

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,  
husband and wife,

Plaintiffs,

v.

REMINGTON ARMS COMPANY, INC.,

Defendant.

Case No. 81-886

BEFORE: The Honorable Edward Leavy, Magistrate,  
United States District Court

TESTIMONY OF W. C. DAVIS, JR.  
March 3, 1983

For the Plaintiff:

BODYFELT, MOUNT & STROUP  
By: Peter R. Chamberlain and  
Kathryn R. Janssen  
Attorneys-at-Law  
222 S. W. Morrison, Room 229  
Portland, OR. 97204  
503/243-1022

For the Defendant:

SCHWABE, WILLIAMSON, WYATT, MOORE &  
ROBERTS  
By: James Huegli, Local Counsel and  
Robert Spurling, Corporate Counsel  
1200 Standard Plaza  
Portland, OR. 97204  
503/222-9981  
  
VIOLA JOYNER, RPR  
Court Reporter  
225 U. S. Courthouse  
Portland, OR. 97205  
503/221-3113

PORTLAND, OREGON - THURSDAY, MARCH 3, 1983; 4:24 p.m.

MR. HUEGLI: Your Honor, at this time we would call  
Mr. Bill Davis.

W. C. DAVIS, JR.,

called as a witness on behalf of the defendant herein, having  
been sworn, testified as follows:

THE CLERK: Please state your name and spell your last  
name for the record.

THE WITNESS: W. C. Davis, Jr., D-e-v-i-s.

DIRECT EXAMINATION

BY MR. HUEGLI:

Q Mr. Davis, what is your age, please?

A 61.

Q And where were you born?

A In Coalport, Pennsylvania.

Q When you graduated from high school, did you go on  
to school or college, or did you go to work, or what did you do?

A Yes, I went to college, Saint Bonaventure, in  
New York State.

Q What did you study?

A I majored in physics and mathematics, graduated in

WITNESS

W. C. DAVIS, JR.

By Mr. Huegli

By Mr. Chamberlain

D

X

FeD

ReX

1

84/92

55

89

EXHIBIT INDEX

NUMBER

DESCRIPTION

RECEIVED

4

Field Service Manual

57

204

Weather Report, Astoria, Oregon, 10-27-79

26

214, 215

Photos

24

217-221

Photos

18

222-225

Photos

24

226

Empty 308 Winchester cartridge

40

227

Empty .22 Remington cartridge

40

1941, Magna Cum Laude, Bachelor of Mathematics and Physics.

Q Mr. Davis, what did you do when you graduated from  
Saint Bonaventure, please?

A Enlisted in the Army.

Q You went into the Army?

A Yes, shortly after I graduated -- I graduated in  
'41 and entered the Army in 1942.

Q How long were you in the Army?

A As a member of the Army, uniformed person in the  
Army, for four-and-a-half years.

Q What did you do while you were in the Army?

A I enlisted originally and served as an enlisted  
man in the Ordnance Corps for a short time; I was then  
commissioned in the Field Artillery, served as Field Artillery  
Officer for a few years; and during the end of my duty, I  
served as Ordnance Officer.

Q What is ordnance?

A Well, ordnance is that part of the technical  
establishment of the Army that deals with their weapons and  
vehicles and so forth.

Q When you left the Army as a regular soldier, wearing  
a uniform, where did you then go, please?

A My last assignment in the Army was at Aberdeen  
Proving Ground, and I stayed on at Aberdeen Proving Ground,  
which is an ordnance proving ground under the control of the

	D	3
1	Army, as a civilian engineer in the Federal Service.	
2	Q Okay. What did you do at Aberdeen Proving Ground	
3	as an engineer; what type of things did you work on?	
4	A My first assignment was as a Test Engineer in the	
5	Small Arms Branch of the Research and Development Center.	
6	It was testing guns and ammunition that were either	
7	in use or planned to be in use, or submitted for potential use	
8	by the Army.	
9	Q Did that testing involve types of powders, speed	
10	of bullets, all of that sort of thing?	
11	A Yes, sir, that's right. Weapon -- evaluation of	
12	weapons, ammunition systems, and weapons separately, and ammuni-	
13	tion separately.	
14	Q Okay. And how long did you stay there, please?	
15	A On that occasion, for one year.	
16	Q And then where did you go?	
17	A I went back to do some graduate study in 1974.	
18	Let's see, yes, 1974, I went back to do graduate study, back	
19	at Saint Bonaventure University on a part-time basis.	
20	Q What did you study?	
21	A More courses in mathematics and physics on a part-	
22	time basis, and my employment at that time, I was invited to	
23	join the faculty of Saint Bonaventure, and I did that, and	
24	taught there for three-and-a-half years.	
25	Q What did you teach at Saint Bonaventure University,	

	D	5
1	and finally, the Infantry and Aircraft Weapon Division. I was	
2	Chief Engineer of the Infantry and Aircraft Division when I	
3	left that assignment in 1959.	
4	Q Where did you then go in 1959, please?	
5	A I went to Frankfurt Arsenal in Philadelphia,	
6	Pennsylvania. Also on Army duty.	
7	Q Doing the same type of tests, firearms, ammunition?	
8	A Yes, although not exactly the same thing.	
9	The principal reason for my going there was to set	
10	up a staff organized North American Test Center for NATO.	
11	Q What did you then do for NATO, and let's move on	
12	to your work for NATO; what did you do for the North Atlantic	
13	Treaty Organization, and where did you work?	
14	A I served as First Superintendent of the North	
15	American Regional Test Center, which was established at Frank-	
16	furt Arsenal at that time.	
17	The function of that was to carry out tests on	
18	weapons and ammunition, small caliber weapons and ammunition	
19	from various NATO countries to assure their compatibility	
20	between the weapons and ammunition, and ammunition was inter-	
21	changeable between forces that might be engaged in the same	
22	area.	
23	Q So the jury won't misunderstand, these rifles would	
24	be considered small caliber in the military parlance?	
25	A Anything that shoots a bullet less than thirty	

	D	4
1	please?	
2	A Mechanics, general physics, differential inter-	
3	value calculus, math analysis -- courses in those areas.	
4	Thermodynamics.	
5	Q What is Thermodynamics?	
6	A It's the phenomena of physics related to heat.	
7	For instance, the study of engines that burn gasolines, that	
8	burn steam, governed by that branch of science called thermo-	
9	dynamics.	
10	Q After you left Saint Bonaventure, Mr. Davis, where	
11	did you then go?	
12	A Back to Aberdeen Proving Ground, beginning after the	
13	escalation of the Korean Conflict.	
14	Q What did you do at Aberdeen Proving Ground in	
15	relation to the tests of firearms and ammunition?	
16	A Continuation of the same sort of activity I had	
17	been engaged in before I went back there in the same branch,	
18	when I went back there in 19 January of 1951, I believe it was.	
19	I went back as Chief of the Hand Arms, Shoulder Weapons, and	
20	Ballistics Section of the Small Arms Branch.	
21	Q And what did you then do, please?	
22	A I stayed at Aberdeen on that same tour until 1959,	
23	and during the course of those years, I had additional respon-	
24	sibility. I was first a Section Chief; then Chief of the	
25	branch in which that section was located, the Small Arms Branch;	

	D	6
1	millimeters in diameter and thirty millimeters would be a little	
2	over an inch; artillery are cannon, and small arms are guns	
3	that are less than cannon.	
4	Q Okay. Did you work both on the North American	
5	continent and on the European continent on that job?	
6	A Yes, I did.	
7	Q After you left to --	
8	Did you at any time leave NATO and go to work any-	
9	where else?	
10	A Yes. I terminated my assignment on the NATO activity	
11	in 1964 and went to work at Colt Firearms in Hartford, Connec-	
12	ticut.	
13	Q What did you do while you were employed by Colt	
14	Firearms, Mr. Davis?	
15	A Primarily, I went there as a Project Engineer, and	
16	then later as Engineering Manager for Military Products.	
17	I was there one year, primarily working on problems associated	
18	with the M16 rifle, which was then deployed in Southeast Asia.	
19	Q Was that manufactured by Colt?	
20	A Yes, it was.	
21	Q And you worked on the Engineering Staff of how that	
22	gun worked; is that it, in one way or another?	
23	A Yes, that's it. Product improvement of that gun,	
24	based on specifications and improved its reliability, and so	
25	forth.	

Q Where did you then go after you left Colt?

A Let's see. I went next to the Office of the Army Project Manager for Rifles, as Chief on the Technical Management Division in that office.

Q How long were you there?

A Let's see. That was in Rock Island, headquarters in Rock Island at that time. I was there for three years, a little more than three years; went there in '66, as I recall, and served there until '69, sometime in '69, and that office was phased out.

Q What did you then do, Mr. Davis?

A I came back for another tour at Frankfurt Arsenal, where I had previously been. I came back as Chief of the Small Caliber Engineering Division at Frankfurt Arsenal.

Q Then where did you go?

A I served in that capacity until 1972, and at that time I retired from Federal Service, took an early retirement and entered private practice as a Consulting Engineer with -- Registered and admitted to practice in Pennsylvania, and entered private practice as a Consulting Engineer in the State of Pennsylvania.

Q Have you done that since that time?

A Yes.

Q Have you worked as a Consulting Engineer not related suits and trials, but related to firearms manufacturers

but not distributed to the general public.

Q I understand. Have you published any books regarding either firearms or ammunition which are available on the market place, to the general public?

A Yes, I have.

Q What books?

A Well, let's see. I contributed to the Fifteenth Edition of the Britannica, published in 1974, I wrote the section on ammunition for that, the title of which is Hand Loading for the National Rifle Association. Those are the only two books.

Q How big is the book that you wrote on hand loading?

A 350 pages, or thereabouts.

Q Okay. And are you an associate editor of any magazines?

A Contributing editor to the American Rifleman magazine.

Q Do you have any contact or relationship to the National Rifle Association at their request?

A Yes, I served as contributing editor for them and consulted for them on technical and engineer questions for which they do not have facilities to address, and permanent staff.

Q Did you publish any article at the request of the National Rifle Association?

A Yes, I do.

seeking from you product improvement?

A Yes, I have.

Q What manufacturers have sought your advice in product improvement, and things of that nature that had nothing to do with a lawsuit?

A Well, let's see. Product improvement, I would say --

Q Or testing, either one.

A Lumped together, engineering functions such as concept formulation, product improvement, product development, research development, and testing, and so forth --

Q Yes.

A Let's see, I guess about, I can think of three commercial manufacturers.

Q Who are they?

A Winchester, Smith and Wesson, and Colt.

Q Okay. Have you published any technical articles or reports regarding firearms testing, ballistics, things of that nature?

A Yes.

Q Approximately how many have you published and where have they been published?

A I published, I should say, about fifty technical reports that are not in the open literature, for technical agencies of the Army, or for the NATO International Secretariat that are published in the -- essentially they exist in the files,

Q Have you testified previously in courtroom proceedings?

A Yes, I have.

Q And depositions regarding litigation?

A Yes, I have.

Q Have you ever testified at any cases where you have been on the other side, if you will, of Remington, where you and Remington --

A Well, yes, at least, I don't know whether I have been -- I have been -- I have testified for other companies in litigation with Remington, where the companies for whom I testified and Remington had interests that did not necessarily coincide.

Q Okay. Thank you, Mr. Davis.

Mr. Davis, at my request, in October of 1982, was the rifle that is involved in this lawsuit today delivered to you to be examined and tested in relationship to the complaints that have been made in this lawsuit today?

A Well, it was not delivered to me, in the sense that at my facility, but it was made available to me at the Remington facility at Ilion, New York.

Q When you arrived there, they gave the gun to you and you tested it on site?

A Yes, that is substantially the way it occurred.

Q And Exhibit No. 2 that we have been discussing today,

1 I'd like to show it to you, and would you take a look at that  
2 and tell me if that is the same rifle that you tested there  
3 in Ilion, New York?

4 A Yes, sir, it is.

5 Q At the plant there in Ilion, would you please tell  
6 the jury what you did when you tested this rifle. In other  
7 words, can you go through the test procedures that you accom-  
8 plished.

9 I have a copy of your report here, and as does  
10 Mr. Chamberlain. If you would like to summarize it.

11 A I should make note on that report that I sent it  
12 to you on 23 of January, '83, on the testing, which I was con-  
13 ducting 21 to 22 October of '82. There is an error on that  
14 report in the second line where it says the caliber of the gun  
15 is 243 Winchester. My penciled note which I have here indicates  
16 that it's a 6 mm. Remington and it is in fact a 6 mm. Reming-  
17 ton, not a 243 Winchester.

18 The serial number is correct and the identification  
19 of the rifle is correct, model number is correct, and manu-  
20 facturer is correct, but I made a mistake in transcribing the  
21 caliber.

22 Q Okay.

23 A When I arrived at the Remington facility in Ilion,  
24 I had communicated by telephone with, I think, Mr. Stekl  
25 the night before and requested that the rifle be put in the

1 Exhibit 220 is photograph of the gun having been  
2 placed in a cradle, which causes it to rest upside down with the  
3 trigger guard up, approximately horizontal position, with the  
4 trigger guard up, simulating the condition which I had under-  
5 stood from the account of the investigation was similar to the  
6 condition which the gun was reported to have been fired at the  
7 time of the accident.

8 Q Okay.

9 A And it shows me trying to -- attempting to lift the  
10 bolt handle in a manner which had been described as leading to  
11 the accident discharge investigated.

