners of all types over the years, especially those that  
25 have been involved in the many accidents that I have

1 investigated.

2 Q All right. Based upon that and upon your general  
3 experience with firearms, do you have an opinion as to whether  
4 or not it was foreseeable in December of 1976 that a gun owner  
5 would use petroleum solvent on the trigger mechanism of his  
6 gun?

7 A Yes, it was, because, as a result of my interviews  
8 of various gun owners, I find that they will, some owners will  
9 clean their guns very religiously with the correct type of  
10 thing, or the type of oils and cleaners that are recommended  
11 by the manufacturers, that is, the manufacturers of those  
12 cleaners.

13 Other people will use whatever they have at hand,  
14 especially the rural people might use gasoline, kerosene,  
15 anything handy.

16 Q Diesel fuel?

17 A Diesel fuel.

18 Q And do you have an opinion as to whether or not it  
19 was foreseeable in December of 1976 that a gun owner would use  
20 lubricant on the trigger mechanism of his gun?

21 A That, again, the use of lubricants vary with gun  
22 owners. Some few clean their guns very religiously as they  
23 are supposed to; other people clean them occasionally; some  
24 never clean them; but the majority of gun owners do like to oil  
25 their guns, and, unfortunately, most of them oil them

1 excessively.

2 Q And can you give the jury some examples of the kinds  
3 of oils that users might foreseeably apply?

4 A Again, this varies. There are several kinds of oil  
5 sold for gun use. Some people use those kinds of oils; other  
6 people use whatever they have on hand, even motor oil.

7 Q WD-40?

8 A Yes, WD-40 is very commonly used among gun people.

9 Q And in your experience, or in your opinion, is it  
10 foreseeable that in December of '76 that a gun owner would use  
11 -- would oil all metal parts of his rifle?

12 A Yes. Many of them will. They will oil everything.  
13 In fact, oil to excess.

14 Q In your opinion, was it foreseeable in December of  
15 1976 that a gun owner or user would clean his gun infrequently?

16 A Yes, there are many people who clean them infrequently;  
17 many people who never clean them, just use them, throw them  
18 aside, and use them again when needed.

19 Q As to the gun owners that do clean their guns, was  
20 it foreseeable in December, 1976, in your opinion, that they  
21 might clean their gun inadequately?

22 A Yes, especially this particular trigger mechanism,  
23 or any trigger mechanism similar to this that is an assembly  
24 rivited together does not lend itself to good cleaning,  
25 because the owner cannot see in the thing.

1 Q. Could you demonstrate what you mean, using your  
2 photographs 47, 48, 49, and 50?

3 A I will have to go to the -- (referring to the easel).

4 Q Okay.

5 A Exhibit 57, this is the trigger mechanism which you  
6 are speaking of. Notice that it's held together with rivets.

7 Q Could you point those out for us.

8 A There are four. I think there may be another one  
9 hidden by the safety. This assembly is held to the receiver  
10 with two pins, one here, and another one back here someplace.  
11 You can see, take those pins out, but most people, I think,  
12 would not take it out; they will simply remove the bolt, stick  
13 the entire rear end of the gun into a can of solvent of some  
14 sort, shake it around, wash it out.

15 Some people would then blow it out with an air hose,  
16 those few that have that. Most people would not. Simply shake  
17 it out. After that, they may spray with WD-40, or something,  
18 and would end up with a lot of oil in it.

19 Q Okay. And you mentioned that trigger assembly is  
20 the design that you cannot see into it; do you have a photo-  
21 graph up there that would demonstrate that situation?

22 A No. Only the one that I mentioned earlier, Exhibit  
23 47.

24 Q How about behind that? Isn't there some that show  
25 the sight angles?

1           A     Exhibit 49 simply shows the front view of the same  
2 assembly. And Exhibit 50 shows the rear view of the same  
3 assembly.

4           Q     All right. Do you have an opinion based upon your  
5 expertise in this field as to whether or not a rifle designed  
6 in December of -- designed and manufactured and sold in December  
7 of '76 should be designed such that it will function properly  
8 under all foreseeable conditions?

9           A     I have an opinion that they should be designed so  
10 that they will function as well as possible under all of these  
11 conditions.

12                     For instance, manufacturers are aware that the  
13 military, for instance, requires that rifles and guns of all  
14 types that are used by the military pass what we call mud and  
15 dust tests, actually submerged in mud and taken out and wiped  
16 with the hand, and nothing else, to see if it will function  
17 under these conditions.

18                     Sporting guns are subjected to a lot of dirt in their  
19 use, so they should be designed so they will function under  
20 dirty conditions.

21           Q     In your opinion, was it foreseeable in December of  
22 1976 that a gun owner of a gun such as the Remington Model 700  
23 would take a loaded rifle into his home; is that a foreseeable  
24 use in your opinion?

25           A     Yes, based upon my experience, there are many people

1 who take loaded rifles into their homes, especially rural  
2 people, especially farmers, who have animals that chase their  
3 livestock. Most of them keep loaded rifles in their homes.

4 Q And in December of 1976, in your opinion, was it  
5 foreseeable that a gun owner in handling his rifle, such as  
6 Exhibit 2, would from time to time inadvertently point that  
7 rifle at other people or leave it in a position where another  
8 person might walk past the muzzle of that rifle?

9 A Yes, my experience has shown that. While every  
10 experienced gun handler attempts never to point his gun at  
11 someone else, I have observed these habits while in hunting  
12 parties and experienced hunters try not to do that, but there  
13 are many times during the day when one hunter or another will  
14 have his gun pointed at another individual, although it may  
15 be a momentary thing, swinging the gun around or moving it  
16 from one place to another.

17 Law enforcement officers point their loaded guns at  
18 tens of thousands of people daily.

19 MR. CHAMBERLAIN: Your Honor, I'm now at a point where I'm  
20 about to launch into another long subject.

21 THE COURT: All right.

22 Now, members of the jury, we will adjourn until  
23 tomorrow morning at nine o'clock. That's a switch. That make  
24 any difference to any of you? Nine o'clock start?

25 Nine o'clock tomorrow morning. Nine o'clock.

1 . (At 4:52 p.m. these proceedings were adjourned for  
2 the evening.)  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 PORTLAND, OREGON - THURSDAY, MARCH 3, 1983; 9:03 A.M.

2  
3 MR. CHAMBERLAIN: Before I start with Mr. Martin, Your  
4 Honor, I would like to reoffer Exhibit 33. It's the sheriff's  
5 report we discussed yesterday.

6 MR. HUEGLI: I have no objection to that.

7 THE COURT: It's received.

8  
9 DIRECT EXAMINATION (continued)

10 BY MR. CHAMBERLAIN:

11 Q Mr. Martin, when you started your testimony yesterday,  
12 we discussed your qualifications, and you told us a little bit  
13 about the Model 700 and how it functions and a little bit about  
14 the foreseeable use of a firearm such as the Model 700.

15 I want to now turn to some information about the  
16 design of the Model 700, and in particular the 1976 Model 700,  
17 such as Exhibit 2 in this case.

18 Can you tell the jury, Mr. Martin, whether or not  
19 you have an opinion, based upon your examination of the Model  
20 700 design, and upon your experience with the gun industry,  
21 as to whether or not the design of the Remington Model 700 as  
22 designed and manufactured by Remington in December of 1976 was  
23 unreasonably dangerous?

24 A Yes, I feel that it is, for several reasons. One is  
25 the bolt lock feather. The bolt lock feature requires that the

1 operator disengage the safety to unload the gun or to load it,  
2 for that matter. Another is that the design of the trigger and  
3 the sear, or the safety mechanism, disengages this sear from  
4 the safety. That makes the mechanism prone to malfunction in  
5 the presence of grease or greasy debris.

6 If greasy debris can get in there and hold the  
7 trigger out of position, it can cause the rifle to fire  
8 accidentally or unintentionally.

9 Q And how about as to the warnings and instructions  
10 that Remington provides; do you have an opinion, based upon  
11 the same foundation, as to whether or not those warnings render  
12 the rifle unreasonably dangerous?

13 MR. HUEGLI: Objection, Your Honor. I don't think that  
14 this witness has testified that he knows what the warnings  
15 are, yet, that we provided on this particular firearm.

16 THE COURT: The objection is sustained.

17 Q (By Mr. Chamberlain) Mr. Martin, have you reviewed  
18 the Owner's Manual, Exhibit 10 in this case?

19 A Yes, sir, I have.

20 Q And have you reviewed the Remington -- let me get the  
21 correct name here, before I ask you; I think I have my copy --  
22 the Remington Peters Hunters Pocket Guide?

23 A Yes, I have.

24 Q And assuming those are the two items that were  
25 provided with the rifle when it was sold new, December, 1976,

1 do you have an opinion based upon your review of those  
2 documents and upon your review of the -- your review of the  
3 design of the rifle as to whether or not those warnings render  
4 the gun unreasonably dangerous?

5 A Yes, I feel the instructions are inadequate, because  
6 they do fail to tell the user how to accurately or safely use  
7 the firearm.

8 They fail to tell the user particularly the inherent  
9 dangers of the mechanism, particularly that grease or debris  
10 can cause it to fire unintentionally, and that he does have a  
11 safety disengaged while unloading; although, the instructions do  
12 cover that, I think, because they do tell him that he has to  
13 disengage the safety before opening the bolt.

14 Q When you say fire unintentionally, are you specifi-  
15 cally referring to the fact of our contention that this rifle  
16 will fire when the safety is released?

17 A Yes.

18 Q Now --

19 MR. HUEGLI: Miss Court Reporter, would you please mark  
20 that portion of the tape, please.

21 Q (By Mr. Chamberlain) Now, Mr. Martin, could you  
22 suggest to the jury some alternative designs for the Remington  
23 Model 700, designs that were feasible in December of '76, and  
24 before which, in your opinion, could alleviate the unreasonable  
25 dangers that you have described for us.

1           A       Well, the most obvious one is that used by the  
2 Springfield Military Bolt Action Rifle, which has the three-  
3 position safety. It does allow you to open the bolt with the  
4 safety engaged, eliminating the problem that occurred in this  
5 accident.

6                   Any other type of safety that can be engaged while  
7 loading and unloading would also correct the problem. An  
8 automatic feature of some sort would be another alternative.

9           Q       Three-position safety, automatic safety; did you  
10 mention removal of the bolt lock?

11          A       No, I did not, but removal of the bolt lock would  
12 have prevented that accident.

13          Q       Okay. I want to take those, then, one at a time and  
14 discuss each one a little bit. I'm going to start with the  
15 automatic safety.

16                   Could the witness be handed Exhibit 45, please. It's  
17 in the green gun case (provided to the witness by the bailiff).

18          MR. CHAMBERLAIN: Maybe you ought to hand him the case.

19          MR. HUEGLI: Miss Clerk, has the Peters Pocket Guide and  
20 the Owner's Manual been marked and both of them admitted as  
21 exhibits?

22          THE CLERK: Plaintiffs' Exhibit 10, Owner's Manual, that  
23 is received.

24          MR. HUEGLI: And how about Peters Pocket Guide?

25          THE CLERK: Is that your Defendant's 206?

1 MR. HUEGLI: Yes.

2 THE CLERK: It's been marked only.

3 MR. HUEGLI: We would offer Exhibit 206.

4 MR. CHAMBERLAIN: No objection.

5 THE COURT: It's received.

6 MR. CHAMBERLAIN: Could that be handed to the witness as  
7 well, please.

8 Q (By Mr. Chamberlain) Now, before we get to the  
9 automatic safety, would you identify Exhibit 206 for the  
10 jury.

11 A 206 is a Remington Hunters Pocket Guide, which I'm  
12 told comes with all of these rifles.

13 Q That's one of the two documents I asked you a moment  
14 ago if you had reviewed, right?

15 A Yes.

16 Q Now, if you would turn your attention to Exhibit 45,  
17 you testified a moment ago that in your opinion an automatic  
18 safety would be one alternative to making the Remington Model  
19 700 reasonably safe?

20 A Right.

21 Q Could you please describe to the jury, and if you need  
22 to step down from the witness box to do this, please feel free  
23 to do so, describe to the jury what the concept of the auto-  
24 matic safety is.

25 A There are several simple mechanical devices that are

1 built into the gun, requires no thought or little thought on  
2 the part of the user, engages automatically each time a gun is  
3 cocked.

4           It was first introduced in a Waters in the late  
5 1800's, has been used since that time in all of the better  
6 rifles -- Colt, Smith & Wesson -- it was first installed in  
7 automatic pistols in the middle '30's, has been used in some  
8 automatic pistols since that time; has never been used in long  
9 guns until fairly recently one manufacturer uses it in his  
10 long guns, but most manufacturers do not use it to date in long  
11 guns.

12           Q     Have you designed and installed on a Model 700 an  
13 automatic safety device?

14           A     Yes, sir, I have.

15           Q     And dose that appear on Exhibit 45?

16           A     It does.

17           Q     Could you come down in front of the jury, please,  
18 and demonstrate that device and describe to them how it works  
19 on the Model 700.

20           A     It's a simple lever mechanism on the side of the  
21 bolt, which each time you cock the gun is engaged.

22                   This is the rear of the firing pin, this lever  
23 engages the rear of the firing pin and holds it away from the  
24 sear each time that you cock the gun, so that you can pull the  
25 trigger all you wish and nothing happens.

1           You must disengage this before pulling the trigger.  
2       So it requires no thought on the user's part, except when it  
3       goes to fire, you must disengage it to fire the gun.

4           Q       How did you actually put that safety on; what  
5       function of the gun puts the safety in the on-safe position?

