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STATE OF NEW YORK
SUPREME COURT COUNTY OF OSWEGO

JAMES SHUTTS, JR., and PENNY SHUTTS,
Plaintiffs,

-vs-

REMINGTON ARMS COMPANY, INC., FREDERICK G.
MATHIS, HAROLD HANEY and DAVID HANEY,
Individually and d/b/a MARCELLUS GUN SHOP,
Defendants.

LEWIS
Testimony of
JOHN AINDE

TRIED BEFORE:

THE HONORABLE EUGENE F. SULLIVAN, JR.,
Justice of the Supreme Court in and for the
Fifth Judicial District, State of New York,
at a trial term of Supreme Court held at
the Oswego County Courthouse, Oswego,
New York, commencing February 6, 1984.

APPEARANCES:

For the Plaintiff: AMDURSKY, DUELL AND PELKY
36 E. Oneida Street
Oswego, New York 13126
By: LEONARD H. AMDURSKY, ESQ.
ROBERT H. DUELL, ESQ.
EARL LEDDEN, ESQ.

For the Defendant
Remington: SUGARMAN, WALLACE, MANHEIM AND
SCHOENWALD
499 S. Warren Street
Syracuse, New York 13202
By: GEORGE E. DE MORE, ESQ.

1 APPEARANCES (Continued):

2 For Defendant Mathis: BOND, SCHOENECK AND KING
 3 One Lincoln Center
 4 Syracuse, New York 13202
 By: S. PAUL BATTAGLIA, ESQ.

LEWIS

5 I N D E X

| <u>Witness</u> | <u>Direct</u> | <u>Cross</u> |
|---|---------------|--------------|
| John Linde | 3 | 48 |
| <u>Exhibit</u> | <u>ID</u> | <u>Evid</u> |
| G Cross section of Model 700BDL | 33 | 38 |
| H Model of trigger assembly, Model 700 | 38 | 41 |

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(Commencing on 2-15-84)

1 J O H N L I N D E , called as a witness on behalf of
2 the Defendant Remington, having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DE MORE:

6 Q Mr. Linde, where do you reside?

7 A I live in Richfield Springs, New York.

8 Q And by whom are you employed?

9 A Remington Arms Company.

10 Q And for how long have you been employed by the
11 Remington Arms Company?

12 A I started with Remington in July 1965.

13 Q All right. And would you tell the jury what
14 your educational background is?

15 A Yes. I grew up in Custer, South Dakota. I
16 graduated from the high school there. I then went to
17 Laramie, Wyoming. I attended the University of Wyoming.
18 I graduated from the university with a mechanical
19 engineering degree.

20 Q That's a degree in mechanical engineering?

21 A Yes, it is.

22 Q Would you just explain briefly what mechanical
23 engineering takes into account?

1 A It covers the whole realm of the engineering
2 sciences. You cover everything from your electrical, your
3 mechanical, your thermodynamics. But my concentration was
4 mostly on mechanical elements, mechanical designs of
5 stress and analysis of, this kind of thing.

6 Q All right. And after you graduated from the
7 University of Wyoming, did you become employed?

8 A Yes, I went immediately to Remington Arms
9 Company in Ilion, New York.

10 Q And have you worked there ever since?

11 A Yes, I have.

12 Q Now, when you started to work for the Remington
13 Arms Company, what was your initial position?

14 A I started as a research assistant and I worked
15 in the--what they call the test and measurements lab.

16 Q All right. What kind of work did that involve?

17 A Okay. The test and measurements lab was a--like
18 a service group to the design group, and they took new
19 designs, design alterations, proposed changes, competitive
20 models, and they would put them all through all sorts of
21 testing.

22 You could do endurance testing to make sure that
23 the gun has a, you know, a long, sustained life. You

1 could do strength testing to make sure it would handle
2 overloads, high pressure rounds, how it would react.

3 You could do stress analysis where you could
4 attach strain gauges and measure the strain levels and you
5 could check the various elements and how--what their
6 strain levels were, to get an idea what the stress is in
7 that particular unit.