12 Exhibit 221 shows my hand as I was trying to dis-  
13 engage the safety, also simulating the conditions which I  
14 understood that prevailed at the time of the accident.

15 Q Okay.

16 A My notes indicate that I opened the box, I found  
17 the gun inside and removed it from the cold box, placed it  
18 in the cradle, or rested it horizontally.

19 Q Let me ask you some questions about that, if I  
20 may.

21 THE COURT: Wait a minute. I ask that you repeat what  
22 you just said, what we heard you say, so the record shows it.

23 THE WITNESS: Yes, sir.

24 I think I said my notes indicate that I opened the  
25 box, found the gun inside, removed it from the cold box, placed

1 environmental temperature cabinet, cold box, as it were, the  
2 night before I was to test it, and it was placed by Remington  
3 into a controlled temperature box, where it was held overnight.

4 The temperature of the box, when I observed it in  
5 the morning, was minus twenty degrees Fahrenheit.

6 Q Let me interrupt you for a moment, Mr. Davis.  
7 I'm going to hand you what we have marked as Exhibits 217,  
8 218, 219, 220, and 221 and ask if you would identify those  
9 exhibits as your testimony moves along here in relationship  
10 to the cold box.

11 A Okay.

12 Q And during your testimony, please refer to them  
13 by the exhibit number which is on the blue tag on the back.

14 A Yes, I will. Exhibit 217 is a photograph of the  
15 thermometer on the exterior of the environment temperature  
16 box, which shows the temperature inside the box, and indicates  
17 that the temperature inside the box is minus twenty degrees F,  
18 Exhibit 217.

19 Q Thank you. Please continue.

20 A Exhibit 218 is a photograph of the gun inside the  
21 box before it was removed from the cold box. Just as it was  
22 placed in there, apparently, the night before.

23 Exhibit 219 is a photograph of me removing the  
24 gun from the temperature box, from the environmental temperature  
25 box.

1 it in the cradle, resting horizontally, trigger guard upward,  
2 simulating the position lying across arms of chair. Following  
3 that --

4 Q (By Mr. Huegli) Okay --

5 A Did you want to ask a question?

6 Q Yes, you have advised in the information that we  
7 passed on to Remington that Mr. Boudreau had alleged the  
8 gun was upside down in the chair, with the trigger up, and he  
9 attempted to unload it upside down; is that correct?

10 A That's what I was advised.

11 Q Did you attempt to unload the rifle in the same  
12 fashion?

13 A Yes, I did. After 50 minutes. I took the gun out  
14 of the cold box, placed it in the cradle, and left it undisturbed  
15 for 50 minutes.

16 Q What temperature was the internal temperature?

17 A The ambient temperature in the laboratory was  
18 approximately 70 degrees, approximately 70 degrees Fahrenheit.

19 Q Okay. Now, did you find it --

20 And I assume you have unloaded bolt action firearms  
21 with bolt locks many, many times in the past?

22 A Yes, indeed I have.

23 Q Did you find it to be normal feeling functions or  
24 awkward loading functions upside down, and what I would call  
25 backwards?

D 15

1 A My notes indicate that I found that somewhat awkward.

2 Q Okay. Now, after the gun had been taken out and

3 it had been at twenty degrees below zero all night long, did

4 any condensation form on the metal parts?

5 A Yes, it did. The gun being much colder than the

6 sear and much colder than the dew point in the room caused

7 condensation and moisture to form on the metal surfaces of

8 the gun in particular quickly.

9 Q All right, after 50 minutes, did you attempt to

10 cycle the rifle by using the bolt and the safety in various

11 combinations?

12 A Yes. I attempted to --

13 I simulated what I understood to be the circumstances

14 leading up to the accidental discharge which was under investi-

15 gation. I attempted to lift the bolt with the gun remaining

16 in the same position. I found that to be somewhat awkward.

17 I then disengaged the safety lever, re-engaged it,

18 and attempted to again lift the bolt handle, the gun still

19 remaining in the same position, and I repeated this sequence for

20 a hundred trials. The result was that the gun remained cocked

21 during the whole trial.

22 Q By remained cocked, you mean the gun functioned

23 as it was intended to function without any malfunctions at all?

24 A It did remain in the cocked condition. In accor-

25 dance with the design, had it contained a cartridge, it would

D 16

1 not have fired.

2 Q Where did you then put the gun?

3 A I placed the gun back into the cold box at approxi-

4 mately zero degrees F.

5 Q Okay now, when you placed the gun back in the cold

6 box, in your professional opinion, were the parts inside the

7 gun, as well as outside the gun, referring to the metal parts,

8 wet?

9 A Yes. There was -- there was still some condensation

10 left on the parts, and we had removed it, left more than 50

11 minutes, and went through the exercise I just described. The

12 condensation had not completely disappeared from the gun on the

13 outside, and I'm sure there would have been some on the inside,

14 though I didn't examine the inside at that time.

15 Q You put it back in the box and closed it at what

16 temperature?

17 A Zero degrees F.

18 Q How long did you leave it?

19 A One hour, exposed to the temperature in the box for

20 one hour at zero degrees.

21 Q What did you then do?

22 A Removed the gun from the box, and I tested the

23 trigger to see whether it reset. Reset is the term applied

24 to the motion of the trigger when it returns to the position

25 in which it was before you pressed the trigger. Reset means

D 17

1 that it's then in a position to engage the sear, so that the

2 sear can't pull down and allow the gun to fire, and that's

3 detectable when you press the trigger and release it, if you

4 watch carefully, you see whether the trigger moves back when

5 you press backward, and whether it returns to the forward

6 position when you release the pressure on it. And I did do that

7 in accordance with the intended design.

8 Q What did you do then?

9 A I attempted to immediately lift the bolt handle,

10 and then disengaged and re-engaged the safety in the same

11 sequence of operation that I described before in the previous

12 trial and repeated this a hundred trials.

13 The difference between this and the previous sequence

14 was that the previous sequence occurred after the gun had been

15 soaked all night at minus twenty and then allowed to come to

16 a normal ambient temperature for 50 minutes before the exercise

17 was started.

18 The exercise was repeated again, except the gun was

19 soaked one hour at zero degrees F; removed and tested immediately.

20 Otherwise, the two were the same.

21 Q Did that gun malfunction in any way?

22 A It did not. No, it remained cocked throughout the

23 200 cycles, one under the first set of conditions, and one

24 under the second set of conditions.

25 Q Did you then take the gun apart?

D 18

1 A No, not immediately.

2 That was all of the testing that was conducted on

3 that day, which was 10-21-82 October, '82.

4 MR. HUEGLI: We would offer the exhibits that we have just

5 referred to.

6 MR. CHAMBERLAIN: Are these all of the ones that you just

7 showed me?

8 MR. HUEGLI: Yes.

9 MR. CHAMBERLAIN: No objections to any of them.

10 MR. HUEGLI: 217, '18, '19, '20, and '21.

11 THE COURT: They are received.

12 Q (By Mr. Huegli) Did you then do a bench examination

13 where you took the stock off the rifle and examined it?

14 A The next day. Yes, but that was not the first,

15 that was not the first exercise of the next day.

16 Q What was the first exercise the next day?

17 A The gun was placed outdoors at ambient temperature

18 of 37 degrees F. It was placed on the roof of the building

19 at Ilion, and, conveniently, the outdoor temperature in Ilion

20 was 37 degrees F.

21 I had in mind to test the gun at a temperature

22 more nearly corresponding to the temperature to which it apparent-

23 ly had been exposed or reported had been exposed on the day of

24 the accident.

25 And it was more convenient to do that outdoors than

D 19

1 to try to do it in the environmental box, because the whole  
 2 test could be conducted outdoors; so we simply put it on the  
 3 roof at 37 degrees, 7:30 a.m., and the temperature remained  
 4 at 37 degrees.

5 When we resumed the testing outdoors at 9:30, the  
 6 bolt had been placed, or the rifle had been placed up there  
 7 by Remington personnel with the bolt closed, safety engaged,  
 8 and with a thermometer attached to the side of the gun.

9 Q Does Exhibit 216 reflect a photograph of you taken  
 10 with the rifle on the roof of Remington with the thermometer  
 11 attached to the rifle?

12 A Yes, sir, that is what it reflects.

13 MR. HUEGLI: We would offer 216.

14 MR. CHAMBERLAIN: No objection.

15 THE COURT: Received.

16 Q (By Mr. Huegli) Then, did you cycle the gun  
 17 once again under these conditions as you had previously?

18 A Yes, more than once. I cycled the gun under those  
 19 conditions 25 trials.

20 Q Were you able to cause any malfunction of this  
 21 gun in any way?

22 A No, the gun functioned perfectly normally under the  
 23 circumstances. 25 trials resulted in no disengagement of the  
 24 firing pin. The gun remained cocked in the normal manner.

25 Q Did you then do a bench examination?

D 21

1 surfaces move slowly over each other rather than rapidly and  
 2 freely, as I might expect.

3 The bolt release is a part which is external to the  
 4 trigger mechanism. It's outside of the trigger housing, but  
 5 it slides along the side surface of the trigger housing, and  
 6 if there is thickened oil between the two surfaces, they are  
 7 large surfaces, and they slide over each other slowly under  
 8 spring force rather than quickly.

9 Q May I see the Exhibit 2 there, which is the gun  
 10 that is involved in this case.

11 A Yes.

12 Q And so, I'd like the jury to be aware, and if you  
 13 would show us where. The bolt release is different than the  
 14 bolt lock; is that correct?

15 A Yes.

16 Q Okay. Would you show the jury where the bolt release  
 17 is on this particular firearm.

18 A Yes, it's in the front of the trigger guard. It's  
 19 not easily accessible, nor easily seen. You have to press it.  
 20 The only occasion for using it is when you want to remove the  
 21 bolt to clean the rifle, or something like that.

22 The bolt release, when I depress this button, it's  
 23 inside the front of the trigger guard. It releases a little  
 24 member, which, otherwise, is up and interposes itself; so I  
 25 can't pull the bolt out of the gun.

D 20

1 A Yes, we then returned the gun to the indoor labor-  
 2 atory and allowed it to return to the normal temperature of the  
 3 laboratory, which was approximately 70 degrees, and I removed  
 4 the bolt.

5 I measured the amount by which the sear was lifted  
 6 clear of the trigger when the safety was engaged.

7 As Mr. Linde explained to you, the function of the  
 8 safety is to lift the sear clear of the trigger, so that the  
 9 trigger is free to move back and forth, set and reset as neces-  
 10 sary and block the sear from being overridden by the firing  
 11 pin, which is trying to urge it downward, so the firing pin  
 12 can go ahead.

13 And one of the important considerations is whether  
 14 the sear is lifted clear of the trigger, so the trigger can  
 15 reset in case it's been pulled, it will not hang up in a partly  
 16 pulled position by reason of interference from the sear.

17 The sear has to be lifted clear so that measurement  
 18 of that is significant, and I did find it was lifted six thou-  
 19 sandths of an inch -- .006 inch, which is sufficient.

20 I noted that when the bolt stopped, it was depressed  
 21 and released, that it rose steadily, but very slowly, as if  
 22 impeded by viscous, resistance of congealed lubricant. In  
 23 other words --

24 Q It was sticky?

25 A Yes, sticky. The thickened lubricant made those

D 22

1 Q Okay.

2 A That's the purpose of it, has nothing to do with the  
 3 bolt lock.

4 Q The bolt just fell off again.

5 A The bolt releases rather slowly, apparently.

6 Q Is it sometimes sticky like it was before?

7 A So it appears. I infer that.

8 Q Okay. So it continues to be sticky now?

9 A Yes.

10 Q That has no safety function, does it?

11 A No, it's not safety-related.

12 Q Okay. When you examined the inside of the gun,  
 13 did you take photographs, and would you quickly describe to the  
 14 jury what the photographs were that you have there on Exhibits  
 15 214 and '15.

16 A Okay. Yes. I did note in addition to the fact that  
 17 when the bolt stop was repressed and released, that it rose  
 18 slowly, as if its movement were impeded; that the trigger and  
 19 safety operation were normal, as just determined by manipulating  
 20 the trigger and the safety manually.

21 I noted that the trigger consistently reset cor-  
 22 rectly if it were pulled while the safety was engaged.

23 Q Means it wasn't back?

24 A Yes, it reset slowly.

25 Q Okay. Mr. Davis, for the conclusion of today,

1 if you would simply identify the photographs that you have before  
2 you and tell the jury what they are.

3 A. Okay.

4 Q. We will go over them.

5 A. Have I identified 222?

6 Q. Yes, I believe you have, have you not?

7 A. All right, 222 shows my hand on the gun and during  
8 the bench test disengaging with my thumb, disengaging the  
9 safety.

10 223 shows the rear of the receiver of the gun with  
11 the stock removed, with the bolt removed. It shows inside the  
12 receiver ring some congealed oil and some solid particles that  
13 look like solvent possibly from a gun case or clothing, as I  
14 recall. That is not clear in the photograph, but there were  
15 some small solid particles and congealed lubrication inside  
16 the back end of the receiver.

17 224 is a test in which I was depressing the sear  
18 while pulling the trigger to see if the sear did move down,  
19 as you saw demonstrated in the large model, training aid model  
20 there.

21 The sear did move down properly and did come back  
22 up properly when it was released, pushing on it with a screw-  
23 driver in the same manner that the bolt, that the firing pin  
24 head would have been pushing on it had the bolt been in there.