6           A       Simply cocking it.

7           Q       And that's lifting the bolt up and down?

8           A       Yes.

9           Q       That rifle also has on it Remington's standard two-  
10      position safety, does it not?

11          A       Yes, it does.

12          Q       And for the purpose of your automatic safety, is that  
13      two-position safety necessary?

14          A       No, that automatic safety would not need the  
15      conventional safety.

16          Q       So, that could be eliminated altogether?

17          A       It could.

18          Q       And as you just demonstrated it, did you have the  
19      lever safety in the on-fire position?

20          A       Yes, I do.

21          Q       And so when you pulled the trigger, nothing happened;  
22      it was your automatic safety that had the gun on safety?

23          A       That's correct, yes.

24          Q       Do you want to resume the stand, please.

25                   Do you have an opinion, based upon the qualifications

1 you have already stated, as to whether or not an automatic  
2 safety, such as the one that you have just demonstrated, would  
3 have prevented the firing of that Exhibit 2 on October 27,  
4 1979?

5 MR. HUEGLI: Objection. I don't believe the opinion that  
6 he has asked for is a sufficient foundation as to what happened  
7 on that date other than the fact that the gun discharged.

8 His opinion is being asked to be based solely upon  
9 the fact that the gun discharged.

10 MR. CHAMBERLAIN: Let me restate the question, if I may,  
11 Your Honor.

12 THE COURT: Yes.

13 Q (By Mr. Chamberlain) I'll ask you to assume a few  
14 facts, Mr. Martin. I'd like you to assume, on October 27,  
15 1976, Stephen Bourdeau brought into his home Exhibit 2, which  
16 is Model 700 Remington bolt action rifle, that the gun was  
17 loaded, the bolt was closed, and the safety was in the on-safe  
18 position; and assume that he put that gun in a horizontal  
19 position, across a chair, realized it was loaded, wished to  
20 unload it, put his left hand on the forestock of that rifle,  
21 and with his right hand attempted to open the bolt.

22 Now, assuming those facts, if that rifle had the  
23 automatic safety that you have described for us, instead of the  
24 Remington two-position bolt lock safety, do you have an opinion,  
25 based upon reasonable engineering probabilities and based upon

1 your experience in the gun industry, as to whether that rifle  
2 would have discharged as he attempted to unload it?

3 MR. HUEGLI: Objection, Your Honor. It is absolutely  
4 necessary that this witness must be ased also to assume that  
5 this individual, Stephen Bourdeau, did not pull the trigger.

6 THE COURT: The objection is sustained.

7 Q (By Mr. Chamberlain) Add to your assumption that as  
8 Mr. Bourdeau is trying to open the bolt with his hand, that he  
9 is not touching the trigger, not pulling on the trigger, and  
10 nothing else is pulling on the trigger.

11 A Yes, I have an opinion.

12 Q What is your opinion?

13 A Had the rifle been equipped with an automatic safety,  
14 instead of the type of safety it has, he could have opened the  
15 bolt without disengaging the safety.

16 Q And once opening the bolt, the gun could be unloaded?

17 A Yes, sir.

18 Q Or at least, the bullet could be removed from the  
19 chamber?

20 A That's correct.

21 MR. HUEGLI: Miss Reporter, would you please mark that  
22 portion of the tape for me.

23 Q (By Mr. Chamberlain) And if the gun owner in the  
24 process just described unloaded the gun as described for you,  
25 would the gun discharge in that process?

1 A No, sir, not with the automatic safety.

2 Q Do you have information as to what the cost would be  
3 to install an automatic safety such as the one you have  
4 described for us on the Remington Model 700 in December of  
5 1976?

6 A Yes, I have the general information that we're talking  
7 about pennies per gun. It would be very small.

8 Q And is that design one that was --

9 I realize you didn't design it in '76, but, based  
10 upon your experience and education in the engineering field,  
11 is that a design that was feasible in 1976?

12 A Yes. It's feasible any time anyone wished to do it,  
13 actually.

14 Q Now, let's talk about the bolt lock feature. You  
15 testified a moment ago that the presence of the bolt lock  
16 feature, or, excuse me, you testified a moment ago that  
17 removing the bolt lock feature from the Remington Model 700  
18 would, in your opinion, render that rifle reasonably safe?

19 A It certainly would have prevented that type of  
20 accident, yes.

21 Q Could you describe to the jury what would be  
22 involved to remove the bolt lock feature from the Remington  
23 Model 700?

24 A A simple matter of cutting off that forward arm that  
25 engages the bolt to lock it.

1 Q Okay. Could you illustrate that for the jury, using  
2 some of the exhibits here in the room.

3 A Using Exhibit 47, it's a simple matter of cutting  
4 off that arm.

5 Q That's the right-hand rectangular arm on the trigger  
6 assembly?

7 A Yes, this is the portion of the safety lever.

8 Q And how would that have, how would removal of that  
9 device eliminated the bolt lock feature?

10 A The forward end of that arm, this end of the arm,  
11 engages a slot or cut, if you will, in the bolt lock; it  
12 prevents it from being opened. If you cut the arm off, you  
13 can open the bolt with the safety on.

14 Q All right now, you can resume the stand, if you  
15 would like.

16 A A moment ago I was asking you about the automatic  
17 safety. I asked you to assume certain facts. Assuming those  
18 same facts, would you have an opinion, based upon your  
19 expertise in this field, as to whether or not the absence of  
20 a bolt lock on the Remington Model 700, December of '76, or,  
21 excuse me, in October of 1979, would have prevented that rifle  
22 from accidentally discharging?

23 A I have an opinion, yes.

24 Q What is that opinion?

25 A That it would have prevented the accident, because it

1 would have allowed the bolt to be opened with the safety on.

2 Q And if the gun operator was attempting to unload the  
3 rifle in that way, would there be any need to touch the safety  
4 lever whatsoever?

5 A No, sir, would not be.

6 Q Any need for the operator to remove the safety from  
7 the on-safe position to the off-safe position?

8 A No, sir.

9 Q In your opinion, does -- would removal of the bolt  
10 lock feature from the Remington Model 700, or any bolt action  
11 rifle, for that matter, in any way hamper the operation of the  
12 firearm?

13 A No, sir, it would not. There is always the  
14 possibility that the rifle can, the bolt can be opened  
15 accidentally during carrying. However, when the operator looks  
16 at the rifle to disengage the safety, he can reclose the bolt  
17 if that should occur. Quite frankly, I have never heard of  
18 that occurring.

19 Q Now, even with a Remington Model 700, it does have a  
20 bolt lock; accidental opening of the bolt is still possible if  
21 the gun is not in the on-safe; isn't it?

22 A Yes.

23 Q And do you know what it would have cost Remington  
24 in December of '76 to remove the bolt lock feature on one of  
25 their Model 700's?

1 A It would have cost less to build it without the bolt  
2 lock than with the bolt lock.

3 Q Why is that?

4 A You do not need the forward arm, nor do you have to  
5 produce the slot in the bolt.

6 Q The slot in which the bolt lock engages?

7 A Yes.

8 Q Is that slot something that is machined in there?

9 A Yes.

10 Q So, when you say it would cost less, it would be one  
11 less tooling function?

12 A In fact, two less. I believe there is also a slot  
13 in the receiver to accommodate the arm.

14 Q Was that kind of design feasible in December of '76?

15 A Yes.

16 MR. HUEGLI: Your Honor, as the Court knows, in pretrial,  
17 we have stipulated that Mr. Chamberlain need not prove that.  
18 We have stipulated that the design was feasible in '76.

19 THE COURT: All right.

20 Q (By Mr. Chamberlain) Is the no-bolt-lock feature,  
21 or the absence of a blot lock, a prevalent design on other bolt  
22 action rifles?

23 MR. HUEGLI: Objection to the form of the question as to  
24 what prevalent is. It's vague, general, and not subject to  
25 any description. Everybody might have a different opinion on --

1 THE COURT: It's overruled.

2 THE WITNESS: Some bolt action rifles do not have a bolt  
3 lock, and some do.

4 Q (By Mr. Chamberlain) Can you give the jury some  
5 examples of rifles, bolt action rifles, that do not incorporate  
6 a blot lock feature?

7 A I haven't researched that, but there are quite a few  
8 that do not. I believe we have one in the courtroom, a  
9 Remington Model -- I have forgotten the model. We have an  
10 exhibit here. There are several others. The Winchester Model  
11 70 has a three-position safety in one position that locks the  
12 bolt, but you can move it to another position where the safety  
13 is still engaged and the bolt is unlocked.

14 That feature is also on the Springfield rifle used  
15 by the military. There are quite a few rifles that don't have  
16 a blot lock, but there are also quite a few that do have a  
17 blot lock.

18 MR. CHAMBERLAIN: Might the witness be handed Exhibits 31,  
19 111, 112, and 113. Those are all rifles. (Exhibits provided  
20 to the witness as requested.)

21 Q (By Mr. Chamberlain) Why don't you pick up one of  
22 those and tell me what the number is, and I will ask you some  
23 questions about it.

24 A I have here Exhibit 111.

25 Q Okay. Could you identify that for the jury, please.

1           A     Yes, this is a Mosburg Model 800A rifle, bolt  
2 action rifle.

3           Q     Now, that -- does that gun have a bolt lock feature,  
4 or not?

5           A     No, sir, it does not. The safety in the engaged  
6 position, I can open and close the bolt. The safety remains in  
7 the engaged position.

8           Q     When you say engaged, does that mean on-safe?

9           A     On-safe.

10          Q     Such, if you pulled the trigger, the gun would not go  
11 off?

12          A     That's correct.

13          Q     Could you grab another one of those rifles, please,  
14 and identify it for the record.

15          A     I have Exhibit 112, which is a Stevens Model 34. It  
16 has a safety on the right rear side of the stock. When engaged,  
17 it does allow the bolt to be opened and closed.

18          Q     How makes the Stevens?

19          A     Savage.

20          Q     That's a Savage Arms Company?

21          A     Yes.

22          MR. CHAMBERLAIN: We would offer Exhibits 111 and 112.

23          MR. HUEGLI: I have no objection, Your Honor.

24          THE COURT: They are received.

25          Q     (By Mr. Chamberlain) Now, the next two, Mr. Martin,

1 I believe, are already in evidence, but I would ask you to  
2 grab Exhibit 113 and also 31 and identify those and tell me  
3 whether or not they have a bolt lock feature.

4 A I think I only have 131 left here. 131 is the  
5 Remington Model 591M. It's a bolt action rifle, has a safety  
6 on the right rear side of the receiver, and pulled rearward,  
7 it is on the on-safe or safe position. It does allow the bolt  
8 to be opened and closed.

9 Q That is manufactured by the defendant in this case?

10 A Yes, sir.

11 Q Did I understand you to say that you don't have  
12 Exhibit 31 before you?

13 A No, sir.

14 MR. CHAMBERLAIN: Might the witness be handed that (the  
15 bailiff provides the exhibit to the witness as requested).

16 Q (By Mr. Chamberlain) Could you identify Exhibit 31  
17 for us.

18 A Yes, Exhibit 31 is a Remington Model 788 bolt action  
19 rifle; has a safety on the right rear inside of the receiver;  
20 is in the on or engaged position to the rear; it does allow  
21 the bolt to be opened and closed with the safety engaged.

22 Q And that is a Model 788 Remington?

23 A Yes, sir.

24 Q Mr. Martin, are you aware of any patents owned by  
25 gun manufacturers in this country for automatic safety devices

1 and/or safety devices that do not incorporate the bolt lock  
2 feathre?

3 A Yes, sir, there are quite a few of them.

4 Q Could you give the jury some examples.

5 A Yes, sir. U. S. Patent No. 2,374,378, patent April  
6 24, 1945. It's owned by Harrington Richardson Arms Company,  
7 and in the body of this patent they tell what the purpose of  
8 the patent is for and generally how that functions. In this  
9 one it says that so the gun is always automatically set on  
10 safe when the bolt is actuated to cock the firearm.

11 I have another patent, No. 2,490,474 -- sorry,  
12 490,474, dated December 6, 1949; owned by Winchester or Olin  
13 Industries, rather. It says (reading) present in general to  
14 firearms and more specially to safety mechanisms by means of  
15 which the fire control mechanism of the firearm may be  
16 rendered inoperative automatically after each discharge of the  
17 firearm --

18 MR. HUEGLI: Objection, Your Honor. The question that  
19 Mr. Chamberlain asked the witness was what patent does he have  
20 knowledge of that relates to the automatic safeties in relation-  
21 ship to bolt locks, bolt action rifles.

22 The witness' answer is not responsive to bolt action  
23 rifles; it has to do with something else.

24 THE WITNESS: The patent.

25 THE COURT: Just a moment.

1 THE WITNESS: I'm sorry, sir.

2 THE COURT: I'm not sure.

3 Do you concede it?

4 MR. CHAMBERLAIN: No, I don't. I believe I did ask for  
5 patents that involved bolt action rifles and other automatic  
6 safety or bolt designs that are not involving bolt locks.

7 MR. HUEGLI: Well, may I ask a question in aid of  
8 objection?

9 THE COURT: Yes.

10

11

QUESTIONS IN AID OF OBJECTION

12

BY MR. HUEGLI:

13

14

15

Q Mr. Martin, has patent No. 2,490,474 of December 6,  
1949, of the Winchester, relate to bolt action rifle in the  
body of the patent?

16

A Yes, sir, it is a bolt action safety.

17

18

19

20

21

Q Does it say that in the body of the patent? You see,  
I haven't had a chance to see your patents. All I'd like you  
to do, to read to the jury that portion that relates to the  
bolt action high-powered firearm or bolt action firearm, for  
that matter, please, and I'll withdraw my objection.

22

23

THE WITNESS: I will have to read it a little to determine  
that.