25 225 is a view, another view of the trigger during

1 PORTLAND, OREGON -- FRIDAY, MARCH 4, 1983; 9:03 a.m.

2  
3 THE COURT: Now, if the witness will take the stand  
4 again, please.

5  
6 DIRECT EXAMINATION (continued)

7 BY MR. HUEGLI:

8 Q. Mr. Davis, so that we can kind of pick up the  
9 speed from yesterday and the jury can, and I can recap, or  
10 recapitulate some of this, you had been requested by Remington  
11 to examine this rifle; you went to Ilion, New York; and you  
12 examined it at the Remington firearm factory; we went through  
13 some of the original tests that you did; and I think when we  
14 concluded, you had identified some of the photographs. I think  
15 we had identified all of the photographs that you had taken  
16 of this firearm in your examination.

17 MR. HUEGLI: Ms. Clerk, have we yet offered all of those?

18 THE CLERK: Yes, they are received.

19 MR. HUEGLI: Thank you.

20 Q. (By Mr. Huegli) Now, I'd like to go back now,  
21 Mr. Davis, to your report, if you would, and I think that  
22 we finished at the time after you had placed this firearm in  
23 a 20 degree -- or excuse me, minus twenty degree temperature  
24 box, taken it out, tested it after 60 minutes, placed it back  
25 again in zero, left it for an hour, taken it out and tested

1 the bench test, right-hand screw, generally before the trigger  
2 was hinged down.

3 215 is a view of the trigger assembly with the rear  
4 pin, which attaches it to the receiver, or the action of the  
5 gun, removed, and the trigger housing swung down part way.  
6 Closer examination of this shows the sear swung up for inspec-  
7 tion; the pin was pushed out here, so that this could be swung  
8 down for examination. It shows some fouling and congealed  
9 oil, and so forth on the side of the sear.

10 This is an enlargement of part of this. This part  
11 here of the sear on 215 is depicted in enlarged form on 214.

12 MR. HUEGLI: Thank you. We would offer those exhibits  
13 just identified.

14 MR. CHAMBERLAIN: No objection.

15 THE COURT: They are received.

16 Now, members of the jury, we will adjourn until  
17 tomorrow morning at nine o'clock. Tomorrow morning at 9:00,  
18 please.

19 (At 5:02 p.m. these proceedings were adjourned for  
20 the evening).

1 it again, and I think we concluded there.

2 Was that your recollection?

3 A. Well, I believe I also did describe the test on  
4 the following day, 22 of October, in which we took the gun  
5 outdoors into the outdoor temperature of 37 degrees and did  
6 some tests under those conditions.

7 Q. All right. Were you advised that the temperature  
8 at the time this accident happened was higher than 37?

9 A. Yes, I was advised to that effect.

10 MR. HUEGLI: Okay. We would offer, Your Honor, Exhibit  
11 No. 204, which is a transcript of the weather report of Astoria,  
12 Oregon, on the date of October 27, 1979.

13 MR. CHAMBERLAIN: Your Honor, I have seen the exhibit.  
14 My only objection is on the grounds of relevance.

15 As I understand it, the weather station in Astoria,  
16 where most measurements are taken, is at the airport. There  
17 has been no evidence that that is where the gun was that day.

18 In fact, I think that the geography of that area,  
19 there is a mountain range, some mountains between the airport  
20 and the area where the parties were hunting.

21 THE COURT: It's overruled. 204 is received.

22 Q. (By Mr. Huegli) Now, Mr. Davis, at my request  
23 through Remington, did you then disassemble Exhibit No. 2 and  
24 take those photographs?

25 A. Yes, we did.

Q And, by the way, when you functioned it at 37 degrees, you found no malfunctions, as I understand?

A That's correct. And at the functioning tests out of the box at minus twenty after 50 minutes, the tests, zero degrees, immediately out of the box, and tests at 37 degrees outdoors, were all performed before the stock was removed and the trigger disassembled for examination.

Q Okay. Would you tell the jury -- they will have a chance to see the picture, and if you feel the pictures would be helpful to you, Mr. Davis --

I'd ask the clerk if we could hand him the picture, please.

--use whatever exhibits you feel would be helpful to demonstrate to this jury what you found during the rest of your examination.

A In the sequence, chronological sequence, there is one more thing that I think I did not describe yesterday, which was the measurement of the trigger pull force, which was also accomplished before the trigger was dropped down for disassembly or dropped down for inspection.

Q What did you measure the trigger pull at?

A Five trials with a Shattalon (phonetic) laboratory spring scale gave four-and-a-half, four-and-a-half, four-and-five-eighths, four-and-a-half, and four-and-a-half pounds.

Q Okay. Is a Shattalon spring scale an accurate

it is in neither detent; it's balanced, you might say, on the point between the two detent positions.

Now, it's in the rear position, now in the forward position, fire position, and you arrange the safety to where it will stay by itself when you let go of it in that middle position, like that (demonstrating).

Q Okay.

A Then you pull the trigger, and you can notice when you pull the trigger, the trigger moves, and when you let go of it, it goes back where it was before. That tells you, as a matter of fact, that the gun is not going to discharge.

If it were going to fail the trick test, the trigger would remain in the pulled or rearward position.

It does not. But to establish that positively, you now disengage the safety, and you do not hear a click, the firing pin does not fall forward, the gun does not discharge.

Q I'm going to cock it again, and I'm going to leave it in the fire position. I'm going to pull the trigger, and I would like you to tell the jury what the sound is that we are going to hear (demonstrating). What is that?

A That is the fall of the firing pin forward. You can, also, it's also advisable, you can see this part here, which is commonly called the cocking piece.

I think Remington's nomenclature for it is firing pin head, but it performs the same function.

measuring device?

A Yes, it's a generally accepted spring scale, laboratory quality spring scale.

Q Please continue, Mr. Davis. What did you then do?

A Okay. Again, before disassembly, repeated the -- let's see (referring to his notes), I repeated the following sequence with the safety engaged; Attempted to lift the bolt, then disengaged the safety, then re-engaged the safety, and then repeat this exercise at the beginning with the attempt to lift the bolt, and again repeat this exercise to 25 trials.

After we had made the measurements on the spring force, and before the trigger was disassembled, the gun remained cocked.

Q Your report next refers to the trick test, does it not?

A That's the next item.

Q Okay. Once again, Mr. Davis, would you come down from the witness stand and come to the front of the jury box with me, please.

And would you show the jury, Mr. Davis, what a trick test is and how you performed it on that particular day.

A Yes. I do this left-handed, because I am left-handed, because the sequence of operations is the same.

The trick test consists of closing the bolt with the gun cocked, moving the safety forward to the position where

This piece that you can see protruding from the back of the bolt is attached to the firing pin. When I pull the trigger, you will see that thing move forward and disappear.

Q Okay. So, in any of these firearms, when we hear that click, hard sound click, that is the firing pin falling?

A There are other clicking noises, but that is the firing pin.

Q On the 700, that is what it sounds like?

A Yes, sir.

Q If there was a bullet in there, I assume it would go bang --

A Yes, sir.

Q -- if the firing pin falls.

Now, how many times did you try the trick test on this particular gun?

A Five trials.

Q Any problems?

A No, the gun remained cocked.

Q Okay, what did you then do, please.

A We removed the stock. I noticed that the gun had been rebedded in epoxy-like compound.

Rebedded is a term applied to a process for improving the fit between the metal parts and the wood parts of the stock. It's desirable from an accuracy standpoint, in particular, that the gun have its metal parts fitted quite exactly into the wood



D 31

1 parts, and one way to do that is to use a plastic compound  
 2 which assumes the shape of the metal parts when they were put  
 3 into it, and it's still in the plastic state, and the plastic  
 4 <sup>when it was</sup> cartons, and the impression, the metal part, is accurately  
 5 reproduced in the plastic; so the fit between the metal and  
 6 the wood is a good fit. It's a custom operation. Indicating  
 7 that this gun had been rebedded in plastic compound of that sort  
 8 after it left the factory.

9 I found no interference of the stock with the fire  
 10 control parts, so I would not ascribe any significance to the  
 11 fact that it had been rebedded.

12 If the wood fits poorly in some guns, and I'm not  
 13 speaking about this one particularly, but it could cause mal-  
 14 functions, but no indication that was true in this case. The  
 15 bedding was all right.

16 I noted the guard screws which hold the metal part  
 17 in the wooden stock had marred heads from prior work. The heads  
 18 of the screws had been marred. It has no functional significance,  
 19 nothing to do with the operation of the gun.

20 Q All right. Please continue.

21 A I looked at the factory sealant on the trigger  
 22 adjusting screws, and it appeared to be, in fact, it did not  
 23 appear that the sealant which is applied at the factory after  
 24 the factory adjustment, had been removed.

25 I disassembled, partially disassembled the bolt,

D 33

1 MR. HUEGLI: We will get to the accident in a minute.  
 2 I'm talking about October 1982 now.

3 THE COURT: It's overruled.

4 Q (By Mr. Huegli) Go ahead.

5 A The only functional effect was that, I think I  
 6 mentioned yesterday, that the bolt release, or sometimes called  
 7 the bolt stop, the thing that prevents the bolt from coming  
 8 out of the rear when you pull it to the rear, that reset only  
 9 very slowly. It did not function normally.

10 Other than that, I found no evidence that the gunk  
 11 was interfering with the functioning of the mechanism.

12 Q And were you present when Mr. Martin testified?

13 A Yes, sir. I was.

14 Q And did you hear his testimony that when he saw the  
 15 rifle, the bolt stop was not functioning and returning slowly,  
 16 as well?

17 A I do, I believe that.

18 Q What did you then do, Mr. Davis, in October of '82?

19 A I noted just by visual inspection the sear connector  
 20 engagement, that is the engagement which was described to you  
 21 by Mr. Linde, when looking through the little hole in the side  
 22 of the trigger, you see that the sear is being supported by the  
 23 trigger, by a ledge that engages one on top of the other, and  
 24 the dimension, that dimension, is an important one, function  
 25 of the trigger.

D 32

1 stripped the bolt to look at the firing pin, the part that  
 2 you saw move when we pulled the trigger inside can be cammed  
 3 by taking it out of the bolt.

4 I did that, and I found it was <sup>significantly</sup> notably dirty and  
 5 did not appear to be fouled in the same way that the trigger  
 6 group later proved to be.

7 The center of the bolt was fairly cleaned and in  
 8 good condition. I did notice, and this is before the trigger  
 9 has been tipped down, there was congealed oil around the bolt  
 10 stop and trigger assembly, which was apparent when the stop  
 11 was removed and was simply visible when you took the metal  
 12 part out of the wood. There was some around the bolt stop and  
 13 trigger assembly, contamination, dirt, gunk.

14 Q Mr. Davis, let me interrupt you for a moment. We  
 15 have referred to it as gunk. I'm not sure what it is. I'm  
 16 not sure whether anybody knows what the chemistry of it is.  
 17 In this trial, referring to whatever you saw inside the gun,  
 18 for generic purposes, do you have a professional opinion as  
 19 of the time that you examined this gun whether the gunk, if  
 20 you will, that you saw in the trigger assembly had any func-  
 21 tional effect on the gun at 37 degrees, at zero degrees, or  
 22 minus twenty degrees?

23 MR. CHAMBERLAIN: I'll object to the form, unless counsel  
 24 states he's talking about October, 1982, when the test was  
 25 conducted.

D 34

1 I did not measure it, but I estimated it to be  
 2 approximately twenty to twenty-five thousandths of an inch,  
 3 which is normal.

4 I have looked at many 700 triggers, and that is  
 5 approximately normal.

6 Estimate for purposes of comparison, a dime is  
 7 about fifty thousandths thick, and that engagement is about  
 8 half the thickness of a dime in a target trigger.

9 I checked the trigger accuracy by manually depres-  
 10 sing the sear while pulling the trigger. That is what I de-  
 11 scribed briefly.

12 One of these photographs, this photograph, in  
 13 pressing down with a small screwdriver on the top of the sear,  
 14 simulating the firing pin trying to override the sear, and if  
 15 the sear then drops under pressure, it's an indication that  
 16 it's functioning correctly, and I did note that, and the  
 17 operation seemed normal.

18 Q Please continue.

19 A I then removed the rear pin holding the trigger  
 20 assembly into the receiver of the gun. I don't have a photo-  
 21 graph specifically showing that. But you can see it on this  
 22 photograph.

23 There is a pin at the forward end of this assembly,  
 24 and the pin at the rear end of the assembly that holds the  
 25 trigger assembly into the action that contains the bolt, the

1 steel parts above it, by removing the rear pin, that you can  
2 hinge it downward, around the front pin for examination without  
3 disassembling it, and when you do that, you can also pivot the  
4 sear upward from the assembly that it contains, and there is a  
5 photograph of that in here.

6 Q Would you refer to those by number, so the record  
7 will reflect --

8 A Yes, Exhibit 215 shows the trigger hinged down,  
9 the pin that was originally in that hole passed through the  
10 receiver. It's removed. You can hinge this down, and when  
11 you do that, you can swing the sear, this part, up for examina-  
12 tion.

13 The trigger assembly is hinged down like this, the  
14 sear is hinged up; so it can be examined and photographed, and  
15 these are photographs of the sear and the trigger in that  
16 position. This is the sear, and this is a closer-up view of  
17 the same thing.