24

MR. HUEGLI: Take your time.

25

THE WITNESS: Well, perhaps I can save time by showing you

1 the picture with the diagrams to show it on the bolt action  
2 rifle.

3 MR. HUEGLI: Well, I don't know how to read those  
4 diagrams. If you say it does, that's fine with me. You are the  
5 expert. If you say it relates to bolt action, I just want to  
6 make sure of that. Thank you. I'll withdraw the objection.

7 THE COURT: All right.

8 Q (By Mr. Chamberlain) Mr. Martin, in further  
9 answering the question, please just make sure you limit your  
10 answer to bolt action rifles and patents that make it clear to  
11 you that they are bolt action rifles.

12 A Yes, sir.

13 I have patent No. 2,551,166, dated May 1st, 1951,  
14 owned by Olin Industries, and it also is an automatic safety  
15 for a bolt action rifle.

16 I have patent No. 2,009,824, dated February 25th,  
17 1958, is a safety for a bolt action rifle that engages  
18 automatically.

19 MR. HUEGLI: Owned by who?

20 THE WITNESS: An individual, Joseph F. Fisher, Grand  
21 Rapids, Michigan.

22 MR. HUEGLI: Thank you.

23 THE WITNESS: I have patent No. 2,976,637, dated March  
24 28, 1961, owned by the Marlin Firearms Company, which is  
25 automatic safety for bolt action rifle.

1 I have patent No. 3,130,513, dated April 28, 1964,  
2 owned by Savage Arms Corporation, which is an automatic safety  
3 for bolt action rifle.

4 I have one more, but it's dated 1968.

5 Q (By Mr. Chamberlain) Fine.

6 A Patent No. 3,387,400, dated June 11, 1968. It's owned  
7 by Olin Mathieson; it is automatic safety device for the manual  
8 bolt action rifle.

9 Q Does that complete your answer?

10 A Yes, sir.

11 Q Now, I want you to turn your attention to the -- you  
12 mentioned one other alternative to the Remington design was the  
13 three-position safety --

14 And I would appreciate it if the witness could be  
15 handed Exhibits 44 and 46, which, again, are two of the rifles  
16 (the requested exhibits are provided to the witness).

17 -- now, you testified that three-position safety was  
18 one alternative to the bolt lock design. Could you describe  
19 for the jury what the concept of a three-position safety is?

20 A On Exhibit 46, which is the Army Military Springfield-  
21 type Rifle, there is a lever in the top rear of the bolt, and  
22 all of the way to the left is disengaged or fire position. All  
23 of the way to the right is in the safety position. That  
24 position also locks the bolt.

25 However, straight up, it's still in safe position and

1 the bolt can be opened and closed without worry of accidental  
2 firing of the gun.

3 Q And, again, assuming the facts that I asked you to  
4 assume a minute ago about how this accident occurred and that  
5 the gun owner brought a gun in and tried to open the bolt and  
6 found that it was locked, if the rifle that he was handling had  
7 been a rifle that had a three-position safety, such as the one  
8 that you just described, and if, after realizing that he could  
9 not open the bolt, the user then grasped the three-position  
10 safety and moved it to the middle position, could the bolt of  
11 that rifle be opened while the safety was still engaged?

12 A Yes, sir, it could be.

13 Q In your opinion, does the three-position safety  
14 hamper the operation of the firearm?

15 A In my opinion, it does not.

16 Q And how about the cost of three-position safety  
17 versus some other devices we have described?

18 A I'm not quite sure I understand your question. The  
19 devices?

20 Q I'm sorry. Other safety devices or other alternative  
21 solutions to resolving the design problem with the Model 700.

22 MR. HUEGLI: Your Honor, I object to the line of  
23 questions in relationship to the cost. There has never been  
24 a contention in this case that I know of that cost has ever  
25 been considered a factor in the design of the rifle, that I

1 know of.

2 Whether it was a dollar more or a dollar less, we  
3 have stipulated that the design in 1976 of a three-position,  
4 or the absence of the bolt lock, was technically feasible and  
5 well within the means of Remington to produce economically and  
6 sell to the public.

7 THE COURT: Well, that does not constitute an objection,  
8 does it?

9 MR. HUEGLI: Yes, it does. It's irrelevant what this  
10 witness has to say.

11 THE COURT: It's overruled.

12 Q (By Mr. Chamberlain) I'm not sure I finished my  
13 question. In fact, I think I didn't.

14 Can you tell us relative -- I want to make a cost  
15 comparison between the two-position safety, the removal of the  
16 blot lock, the automatic safety, versus the approximate cost  
17 of a three-position safety on a firearm.

18 A I cannot tell you in dollars and cents, only to say  
19 that the cost is obviously not prohibitive, because it is used  
20 by certain manufacturers.

21 For instance, the -- probably the most famous bolt  
22 action rifle ever is the Winchester Model 701, of which I'm  
23 holding here Exhibit 44. They used the three-position safety  
24 on their bolt action rifle.

25 It's also used in the Military Springfield Rifle,

1 and many, many Mauser Military Rifles.

2 Q How long has the three-position safety been in use on  
3 various bolt action rifles?

4 A Well, certainly since the late 1800's.

5 Q And in particular, the Exhibit 46, this Springfield  
6 aught three, what year has that been in production since?

7 A The aught three indicates its year. It was adapted  
8 by the military in 1903. It is a copy of the -- or designed  
9 after the Mauser of earlier years.

10 Q I haven't asked you this question yet, but you may  
11 have answered it in some of your other answers. I want to ask  
12 you about the prevalence of three-position safety on bolt  
13 action rifles. Is it a prevalent design and has it been over  
14 the years?

15 A Yes, it's very prevalent.

16 Q Now, you referred to Exhibits 44 and 46. Could you  
17 pick each one of those up and identify them for the jury.

18 A This is Exhibit 44. It's a Model 70 Winchester bolt  
19 action, has a three-position safety on the bolt. Pulled full  
20 rearward, the safety is in the on-safe position and the bolt is  
21 locked. Pushed full forward, it's in the fire position and  
22 the bolt action unlocked.

23 However, with the position in the mid-position, it's  
24 in the safe position, the bolt can be unlocked, opened and  
25 closed.

1 Q But if you pull the trigger in that mid-position,  
2 would the gun fire?

3 A No, sir.

4 Q And Exhibit 46?

5 A Exhibit 46, we have already described. It is the  
6 Military Springfield Rifle.

7 MR. CHAMBERLAIN: We would offer Exhibits 44 and 46.

8 MR. HUEGLI: No objection.

9 THE COURT: They are received.

10 Q (By Mr. Chamberlain) And I believe you mentioned the  
11 one other alternative to the Remington design as a solution to  
12 what you described as a design defect in the Model 700, that  
13 was the trigger lock design; did we talk about that?

14 A No, I don't believe we have.

15 Q All right, let me ask you if, in your opinion, is the  
16 trigger lock design another alternative to the bolt lock  
17 feature on the Model 700?

18 A Yes. Had this rifle been equipped, the design of the  
19 rifle been equipped with the safety that locked the trigger,  
20 instead of in conjunction with the sear, this accident may not  
21 have happened, because when the safety is engaged, it forces  
22 the trigger into a full engagement with the sear. It does not  
23 permit partial engagement when engaged.

24 Q And would the trigger lock design, can the trigger be  
25 pulled at all when the safety is in the on-safe position?

1 A No, sir, it cannot.

2 Q And can you contrast that to the safety design on the  
3 Model 700?

4 A If you had a trigger mechanism with a trigger lock  
5 design which locked the trigger, if debris gets into the thing  
6 to create a problem, if you can lock the trigger, you do force  
7 the trigger into full engagement with the sear if it has a sear.

8 Let's say we have the same mechanism, but it has a  
9 trigger lock safety instead of a sear safety, or in conjunction  
10 with it, it would force the sear into full engagement with the  
11 trigger and would, in all probability, eliminate the residue  
12 problem.

13 Q All right, I want you to assume some facts. Assume  
14 Teri See's accident happened like this, that the rifle was  
15 brought into the house loaded, cocked, bolt closed, safety on;  
16 and assume that that particular rifle did have some lubrication  
17 or congealed solvent in the trigger and it was a sufficient  
18 amount to pull the trigger in the full position if someone did  
19 pull it; okay?

20 A All right.

21 Q If, when that rifle was brought in, it had a trigger  
22 lock design, would it be possible for the fire when safe  
23 released condition to occur on that rifle?

24 A Not if the safety were engaged, because the trigger  
25 would be in full engagement with the sear at that time.

1 Q And you wouldn't be able to pull the trigger to set  
2 up the FSR condition?

3 A That's correct.

4 Q In your opinion, does the trigger lock design hamper  
5 operation of a firearm?

6 A No, sir. It's probably the most prevalent safety  
7 device there is.

8 Q And could you give the jury some examples of the  
9 kinds of rifles or long guns that you have seen it on?

10 A Well, there are many. I cannot mention all of them,  
11 but, in fact, this manufacturer uses the trigger lock safety  
12 on the majority of their shotguns, automatic rifles, pump  
13 action rifles.

14 Q Which manufacturer does?

15 A Remington. Many other manufacturers use trigger lock  
16 safety, also.

17 Q Now, I want you to assume that -- these facts: A group  
18 of people were on a hunting trip, that after the hunting trip,  
19 the owner of three of the firearms brings those firearms into  
20 his home, sets them down horizontally on a chair and realizes  
21 that one of the rifles may be loaded, such as there is a bullet  
22 in the chamber, proceeds to attempt to unload the rifle while  
23 it is lying across the arms of a chair in a horizontal  
24 position. Based upon your experience in the gun industry, was  
25 that sort of use of the Model 700 rifle foreseeable use in

1 December of 1976?

2 A Yes, there are many people who take loaded guns into  
3 their house.

4 Q All right. Now you have described for us a number of  
5 alternative designs, alternatives to the bolt lock feature on  
6 the Model 700.

7 You have described the no-bolt lock, the auto safety,  
8 the three-position safety, and the trigger lock.

9 In your opinion, to make the Model 700 reasonably  
10 safe, would it be necessary to employ all of those alternatives,  
11 or just one of them?

12 A It certainly wouldn't be necessary to employ all of  
13 those to prevent this accident. Any one of them, eliminating  
14 the bolt lock feature alone, would have prevented this accident.

15 Q And installation of auto safety, automatic safety  
16 alone would have?

17 A Yes, either one of those things.

18 Q Now, I want you to assume another set of facts, and  
19 I'm going to ask you a series of questions about causation.

20 I want you to assume that on the day of Teri See's  
21 accident, the gun owner attempted to unload the rifle but was  
22 unable to do so, because the bolt was locked, and at that point,  
23 that he moved the safety on the rifle from the on-safe position  
24 to the off-safe position. I want you to assume in so doing,  
25 he did not touch the trigger, and as he moved the safety from

1 on-safe to off-safe, the gun fired, causing injury to Teri See.

2 Have you got those facts?

3 A I think so.

4 Q Assuming those facts and based upon your experience  
5 with guns and based upon reasonable engineering probabilities,  
6 do you have an opinion as to whether or not the presence of  
7 the blot lock feature was a cause of Teri See's injuries?

8 A I have an opinion, yes.

9 Q What is your opinion?

10 A That, had the bolt lock feature not been there, there  
11 would have been no need to disengage the safety; hence, the  
12 accident would not have happened.

13 Q Assuming those same facts, do you have an opinion,  
14 again based upon reasonable engineering probabilities and your  
15 expertise in the industry, as to whether or not the design  
16 of the trigger assembly was a cause of Teri See's injuries?

17 A I have an opinion, yes.

18 Q What is your opinion?

19 A That if there was some debris or gummy residue of  
20 some sort in the trigger mechanism holding it somewhat out of  
21 engagement with the sear at that time, it was a cause, one of  
22 the causes of the accident.

23 Q And assuming those same facts and based upon your  
24 same expertise, do you have an opinion as to whether or not the  
25 absence of an automatic safety on the Remington Model 700

1 involved in this accident was a cause of Teri See's injuries?

2 A I have an opinion, yes.

3 Q And it is?

4 A Had it been equipped with an automatic safety, the  
5 trigger could not have been pulled, this accident would not  
6 have happened.

7 Q Again, based upon the same assumed facts and your  
8 expertise, do you have an opinion as to whether or not the  
9 absence of a three-position safety on the Remington Model 700  
10 involved in this accident was a cause of Teri See's injuries?

11 A I have an opinion.

12 Q And it is?

13 A Had the rifle been equipped with a three-position  
14 safety, the bolt could have been opened with the safety  
15 engaged, and the trigger could not have been pulled and fired  
16 the gun.

17 Q My last question under these same assumed facts and  
18 based upon your same expertise, do you have an opinion as to  
19 whether or not the absence of a trigger lock on the Remington  
20 Model 700 was the cause of Teri See's injuries?

21 A I have an opinion, yes.

22 Q And it is?

23 A Had this gun been equipped with a trigger lock  
24 safety, the trigger could not have been pulled at the time of  
25 the accident.

1 Q Therefore, you couldn't set up the fire with safe  
2 release condition?

3 A That's correct.

4 Q Now, I want to change the factual assumptions in one  
5 respect, then I'll ask you three more questions.

6 I still want you to assume that the gun owner brought  
7 the rifle in loaded, cocked, in the on-safe position, and  
8 that he attempted to unload the rifle, was unable to do so by  
9 removing the bolt, because the bolt was locked; and then I want  
10 you to assume that the gun owner was not being as careful as  
11 he might have been and as he moved the safety from on-safe to  
12 off-safe, he inadvertently contacted the trigger and the rifle  
13 discharged.