18 Q Okay.

19 A It does show gunk along the sides there, the dark  
20 areas there, gunk, sludge.

21 Q Mr. Davis, this Exhibit 214, that is the sear on  
22 our model here, that is this piece of metal right here?

23 A Yes.

24 Q That's correct?

25 A Yes.

1 of demonstration or tolerance springs?

2 A They are for the purpose of demonstrations. They  
3 do not resemble springs in a rifle. Spring forces are much  
4 higher. If you scale the springs up to the size of this model,  
5 the springs would be so strong that you couldn't manipulate  
6 the model, so the springs are relatively weaker than if you  
7 scaled the whole thing up.

8 Q Now, after you dropped the sear down and looked  
9 inside, you saw the material that the jury is able to look at  
10 in the photographs. Were there any other observations that you  
11 felt were important?

12 A No, I think not.

13 I did note that, notwithstanding the sludge inside  
14 the mechanism, my notes say that the sides of the sear were  
15 coated with congealed oil or sludge, if you will, but, never-  
16 theless, it appeared to function normally.

17 Q What did you then do, please?

18 A Concluded the test at Ilion.

19 Q Now, there has been a substantial amount of dis-  
20 cussion in this trial about center fire cartridges versus  
21 rim fire cartridges. Are you familiar with the difference?

22 A Yes.

23 Q In fact, in the article that you wrote for the  
24 Encyclopedia Britannica and your book that you published on  
25 hand loading, did you discuss the differences in those two

1 Q So, if we can compare the two, that is what we're  
2 looking at, and then, this is the trigger assembly, which is  
3 Exhibit 215, and that is reflected by the model, as well as  
4 that cutaway?

5 A Yes.

6 Q Okay. Is this the pin right here that you used to  
7 drop the sear up, the one that just fell out, this is the pin  
8 that you are referring to?

9 A Yes, that -- here on the model, it only passes  
10 through those plastic side plates. It's simulated, the steel  
11 side plates, on the trigger, but in the gun, it also passes  
12 through the hole in the bottom of the receiver; so it holds the  
13 assembly to the receiver as well as to pivot the part and  
14 access a stop for the sear you see there.

15 Q When you open this up, you can actually look right  
16 inside the mechanism to see what is inside?

17 A Yes.

18 Q And you could see that?

19 A Yes, I could.

20 Q By the way, on these markups like what we have here  
21 that are used for training purposes, are the springs and things  
22 of that nature for demonstrative purposes or for tolerances?

23 A I'm sorry, I missed the question.

24 Q There are some springs in here. I took it apart,  
25 and they are starting to come apart. Are those for the purpose

1 publications?

2 A I'm sure that distinction was dealt with in the  
3 article, but not in the hand loading.

4 Q Once you shoot a rim fire cartridge, you throw it  
5 away?

6 A That's right. Not reloadable.

7 Q I'd like to hand you what has been marked Exhibit  
8 226 and 227. I'm going to take it off here, it's hard to mark.  
9 Would you tell the jury what those two things are.

10 A Yes, sir. 226 is a caliber 308 Winchester empty  
11 primed cartridge case, manufactured by a company in Sweden,  
12 or used in 308 Winchester rifles, or rifles chambered for  
13 308 Winchester ammunition.

14 Q 227, I think --

15 A Yes, 227 is a caliber .22 rim fire blank cartridge  
16 containing a powder charge but no bullet, has a U on the bottom,  
17 which indicates that it was manufactured by Remington.

18 Q Okay. Now, this particular exhibit, which is the  
19 little one, 227, would that cartridge, if you will, discharge  
20 in this firearm which is Plaintiff's Exhibit 112 -- it's a  
21 .22?

22 A Yes, I guess it's an ordinary .22 long rifle, not  
23 a magnum.

24 Q Now, this would not, would it, in fact, Exhibit 226,  
25 wouldn't fit in it?

A. That's correct.

Q. Now, Mr. Martin has brought a firearm here today which is a Remington 700 Model 308 with a bolt lock and his automatic safety; would Exhibit No. 226 fit in this firearm?

A. Yes, sir, if you took the sticker off.

Q. Okay. Now, I noticed on the back of Exhibit 226 there is a silver dot; what is that?

A. The thing in the center?

Q. Yes.

A. The round thing in the center is the primer.

Q. Would you come down from the witness stand, please, and show the jury what the differences in the way these two things are built, and I assume that this big one is the one that you can reload, and this one you can't?

A. That's correct. All right, in this one, the .22 rim fire, this metal that you see on the outside is all of the metal that there is in the assembly, just a cup with the flange around the bottom, all formed in one piece, and the priming compression, which is the percussion-sensitive material which will explode when it's struck is in there, this little flange, this little rim, and the mechanism of firing a rim fire cartridge is to support the cartridge in the barrel. It goes in the barrel, so it's supported in that manner, and the firing pin strikes that flange like my pencil point is striking it there, and crushes the flange, and that causes percussion

Q. (By Mr. Huegli) Maybe you could put those on the witness stand in front of you, and then retake the witness stand. Thank you.

Is it ordinary, or is there a differentiation, and I'm talking about hunting versus target shooting, and is there any correlation between that rim fire and center fire?

A. Well, yes. In that context, I guess you could say that rim fire ammunition is probably the kind most often used for target shooting, because it's inexpensive.

Of course, this wouldn't be, because it's blank, but a bullet had once probably, most rim fire ammunition is used for target shooting, and if it's used for any other purpose it's for hunting rabbit or squirrels, or small animals.

Q. Do you know of your own personal knowledge whether or not there are laws in some states against hunting big game animals with a .22, such as elk?

A. Yes, there are.

MR. CHAMBERLAIN: Objection, calls for a legal conclusion, Your Honor.

MR. HUEGLI: This man is an expert.

MR. CHAMBERLAIN: Also irrelevant.

THE COURT: The objection is sustained.

Q. (By Mr. Huegli) Mr. Davis, in your experience in working, I'm going to go back now to your testing of this gun, in your experience in giving advice to the various countries

sensitive implosion inside to detonate, and that ignites the powder charge to fire the round. That's why it's called rim fire. It's struck on the rim to fire it.

That is called center fire, because the percussion sensitive element, which is called a primer, in this case, is in this center area here, and it's a separate piece of metal.

If you look down inside of this thing, you can see a hole in the bottom of the center of the cartridge case.

Q. That exhibit that the jury is looking at now can be refired and refired as long as you first don't wear out the case and continue to put a new detonation cap in every time?

A. That's right. You need a new primer every time. The little silver colored thing in the center of the bottom is in a pocket, and the hole that you see from looking in the front of the cartridge case goes through into the pocket that changes.

The primer is a little metal cup consisting of two metal pieces. The cup inside is called an anvil, which allows the detonating mixture to be crushed between the cup and the anvil that fires goes through the hole, and the powder is inside and is ignited and fires that way.

MR. HUEGLI: Thank you.

We would offer both exhibits.

MR. CHAMBERLAIN: No objection.

THE COURT: They are received.

of NATO and various law enforcement agencies, such as the FBI and CIA, have you had an opportunity to test firearms in cold temperatures in the same or similar manner that you tested this firearm for us?

A. Yes.

Q. Now, I'd like to call your attention now to another area, which is your military experience.

You have told us that you had substantial military experience over your career in testing firearms for the military, and you are familiar with their requirements and things of that nature?

A. Yes, sir, that's correct.

Q. In fact, you have knowledge and experience in the requirement of the military for the passage of firearms for their use?

A. Yes, sir, I do have.

Q. What is the first requirement that the military requires of a firearm before the military will accept it for use either in combat or in non-combat situations?

A. Safety certifications are the first requirement.

Q. Okay. And does that involve all aspects of safety?

A. Well, safety certification is generally issued by the Army Test and Evaluation Command, which is headquartered at Aberdeen Proving Ground, and the people there make a decision as to what safety requirements are appropriate for the conditions

1 of use to which the item is going to be subjected. All those  
2 features which might jeopardize the user are checked.

3 Q Okay. Could you tell the jury what AARADCOM is?

4 A It's an acronym for the Army Armament Research and  
5 Development Command.

6 Q Are you currently a professional expert consultant  
7 for AARADCOM?

8 A Yes, sir. I have a contract for thirty days each  
9 six months' period as a consultant for AARADCOM.

10 Q Did the --

11 Was the Model 700, the identical design of the  
12 Model 700 rifle that is in this courtroom today used by the  
13 military extensively as a sniper rifle in Vietnam?

14 A Well, substantially identical. Certainly the  
15 caliber was different, of course, but the Model 700 having that  
16 same action was used as a sniper rifle, yes.

17 Q Of course, I'm sure that some of them had scopes  
18 and things of that nature, but I'm specifically referring to  
19 the safety and trigger assembly that are in issue in this  
20 lawsuit.

21 A Yes, same.

22 Q Mr. Davis, I would like you to assume these facts  
23 to be true, and I'd like you to listen carefully, and I'd like  
24 you to base an opinion upon these facts. I'm going to give you  
25 a rendition of the facts that I think are evident in this lawsuit

1 THE COURT: On what theory, on what theory of admissibility?

2 MR. HUEGLI: On the basis that this deposition may be  
3 used for any purpose at the time of this trial. This deposi-  
4 tion was taken by myself and Mr. Chamberlain at the time when  
5 he had an opportunity to cross-examine him. The only purpose  
6 I'm offering it is to show Mr. Boudreau's statement as to how  
7 many rounds he shot through this rifle.

8 MR. CHAMBERLAIN: I believe the former testimony and  
9 the witness was available through the trial.

10 MR. HUEGLI: It's not being offered to impeach.

11 MR. CHAMBERLAIN: I didn't say impeach, counsel.

12 THE COURT: You are ready to read?

13 MR. HUEGLI: Yes, sir.

14 THE COURT: The objection is sustained.

15 Q (By Mr. Huegli) Okay. Without assuming the number,  
16 I'd like you to assume that Mr. Boudreau had used the gun  
17 extensively from the time he purchased it up until October of  
18 1979; I'd like you to also assume that there is no evidence in  
19 this trial of any prior malfunctions by Mr. Boudreau when  
20 the safety was moved from safe to the fire position; I'd  
21 like you to also assume that he told us that the trigger pull,  
22 specifically the number of pounds required to pull that trigger,  
23 remained unchanged, or, at least, got lighter with the passage  
24 of time from the time that he bought the rifle until the time  
25 that Teri See was shot;

1 today:

2 Steven Boudreau purchased this rifle, Exhibit 2,  
3 brand new; he took it right out of the box; it had never been  
4 fired by anyone, except, of course, Remington when it was test-  
5 fired in the gallery at their factory and passed all of their  
6 requirements, as evidenced by the stamp on the rifle; Mr.  
7 Boudreau -- let me interrupt you for one moment.

8 Your Honor, I would like to read at this time a  
9 page from Mr. Boudreau's testimony where he indicated how  
10 many rounds he fired through the rifle up until October 27th.

11 THE COURT: Is that otherwise in evidence?

12 MR. HUEGLI: I'm not sure if it is, and I don't think it  
13 is, but that's the only reason I'm offering it.

14 MR. CHAMBERLAIN: I'll object if it's not in evidence.  
15 Otherwise, I have no objection.

16 THE COURT: Mr. Huegli, I want to know what you intend  
17 to do. Do you want to read from a deposition?

18 MR. HUEGLI: Right.

19 THE COURT: Of a witness?

20 MR. HUEGLI: Yes.

21 THE COURT: Who has already been on the stand?

22 MR. HUEGLI: Yes.

23 THE COURT: And you want to put before the jury as evidence  
24 whatever you are about to read?

25 MR. HUEGLI: Yes, I do.

1 I'd like you to also assume that on the last time  
2 the gun was used by Mr. Boudreau prior to October 27, its  
3 functions all worked properly, that is, the trigger return,  
4 the safety worked, the gun could be cocked and loaded and fired;

5 I'd like you to also assume that on the morning of  
6 October 27, 1979, the trigger, the bolt action and the safety  
7 functioned correctly without any problem at all; the gun was  
8 then loaded in the morning and cocked by Mr. Boudreau and  
9 he put the safety on for his wife;

10 From the early morning until 6:00 p.m. that night,  
11 there is not evidence that anybody put anything in the trigger  
12 mechanism, no one fired the rifle, no one put any gunk in the  
13 rifle, no one unloaded the rifle, or in any way functioned  
14 the bolt trigger or safety of the rifle;

15 I'd like you to assume that the temperature,  
16 pursuant to the certified copy of the weather report, ranged  
17 between 47 degrees for a low to a high of 60 in the afternoon,  
18 and accept the temperature of 49 degrees at 5:56 p.m.;

19 I'd like you to assume it was intermittently raining  
20 during the day, but that the gun spent the greater majority of  
21 its time inside the vehicle, in the possession of Mr. Boudreau's  
22 wife;