14 A All right.

15 Q Assuming those facts, do you have an opinion based  
16 upon your experience in the gun industry and upon your  
17 reasonable engineering probabilities as to whether or not the  
18 presence of the bolt lock feature was a cause of Teri See's  
19 injuries?

20 A I have an opinion, yes.

21 Q And what is your opinion?

22 A That the bolt lock was a factor in that accident;  
23 had the bolt lock not been present, the safety could have  
24 remained engaged, and even had he pulled the trigger  
25 inadvertently, the gun would not have fired.

1 Q Assuming those same facts, and, again, based upon  
2 reasonable engineering probabilities and your experience and  
3 expertise, do you have an opinion as to whether or not the  
4 absence of an automatic safety on the Remington Model 700 was  
5 a cause of Teri See's injuries?

6 A I have an opinion, yes.

7 Q And what is it?

8 A That it was. Had there been an automatic safety,  
9 the accident would not have happened.

10 Q And why is that?

11 A Because the trigger could not have been pulled,  
12 because it wouldn't have caused the gun to fire.

13 Q Because it was on safe?

14 A Yes.

15 Q And with the automatic safety, it remains on safe?

16 A Until discharged by the user.

17 Q Lastly, assuming those facts, do you have an opinion,  
18 based upon your experience and reasonable engineering  
19 probabilities, as to whether or not the absence of a three-  
20 position safety on the Remington Model 700 Rifle was a cause of  
21 Teri See's injuries in October of 1979?

22 A I have an opinion.

23 Q What is your opinion?

24 A That the absence of the three-position safety was a  
25 cause, because, had it been on this rifle, the bolt could have

1 been opened with the safety in the safe position.

2 Q Such as, even if the user was inadvertently pulling  
3 the trigger, the gun would not go off?

4 A Yes, even had the trigger been pulled, it would not  
5 have fired.

6 MR. CHAMBERLAIN: May the witness be handed Exhibit 10,  
7 please (the exhibit as requested is provided to the witness).

8 Q (By Mr. Chamberlain) Do you have in front of you  
9 Exhibit 10 and Exhibit 206?

10 A Yes, sir.

11 Q And that's the Remington Owner's Manual and the  
12 Peters Hunter Pocket Guide?

13 A It is.

14 Q And you have reviewed both of those, at my request?

15 A I have, yes.

16 Q Based upon your review of those documents and review  
17 of the design of the Remington Model 700, based upon your  
18 experience in the gun industry, do you have an opinion as to  
19 whether or not those manuals, Exhibits 10 and 206, contain  
20 adequate warnings for the user regarding the propensity of  
21 the Model 700 rifle to fire when the safety is released?

22 A I have an opinion, yes.

23 Q What is your opinion?

24 A They do not have adequate warnings.

25 Q Do they even mention it?

1 A No, sir, they do not.

2 Q Do you have an opinion as to whether or not those  
3 manuals accurately warn the user as to the proper lubrication  
4 of the trigger assembly?

5 A I have an opinion, yes, sir.

6 Q What is your opinion?

7 A They do not adequately discuss the proper lubrication

8 Q Do you have an opinion as to whether or not they  
9 adequately warn the user, instruct him as to the proper  
10 cleaning of the trigger assembly?

11 A I have an opinion, yes, sir.

12 Q What is your opinion?

13 A That they do not adequately instruct the user in the  
14 proper cleaning of the mechanism.

15 Q And, again, based upon the same assumptions, do you  
16 have an opinion as to whether or not those two exhibits  
17 adequately warn the user as to the functioning or potential  
18 malfunctioning of the Model 700 in colder temperatures?

19 A I have an opinion, yes.

20 Q What is your opinion?

21 A That they do not adequately warn about its propensity  
22 of malfunctions in the presence of greasy residue in cold  
23 temperature.

24 MR. HUEGLI: I think I would object to the form of the  
25 question and the answer on the basis that cold temperatures is

1 a phrase that has no foundation to it. In Florida, cold  
2 temperatures might be 60 degrees.

3 THE COURT: It's overruled.

4 Q (By Mr. Chamberlain) Mr. Martin, in your opinion,  
5 does the absence of the warnings that you have -- that we have  
6 just discussed render the Model 700 Remington Rifle reason --  
7 unreasonably dangerous?

8 A In my opinion, it does, yes.

9 Q And based upon your experience in the gun industry,  
10 what could the manufacturer of the Remington Model 700 have  
11 done in December of 1976 to make those warnings adequate?

12 A They could have gone into greater detail, first of  
13 all, on how the mechanism functions, how to properly lubricate  
14 it, how not to lubricate it, how properly to clean it, and  
15 how not to clean it.

16 Q In your experience, does the typical gun owner tend  
17 to over-lubricate --

18 MR. HUEGLI: Objection. I don't know -- this man is not  
19 qualified to testify what the typical gun owner does or does  
20 not do.

21 THE COURT: I would prefer that you take the first step  
22 in asking him whether or not he has such an opinion.

23 So the objection is sustained.

24 Q (By Mr. Chamberlain) First, Mr. Martin, in your  
25 work in the gun testing and accident investigation, you have

1 occasion to come in contact with gun owners and gun users?

2 A Yes, I have many times, and I have discussed this  
3 problem with many gun owners and gun users.

4 Q And as part of your work, did you conduct interviews  
5 of gun owners and gun users?

6 A Yes.

7 Q Is lubrication one of the topics that you discussed  
8 with them?

9 A Yes, cleaning and lubrication and use of the gun.

10 Q Okay. Do you have an opinion based upon that  
11 experience and your general experience in the gun industry as  
12 to whether or not it is common for gun owners and gun users to  
13 accessively lubricate their firearms?

14 MR. HUEGLI: Objection. I would not have an objection if  
15 he would give an opinion as to what the gun owners, what was  
16 the common finding of the gun owners he interviewed, but as to  
17 all gun owners in the world, he's not qualified to make that  
18 opinion.

19 THE COURT: It's overruled.

20 Q (By Mr. Chamberlain) Do you have such an opinion?

21 A I have an opinion, yes.

22 Q What is it?

23 A That some gun owners do over-lubricate their guns.

24 Q Is that fairly common in your experience?

25 A Yes, it is.

1 Q Is there anything else as far as the content of the  
2 warnings that comes to mind that you think Remington could do  
3 or could have done in December of '76 to make their warnings  
4 adequate, or have you covered all of that thoroughly?

5 A I think we have covered that.

6 Q Okay. Let's talk about the form of warnings. Are  
7 there some things that Reming.on could have done to better  
8 deliver their warning message?

9 A Yes, there are.

10 Q Could you give us some examples .

11 A Well, in addition to going into greater detail, they  
12 could attach it to the firearm in a manner where the user has  
13 to go to considerable trouble to get it off the firearm.

14 One manufacturer attaches it to the gun with very  
15 strong plastic cord of some sort. You cannot break it. You  
16 have to cut it loose, for instance.

17 Another manufacturer incorporates his instruction  
18 book with the warranty card; when you sign the warranty card,  
19 you sign that you have read and understand these instructions.

20 Still another manufacturer prints directly on the  
21 barrel of the gun, do not use -- or, read instructions before  
22 use. Instructions free from the manufacturer. And gives the  
23 manufacturer's name and address directly on the gun.

24 MR. CHAMBERLAIN: Could I have Exhibit 85 handed to the  
25 witness, please.

1 THE WITNESS: There is one other example I would like to  
2 cite. Another manufacturer goes into great detail in his  
3 instruction booklet and puts warnings in there in red print.  
4 He has some in bold black print, some in red print, and he  
5 goes into great detail about how to use the gun and not to  
6 use the gun, and various problems that exist.

7 Q (By Mr. Chamberlain) What you are suggesting is  
8 different colored ink would call the reader's attention to  
9 various parts of the manual?

10 A Yes.

11 Q Are you talking about a different type face?

12 A Yes.

13 Q Could you explain that a little bit.

14 A Well, the significant thing the manufacturer wants  
15 the user to understand, he puts either in bold black print  
16 or in red print.

17 MR. CHAMBERLAIN: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 Q (By Mr. Chamberlain) I'm going to hand you what has  
20 been marked as Plaintiffs' Exhibit 85 and ask you if something  
21 such as this tag could be incorporated in the warning process?

22 A Well, tags --

23 Q There is nothing written on there?

24 A Well, tags can be attached to guns with various types  
25 of warnings.

1 Q Have you seen that on other manufacturers' rifles?

2 A I have, but I cannot remember who does it. Some do,  
3 though.

4 Q On the Remington Model 700, there is a trigger guard  
5 where such a tag could be conveniently installed?

6 A Yes, they could be attached to the trigger guard or  
7 to the barrel, or any number of places.

8 Q One last area I want to talk to you about,  
9 Mr. Martin, then I'll turn you over to Mr. Huegli.

10 I want you to assume that October 27, 1979, the  
11 Remington Model 700 that has been identified as Exhibit 2 in  
12 this case was involved in the shooting accident which caused  
13 injury to Teri See, and I want you to assume that sometime  
14 after that accident the gun was used again, sometime after that  
15 accident the gun was cleaned on at least one occasion; and  
16 assume, then, that the gun traveled from a law office in  
17 Astoria, Oregon, to a law office in Portland; and then to you  
18 in Maryland, and then by car to New York; that it was then  
19 air freighted back to Oregon.

20 Do you have an opinion based upon those assumed facts,  
21 based upon a reasonable engineering probability and your  
22 experience in the gun industry as to whether or not the  
23 condition that existed in the trigger mechanism of Exhibit 2  
24 on the day of the accident could change over time such that  
25 any malfunction of that rifle which might have occurred on

1 October 27, 1979 could not be duplicated?

2 MR. HUEGLI: Objection. The question asks for an opinion  
3 based upon the hypothetical that is incomplete. The question  
4 simply states at the time the gun was cleaned; it does not  
5 state how the gun was cleaned or what parts of the gun were  
6 cleaned.

7 It's critical for this witness to be asked what parts  
8 of the gun were cleaned if he's to form such an opinion.

9 If the stock is merely wiped off, then I think it  
10 goes without saying that the gun was in the same condition.

11 MR. CHAMBERLAIN: I can correct that, Your Honor.

12 THE COURT: All right.

13 Q (By Mr. Chamberlain) Mr. Martin, assume the same  
14 facts, but you were here yesterday when Mr. Boudreau testified?

15 A Yes.

16 Q I want you to assume in addition all of his testimony  
17 as it relates to gun cleaning; assuming those additional facts,  
18 do you have an opinion as to whether or not the condition  
19 existed in the trigger mechanism on Exhibit 2 on the date of  
20 the accident could change over time such that any malfunction  
21 which occurred on that day could not now be duplicated?

22 A I have an opinion.

23 Q And what is that opinion?

24 A It's quite likely, in all probability, it would  
25 change because simple operation of the bolt mechanism and the

1 tribber and safety by various individuals throughout all of  
2 these travels would most certainly change the condition of the  
3 gun.

4 Q In your experience, is the fire when safe in release  
5 position on the Model 700 something that only happens on an  
6 intermittent basis?

7 A Yes.

8 THE COURT: Now, members of the jury, we will take a  
9 recess for a bit.

10 (Recess.)

11 MR. CHAMBERLAIN: Your Honor, I don't have any more  
12 questions. I did want to offer Exhibit 45.

13 MR. HUEGLI: No objection.

14 THE COURT: It's received.

15

16 CROSS EXAMINATION

17 BY MR. HUEGLI:

18 Q Mr. Martin, Exhibit 45, which is the gun that you  
19 designed, can I assume that that is a functional rifle, and if  
20 I put a bullet in it, it will go off?

21 A Yes, sir.

22 Q And you have told the jury that you have read this  
23 Owner's Manual, I assume, several times, since you were going  
24 to have to testify about it --

25 A I have, yes.

1 Q -- before this trial today.

2 Now, Exhibit No. 2, which is what I'll call the  
3 trial gun, to separate these guns out, when you saw that gun  
4 for the first time, that gun functioned exactly as it was  
5 designed by the manufacturer to function, did it not?

6 A Yes, sir.

7 Q And oh, by the way, there is a diagram up here that  
8 you marked as an exhibit. It's a beautiful drawing that you  
9 introduced; that is the one that we gave you, wasn't it, when  
10 your attorney asked for it?

11 A I believe so, yes.

12 Q You have mentioned something in the first of your  
13 testimony about a military dust test?

14 A Mud and dust test, yes.

15 Q Can you tell me why the military requires all of the  
16 guns they use to pass such a test?

17 A Well, actually, they don't require that they pass.  
18 them; they require that they be subjected to that test, but  
19 most guns will not pass it. Some few will.

20 Q Okay.

21 A They want it to pass the test, because it's not --  
22 it's usual for soldiers to become involved in very dirty, muddy  
23 situations. They, many times, crawl with their gun on the  
24 ground. If it gets muddy, dusty, they like it to operate in  
25 that condition.

1 Q Do they ever accept rifles for combat situations in  
2 swampy, muddy, dusty areas that don't pass the test?

3 A Yes.

4 Q Has it been your experience that they are very  
5 selective in the rifles that they do accept for combat use?

6 A Yes, they are. I'm sorry. For combat use, yes, they  
7 are.

8 There are some, I should elaborate on that. Sniper  
9 teams, for instance, I did a lot of testing for sniper teams  
10 that were used in Vietnam.

11 The Army people who normally select guns for the  
12 military did not select those guns. The sniper teams selected  
13 them, did not have to go through the mud and dust test, and  
14 that sort of thing.

15 Q Why were sniper rifles specifically selected by the  
16 sniper teams? Did they want extra special rifles because of  
17 their position being up in a tree, or something?