23 The gun was loaded and could be cocked, and, in fact,  
24 was cocked when it was taken into the home;

25 I'd like you to assume there is no evidence at all

	D	47
1		in this trial that anyone or anything pulled the trigger of the
2		gun from the time it was loaded in the morning through and
3		including the moment it was laid down on the couch -- excuse
4		me, the chair in the Boudreau home.
5		Okay. Assuming those facts to be true, do you have
6		an opinion as to whether or not the safety on the rifle you
7		examined would have discharged the rifle when it was simply
8		moved from the safe to the fire position without anybody touching
9		the trigger?
10	A	Yes, sir, I have an opinion.
11	Q	What is your opinion?
12	A	It could not have discharged upon disengagement of
13		the safety, given those circumstances.
14	Q	Upon what do you base that opinion; are there any
15		particular facts that you feel are very important?
16	A	Yes, sir, I think the key fact would be that when
17		the gun was loaded in preparing for taking it on the hunt,
18		it evidently did remain cocked, since it was cocked at the time
19		of the accident.
20		If the gun remained cocked, the trigger must have
21		been in position beneath the sear to support the sear; other-
22		wise, the firing pin had -- or the cocking piece would have
23		overridden the sear, and it would have resulted in what is
24		commonly called a follow-down, or the gun would have failed
25		to remain cocked when the bolt was closed, the trigger not in

	D	49
1		When I, as I close the bolt, the firing pin moves
2		forward slowly, there is a cam in there which lets the firing
3		pin move forward slowly as the bolt is rotated down to that
4		position.
5		A follow-down results in a round in the chamber,
6		but the gun is incapable of firing because it's not cocked.
7		A follow-down, as I have just done there, the
8		safety is disengaged, and I can pull the trigger and nothing
9		happens, because the cartridge would not have fired. The
10		reasoning from that, if there was not a follow-down, the
11		trigger was not stuck at that time, and one of the further
12		conditions was that there is no evidence that the trigger was
13		pulled between the time the gun was reloaded and the time the
14		accident occurred. The trigger had to have been supporting
15		the sear at the time the gun was loaded, else, there would have
16		been a follow-down and the trigger was not moved from that
17		position, it would have supported the sear when the safety
18		was disengaged, and the gun would not have fired.
19	Q	What significance does the fact in this group of
20		facts I have given you that Mr. Boudreau had never had this
21		problem in the past, and, further, had not noticed the trigger
22		pull had remained basically, what is the significance to those
23		facts?
24	A	Both of those things tend to indicate that the
25		sludge was not causing any impediment, any resistance to motion,

	D	48
1		position.
2	Q	Would you come down, and let's show the jury what
3		a follow-down is. Follow-down is a term of art used in the
4		gun industry?
5	A	Yes, commonly used in the gun industry. If I may
6		keep it this way. Okay.
7	Q	Okay.
8	A	When I cocked the gun, normally I think I said
9		before, you see the head of the firing pin protruding from the
10		back end of the bolt, if I pull the trigger, now that is not
11		a follow-down. I'm demonstrating, again, what happened to the
12		firing pin. It moved forward, and now you see a hold where that
13		thing was protruding.
14	Q	Now we are speaking of the morning the gun was loaded
15		on October 27. I'd like to refer you to that time. Now, if
16		the trigger was pulled and held --
17	A	If the trigger were stuck in the rear, for example,
18		which deprives the sear of support, and I'm going to hold it
19		back with my finger, simulating a stuck condition with the
20		trigger stuck to the rear, and I close the bolt and turn it
21		down, that thing does not protrude; it's already disappeared
22		into its fired position.
23		And if I had had a cartridge in the chamber, it would
24		not have fired, because the firing pin just moves forward slowly
25		as I close the bolt.

	D	50
1		that the trigger must have been moving relatively freely, and
2		the sear must have been moving relatively freely.
3		The symptoms of sludge in a trigger of that kind,
4		that one would expect would be follow-downs. That kind of
5		malfunction that I demonstrated. And if the sludge were to
6		build up sufficiently to keep the trigger from resetting, that
7		is, returning to its normal forward position as it is intended
8		to do, the same resistance that would cause it to remain in a
9		pulled position when the spring was trying to urge it back
10		forward would also have increased the force necessary to pull
11		the trigger.
12		The same kind of force which resists moving it
13		from the rear to the front after I have pulled it would also
14		be exerted, and when it would also be apparent, when I tried
15		to pull it from the front to the firing position.
16		The sludge is not directional. It resists movement
17		forward and backward the same, so the trigger pull should have
18		been increased if the movement of the trigger was impeded to
19		that degree.
20	Q	Would the trigger pull increase with use or develop
21		over the passage of time?
22	A	It would not have been instant use. If it were
23		caused by accumulation of sludge of that kind. That's a sticky
24		kind of resistance. Viscous resistance is a term for it.
25		But it means that the stuff becomes sticky, then,

D 51

1 as it gets more sticky and more stiff, the resistance to move-  
 2 ment tends to increase, and that is not a sudden transition  
 3 but gradual one.

4 Q Okay, I'd also like you to assume another set of  
 5 facts, Mr. Davis. I'd like you to assume that after Mr. Boud-  
 6 reau fired this rifle in the house -- in his own home, that  
 7 the gun was then unloaded at sometime. It was never fired  
 8 again; it was never cleaned. Those two facts.

9 It was then handed at one time in the next month  
 10 or set of months, or weeks, was then handed to his lawyer;  
 11 it then went from his lawyer to another lawyer, Mr. Chamberlain;  
 12 and then it was delivered to L. S. Martin;

13 I'd like you to also assume that in the transition  
 14 of delivering the gun to L. S. Martin that this gun that you  
 15 examined sustained the vibrations which would be accepted  
 16 and expected from normal use and handling.

17 Now, assuming those facts, do you have an opinion  
 18 as to whether or not the gun arrived in L. S. Martin's office,  
 19 it was in substantially the identical condition it was on  
 20 October 27, 1979, when Teri See was shot?

21 A Yes, I have an opinion.

22 Q What is your opinion, Mr. Davis?

23 A My opinion is that what kind of sludge that I found  
 24 in the trigger is not -- would not have been altered appreciably  
 25 by that passage of time.

D 53

1 A Yes. Perhaps I should mention first what I mean  
 2 by automatic safety in this context. I mean a safety which  
 3 renders the gun incapable of firing after one shot has been  
 4 discharged and the gun has been reloaded before the next shot  
 5 can be discharged.

6 Q That is what Mr. Martin's does?

7 A It does, and there are other definitions that might  
 8 apply to an automatic safety. I think some testimony yesterday  
 9 was given on safeties on automatic pistols, in the context which  
 10 I applied to Mr. Martin's design, the engagement of an automatic  
 11 safety between shots would seriously reduce the ability of the  
 12 gun to be used for firing rapidly.

13 The whole purpose of having a magazine containing  
 14 additional cartridges in the chamber is that they can be fired  
 15 rapidly after the one from the chamber has been fired, by  
 16 manipulating the action, the next one can be fired in a fairly  
 17 rapid succession, and that purpose is largely defeated by  
 18 introducing another movement that has to be accomplished between  
 19 the reloading of the gun and the firing of the subsequent rounds.

20 Q Mr. Martin has testified and I read into the record  
 21 a transcript of his testimony from a previous trial, and I'd  
 22 like to read that to you and ask you if you agree or disagree.

23 (Reading:) It is my opinion that all  
 24 guns should have what I call an automatic  
 25 safety, one that does not put the onus

D 52

1 Q Is that type of sludge that you saw the type that  
 2 would drain out of a gun, or would it have to be washed out  
 3 with a high grade of solvent?

4 A It was too sticky to have drained out by itself,  
 5 I should say.

6 Q Okay. Did you notice when you examined the gun  
 7 that the material was draining or oozing, or was it solid?

8 A Well, it was not runny, but neither was it solid.  
 9 It was of the consistency of something like a light grease or  
 10 a heavy oil which doesn't run as a liquid, but could not be  
 11 considered to be a solid material, really, either.

12 Q Okay. Mr. Davis, in all of your years of experience  
 13 with the military and NATO and the private industry that you  
 14 have given expert opinions as a consultant, are you familiar  
 15 with the design of a bolt action rifle, specifically with  
 16 relationship to a high-powered center fire bolt action rifle  
 17 and whether or not there are any of those guns in the whole  
 18 wide world that have an automatic safety, other than Mr. Martin's  
 19 that he brought here today?

20 A With that exception, I do not know of any repeating  
 21 rifle that has an automatic safety.

22 Q Can you tell the jury in your expert opinion what  
 23 an automatic safety would do to a high-powered repeating rifle  
 24 such as a Model 700, what effect would it have on its quality  
 25 of function.

D 54

1 on the user, one that is on automatic  
 2 until he needs to fire, and then he has  
 3 to disengage it, at which time it will  
 4 return to the on position.

5 Question: Okay, so your opinion is  
 6 that all guns should have an automatic  
 7 safety.

8 Answer: Yes, sir.

9 Do you agree or disagree with that quotation in  
 10 relationship, first, to bolt action rifles, and then we'll  
 11 go on to some more? I'm talking about center-fired high-powered  
 12 bolt action rifles.

13 A With the exception of a single shot, possible  
 14 exception of single shot rifle, I would disagree with the  
 15 statement.

16 Q What effect would an automatic safety have on a  
 17 semi-automatic .22?

18 A Well, it would negate the advantage of semi-automatic  
 19 mechanisms. Instead of pulling the trigger to fire successive  
 20 shots, you would have to pull the safety, pull the trigger  
 21 again, disengage the safety, and pull the trigger again. It  
 22 slows down the operation.

23 Q Initially, when you examined the rifle on October 22  
 24 1972 (sic), did it appear to you that this firearm, particularly  
 25 the trigger mechanism and the safety mechanism, which the user

	D	X	55
1	is going to have to decide, a factual question on, did it appear		
2	to you as though it had been cleaned?		
3	A	No, it did not appear to have been cleaned recently,	
4	certainly.		
5	Q	And I want you to assume that nobody fired it from	
6	the time of October 27 until you got it.		
7	A	It did not appear to have been cleaned in that	
8	period.		
9	MR. HUEGLI: Thank you, Mr. Davis. I have no further		
10	questions.		
11			
12	CROSS EXAMINATION		
13	BY MR. CHAMBERLAIN:		
14	Q	Did I understand you to say that, Mr. Davis, that	
15	it was your opinion that the gun had been cleaned from the date		
16	of Teri See's accident during the next three years until you		
17	examined it?		
18	A	I think I said it had not been cleaned recently.	
19	It had not been cleaned since the introduction of whatever		
20	material caused the sludge that I observed in there.		
21	Q	At least what you observed had not been cleaned	
22	out of it?		
23	A	That's true.	
24	Q	You do not know if there was more sludge that had	
25	been cleaned out, such as inadequate cleaning, no way that you		

	X	57
1	THE COURT: Exhibit 4 is received.	
2	MR. CHAMBERLAIN: A little housekeeping.	
3	Q	(By Mr. Chamberlain) Now, Mr. Davis, when you
4	examined Exhibit 2 and wrote your report, you made one error	
5	which was pointed out, and that was that you, in your report,	
6	indicated that Exhibit 2 was a 234 Winchester caliber, rather	
7	than a 6 mm.?	
8	A	Yes, sir, I did point that out.
9	Q	And you have been sitting here throughout the trial,
10	including opening statements, have you not?	
11	A	Yes, sir.
12	Q	So you heard me make a similar mistake in my opening
13	statement, didn't you?	
14	A	Yes, sir, I did.
15	Q	And you heard Mr. Heugli point out in his opening
16	statement that I had made that mistake and pointed out if I	
17	had read on the barrel, the 6 m, I would have known it was in	
18	fact a 6 mm.?	
19	A	Yes, sir.
20	Q	So we are even, huh?
21	A	True.
22	Q	What is the sear connector engagement specification
23	for the Remington Model 700?	
24	A	I don't know.
25	Q	When you estimated the sear connector engagement on

	X	56
1	know that, is there?	
2	A	No. It's possible that it was inadequately cleaned.
3	That's a possibility, yes.	
4	Q	That's something that happens with rifles from time
5	to time, right?	
6	A	Sir, I'm sorry?
7	Q	That is something that happens with rifles from
8	time to time, inadequate cleaning?	
9	A	Yes.
10	Q	Such as superficial wipe-down, or a gun user that
11	is not perfect and doesn't wash and dry each part as suggested	
12	by Mr. Linde, that could happen, couldn't it?	
13	A	Yes.
14	MR. HUEGLI: As requested by Mr. Linde, I think it's	
15	written in our owner's manual. I think that is an improper	
16	characterization as being Mr. Linde was reading from the book.	
17	THE COURT: I'll leave that argument. You can make that	
18	argument later on.	
19	For the record, your objection is overruled.	
20	MR. CHAMBERLAIN: Speaking of the book, at this time I	
21	would like to offer Exhibit 4, which was identified by	
22	Mr. Linde yesterday afternoon.	
23	MR. HUEGLI: Which book?	
24	MR. CHAMBERLAIN: Exhibit 4, Field Service Manual.	
25	MR. HUEGLI: I have no objection to Exhibit 4, Your Honor.	

	X	58
1	this rifle, your estimate was just that; it wasn't a measurement,	
2	right?	
3	A	That's true. I think I described the basis on which
4	I made that sort of judgment, based on prior experience in	
5	looking at the Remington and comparing it roughly to the	
6	thickness of a dime.	
7	Q	Wouldn't surprise you that the specification for
8	the sear engagement was fifteen to twenty thousandths, would	
9	it?	
10	A	It would not.
11	Q	And you found that this one had twenty to twenty-
12	five thousandths?	
13	A	I estimated it twenty to twenty-five thousandths.
14	Q	And do you know what the specification is on the
15	Remington model for the 700, for pounds of trigger pull?	
16	A	I'm not sure. Now, I believe it's two-and-a-half
17	to five, but I'm really not sure of that.	
18	Q	And if you are correct that the upper limit, at
19	least, is five pounds, your measurement of trigger pull on the	
20	Remington Model 700 in October of '82 at four-and-a-half to	
21	four-and-five-eighths pound is at the upper limit of that speci-	
22	fication, true?	
23	A	If the upper limit is five, it's absolutely below
24	the upper limit.	
25	Q	Right, but close to it?