18 A They wanted accurate rifles. One, that they were  
19 accurate at certain distances, so they used several calibers,  
20 several different types, also.

21 Q Would you agree with me that the people that  
22 selected the sniper rifles in the military used extreme care  
23 in the selection of that type of firearm?

24 MR. CHAMBERLAIN: I'll object to the form of the question,  
25 Your Honor. There is no foundation that he knows what kind of

1 care anybody used to select rifles for the military. He  
2 wasn't involved in the selection process, I don't believe.

3 THE COURT: It's overruled.

4 THE WITNESS: I do have some experience with that, and  
5 their only concern was the accuracy of the rifle. We were  
6 never questioned about any other feature of the rifle.

7 Q (By Mr. Huegli) They could have cared less if it  
8 misfired, then?

9 A In fact, we chose --

10 Q Would you answer that question, Mr. Martin.

11 A I have never asked if they cared for misfire.

12 Q I'm sure they took that into consideration, didn't  
13 they?

14 A We were never questioned on the safety devices or  
15 anything other than the accuracy and range.

16 Q I understand. You would certainly agree with me,  
17 sniper rifles used in Vietnam, the people that selected that  
18 rifle certainly would be extra specially cautious in selecting  
19 a rifle so as not to have it operate in such a condition that  
20 it would fire when the safety was released; you would agree  
21 with me that would be an extremely important factor?

22 A No, I don't agree with you, because I do have some  
23 experience in their selection of those rifles. They used  
24 rifles -- they asked us for accurate rifles, ones that were  
25 accurate in certain distances; they asked for several calibers.

1 We chose the rifles and gave them to them. They used them  
2 and never questioned us about anything other than accuracy.

3 Q You know what I'm getting at, do you not, Mr. Martin,  
4 is that the Model 700 involved in this case is the most used  
5 rifle by all the military in Vietnam, you know that for a fact,  
6 don't you?

7 A It was used by the military, but so were other rifles  
8 used by the military.

9 Q Mr. Martin, in relationship to handling a loaded  
10 firearm, would you agree with me that the most important item  
11 that should be the most careful with handling a loaded firearm  
12 is in the loading and unloading process, if you have to pick  
13 an item?

14 A No, I don't know that you should use any more care  
15 when loading and unloading. I'm more concerned about carrying  
16 it loaded than I am --

17 Q When you were loading and unloading and functioning  
18 the mechanism, and isn't it true that almost universally,  
19 almost every safety manual that has ever been published, has  
20 stated that the most dangerous time, when you should be most  
21 cautious in which direction the gun barrel is pointed is when  
22 you are loading and unloading?

23 A I can't agree or disagree. I don't know that I have  
24 read that in every instruction manual that has ever been  
25 printed.

1 Q Okay. Mr. Martin, I'm sure that every attorney that  
2 has cross-examined you in all of the time that you have  
3 testified in court, which has been many, hasn't it, depositions,  
4 and trials?

5 A Yes, sir.

6 Q Probably hundreds in combination?

7 A I have never kept count. I don't know how many times.

8 Q They have all asked you about your qualifications;  
9 isn't that true?

10 A Yes.

11 Q While you worked for White Laboratories, it's a fact  
12 that you were an employee; you weren't Mr. White or the owner  
13 at the time?

14 A I'm sorry, I was not Mr. White.

15 Q You weren't operating by company name?

16 MR. CHAMBERLAIN: I'll stipulate he was not Mr. White.

17 MR. HUEGLI: In other words --

18 THE COURT: Wait a minute.

19 Q (By Mr. Huegli) By Mr. White, I mean you did not  
20 own the company and operating under the name of H. P. White,  
21 you were an employee?

22 A Yes, sir.

23 Q And isn't it a fact that all the White Laboratory  
24 did was test guns; they were not a design factory?

25 A We tested guns, yes. We did evaluate designs from a

1 functional standpoint; never designed or manufactured guns.

2 I'm sorry, I should elaborate on a degree. We did  
3 manufacture guns, but we used components that were already  
4 manufactured.

5 These sniper rifles, we assembled those, made custom,  
6 made sniper rifles for the sniping teams.

7 Q You never designed any firearms at White Labs?

8 A No, sir, we were not designers. Our primary function  
9 was testing.

10 Q Now, isn't it true, Mr. Martin, that you personally  
11 have never designed a rifle?

12 A Yes, that's correct.

13 Q And isn't it true that you personally have never in  
14 all of the broad scope of experience that you have had, you  
15 have never written any articles about any firearms at all?

16 A No, I'm not a writer. Never had any interest in  
17 writing. My interest has been in testing. There have been  
18 quite a few reports that I have written, published by the  
19 NRA. We did a lot of testing for the NRA. Our test results,  
20 many times, were published by and identified as such, in fact.  
21 But, as far as writing, per se, I have never written.

22 Q Isn't it true that you hold no patents at all in  
23 relationship to any firearm?

24 A No, sir, I have never designed a firearm, never  
25 applied for a patent.

1 Q Okay. May I take a look for a moment at your auto-  
2 matic safety on your gun.

3 Now, as I understand it, on this, when this safety  
4 works, if the trigger is pulled, it's on safe. To get it off  
5 safe, you push the safe forward?

6 A Yes, sir.

7 Q Pull the trigger, and when you cock it again, it  
8 automatically goes on safety?

9 A Yes, sir.

10 Q Mr. Martin, isn't it a fact that in the entire world,  
11 and I'm talking about Italy and Germany, and everywhere in the  
12 world, at the present time or in the history of the world,  
13 there has never been a high-powered, bolt action, repeating  
14 firearm with an automatic safety?

15 A I have never seen one. We have these patents.

16 Q We will get to the patents in a minute.

17 I'm asking whether there has ever been one produced  
18 besides the one in the courtroom today?

19 A I don't really know. I have never seen one. That's  
20 all I can say.

21 Q Okay.

22 A However, there is no reason there could not have  
23 been some made.

24 Q Would you agree with me, Mr. Martin, there are  
25 literally millions of bolt action rifles -- now, I'm talking

1 about high-powered, center fire rifles -- in production today  
2 in private homes, with the two-position safety on a bolt lock?

3 A Yes.

4 Q Now, the 700 that you have up there, that's your own  
5 personal gun, is it not?

6 A Yes, sir.

7 Q And when you purchased that rifle, that was some  
8 six or seven years ago, was it not?

9 A It was.

10 Q And at the time that you purchased it, you actually  
11 used it for deer hunting yourself, did you not?

12 A I have, yes.

13 Q And you used it in the exact design that we  
14 manufactured it; is that correct?

15 A That is correct.

16 Q Now, I'm interested in your telling the jury about  
17 the installation of that automatic safety. Isn't it a fact  
18 that the automatic safety on that particular firearm was  
19 installed by you in January of 1982, after you testified in  
20 the deposition as an expert against Remington in another case;  
21 isn't that a fact?

22 A Yes, it is.

23 Q You have testified in court, have you not, Mr. Martin  
24 that the design, not only of the Remington, but the design  
25 of certain Marlins, Mosburgs, Rugers, and other guns, including

1 Savages and Colts, those designs of various guns  
2 that they have produced are dangerous and defective?

3 A Yes, I have. And I would like to explain why I have.

4 Q Mr. Chamberlain can have you explain.

5 Mr. Martin, do you agree with me that the two-  
6 position safety on Remington firearm with a blot lock, are on  
7 any other firearm, in your professional judgment, does not  
8 constitute a design defect?

9 A No, I don't agree with you.

10 Q You don't.

11 MR. CHAMBERLAIN: If we are going to have something before  
12 the jury, Your Honor, I would ask that it first be marked and  
13 received into evidence and received a copy of it, rather than  
14 something that counsel has fixed up.

15 MR. HUEGLI: I would ask that it be --

16 MR. CHAMBERLAIN: I would ask that it be marked.

17 MR. HUEGLI: I'm going to read it, so the jury can see  
18 that I'm quoting directly.

19 THE COURT: The objection is sustained. You can remove  
20 it.

21 Q (By Mr. Huegli) Mr. Martin, did you testify in a  
22 case called Schoonover, in Wayne B. Schoonover and Nancy  
23 Schoonover versus Richard I. Sweigard and Remington Arms  
24 Company, Wednesday, March 30, 1976?

25 A Would you tell me what state or location?

1 Q Sure. It was in the Court of Common Please of the  
2 37th Judicial District, Warren County Branch. It was a civil  
3 action at law and trespass and appears to be an assumption,  
4 whatever that means. It's a type of pleading they have back  
5 there.

6 A Is that Pennsylvania? Or New York State, or what?

7 Q Pennsylvania.

8 A Was that -- do you know what model rifle?

9 Q It was a Model 788 with a bolt lock and two-position  
10 safety.

11 A I recall testifying in a case. I think that's the  
12 one, yes.

13 Q I'm reading from the transcript of this case and ask  
14 you if you were asked the following question, and did you give  
15 the following answers:

16 (Reading:) Just a few more questions,  
17 Mr. Martin. Is it your opinion that the two-  
18 position safety utilized on the Remington 788  
19 or any firearm constitutes a design defect.

20 Answer: No.

21 Was that your testimony at that time?

22 A Yes, it was.

23 Q Mr. Martin, would you agree with me that as an  
24 expert in firearm handling that the owner of a gun, no matter  
25 what gun, should treat every gun as if it were loaded and ready

1 to fire?

2 A Yes, I do.

3 Q Would you agree with me that you should never, as a  
4 matter of common sense and practice in the industry, carry a  
5 loaded firearm until you are ready to use it?

6 A That certainly is a good practice, yes.

7 Q And would you agree with me that you should always,  
8 under any circumstances, watch the muzzle of a rifle or any  
9 firearm, pointing it in a safe direction, unless you intend  
10 to shoot it at what it's pointed at?

11 A Yes.

12 Q Would you agree with me that guns and ammunition  
13 should be kept locked and stored, separate from each other?

14 A Yes, if there are children concerned. If not, there  
15 is no other need for it.

16 Q If not, you can leave them all together?

17 A Sure.

18 Q Would you agree with me that you should never carry  
19 a loaded deer rifle in a car while on your way from, or on  
20 your way to, or coming from hunting?

21 MR. CHAMBERLAIN: Objection, relevance.

22 MR. HUEGLI: Your Honor --

23 MR. CHAMBERLAIN: This accident didn't happen in the car.

24 MR. HUEGLI: The conduct of Mr. Boudreau is an issue.

25 THE COURT: It's overruled.

1 MR. HUEGLI: Thank you.

2 Q (By Mr. Huegli) Should you always unload a gun  
3 immediately after hunting after you are done using it?

4 A It is the best practice to do that, yes.

5 Q Would you agree with me it is dangerous to drink  
6 alcoholic beverages while handling loaded firearms?

7 A Yes.

8 Q Would you agree with me that you should always keep  
9 your fingers off the trigger while loading or unloading a gun?

10 A If at all possible, yes.

11 Q Would you agree with me, it's unsafe and common  
12 sense tells us that you should not take a loaded deer rifle  
13 into a living room of a private home, unless you intend to  
14 shoot something in that living room?

15 A It would certainly be the best practice, but I know  
16 for a fact that many people do.

17 Q We know one person did it?

18 A I have done it myself; so it is done by a lot of  
19 people.

20 Q Would you agree with me that the owner of a gun  
21 should read the manufacturer's instructions, follow the  
22 manufacturer's instructions in the care and maintenance of a  
23 firearm?

24 A Yes, I do.

25 Q Mr. Martin, would you agree with me from that, and

1 I'm asking you a question about an opinion that you gave to  
2 Mr. Chamberlain that somewhat surprised me, would you agree  
3 that it has been your opinion up until today, it was your  
4 opinion that other than placing an automatic safety on the  
5 Model 700 rifle, that there were absolutely no other defects in  
6 the form of design that you had never ever found with it up  
7 until today?

8 A No, I don't agree. I do agree that I said words to  
9 that effect in another case. However, the bolt lock was not  
10 an issue in the other case.

11 Q Let me call your attention to your testimony in a  
12 case called Phillip Van Allen and Linda Van Allen versus  
13 Remington Arms.

14 A What page are you on?

15 Q I assume that you brought a transcript, because you  
16 probably knew I had this one. I'm calling attention to your  
17 trial testimony. Do you have that with you?

18 A Yes, sir.

19 Q Let's take a look at Page 79 and read along with me,  
20 if you would, starting at Line 13, and if I don't read this  
21 correctly, you correct me. (Reading:) Question: So, in  
22 other words, this rifle --

23 And that's referring to the 700, is it not?

24 A Yes, sir.

25 Q With the bolt lock and two-position safety, is it not?

1 A Well, he didn't mention the bolt lock or the two-  
2 position safety. He's talking about a rifle in general.

3 Q He said this rifle?

4 A Yes.

5 Q And he's talking about a two-position bolt lock 700,  
6 isn't he?

7 A Yes, but he's not specifying any particular feature.

8 Q (Reading:)

9 So, in other words, this rifle is all  
10 right from a design standpoint with the  
11 exception that it could possibly have an auto-  
12 matic safety on it; is that what you are saying.

13 Answer: Not possibly; it could have  
14 an automatic safety.

15 Question: It could have.

16 Answer: Yes.

17 Question: But, other than the fact  
18 that it could be made more safe, it is still  
19 a reasonable design in the market today, is  
20 it not, Mr. Martin.

21 And your specific direct answer: Yes.

22 If it had an automatic safety, I would not  
23 have any criticism of it.

24 That was your --

25 That was a question and answer read to you and that

1 testimony was given almost a year ago to the day, was it not,  
2 Mr. Martin?

3 A Yes, sir. And I would like to explain.

4 Q Mr. Chamberlain will give you an opportunity to  
5 explain your answer.

6 In the same case, and I call your attention to Page  
7 80 (reading):

8 Question: --Line 11 -- Isn't it true  
9 that you know of no manufacturer that has a  
10 bolt action rifle, high-powered rifle now,  
11 bolt action, with an automatic safety on it  
12 right now, today.

13 Answer: That is true.

14 Was that your testimony then?

15 A Yes, sir.

16 Q Okay. Mr. Martin, I assume that it's your opinion  
17 that some guns, some types of guns, we have lots of different  
18 types of guns in the world; don't we? I mean, all different  
19 types of firearms -- pistols, rifles, shotguns, single shot,  
20 double barrels?

21 A Sure.

22 Q Would you agree with me that there are certain  
23 designs where an automatic safety is not desirable?

24 A No, I don't agree with you.

25 Q So, is it your testimony here today that it's your

1 opinion that every firearm manufactured should have an auto-  
2 matic safety?

3 A I would like to amend that answer.

4 Q Is that your opinion?

5 A I would like to amend my previous answer. With one  
6 exception. There are certain shotguns that are used for trap  
7 and skeet shooting where there is no need for any safety at all,  
8 because the shooters are not permitted to load their guns  
9 until they are on their station, not permitted to leave their  
10 station with a loaded gun; so there are certain shotguns that  
11 have no safety at all.

12 With that exception, in my opinion, any gun can have  
13 an automatic safety.

14 Q No, the question is: Is it your opinion that all  
15 guns should have an automatic safety? Yes or no. Is it your  
16 opinion one way or the other?

17 A Should have?

18 Q Should have. All guns.

19 A No, there certainly are other -- some guns that do  
20 not have to have them. Guns with a three-position safety,  
21 and so forth.

22 But there is no reason that you can't put an auto-  
23 matic safety on any gun.

24 Q Not whether you could or could not. Do you have an  
25 opinion one way or the other if all guns should have an

1 automatic safety on them, and I'm even including three-position  
2 safety guns; should those have an automatic safety?

3 A They would be safer if they had automatic safety.

4 Q Does a three-position safety constitute a design  
5 defect?

6 A Well, the safety itself, no.

7 Q Does the design?

8 A There may be other aspects of the gun that have  
9 problems, but the safety itself --

10 Q I'd like to call your attention to testimony in a  
11 case called Betty Sue Edwards versus William David Springer,  
12 in the Circuit Court, in and for Brevard County, Florida, from  
13 testimony which was given 13 of January, 1981, at 3:00 o'clock;  
14 do you recall that case?

15 A Not yet. What kind of gun is it?

16 Q Well, do you recall testifying in that case?

17 A Not yet, no.

18 Q It was just about two years ago, was it not?

19 It was a Ruger, as I recall, but you do not recall,  
20 do you, what kind of gun it was or not?

21 A No. Could you give me the plaintiff's name again?

22 Q Sure. Betty Sue Edwards, plaintiff, versus William  
23 David Springer. It was in the Circuit Court of Brevard County,  
24 Florida. James I Knudson, Esquire and Jerry McGreal, Esquire,  
25 of Spielvogel & Goldman, Merritt Island, Florida, appearing on

1     behalf of the plaintiff.

2             You remember the case now?

3         A     I remember now.

4         Q     Did you give this testimony in that case:

5             (Reading:) It's my opinion that all  
6             guns should have what I call an automatic  
7             safety, one that does not put the onus on the  
8             user, one that is on automatically until he  
9             needs to fire, and then he has to disengage it,  
10            at which time it will return to the on position.

11            Question by the lawyer: (Reading:)  
12            Okay, so your opinion is that all guns should  
13            have an automatic safety.

14            Answer: Yes, sir.

15            THE WITNESS: Yes, I still agree with that.

16         Q     (By Mr. Huegli) Okay. Now, Mr. Martin, I assume  
17            that you have investigated literally hundreds of firearm  
18            accidents over the many years of your broad breadth of  
19            experience; is that fair to say?

20         A     Yes, I have.

21         Q     What do you find to be the most common thread  
22            running through every firearm accident that you have investi-  
23            gated and the most common cause of firearm accidents that you  
24            have investigated?

25         A     The first thing was the threat?

1 Q Thread. What is the most common cause of an  
2 accident, firearm accident, in your broad breadth of  
3 experience?

4 A I guess, dropping firearms.

5 Q Dropping them?

6 A Yes.

7 Q Mr. Martin, once again, I'm going to call your  
8 attention to your testimony in a case called Schoonover that  
9 we have already discussed. Your testimony, March 31, 1976,  
10 commencing 10:30.

11 Do you recall giving testimony in that case?

12 A I believe so, yes.

13 Q Let me read your testimony from that case, and tell  
14 me if this might refresh your recollection.

15 (Reading:) Question: Several means  
16 some things to some people and some things to  
17 other people. Could you give me just an approxi-  
18 mation, a ballpark figure, and, of course, I do  
19 not intend to hold you to it, but just an idea.

20 Answer: No, I don't think I can. As I  
21 say, I have worked in hundreds of cases like  
22 this, and some few of those hundreds have  
23 involved defective firearms, and some have  
24 involved defective ammunition, and the majority  
25 have involved the operator.

1                   Question: The majority have involved the  
2                   operator, did you say.

3                   Answer: Yes.

4                   THE WITNESS: All right.

5                   Q        (By Mr. Huegli) Was that your testimony?

6                   A        That was at that time. However, since that time, the  
7                   conditions have changed considerably. Since 1978 alone, I have  
8                   been involved in between three and four hundred additional  
9                   accidents. The vast majority of those have resulted from  
10                  dropping firearms. And so my answer today would not be the  
11                  same as it would be that day.

12                  Q        Okay. Mr. Martin, have you ever read a book called  
13                  the Bolt Action Rifle, by Stuart Otteson?

14                  A        If so, I don't recall.

15                  Q        You do not recall, you don't know whether this is a  
16                  well recognized authority and standard in the industry upon  
17                  which experts rely?

18                  A        I don't recognize the name. I don't recognize it as  
19                  an authority, no.

20                  Q        Okay. Mr. Martin, would you agree with me that  
21                  literally every bolt action rifle on the market today can be  
22                  contaminated in one form or another by dirt?

23                  A        They could all be contaminated, but the results of  
24                  the contamination is what I'm concerned with.

25                  Q        We will get to the results.

1 First of all, I'm talking about contamination,  
2 virtually every gun manufactured can be contaminated by dirt  
3 or debris, can they not?

4 A They sure can.

5 Q And would you agree with me that virtually every  
6 firearm in the world today can be abused, altered and misused,  
7 contrary to the manufacturer's instructions?

8 A Yes.

9 Q Now, would you please --

10 Well, I think this is Exhibit 2, and would you agree  
11 with me that in Exhibit 2, as it is designed, that if the  
12 owner reads the manufacturer's instructions, the man who  
13 purchases the gun, that the owner would -- there would be no  
14 question that in order to unload this firearm it would be  
15 necessary to push the safety forward, put the gun in the fire  
16 position, and open the bolt to take the bullet out?

17 A Yes.

18 Q Because that's the way it's designed, is it not?

19 A It is.

20 Q Mr. Martin, would you please come down from the  
21 witness stand and stand in front of the jury, please (the  
22 witness complies).

23 I have now placed this Exhibit 2, the trial rifle  
24 in the safe position and the gun is cocked; is that correct?

25 Cock it again. Is that correct?

1 A Yes, it is.

2 Q Would you please demonstrate to the jury how the  
3 rifle, if -- assume there is a bullet in it, how the rifle  
4 should be unloaded. How it should be unloaded.

5 Q Yes.

6 A According to the instruction book, the instruction  
7 book tells you to move the safety to the off-safe position,  
8 lift the bolt handle, reengage the safety, and then retract  
9 the bolt.

10 Q And would you agree with me that the instructions in  
11 the owner's manual are just that simple; when they are read,  
12 they say those exact words?

13 A They do say those words, yes.

14 Q Thank you. You may take the witness stand again.

15 Mr. Martin, is it not true that you have testified  
16 in previous trials that the following rifles or guns are  
17 dangerously defective in design, number one, the Remington  
18 Model 1100?

19 A That isn't a rifle.

20 Q I said guns. That's a shotgun.

21 A I'm sorry. I misunderstood you.

22 Q I'd like you to assume rifles or guns, something  
23 that shoots. Remington Model 1100?

24 A Yes, sir.

25 Q Remington Model 870?

1 A Yes, sir.

2 Q Remington Model 700? Van Allen.

3 A Yes. Okay.

4 Q Ruger Blackhawk?

5 A Yes.

6 Q Ruger Single-Six?

7 A Yes, that is the same as the Blackhawk.

8 Q Ruger Bearcat?

9 A I don't believe I ever testified on a Bearcat case.

10 Q Have you testified that any rifle which has an exposed  
11 hammer and release upon a notch for its safety mechanism is  
12 dangerously defective in design?

13 A Yes, I have.

14 MR. HUEGLI: May I have this marked, please (to the clerk).

15 THE CLERK: Marked Defendant's 211.

16 MR. HUEGLI: Thank you.

17 Q (By Mr. Huegli) Mr. Martin, I'm going to hand you  
18 Defendant's 211, and would you tell the jury what that is.

19 A This is a Winchester Model 94, caliber .30-30 rifle.

20 Q Would you agree with me that that particular rifle  
21 that, I think, I would assume, that most everyone has seen in  
22 either a movie or somewhere, is virtually the most common deer  
23 rifle in the world today?

24 A I believe it probably is.

25 Q And it's your opinion that it's dangerously

1 defective, is it not?

2 A It is. Yes. May I explain why?

3 Q Mr. Chamberlain will have an opportunity to redirect  
4 his examination.

5 Now, I'd like to call your attention to this  
6 particular firearm that is involved in this accident.  
7 Specifically on the date of that accident, I'd like you to  
8 assume that Mr. Boudreau discharged the firearm; I'd like you  
9 further to specifically assume that he unloaded the rifle some-  
10 time at the end of that day.

11 And I'd also like you to assume that the following  
12 statement of Mr. Boudreau, which was given in the lawyer's  
13 office, July 15, 1980, in typewritten form is true:

14 (Reading:) On the evening of October 27,  
15 1979, after Teri See was taken to the hospital,  
16 I again stested the safety on the gun. Present  
17 were Jim MacDermott and Deputy Dan P. Laughlin,  
18 of the Clatsop County Sheriff's Office. With  
19 the gun empty, I would release the safety to  
20 see if it would fire. After approximately 20  
21 tries, the firing pin again fired.

22 Pay particular attention to Mr. Boudreau's  
23 last statement in this written report in 1980,  
24 in the lawyer's office: Since that time I have  
25 not used or cleaned it.

1 I'd like you to assume that to be true. I'd like  
2 you to then assume that the rifle went directly from  
3 Mr. Boudreau to his lawyer, and from the lawyer, the rifle  
4 went directly to you.

5 Would you not agree with me, assuming those facts to  
6 be true, that when you received the rifle, that it was in  
7 substantially the identical condition it was at the time that  
8 Teri See was shot?

9 A Only if the rifle had not been functioned since the  
10 accident, which we know it had been, both he and someone else  
11 functioned it. It had been subjected to I don't know what kind  
12 of vibrations during the course of that interval, temperature  
13 changes.

14 So I don't agree with you it's in substantially the  
15 same condition.

16 Q Okay. Now, your opinion, then, assuming that the gun  
17 hadn't been cleaned and that it never had been used again, and  
18 we know that it went from him to his lawyer, and from his  
19 lawyer to you, that somewhere in the chain of custody of that  
20 rifle, that somehow, whatever was in there is mysteriously  
21 disappeared without cleaning it; that is your testimony, is it  
22 not?

23 MR. CHAMBERLAIN: I'll object to the testimony in one  
24 regard. That is, counsel states, asking him to assume that it's  
25 never been used, but in the statement he read, they mentioned

1 functioning the weapon twenty times.

2 I'm not clear what counsel means by use.

3 MR. HUEGLI: Firing a shot.

4 THE COURT: It's overruled.

5 MR. HUEGLI: I'll strike the question.

6 Q (By Mr. Huegli) Did you examine the rifle?

7 A Yes, sir.

8 Q Did you take it apart and take pictures?

9 A I took it apart to a degree. I have never dis-  
10 assembled the trigger mechanism other than to pull pins, drop  
11 it off the receiver and take the sear itself off. I have  
12 never removed the trigger.

13 Q Did you find the trigger assembly to be dirty?

14 A Yes.

15 Q Would you agreed with me that if the trigger assembly  
16 had been washed with a high grade of petroleum solvent that it  
17 would not have appeared as though it was dirty when you saw it?

18 MR. CHAMBERLAIN: I'll object to the form of the question,  
19 unless counsel establishes what a high grade of petroleum  
20 solvent is.

21 MR. HUEGLI: Strike the question.

22 Q (By Mr. Huegli) Would you agree with me, Mr. Martin,  
23 that this rifle is designed, if the safety had been moved from  
24 the safe to the fire position, the trigger had not been pulled,  
25 the gun was pointed specifically in a safe direction, that that

1 gun can be unloaded without it going off?

2 A If there is no residue or anything in the trigger  
3 mechanism, yes.

4 Q If there is nothing binding the trigger, it can be  
5 unloaded safety, can it not?

6 A Yes.

7 Q Now, I'd like you to show me what you have told the  
8 jury is the -- I think you said it was the most, either the  
9 most wonderful or the most accepted, or something, rifle in  
10 the world today. I think you said it was the Winchester Model  
11 7?