	X	59
1	A	Yes.
2	Q	You measured it five times, and you got two different
3		readings, two different pound readings?
4	A	Yes, disagreement by an eighth of a pound. That's
5		about the accuracy of a chatillon, c-h-a-t-i-l-l-o-n, really.
6	Q	Did you say you worked for Colt at one time?
7	A	Yes, sir, I did.
8	MR. CHAMBERLAIN:	Could the witness be handed Exhibit 104,
9		in that envelope, the small one (the bailiff provides the
10		exhibit to the witness).
11	Q	(By Mr. Chamberlain) Would you take that out of the
12		envelope and identify it for the record, please.
13	A	Yes.
14	Q	What is that?
15	A	It's an instruction manual for the Colt Gold Cup
16		National Match Mark IV, Series 70.
17	Q	Is that a Colt firearm?
18	A	Yes, it's a Colt auto-loading pistol.
19	Q	And that's the product literature that they put in
20		with their new guns when they sell them?
21	A	I assume that is so. It's what it appears to be.
22	MR. CHAMBERLAIN:	We would offer Exhibit 104.
23	MR. HUEGLI:	I have a brief matter for the Court, Your
24		Honor. I object, and I would like to make my objection.
25	THE COURT:	All right, members of the jury, you can take

	X	61
1	MR. CHAMBERLAIN:	What I would suggest, Your Honor, he's
2		identified it for the record. I'll withdraw my offer at this
3		time, and I'll re-offer it later on.
4		To be frank with the Court, I didn't intend to use
5		the document with this witness. I intended to use it with
6		Mr. Linde yesterday. I forgot to. I have some uses for it
7		later on with another witness.
8	THE COURT:	All right. 104 is withdrawn. The offer of
9		104 is withdrawn.
10	MR. HUEGLI:	Your Honor, I apologize to the Court for
11		asking for matters with the Court, but I'm concerned that what
12		I feared would happen that the witnesses are going to be shown
13		impeachment documents, alleging impeachment, and the purpose
14		is going to be how other owners' manuals are drafted, and, for
15		instance, this particular book.
16	THE COURT:	Now, wait. There is no harm that has been
17		done.
18	MR. HUEGLI:	I did want to apologize to the Court.
19	THE COURT:	That's all right. You have no apology to
20		make. The Court has ruled in your favor.
21	MR. HUEGLI:	Thank you.
22	THE COURT:	If I have any criticism of you, I'll make it.
23	MR. HUEGLI:	Thank you.
24	THE COURT:	We can take our recess now.
25		(Recess.)

	X	60
1		your recess now.
2		(The following proceedings were had in open court
3		outside the presence of the jury:)
4	MR. HUEGLI:	Exactly what I thought was going to happen,
5		we are going to have impeachment documents that are going to
6		be offered as substantive evidence to prove something and not
7		to impeach the witness.
8		There has been no attempt to impeach this witness
9		in any particular fashion.
10		He said, Is this a Colt instruction book.
11		It's a brand new book. I don't know how Colt
12		instructs. I've never seen it before. There is no evidence
13		that this witness says something that denies something or
14		admits something simply to shove into the jury's hands --
15	THE COURT:	Wait a minute. What is your objection?
16		On what ground?
17	MR. HUEGLI:	My objection is, there is no foundation
18		laid.
19		There is no impeached evidence here. This is not
20		a document offered at pretrial. It's in a sealed envelope.
21		No foundation laid for it. It's irrelevant to this
22		case, immaterial, whether we did or did not in 1976 put an
23		instruction manual in our box.
24		Those are three good ones that I can think of
25		off the top of my head.

	X	62
1		(The following proceedings were had in open court
2		in the presence of the jury:)
3	Q	(By Mr. Chamberlain) Mr. Davis, this isn't your
4		first time testifying on behalf of the Remington Arms Company,
5		is it?
6	A	No, sir, it's not the first.
7	Q	How many times have you testified for them in trials?
8	A	Trials in court, I only recall two, though there
9		might have been one or two others.
10	Q	Where were the two trials that you testified in?
11	A	One was in Florida, Ft. Lauderdale, Florida, and
12		concerning an ammunition malfunction. The other that I recall
13		right now was in Georgia.
14	Q	Weeks (phonetic) v. Remington?
15	A	Yes, Weeks.
16	Q	Shotgun case?
17	A	Yes.
18	Q	In addition to that, you have testified in deposi-
19		tions for them a number of times?
20	A	I don't really recall any occasion in which I have
21		been deposed in a case for them.
22		I have been consulted by them on other occasions,
23		but I do not recall any in which I gave a deposition or testified
24		in court.
25	Q	And you are being paid by them, right?



1 A Yes, sir.

2 Q And you have been here what? since Sunday this week?

3 A Yes, sir.

4 Q Are you paid on a daily basis or hourly, or what?

5 A Daily.

6 Q What do you charge them?

7 A \$200 a day.

8 Q Plus your expenses?

9 A Yes, sir.

10 Q You talked about rebedding the stock of this gun

11 or did I understand you correctly that all that has been done

12 on this gun, it's your statement that has nothing to do with

13 the trigger assembly or any malfunctions on this gun?

14 A That is my opinion.

15 Q So, it's something that you noted, because it was

16 not as-manufactured feature, but something we shouldn't concern

17 ourselves with when we are looking at this gun?

18 A I think that is extraneous to this safety-related

19 matters entirely.

20 Q Okay. And you mentioned the condition of the

21 trigger guard screws. You said they had been marred by somebody

22 using the wrong size screwdriver. You noted that again in

23 October '82, right?

24 A I'm sorry, I didn't hear all of that last question.

25 Q You noted that, you noted that condition in October

1 Model 700 in relation to the trigger assembly?

2 A Well, it fits on the outside, around the outside

3 of the trigger assembly.

4 The piece that releases the bolt stop is in the

5 trigger guard immediately ahead of the finger piece in the

6 trigger.

7 Q Above the trigger assembly when the gun is in an

8 upright position?

9 A Well, if the gun were pointing muzzle up, it's in

10 front of the trigger.

11 Q I'm talking about the gun is horizontal, the bolt

12 stop is above the trigger assembly; isn't it?

13 A Not entirely.

14 Q Partially?

15 A Yes.

16 Q And it's in the bolt stop that you observed the

17 largest amount of what you called gunk?

18 A Well, I don't know that it was the largest amount,

19 but by the nature of the parts, it was the functioning of that

20 part that was noticeably impaired by the gunk. I think it's

21 more susceptible from interference from gunk.

22 Q And the effect of that gunk on that bolt stop was

23 that it didn't move as fast as it otherwise would?

24 A That's right. It moved under spring force, it

25 moved slowly.

1 of 1982?

2 A Yes, I did.

3 Q And, again, that is not safety-related in this case,

4 is it?

5 A It is not.

6 Q And considering that this gun has been the subject

7 of a lawsuit for -- or subject to claims since October of 1979,

8 it's not surprising to you that it would be taken apart a number

9 of times and examined, is it?

10 A It is not surprising that it might be taken apart,

11 though I would be surprised if the people who take it apart

12 under those circumstances, such as Mr. Martin. My opinion is

13 that would have been done by an in-expert.

14 Q The factory sealant was intact on all screws?

15 A It appeared so, yes, sir.

16 Q That means that those screws have not been adjusted

17 since the gun left Remington's hands; is that right?

18 A That's what that would indicate. Yes, sir.

19 Q I take it, then, that you would disagree with

20 Remington's contention in the pretrial order that the owner

21 of that gun was negligent in improperly adjusting the trigger

22 pull, contrary to the manufacturer's directions?

23 MR. HUEGLI: Your Honor, we are withdrawing any contention

24 of adjusting the trigger pull in this case.

25 Q (By Mr. Chamberlain) Where is the bolt stop on the

1 Q The gunk was, in effect, holding it back from moving

2 quickly; is that a fair statement?

3 A That's true, yes.

4 Q Would you agree with me that a gun that is loaded

5 and cocked and on safe and is carried around a good part of

6 the day by a hunter, a gun that does not have a gun strap on

7 it, that the hunter has to hold it in his or her hands, that

8 it's very foreseeable that at times during the day the hunter

9 will inadvertently touch the trigger or the trigger might

10 contact the brush --

11 MR. HUEGLI: Objection. He's asking this witness to

12 speculate.

13 THE COURT: It's overruled.

14 Q (By Mr. Chamberlain) Do you remember the question?

15 A I think I do remember the question.

16 I consider that a reasonable possibility, yes.

17 Q Wouldn't surprise you if that happened, would it?

18 A No, it would not surprise me.

19 Q You might not expect it every time, but it's the

20 kind of thing that happens to hunters; true?

21 A Well, I think it's not a surprising occurrence if

22 that happened.

23 Q It's even possible that that could happen and the

24 gun handler would not even know it; isn't it?

25 A I suppose it's possible that it could happen without

1 the handler knowing it.

2 Q If the safety was on, the gun wouldn't discharge,  
3 so there wouldn't be any loud bang?

4 A True.

5 Q Right?

6 A Uh-huh.

7 Q Now, you mentioned that it was your opinion that  
8 this gun did not fire when the safety was released on October  
9 27, 1979, and you stated that the key fact based -- that you  
10 based your assumption or based your opinion on was that the  
11 gun didn't follow down; is that what you were telling us?

12 MR. HUEGLI: Objection. He didn't state that was the  
13 key fact at all. That is a misstatement of this witness'  
14 testimony.

15 MR. CHAMBERLAIN: Well, if that is so, I think --

16 THE COURT: Just a moment. It's a question to the witness.  
17 The witness can disagree with it or not. If I understand it  
18 correctly, and it gives the witness a full opportunity to  
19 tell us what he said, and if it's inaccurate, it's up to the  
20 witness.

21 It's overruled.

22 MR. HUEGLI: Very well.

23 THE COURT: Do you have the question in mind?

24 MR. CHAMBERLAIN: I think I could probably restate it  
25 and do a little better job.

1 follow down?

2 A Yes, if that were the case, it would have followed  
3 down.

4 Q Such that it won't fire even though it's in the  
5 fire position?

6 A That's true.

7 Q But, if when he loaded it, it wasn't stuck, he  
8 then closed it, and he loaded it and it stuck, and he put it  
9 on fire, and then sometime during the day that trigger was  
10 inadvertently pulled, there would be no follow-down?

11 A That's true.

12 Q And if it was inadvertently pulled, stayed put from  
13 the on safe to the off safe, it would go off, right?

14 A I understand your question to be with the one  
15 condition which Mr. Huegli outlined, there was no evidence that  
16 the trigger was pulled between the time the gun was loaded and  
17 the time that the accident occurred. That was one of  
18 Mr. Huegli's propositions on which I was to base the judgment,  
19 and you are now changing that, as I understand it, to say that  
20 the trigger was supposed, hypothetically, that the trigger was  
21 pulled after the gun was loaded and cocked and locked on safe,  
22 but prior to the time that the accident occurred?

23 Q Right.

24 A Okay, I understand you, and you are asking me --

25 Q If it was then pulled by someone's finger, or hit by

1 THE COURT: All right.

2 Q (By Mr. Chamberlain) Do you remember when you were  
3 giving your opinion about the Model 700, Exhibit 2?

4 A Yes, sir, I do remember.

5 Q You remember that you stated this was the key fact  
6 that you relied upon?

7 A Well, I don't recall that that was my testimony  
8 verbatim, but it was one of the factors, one of the important  
9 factors in arriving at my judgment was that the gun did not  
10 follow down when it was slowed, that is true.

11 Q And that assumption, or that opinion, then, assumes  
12 that the trigger was already in the pull position before the  
13 user tried to load it, doesn't it? In other words, the gun  
14 would follow down if that trigger is pulled?

15 A Yes, it assumes that one of the conditions, as I  
16 recall, was that the gun had worked perfectly on its occasions  
17 of prior use, which I would interpret as meaning its firing,  
18 and that would necessitate that the trigger be pulled, and on  
19 that prior occasion, the trigger was apparently working correctly.

20 Q I want to make sure we understand this. Do you have  
21 Exhibit 2 there?

22 A It's here.

23 Q What you are telling the jury is, if Mr. Boudreau  
24 went to load the gun for his wife that day, the trigger was  
25 already stuck back, and when he closed it, the gun, it would

1 brush because of some condition, and the trigger assembly stayed  
2 pulled, then when the safety was moved to the fire position,  
3 the rifle would discharge?

4 A If that were true, yes. The rifle would discharge.

5 Are you asking me, does that alter my conclusion?

6 Q No, I'm trying to make a distinction between what  
7 I described at the follow-down condition.

8 A If some condition prevailed during the day such as  
9 to wedge the trigger in or to stick the trigger in its rearward  
10 position, after it had been pulled, subsequent to the time it  
11 was loaded, cocked, and locked, then whatever condition was  
12 introduced in the meantime caused the trigger to stick on that  
13 occasion but not on the previous occasions, and it remained  
14 stuck, the answer to your question is affirmative, that it  
15 would cause it to fire.