12 A I haven't used the world wonderful or accepted, for  
13 that matter.

14 Q What did you say?

15 A Probably the most popular.

16 Q Most famous, most popular?

17 A Perhaps.

18 Q Would you agree with me that the Winchester Model 7  
19 has built into it a bolt lock?

20 A Yes.

21 Q Would you agree with me that the most famous or most  
22 popular rifle in the world today does not have a trigger lock?

23 A No, sir.

24 Q It does?

25 A I agree with you that it does not.

1 Q Now, you have told us that it costs less to build a  
2 gun with a bolt lock than without a blot lock; is that correct?

3 A Yes, sir.

4 I'm sorry, what did you say?

5 Q Cost less to build a gun without a bolt lock than  
6 without a bolt lock (sic). Did you -- switch that around. At  
7 any rate, it's cheaper, build one without it and more expensive  
8 to design a bolt lock in; isn't that a fact?

9 A Yes, it is.

10 Q Now, I assume that you are aware that a bolt lock  
11 design does have a functional purpose, doesn't it, on a high-  
12 powered firearm?

13 A Yes, it does.

14 Q And there are some hunters, I don't know how many,  
15 because I haven't wandered throughout the woods and done an  
16 examination, but there are some hunters that desire the bolt  
17 lock, they want it built into their gun, they want that as a  
18 design; isn't that a fact?

19 A No, I can't agree with that. I know of no basis for  
20 that opinion.

21 Q Well, just a minute. You have done a study of all  
22 of the hunters, you must have done some kind. Hunters, you  
23 know that hunters over-oil their guns and take guns in the  
24 living room; have you ever asked them about a bolt lock?

25 A No, sir, I never have.

1 Q All right. Now, let's take a look at some of those  
2 rifles that you have up there.

3 First of all, Model 591, that is not a center fire  
4 rifle, is it? It's a rim fire?

5 A Yes, this is a rim fire, but, nevertheless, it's a  
6 bolt action.

7 Q Sure. I agree with you. It's a bolt action.

8 A Whether a center fire or rim fire doesn't necessarily  
9 have to have a bearing on safety features.

10 Q I understand that.

11 Would you agree with me that a center fire rifle  
12 almost universally is more high-powered than a rim-fired rifle?

13 A Yes, sir.

14 Q And a .22 is a rim-fired rifle, isn't it?

15 A It is.

16 Q Now, the Mosburg 800A, you said it has no bolt lock;  
17 is that correct?

18 A Yes, sir.

19 Q When was that gun produced, that particular gun that  
20 has been marked as a trial exhibit here today?

21 A I have no idea.

22 Q Isn't it a fact that Mosburg has in the past produced  
23 rifles with bolt locks?

24 A I believe they have, yes.

25 Q Now, let's take a look at the Model 788 Remington.

1 That gun was manufactured subsequent to the accident in question  
2 in this lawsuit, was it not? In 1976, the 788 had a bolt lock,  
3 didn't it?

4 A Yes, it did.

5 Q Now, I'd like to -- I'd like to --

6 MR. CHAMBERLAIN: May we approach the bench, Your Honor?

7 I have an objection that I hesitate to state on the record.

8 THE COURT: All right.

9 (Bench conference between Court and counsel, outside  
10 the hearing of the jury and the court reporter.)

11 Q (By Mr. Huegli) Mr. Martin, the Model 788, at one  
12 time, had a bolt lock, and we are not certain whether it's  
13 before or after this accident, but I would like you to assume  
14 it was before the accident and Remington eliminated the bolt  
15 lock on the 788; didn't they?

16 A Yes, sir.

17 Q Now, these patents that you have talked about are very  
18 interesting. I would like to go over them one at a time. Okay.

19 The first patent is by H and R, and I assume that is  
20 Harrington and --

21 A Richardson.

22 Q 1945?

23 A Yes, sir.

24 Q The patent automatic safety on bolt lock rifle. Would  
25 you please tell the jury the model number of any Harrington

1 Richardson bolt action rifle that has an automatic safety, or  
2 that has ever been produced.

3 A I don't know. I never asked them if they have used  
4 it.

5 Q You do know, do you not, there is no Harrington and  
6 Richardson rifle in the world that has an automatic safety?

7 A No, I don't know that.

8 Q What about Winchester?

9 A The same answer.

10 Q You do not know whether -- okay. I'm not trying to  
11 trick you. I'm talking about production rifles, not proto-  
12 types. I'm not trying to play word games with you. I'm talking  
13 about a rifle that they have produced to sell to the general  
14 public.

15 Let's go back to H and R. They have never produced  
16 one with an automatic safety?

17 A I do not know that they may have or may not. I have  
18 not researched it.

19 Q Winchester?

20 A Same answer, I do not know.

21 Q So, your testimony is today, in this room, that you  
22 do not know whether or not Winchester or Harrington and  
23 Richardson have ever produced for production and sale to the  
24 general public and actually sold it, a bolt action rifle with  
25 an automatic safety?

1 A That's correct.

2 Q Would you take a moment, and are you satisfied with  
3 your answer that you don't know whether there are any in the  
4 world? I'm going to read your testimony from Van Allen, Page 64.

5 A What page?

6 Q Sixty-four. This was not so long ago. This was  
7 February 18, 1982.

8 A What line?

9 Q Well, let's start at 18 (reading): Question: Are  
10 there any in existence now on long guns. Answer --

11 And we are refe-ring to automatic safeties, are we  
12 not, referencing Line 10?

13 A Yes.

14 Q (Reading:) Answer: I don't know of any now on bolt  
15 action rifles. The one designed. But there are some on  
16 break-open shotguns and exposed-hammer shotguns, rifles.

17 Was that your answer in Van Allen a year ago?

18 A Sure. It's no different than my answer today.

19 Q I think the jury can determine that.

20 A I said, I don't know -- then; and I don't know now,  
21 either.

22 Q Let's refer to the patents of the Marlin, Savage, and  
23 Olin. Let's look at those three.

24 Would you agree with me that none of those patents  
25 which were patented in '64, '76 and '68 have ever been produced

1 or produced commercially by any of those rifle manufacturers  
2 on high-powered bolt action?

3 A I will have to give you the same answer. I do not  
4 know.

5 Q Other than your gun, sitting up there, you have never  
6 seen a high-powered rifle with an automatic safety on it in the  
7 whole world?

8 A I have already testified that I have not.

9 Q Would you please pick up the Mauser rifle that you  
10 have up there. Do you have a Mauser up there?

11 A I don't believe so.

12 Q How about a Springfield?

13 A Yes, I have one somewhere.

14 Q Does that rifle have a trigger lock?

15 A No, sir.

16 Q So that rifle is dangerously defective, is it not?

17 A It would be safer if it had a trigger lock.

18 Q No, you told us our rifle is dangerously defective  
19 because it does not have a trigger lock. That rifle does not  
20 have a trigger lock, does it?

21 A There is no similarity on the sear mechanism on those  
22 two rifles, so this rifle is --

23 Q I didn't ask you that. Is it your opinion that it's  
24 dangerously defective?

25 A No, sir.

1 Q Model 70, that is not dangerously defective, is that  
2 your testimony?

3 A That's correct.

4 Q Do you know of any rifles that have both a sear block  
5 and trigger lock that are bolt action high-powered rifles?

6 A Both the sear block --

7 Q And trigger lock.

8 A And trigger lock --

9 Q One does not exist, does it?

10 A Again, I don't know. There are plenty that have  
11 trigger locks.

12 Q Isn't it true that a manufacturer is, as a general  
13 rule in the industry today, uses either a sear block or a  
14 trigger lock, but you know of no manufacturer in the whole world  
15 that combined the two together; isn't that true?

16 A Well, no, I can't agree with that. It's true, it may  
17 be true, but, I know there are patents.

18 Q I'm talking about guns manufactured that the public  
19 buys, not patents.

20 A I cannot sit here today and recall one.

21 Q Would you not agree with me that the purpose of a  
22 semi-automatic repeating rifle is for rapid fire?

23 In other words, I think we have all had some  
24 experience with a .22, that we shoot at a shooting gallery,  
25 and you pull the trigger, and you pull the trigger, and it goes

1 bang, bang, bang, bang, bang.

2 Would you agree with me that if an automatic safety  
3 was installed on a repeating semi-automatic repeating rifle that  
4 the purpose of the rifle would be defeated, that is, rapid fire?

5 A No, I don't agree with that at all. It would depend  
6 entirely upon the type of automatic safety.

7 For instance, the Colt .45 pistol has an automatic  
8 safety in the form of a grip safety. It doesn't bother the  
9 rapid fire.

10 Q Would you agree with me that if Remington had put in  
11 this box for Stephen Boudreau a warning that was three feet long  
12 and ten feet wide, and if he didn't read it at all, that it would  
13 have had absolutely no effect on him?

14 A Yes, I'll agree with that.

15 Q So you would agree with me, would you not, that if  
16 the owner of a gun doesn't read a warning and heed a warning, it  
17 doesn't matter how much you warn?

18 A Yes.

19 Q Now, Mr. Boudreau in this case has told us that he  
20 took the Owner's Manual, which says right on its face, always  
21 point a gun in a safe direction, et cetera, et cetera, and our  
22 Peters Pocket Guide, which tells him how to handle rifles  
23 carefully, and threw them right away in the fireplace, threw  
24 them right away?

25 A I didn't understand the testimony like that.

1 Q Okay. I'd like you to assume that Mr. Boudreau has  
2 testified that when he received the rifle, he probably got the  
3 Owner's Manual and pocket guide, and he directly threw them  
4 away. Do you understand that?

5 A This is your testimony, not his?

6 Q Well, did you hear the testimony that way?

7 A No, I did not.

8 Q Okay.

9 A The testimony I heard said if it was in the box, he  
10 probably threw it away.

11 Q Okay. Now, I'd like to call your attention now  
12 specifically to your rifle. And I assume that your rifle, as  
13 you have the implementation and design of your rifle, the  
14 automatic safety rifle that you consider that to be a safe and  
15 adequate firearm?

16 A A safe and adequate firearm?

17 Q In other words, it's your opinion that the firearm  
18 that you have designed, Exhibit 46, I believe it is, as it is  
19 designed, as the design is executed in your rifle, that it is  
20 not dangerously defective?

21 A Actually, I designed this to show what is feasible if  
22 a manufacturer wanted to. I have not conducted, for instance,  
23 reliability tests or that sort of thing with it.

24 Beyond the fact that it is an automatic safety, it  
25 could be put on the gun, that would make it safer, I have no

1 other opinions.

2 Q I understand, but you feel that the gun as it now sits  
3 was safer than the gun that shot Teri See?

4 A No question about it, yes.

5 Q Mr. Martin, I'd like to call your attention once  
6 again to your testimony in Van Allen, okay?

7 A Right.

8 Q And this testimony was given in deposition on  
9 December 21st, 1981, at 2:50 p.m., Holiday Inn, 890 Elkridge  
10 Landing Road, Linthicum, Maryland.

11 Do you remember when you showed up for that deposition?

12 A I believe so.

13 Q All right. And that involves the same gun that we  
14 have here today, a Model 700, did it not?

15 A Yes, sir.

16 Q I'd like to reference you to Page 5 of that deposition.

17 Did you give this answer to this question? (Reading:) Question:

18 As a result of your testing and examining this particular rifle,  
19 did you reach any conclusion or opinion that, one, there was  
20 anything wrong with the design of the rifle --

21 And, of course, we are distinguishing here, are we  
22 not, design defect from manufacturing defect; correct? Design?

23 A Yes.

24 Q (Reading:) -- one, or there was anything wrong with  
25 the design of the rifle, and by design of the rifle, I am

1 speaking particularly to the mechanical function of the rifle.

2 Was this your answer? (Reading:) Well, design-wise, --

3 This rifle, speaking of a 700, identical to Teri

4 See's design rifle --

5 -- uses a design that has been the state of the art  
6 for a long, long time, so I guess, compared to other rifles on  
7 the market, I don't think there is any design problem with it,  
8 period, end quote.

9 Was that your statement?

10 A Yes, it was. However, the bolt lock, as I mentioned  
11 before, was not an issue there, and I think if you read further  
12 in that testimony, you will find that it stated that my  
13 research and tests were devoted solely to the sear engagement  
14 and the fact that the sear engagement was improper and needs a  
15 trigger pull.

16 Q Your statement in that transcript was unqualified,  
17 was it not?

18 A Yes, it was. So was the question.

19 Q Okay. Let's ask you to listen to Page 24. Here's  
20 another question you could have qualified.

21 (Reading:) Question: And the only thing  
22 concerning the design of the 700 rifle was that  
23 it did meet the state of the art as of the time  
24 the rifle was manufactured, but you feel that it  
25 could have an automatic safety.

1 Answer: Yes, sir.

2 Was that your testimony at that time?

3 A Yes, it was.

4 MR. HUEGLI: I think that's all I have of Mr. Martin,  
5 Your Honor.

6 MR. CHAMBERLAIN: Before I continue with redirect, Your  
7 Honor, I would ask counsel to turn his attention to interroga-  
8 tory answer No. 23, and I will ask you if you stipulated that  
9 the design change in the Model 788 occurred in 1974.

10 MR. HUEGLI: Yes, I would stipulate to that.

11

12 REDIRECT EXAMINATION

13 BY MR. CHAMBERLAIN:

14 Q Mr. Martin, let's take up where Mr. Huegli left off.

15 What does the term state of the art mean to you?

16 A It means that design that is more prevalent in the  
17 field today.

18 Q Does it mean the most advanced design?

19 A No, sir, not to me, it doesn't.

20 Q Does it mean the most modern design?

21 A No, sir.

22 Q The best design?

23 A Not necessarily the best either, no.

24 Q So, if the bolt action rifles have been designed with  
25 the bolt lock feature for 100 years and after 100 years they are

1 still designed with the bolt lock feature, would you say the  
2 bolt lock feature is the state of the art?

3 A Yes.

4 Q It's descriptive of the state as designed at that  
5 time, right?

6 A Yes, sir.

7 Q Now, you were asked some questions about Van Allen  
8 versus Remington. That was a lawsuit in Florida where  
9 Remington was sued and the claim against them was their Model  
10 700 rifle was unreasonably dangerous; right?

11 A I believe so, yes.

12 Q Do you remember some of the facts of that lawsuit;  
13 were they similar to this lawsuit; was there any manipulation  
14 of safety immediately before the injury?

15 A Yes, I remember the facts. There were no similarities  
16 to how the accident happened. The bolt lock or the safety was  
17 not moved prior to the accident. The trigger was not pulled by  
18 hand. There was no hand on the action at the time.

19 There was a hand on the muzzle end of the barrel, but  
20 that's all.

21 Q Tell the jury, if you remember, what physically the  
22 parties were doing immediately before that accident.

23 A The parties had been hunting in a field; they were  
24 going to move their hunting location, and they were in a pickup  
25 truck. One of them lay a 700 on the seat of the pickup truck

1 with the muzzle pointing toward the passenger's side.

2 The passenger came around and started to get in and  
3 the gun was in his way. He took hold the muzzle to move it,  
4 and it fired through his pelvic area.

5 Q Okay. So the safety had nothing to do with that  
6 accident? Rather, the bolt lock feature had nothing to do with  
7 that accident?

8 A No, sir.

9 Q Because, as you testified, the safety was already off  
10 safe when they got in the car?

11 A Yes, sir.

12 Q Was there any contention in that case that there was  
13 a problem with the trigger assembly that was causing the rifle  
14 to fire when the safety was released?

15 A No, sir.

16 Q Was there any contention in that case that either the  
17 warning provided to the user with that rifle were inadequate or  
18 that the user did or did not read the warnings?

19 A No, sir.

20 Q And your testimony in that case was that that auto-  
21 matic safety would have, in all likelihood, have prevented that  
22 accident?

23 A Yes.

24 Q Could you explain to the jury how that is, how you  
25 reached that opinion?

1       A       Because the automatic safety is on every time you load  
2 the gun. It stays on until you disengage it to fire. The man  
3 had loaded the gun, put it in the truck, and the automatic  
4 safety would have been engaged at that time.

5       Q       So right before that accident, Van Allen, or whoever  
6 it was, loaded the gun, didn't put the gun on safe, put it in  
7 this car. Your point is that if the gun had an automatic  
8 safety when he loaded it, the gun would have been on safe?

9       A       Yes.

10      Q       Bolt lock feature or no bolt lock feature, wouldn't  
11 have been any aid to the user in that case?

12      A       No, it would not. It was not an issue in the case.

13      Q       Since the safety wasn't on it, the trigger lock  
14 feature wouldn't have been any aid to the user in that case?

15      A       No, sir.

16      Q       In your testimony in the plaintiffs' case, did they  
17 concentrate on the things that were issues in that case?

18      A       Yes, sir, I did, and I so testified.

19      Q       And to the exclusion of the things that were not  
20 issues in that case?

21      A       That's correct.

22      Q       Now, when you put the design and installed the auto-  
23 matic safety on your Model 700, you did not do that --

24       MR. HUEGLI: Objection. Mr. Chamberlain has led this  
25 witness through the entire redirect, and I must object.

1 THE COURT: The objection is sustained.

2 Q (By Mr. Chamberlain) You testified, or you did put  
3 an automatic safety on your Model 700?

4 A Yes, sir, I did.

5 Q Why did you do that?

6 A During my deposition I was asked the question, or the  
7 comment was made by the defense attorney, something to the  
8 effect, well, Mr. Martin, you have never designed a safety, have  
9 you; and I said, no, I haven't.

10 I gave this some thought afterwards and decided that  
11 I would. That is the reason for it.

12 Q How long did it take you to conceive of that design?

13 A I thought of it driving home from the deposition. I  
14 got home, I sketched it. We went in the shop and the gunsmith  
15 and I made it. It was a matter of a couple of hours.

16 Q So your record is clear, your gun is Exhibit 45, not  
17 Exhibit 46?

18 A I'm sorry?

19 Q Just for the record, counsel referred to your gun as  
20 being Exhibit 46; isn't it 45?

21 A I believe it's 45, yes, sir.

22 MR. HUEGLI: If I did, I didn't do it intentionally,  
23 Mr. Martin. I couldn't remember which one it was.

24 I apologize to the Court. I was trying to refer to  
25 whatever number it was.

1 Q (By Mr. Chamberlain) Now, on cross-examination it was  
2 pointed out that the, I think the Winchester Model 70 does not  
3 have a trigger lock, doesn't have an automatic safety, and does  
4 have a bolt lock, one of three features, or one of three  
5 positions; right?

6 A Yes, sir.

7 Q You gave those ideas to us or those concepts to us  
8 as alternatives to cure the unreasonably dangerous defect in  
9 the Model 700.

10 I think I asked you this before, but does a manu-  
11 facturer need to incorporate all three or four or the alterna-  
12 tives that you suggested, or would any one of them cure the  
13 dangerousness?

14 A Any one of them would have prevented this accident.

15 Q And on the patent, I think you testified that you  
16 didn't know if those had been put into production?

17 A No, I do not.

18 Q But, those patents are at least valuable enough to the  
19 manufacturers that they did want to protect them by registering  
20 them?

21 A They did go to the expense of purchasing a patent.  
22 In most instances, they were patented by some individual, and  
23 he assigned them to the manufacturer. They were interested  
24 enough that they did get the patents.

25 Q Now, in a number of your questions, I think it was one

1 of the very first questions Mr. Huegli asked you, if in fact  
2 you hadn't criticized a number of different rifles and contended  
3 that they were dangerously defective, and later in your  
4 testimony, he listed four or five different ones, I believe,  
5 three of which happened to be Remington products. And you asked  
6 if you could explain your testimony, and he said no.

7 This is your chance to do that. Could you explain to  
8 the jury how it comes to pass that you do have a criticism of  
9 quite a number of different firearms?

10 A Yes, I have criticized quite a number of firearms. I  
11 feel for good reason.

12 Quite a few manufacturers, including this manu-  
13 facturer, have not done anything in the 1900's to make firearms  
14 safer from a functional standpoint, that is, insofar as safety  
15 handling of the gun is concerned.

16 In fact, they have, in some instances, made them less  
17 safe, as in the case of this gun. This gun certainly would be  
18 safe if it had a three-position safety on it. It does not have  
19 a three-position safety, and the only reason for that is one  
20 of economics. Certainly not safety.

21 So for that reason, I have criticized quite a lot of  
22 guns.

23 Q In your answer you said this gun. Were you referring  
24 to Exhibit 2, the Model 700?

25 A Yes, sir.

1 Q Now, one of the guns that you criticized was the  
2 Model 788 Remington?

3 A Yes, sir.

4 Q Because it did have a blot lock?

5 A Yes, sir, I did.

6 Q I take it, then, you were criticizing the Model 788  
7 that was manufactured before 1974?

8 A Yes, the 788 I criticized had a bolt lock, and I  
9 criticized it for that reason.

10 Q And thereafter the design was changed?

11 A Yes, sir.

12 Q And the bolt lock was eliminated?

13 A It was.

14 Q You told counsel that it was, in your opinion, a  
15 safe practice to keep ammunition locked and stored separately  
16 from guns; do you remember that?

17 A If children are present.

18 Q If you have a loaded firearm, before you can  
19 separate the ammunition from the gun and store them separately,  
20 you do have to unload the gun, don't you?

21 A Yes, sir.

22 Q The Winchester Model 94, bolt or lever action, do you  
23 have that in front of you?

24 A Yes, I do.

25 Q What exhibit number is that?

1 A 211.

2 Q And that's not a bolt action rifle but what is  
3 called a lever action?

4 A Called a lever action, yes, sir.

5 Q You started to try to explain what your criticism was  
6 of that gun, and you got cut off. Again, this is your  
7 opportunity to explain your answer.

8 A This is an exposed hammer gun, and the safety  
9 feature on it is that it has a safe notch, some people call it  
10 a half-cocked notch.

11 If this hammer received a blow and breaks the sear  
12 end of the trigger or the notch itself, the hammer will fall,  
13 and the firing pin will strike the rifle. There have been a  
14 lot of accidents caused with handguns that have this feature.

15 Rifles are not as prone to that as handguns because  
16 the stock protects the hammer. But, nevertheless, there have  
17 been a few with these rifles, also.

18 This gun is quite easy to put a hammer block feature,  
19 or something called a transfer bar into this type of mechanism  
20 and automatic safety. I have been critical of that design.

21 Q How long has that design been around?

22 A About a hundred years.

23 Q That's one of the examples of a designer that hasn't  
24 changed their rifle design in a Century?

25 A That's right. No basic change in the safety

1 mechanism of this gun since a hundred years, and it was first  
2 introduced.

3 Q And, again, another area where you were cut off from  
4 explaining your answer, you began to tell us how functioning of  
5 the trigger assembly on the Model 700 could cause it to be in a  
6 different condition than it was on the day of the accident.  
7 Could you explain that to the jury.

8 A Sure. Let's assume some gummy residue, resulting from  
9 excessive oil, is in the mechanism. It creates a problem, a  
10 malfunction. That could be corrected quite easily by func-  
11 tioning the action a few times, with nothing else involved.

12 At least, this type of accident tends to be a one-time  
13 thing, in my experience; so, whatever causes the accident is not  
14 necessarily there at a later date.

15 Q In fact, it would be surprising if it happened every  
16 time, wouldn't it?

17 A Yes.

18 MR. HUEGLI: Your Honor, these are leading questions. I  
19 must object.

20 THE COURT: The objection is sustained.

21 Q (By Mr. Chamberlain) Would it surprise you or not if  
22 the gun fired when the safe was released on a re-engagement?

23 A I would be surprised if it did. I have seldom seen  
24 that condition to continue.

25 Q You testified on cross-examination that the Winchester

1 Model 70 has a bolt lock?

2 A Yes, it does.

3 Q And how many positions does the safety have on the  
4 Model 70?

5 A Three positions.

6 Q And of those three positions, how many lock the bolt?

7 A Just one.

8 Q And what is the condition of the rifle in the mid-  
9 position, between bolt lock and fire?

10 A It's a safety position which allows the bolt to be  
11 opened and the rifle loaded or unloaded.

12 Q And if the user, handling that rifle in that way,  
13 with the safety in that position, inadvertently pulls the  
14 trigger, would the gun fire during the unloading process, or  
15 even before it?

16 A No, sir, it would not.

17 Q Mr. Martin, I've attempted to give you an opportunity  
18 to explain your answers in each instance where you were not  
19 given that opportunity on cross-examination. Can you think of  
20 anywhere you wanted to offer an explanation and didn't get a  
21 chance to do so?

22 A I don't recall. I would have to see the questions  
23 again.

24 MR. CHAMBERLAIN: Thank you. I have no further questions.  
25

## RECROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. HUEGLI:

Q Mr. Martin, isn't it correct that in accident reconstruction cases an expert witness must, by necessity, base his opinion upon facts which he has been given which occurred outside of his presence?

A That certainly is part of his investigation, yes.

Q It's a very important part of the investigation, is it not?

A Yes.

Q And your opinion is based in part, is it not, in fact, substantially in part, upon the credibility and the reliability of Mr. Boudreau's rendition of the facts on October 27, 1979?

MR. CHAMBERLAIN: I'll object to the form of the question. It bears upon Mr. Boudreau's reliability and credibility. We didn't ask him to assume any such thing. We just asked him to assume particular facts. I think the credibility is for the jury, not for this witness or counsel.

THE COURT: The objection is sustained.

I don't think he was asked to assume that anybody was credible. He was asked to assume that certain things were true.

Q (By Mr. Huegli) Mr. Martin, if this jury of six people comes to the conclusion that Mr. Boudreau's testimony was not credible and that the accident did not happen like he said,

1 and if they further come to the conclusion that when the  
2 safety was moved from the safe to the fire position that the  
3 gun didn't go off, that he pulled the trigger, would you agree  
4 with me that your opinion which concluded that it did happen  
5 would be incorrect?

6 MR. CHAMBERLAIN: Same objection, Your Honor. It invades  
7 the province of the jury.

8 THE COURT: The objection is sustained.

9 Q (By Mr. Huegli) Is it necessary for you, Mr. Martin,  
10 to base your opinion in some respect upon the rendition of  
11 facts by Mr. Boudreau?

12 A Yes, that is certainly a factor in my opinion.

13 MR. HUEGLI: Thank you, Mr. Martin. No further questions.

14 MR. CHAMBERLAIN: No further questions.

15 THE COURT: All right, sir, that's all.

16 THE WITNESS: Thank you, sir.

17 (At 11:36 a.m. the testimony of Mr. Martin was  
18 concluded.)

19

20

21

22

23

24

25

1 State of Oregon )  
2 ) ss.  
3 County of Multnomah )  
4

5 I, Viola Joyner, Court Reporter, do hereby certify that  
6 I reported the proceedings as herein transcribed and that this  
7 is a full, true, and accurate transcription of the testimony  
8 of Mr. L. S. Martin, in re: C. V. REMINGTON, USDC CIVIL CASE  
9 NO. 81-886, on the dates heretofore set out in this transcript.

10 Dated this 3 day of June 1983, at Portland,  
11 Oregon.  
12

13 Viola Joyner  
14 VIOLA JOYNER, RPR  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25