16 Q Fine. Good. Thank you.

17 You attach some significance in giving your opinion  
18 that this gun owner had never experienced an FSR, fire when safe  
19 released, problem with this gun before; correct?

20 A I think that it was not put exactly that way. I  
21 think that he had not complained of previous malfunctions which  
22 would include but not be limited to FSR.

23 Q You would agree, wouldn't you, that if a gun is  
24 going to fire when the safety is released, sooner or later it  
25 has to happen for the first time?

X 71

1 A Well, that's true, but it's not -- it does not  
2 follow my train of thought from the preceding question. He  
3 said no malfunctions, which I interpreted to mean no follow-downs.  
4 Q I want to talk about fire when safe is released. If  
5 a gun is ever going to do it, it has to happen the first time?  
6 A And I would expect that to be preceded by some other  
7 malfunctions that do not have hazard conditions such as follow-  
8 downs.  
9 Q In your opinion, would a gun owner be likely to  
10 perceive a half-pound gradual change in the trigger pull on his  
11 rifle?  
12 A I couldn't speak for Mr. Boudreau.  
13 Q Do you know what dried gun oil is?  
14 A Do I know what dried gun --  
15 Q Dried gun oil, gun oil that has dried.  
16 A Yes, it's --  
17 I'm not quite sure I understand the question. Do  
18 I, do I know what causes gun oil to dry?  
19 Q You would agree it does dry?  
20 A Say that again.  
21 Q Would you agree that it does dry?  
22 A Well, some gun oils do, and some do not.  
23 Q Okay. And some of the substances in some oils can  
24 evaporate out over time, right?  
25 MR. HUEGLI: Objection --

X 73

1 A Yes.  
2 Q Practical event to use that sort of thing?  
3 A Yes.  
4 Q You are familiar with the -- seen the automatic  
5 safety design that Mr. Martin installed on his Model 700?  
6 A Yes, sir, I did.  
7 Q And you expressed some opinions about that safety  
8 mechanism, didn't you?  
9 A Yes, I think I expressed an opinion about the  
10 automatic safety categorically as distinguished from that one  
11 in particular.  
12 Q You have never tested his safety mechanism, have  
13 you?  
14 A Only fairly superficially in your office, yes.  
15 Q As a product tester, you would agree, wouldn't  
16 you, that superficial testing is not a very thorough and  
17 scientific matter in which to reach a conclusion about the  
18 feasibility of a product?  
19 A Some superficial testing can detect an unsatisfactory  
20 condition, but to confirm that the product is without any  
21 unsatisfactory conditions requires much more sensitive testing.  
22 Some superficial test is only conclusive when the  
23 result is negative.  
24 Q Was the --  
25 You mentioned the Model 700 was used as a sniper

X 72

1 THE WITNESS: Well --  
2 MR. HUEGLI: -- we are talking about this gun and this  
3 lawsuit, and he's asking the witness to speculate on any one of  
4 a broad spectrum of chemicals that could or could not do some-  
5 thing under any number of circumstances.  
6 THE COURT: It's overruled.  
7 THE WITNESS: Well, I could not characterize the action  
8 that takes place on gun oils when they deteriorate to be  
9 evaporation. It's an oxidation process, but the consistency  
10 of them changes with the passage of time and consequences of  
11 oxidation.  
12 Q Okay. One of your jobs that you listed for us  
13 was firearm testing; is that right?  
14 A One of my jobs has included firearms testing, is  
15 that your question?  
16 Q Right.  
17 A Yes, sir.  
18 Q Are you having trouble hearing me?  
19 A I do, yes.  
20 Q Okay, I'll speak into the microphone.  
21 And one of the functions of testing a firearm is  
22 to determine whether or not they work properly, work as they  
23 are designed?  
24 A Yes, sir.  
25 Q Whether or not that's feasible?

X 74

1 rifle in Viet Nam; was that rifle tested and approved for use  
2 by troops in the United States Army?  
3 A I don't have special knowledge of tests, but by --  
4 Q I'm not asking about tests, I'm asking if it was  
5 approved, tested and approved for use by troops in the United  
6 States Army.  
7 A From my knowledge of the fact that all weapons used  
8 are required to have safety certification, I must assume that  
9 since this --  
10 Q I don't want you to assume anything --  
11 MR. HUEGLI: Objection, Your Honor.  
12 Q (By Mr. Chamberlain) -- I want you to tell me, do  
13 you know if it's approved or not, a simple yes or no question.  
14 MR. HUEGLI: Your Honor, he's entitled to answer the  
15 question as he sees fit. Mr. Chamberlain is arguing with him,  
16 because he knows that he's going to give --  
17 MR. CHAMBERLAIN: I would like an answer before I get  
18 an explanation, is the point, Your Honor.  
19 THE COURT: The objection is overruled.  
20 Q (By Mr. Chamberlain) Now, yes or no, Mr. Davis,  
21 was the Model 700 rifle, to your knowledge, tested and approved  
22 for use by troops by the U.S. Army?  
23 A Yes.  
24 Q Okay.  
25 Can debris in the Model 700 rifle trigger assembly,

1 talking about debris now, substantially change the pounds of  
2 trigger pull?

3 MR. HUEGLI: Your Honor, I hate to continually object,  
4 but we are asking this witness to speculate on absolutely un-  
5 realistic questions that have no foundation.

6 I don't know if the debris is cotton balls, steel,  
7 honey, jello, maple syrup.

8 The question is without condition or foundation,  
9 asking this witness to speculate on facts that aren't in evidence.

10 THE COURT: The witness always has the option to know  
11 if that is the fact, and it's up to the witness to tell whether  
12 or not he can answer the question.

13 It's overruled.

14 Q (By Mr. Chamberlain) Do you remember the question,  
15 Mr. Davis?

16 A No. Read it again.

17 (The court reporter reads the question as requested.)

18 THE WITNESS: Without further characterization of the  
19 debris, I could not answer your question as to whether it would  
20 or would not.

21 Q You don't know?

22 A In terms of your question, it is unanswerable, so  
23 I don't know.

24 Q Your test of the Remington Model 700, Exhibit 2 in  
25 this case, was conducted almost three years to the day after

1 mechanism, or removed the debris or removed substances from the  
2 trigger mechanism, that you very well could get different test  
3 results three years after this accident than you might have had  
4 if you had tested the gun one day after the accident?

5 A If debris were added or subtracted, or fouling were  
6 added or subtracted in the meantime, yes, it's possible.

7 Q Would you agree with me that a gun that fires when  
8 the safety is released is dangerous?

9 A Yes, sir, a gun which fires when the safety is  
10 released is dangerous.

11 Q Incidentally, isn't the gun industry a self-regulated  
12 industry?

13 A Yes, largely.

14 You mean self-regulated, you mean it is not subject  
15 to any national proof law or something of that nature; is that  
16 the substance of your question?

17 Q Right. The sort of thing that car manufacturers  
18 are subject to, it doesn't have that kind of federal regulation,  
19 does it?

20 A I don't know the regulations to which the car  
21 manufacturer is subjected. I'm sorry.

22 Q You read the paper, you have seen there are seat  
23 belt laws and safety standards, and all sorts of things that  
24 the federal government is always imposing on car manufacturers;  
25 nothing like that for gun manufacturers?

1 the day of this accident, right?

2 A So I understand, according to the testimony I have  
3 heard.

4 Q And you have been asked to assume various facts  
5 about where that rifle had been and what handling it had been  
6 subjected to and whether or not it's been cleaned, and if so,  
7 how well, but you do not know what conditions that rifle has  
8 seen in the three years between the accident and your testing,  
9 do you?

10 A No, I do not.

11 Q You don't know how many times the action has been  
12 functioned?

13 A I do not.

14 Q No doubt, it's many, many times; wouldn't you  
15 expect?

16 A I'm sure it has on a number of times.

17 Q You don't know what temperatures it has been  
18 subjected to in that three-year time period?

19 A No, I do not.

20 Q You don't know what humidity it's been subjected  
21 to in that three-year time period?

22 A No, I do not.

23 Q And you would agree with me, wouldn't you, if in  
24 fact that rifle has undergone some cleaning or some changing  
25 that either added debris or added substance to the trigger

1 A No government regulations, so far as I know, imposed  
2 on sporting arms manufacturers.

3 Q In decades there haven't been any improvements in  
4 the mechanical safeties used on firearms?

5 A Well, --

6 Q Just answer that yes or no. Do you agree or dis-  
7 agree?

8 A I disagree.

9 Q All right. Let's talk about the Model 700. It's  
10 manufactured since 1951, and they have not improved the design  
11 of that, changed the design of that safety mechanism since then,  
12 have they?

13 A Well, I'm not altogether familiar with the product  
14 history since '71, but I think there have been -- I don't recall  
15 any substantial changes in the safety system on the 700.

16 Q And in fact, the safety being incorporated when  
17 they first started making the Model 700 is the one that had  
18 been around for decades before that, isn't it?

19 A No.

20 Q Didn't you hear that testimony yesterday?

21 A No, I did not. At least, if I did, I do not recall.

22 Q You do not think that same type of safety has been  
23 around for decades and decades; you disagree with that?

24 A I would disagree with that. By some time, I assume  
25 you mean a similar mechanism?

1 Q Same concept, same way of putting the gun in the  
2 on safe position is what I'm talking about, two position safety.

3 A Before I can answer your question, I have to get a  
4 better definition of same time.

5 Q Two-position lever safety.

6 A Oh, two-position lever safety which may be vastly  
7 different from one specimen to another. Two-position lever  
8 safeties have existed for a very long time.

9 Safeties that are similar mechanically to the one  
10 used on the Model 700 did you exist prior to the time that it  
11 was used on the Model 700, so far as I know.

12 The resemblance to other two-position safeties is  
13 only superficial.

14 Q Okay. A good deal of your experience with firearms  
15 has been derived through your experience working either in the  
16 Army or for the Army; is that right? For the military?

17 A Up until the last ten years, the preponderance of  
18 it was military. That's right. And the last ten years, the  
19 preponderance of it has been non-military.

20 Q All right. I want to talk to you about some military  
21 weapons. I want to start with the Army Colt .45 pistol, the  
22 1911.

23 A Yes.

24 Q Incidentally, although that has been called a Colt  
25 pistol, that has been manufactured by Remington Arms occasionally,

1 Q If he doesn't have his hand on the handle of the  
2 gun, it's automatically on safe?

3 A That's true, providing it's functioning normally.

4 Q Absolutely.

5 Another military weapon, and we have one in the  
6 room here, is the Springfield .03; isn't it?

7 A Yes, it's a past military weapon.

8 Q And right now in current production?

9 A True.

10 Q And that's been manufactured by Remington Arms,  
11 among other companies?

12 A Yes, it has.

13 Q And that has a three-position safety?

14 A Yes.

15 Q And one of those three positions allows the operator  
16 to unload that gun with the safety in the on safe position,  
17 such that an inadvertent touching of the trigger would not  
18 cause the gun to discharge?

19 A Yes, that's one of the functions of the third  
20 position.

21 Q And, again, at least through World War II, that  
22 was one of the most common military rifles, wasn't it?

23 A The .03?

24 Q Right.

25 A Yes, I think that the total number of .03's was

1 has it not?

2 A I believe that Remington might have made a few of  
3 those arms in the World War I period. Not recently.

4 Q And that rifle -- excuse me, that gun is still  
5 manufactured and sold today?

6 A Yes, it's manufactured by Colt, or, at least,  
7 basically similar gun, for the civilian market, yes.

8 Q And would you agree, it's one of the most popular  
9 guns ever been marketed?

10 A Yes, I think that is a fair statement.

11 Q It has a manual safety?

12 A Yes, it does,

13 Q Which locks the trigger and the sear?

14 A Let's see. The manual safety, I'm not really  
15 sure which element is blocked right now by which of the  
16 safeties. Between the grip safety and the manual safety, they  
17 block the, both the trigger and the sear, but I don't remember  
18 which performs which function, off the top of my head.

19 Q Now, in addition to the manual safety, the grip  
20 safety is a second safety device on that gun that the operator  
21 has to squeeze so he can fire that gun?

22 A That's true, yes.

23 Q And if he does not squeeze it, he can't fire the  
24 gun?

25 A That's right.

1 exceeded by the number of Infields in that period. But  
2 probably the second most common in the United States service.

3 Q Then I want to talk about one more series of  
4 guns. The M1 automatic. Are you familiar with that?

5 A Auto-load, simply automatic.

6 Q Used during World War II?

7 A Yes, I'm familiar with that.

8 Q And that has a safety on it which locks the trigger  
9 and hammer?

10 A It locks the hammer and the sear. Any my recol-  
11 lection is that it is not a trigger block.

12 Q We disagree on that?

13 A I'm not positive about that.

14 Q All right.

15 A I think I testified to that effect once before,  
16 and I'm not sure whether that -- I'm not sure whether that  
17 is correct or not, whether it locks the trigger. It does  
18 positively lock the hammer. It locks the sear, I believe,  
19 also.

20 Q In addition to the M1, there is a more recent  
21 military rifle called the M14?

22 A Yes.

23 Q And although we disagree on what kind of safety  
24 the M1 has, the M14 has basically the same safety, does it not?

25 A I must say, I'm not necessarily disagreeing with you.

1 I say I'm not sure whether it blocks the trigger or not. And  
2 the M14 is substantially the same mechanism as the M1.

3 Q Then, there is a third M rifle, called M16, which,  
4 again, has a trigger or safety that locks the sear and the  
5 trigger, right?

6 A I believe that is right.

7 Q On the M1, M14, and M16, all of those rifles which  
8 are commonly used in the military, or have been used in the  
9 military, on all three, you can unload those rifles with the  
10 safety in the on safe position, can't you?

11 A Yes.

12 Q You heard L. S. Martin testify two days ago and  
13 then yesterday morning?

14 A Yes, I did.

15 Q Do you remember he testified about his examination  
16 of the Exhibit 2 and his measurement of the trigger pull?

17 A Yes.

18 Q Do you recall that he testified that trigger pull  
19 was five-and-a-half pounds on Exhibit 2?

20 A Yes, I do remember that.

21 Q That was about right around one pound more than  
22 your measurement, right?

23 A Yes, that's right.

24 Q Of course, there was about a year difference between  
25 the time that you measured the trigger pull in October of '82

1 in different fashions?

2 A Yes.

3 Q Okay.

4 A The results of trigger pull tests do differ,  
5 depending upon the method.

6 Q Mr. Chamberlain asked you to modify the hypothetical  
7 that I gave you by changing one factor.

8 I'd like you to assume that Star Boudreau, Teri  
9 See, Darrel See, or Mr. Boudreau, somebody, or a tree, or  
10 something inside the car pulled the trigger on the subject  
11 rifle on this day. He changed that one fact.

12 Do you have an opinion as to whether or not that  
13 rifle would have discharged in the Boudreau home that day  
14 without Mr. Boudreau having pulled the trigger himself?

15 A Yes, I have.

16 Q What is your opinion?

17 A My opinion is the same, that it would not have  
18 discharged under those same conditions.

19 Q Upon what do you base that opinion?

20 A Upon the very remote likelihood that either the  
21 amount or character of the gunk would have changed during the  
22 day.

23 Assuming that no more gunk was injected during the  
24 day and that the environmental conditions to which it was  
25 exposed would not have caused a drastic change in the stickiness

1 and the time that Mr. Martin did in December of '81, right?  
2 Ten, eleven months?

3 A Well, I won't argue about the time lapse, though,  
4 the relationship of that to the previous question, I don't  
5 necessarily agree with. The disparity between the measurements,  
6 I would think, is not likely to be due to the passage of time.

7 Q I'm just asking, there was about a year's difference  
8 between the two dates?

9 A The difference between those two dates is about a  
10 year, I agree to that.

11 Q And when you did your measurements, we have your  
12 report here, maybe the answer is in it, did you test the  
13 trigger pull first, or did you function the rifle and have  
14 it in the deep freeze and that sort of thing first?

15 A The functional tests were mostly done before the  
16 trigger was pulled.

17 The environmental functioning tests, cold box tests  
18 were done before the trigger pull was measured. So was the  
19 37 degree exposure outdoors than before the pull was measured.

20 MR. CHAMBERLAIN: Thank you, Mr. Davis. No further  
21 questions.

# REDIRECT EXAMINATION

24 BY MR. HUEGLI:

25 Q Mr. Davis, do different people measure trigger pulls

1 or character of the gunk, then, if the trigger were free on the  
2 last occasion of use, I would not expect it to have jammed in  
3 a pulled position between the loading of the gun in the morning  
4 and the accidental discharge in the evening.

5 Q Okay. You were also asked this question. Doesn't  
6 a gun, if it's going to go off on safe, has to go off the  
7 first time.

8 Well, if it's going to go, it's got to go the first  
9 time, we'll agree that has to precede that. Is this something  
10 that all of a sudden magically happens, or are there things  
11 that lead up to it as a matter of mechanics?

12 A The reasonable assumption that gunk is the cause  
13 of the malfunction, I would expect the jamming of the trigger  
14 to the rear, which would be necessary to cause the accidental  
15 discharge upon release of safety. I would expect that to be  
16 preceded by other malfunctions, principally follow-downs.

17 I would expect that the user would complain that  
18 when he loaded the gun and chambered a round and turned the  
19 bolt handle down, that the gun did not stay cocked as it was  
20 supposed to have done, and I would expect that to develop  
21 earlier in the deterioration, in the pattern of deterioration,  
22 than jamming of the trigger in pulled position.

23 Q Okay. Do you have an opinion, and we have talked  
24 about the increase in pull of the trigger with the passage  
25 of time and the accumulation of what we called gunk, and you have

1 stated that one-and-a-half pounds is not a measure of increase.  
2 or decrease one way or the other in a trigger pull situation;  
3 if the trigger in a rifle went from, say, four-and-a-half  
4 pounds to seven-and-a-half pounds, would that be a perceptible  
5 increase that almost anyone could feel with their finger?

6 A Well, I think that should be pretty readily notice-  
7 able, four-and-a-half to seven-and-a-half, a change of that  
8 magnitude. I'm sure I could tell that difference, and I think  
9 a user who shot many rounds in target practice would perceive  
10 that change, yes.

11 Q Okay. Now, you were then asked to assume questions  
12 about these Army rifles.

13 The first question I want to ask you, would the  
14 M1 and M16, or M14, be functional at all if Mr. Martin's auto-  
15 matic safety was installed on them, or any automatic safety  
16 was installed on them?

17 A Well, they would not function in their intended  
18 manner.

19 Q Which is simply automatic repeater?

20 A It would require another movement in the cycle  
21 of operation.

22 Q Okay. Are M1's, M14's, and M16's hammer system rifles?

23 A They are all hammer system rifles, differing from  
24 the bolt actions that we have discussed.

25 Q So you have talked about the sear block and trigger

## RECROSS EXAMINATION

2 BY MR. CHAMBERLAIN:

3 Q Two areas, Mr. Davis. First, you testified if gunk  
4 was the cause of FSR malfunctions, that you would expect complaints  
5 of follow-down to precede that FSR malfunction; right?

6 A Yes.

7 Q Have you reviewed the gun, the 49 gun examination  
8 reports produced by Remington, provided to us in this case?

9 A No, I have not.

10 Q You have not?

11 A Have not.

12 Q So you don't know whether or not those complaints  
13 also contained 49 complaints of follow-down?

14 A I have no information whatsoever on that.

15 Q Okay. And the last question, Mr. Davis, is this.

16 I want you to assume that on the date of this accident  
17 Steven Boudreau walked into his house and put the gun down,  
18 upside down, on the chair, he testified; and that he realized  
19 there was a bullet in the chamber, and he took it, had his  
20 left hand on the stock and put his right hand on the bolt  
21 in an attempt to move the bolt, to unload the gun; couldn't  
22 do so, because the bolt was locked closed.

23 And then assume that he used his thumb and pushed  
24 the safety from on safe to fire; then I want you to assume  
25 what you told us you believe, that he was, that he pulled the

1 in those rifles.

2 Are the guts of those rifles a different design  
3 entirely from a bolt action rifle?

4 A They are different entirely.

5 Implementation of the safety system on a hammer-  
6 fired gun is entirely different mechanical problem than a bolt  
7 action safety system.

8 Q Now, the Army Colt .45, is that a pistol?

9 A Yes, it is.

10 Q Is that the one that we show that is a black pistol  
11 that looks like, you know, we talk about a .45, it's not the  
12 old Western Rifle, is it?

13 A Not, obviously, cowboy rifle. It's an automatic,  
14 called automatic pistol. Strictly speaking, it's an auto load  
15 pistol, military.

16 Q When you pull the trigger, if you pull the trigger  
17 one, two, three, four, five times, it shoots that many times  
18 in a row?

19 A Yes, up to eight times.

20 Q What would the effect of the automatic safety have  
21 on that firearm?

22 A As a personal defense weapon, it would certainly  
23 decrease its usefulness, very seriously.

24 MR. HUEGLI: Thank you. That's all we have, Mr. Davis.  
25 Thank you very much.

1 trigger.

2 Now, you don't contend that he did it on purpose,  
3 do you?

4 A No.

5 MR. HUEGLI: Objection. That is argument. This man  
6 didn't shoot this woman on purpose --

7 MR. CHAMBERLAIN: I want to make sure --

8 MR. HUEGLI: -- it's irrelevant.

9 THE COURT: What do you claim here?

10 MR. CHAMBERLAIN: I just want to make sure he testified  
11 that --

12 THE COURT: Yes?

13 MR. CHAMBERLAIN: -- he testified that, in your opinion --

14 I should stand up --

15 THE COURT: I'll hear you in support of your question.

16 MR. CHAMBERLAIN: I want him to assume facts. One that  
17 I want him to assume is that Steve Boudreau unintentionally,  
18 carelessly, had his finger on the trigger at the time that  
19 the gun went off.

20 THE COURT: But the objection is to your question in which  
21 you asked this witness whether or not he contends that Steve  
22 Boudreau fired the gun intentionally.

23 MR. CHAMBERLAIN: I was clarifying that I want to make  
24 sure that weapon, he testified that it was inadvertent or a  
25 careless act on Mr. Boudreau's part and not anything else.

1 THE COURT: All right.

2 MR. CHAMBERLAIN: Which I believe is his testimony.

3 THE COURT: The objection is sustained.

4 Q (By Mr. Chamberlain) Assume Mr. Boudreau brought  
5 the gun in, had it upside down, loaded, cocked, safety on,  
6 left hand on the forward stock, right hand on the bolt; his  
7 intent was to unload the gun; he tried to move the bolt, and  
8 it would not, because the bolt was locked.

9 Assume then that he used his thumb and pushed the  
10 safety from on safe to fire, and in so doing, he unintentionally  
11 also had one or more of his fingers on the trigger. All right.

12 Isn't it a fact, Mr. Davis, that if the Remington  
13 Model 700 that Mr. Boudreau was handling that day did not have  
14 a bolt lock, he never would have had to touch the trigger; when  
15 he gripped that bolt and tried to open it, it would have opened?

16 A He wouldn't have had to touch the trigger in this  
17 case --

18 MR. HUEGLI: The fact assumes that you have to pull the  
19 trigger to unload this rifle. He said, isn't it a fact that  
20 if he didn't have to touch the trigger to --

21 MR. CHAMBERLAIN: I misspoke myself. I meant the safety  
22 lever.

23 MR. HUEGLI: Okay.

24 Q (By Mr. Chamberlain) Isn't it a fact that if it  
25 didn't have the bolt lock, when he grabbed that bolt, he could

1 trigger, and the gun was loaded, it would go off?

2 MR. CHAMBERLAIN: I'll object. No foundation for that  
3 question. All of the testimony is that the safety was on  
4 immediately prior to the accident.

5 MR. HUEGLI: I think the jury is entitled to determine  
6 whether it was or not. It's a question of fact.

7 THE COURT: The objection is sustained.

8 MR. HUEGLI: Very well.

9 THE COURT: I don't have any quarrel with your question  
10 really, except that it contains an element of argument. You  
11 are incorporating an element of argument.

12 If you want to ask whether or not the gun would  
13 go off if the safety wasn't in place, you can ask that question,  
14 and I think he can answer that, but your question has an element  
15 of argument.

16 MR. HUEGLI: I understand, Judge Leavy, and I withdraw  
17 the question.

18 THE COURT: All right.

19 MR. HUEGLI: That's all I have.

20 MR. CHAMBERLAIN: No further questions.

21 THE COURT: All right, sir, that's all.

22 (The testimony of Mr. Davis is herewith concluded.)  
23  
24  
25

1 have opened it and disarmed that gun, taken the bullet out of  
2 the chamber; he never would have had to touch that safety to  
3 attempt to unload the gun?

4 A If it had not had a bolt lock, he would not have  
5 had to touch the safety in order to lift the bolt, that's true.

6 Q And he could have unloaded the gun in an on safe  
7 position?

8 A He could have, provided he was operating the gun  
9 in the intended manner.

10 Q And if the gun is on safe, it doesn't matter how  
11 careless he is with his finger in the trigger, the gun is not  
12 going to go off if the gun is in on safe?

13 A Say that again.

14 Q If the gun is on safe, it does not matter where his  
15 fingers are in relation to that trigger, because the gun is  
16 not going to go off?

17 A That's true.

18 MR. CHAMBERLAIN: Okay. Thank you. No further questions.  
19

20 FURTHER REDIRECT EXAMINATION

21 BY MR. HUEGLI:

22 Q Mr. Davis, if Mr. Boudreau, the owner of the  
23 gun, who has testified in this case, never uses the safety  
24 anyhow, walked in the house, laid the gun upside down and that  
25 his habit prevailed of not using the safety, and he pulled the

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF OREGON  
3  
4  
5

6 I, the undersigned, Viola Joyner, an Official Court  
7 Reporter of the United States District Court for the District  
8 of Oregon, do hereby certify that on the date set forth on the  
9 title page of this transcript, I reported in stenotype the  
10 proceedings occurred in the transcript appended hereto; that  
11 I thereafter caused my stenotype notes to be reduced to  
12 typewriting, under my direction, and that the foregoing  
13 transcript, consisting of Pages 1 to 93, both inclusive,  
14 constitutes a full, true, and accurate transcript of said  
15 proceedings so reported by me to the best of my ability on  
16 said date as aforesaid.

17 Dated at Portland, Oregon, this 3 day of June, 1983.  
18  
19

20 *Viola Joyner*  
21 VIOLA JOYNER, RPR  
22 Official Court Reporter  
23  
24  
25