8 Q All right. How long did you stay in that
9 position?

10 A I was there until, oh, a little over a year, and
11 I moved in 1966.

12 Q What did you then become?

13 A I then became a design engineer and I
14 worked--moved into the design area.

15 Q All right. Briefly, what did you do as a design
16 engineer?

17 A I started on the basic designs where you would
18 change parts and components.

19 Q These are all the parts and components of the
20 various guns made by Remington?

21 A Yes. The Ilion plant is the firearms plant, and
22 the only thing we make there are firearms and mechanical
23 traps and powered metal parts. It's all relating to

1 firearms.

2 I did a number of different assignments. I was,
3 oh, kind of like a lead designer on one where I developed
4 a camera mount. Remington was doing a movie on skeet
5 shooting. In skeet shooting you're shooting moving
6 targets. It's hard to explain. So it can be how much you
7 should lead with a shotgun, and a moving target, and I
8 designed a mount so that you could take and you could
9 shoot skeet with a shotgun and have a 16-millimeter camera
10 to see what the shooter's eye sees.

11 And this helped in the movie because it showed
12 people at any given station of skeet shooting what the
13 proper lead should be.

14 Q Now, did there come a time when you became a
15 supervisor of product design?

16 A Yes. And that would be in 19--let's see. I
17 went to--'68, went to a research engineer, '70, senior
18 research engineer. It would be '72, I went to a research
19 supervisor.

20 Q All right. What did that job entail?

21 A At that point I was heading up a design group.
22 We were developing the model 3200 over-and-under shotgun.
23 I was like the head designer, if you will, and we had a

1 number of different model variations. It was a complete
2 new gun for Remington. All the parts were new and we were
3 --in '72, we were just starting to implement it into
4 production.

5 Q All right. And during the time period from when
6 you started to work at Remington in 1965, I believe you
7 said, up through 1972, did you also have experience in
8 bolt-action rifles?

9 A Yes.

10 Q Okay. And you became acquainted with their
11 design and function?

12 A Yes, I did. I--before I went to work for
13 Remington, that was one of my first interests that got me
14 interested in firearms, was bolt action rifles.

15 Q All right. What's your present title for the
16 Remington Arms Company?

17 A I am the superintendent of product engineering
18 and control.

19 Q What does that involve?

20 A I moved from the research facility to the
21 production facility in 1978, to this position. And what I
22 do is I work--I am in charge of the manufacturing
23 engineering. That's the engineering support for the

1 production facility.

2 We also tool the new products. When you have a
3 new gun design, you have to have a machine, you have to
4 have a fixture. You have to have a cutter. You have to
5 have a gauge to gauge the part. All these things have to
6 be designed and fabricated before you can actually make a
7 firearm.

8 So this is part of my job function, is to
9 oversee that section on new product introductions. I'm
10 also--want me to finish?

11 Q Go ahead.

12 A Also we have the chemical and metallurgical
13 control section. This is where we check all the incoming
14 steel, make sure they're the correct steel, the chemistry
15 is right, the hardness is right. We check our chemistry
16 in, like, our bluing tanks. This is the technical support
17 in that area.

18 The other area, I am in charge of the quality
19 control section, and the quality control section has well
20 over a hundred people working on the testing, measuring,
21 incoming parts inspection, raw materials inspection,
22 purchased parts inspection, inspection in the process and
23 inspection of the finished product.

1 Q Between 1965 and the present, do you hold any
2 patents?

3 A Yes, I have four that I can think of.

4 Q All right. Do these relate to the design of
5 various things? **LEWY**

6 A Yes, they do.

7 Q Okay. Now, back in 1973, Mr. Linde, were you
8 familiar with the various types of safeties that were
9 available for bolt-action rifles?

10 A Yes.

11 Q And would you tell the jury what those safeties,
12 the different types of safeties, if you will, that work?

13 A There is basically three types of safety on a
14 bolt-action rifle, because there is basically three
15 elements in the firing mechanism.

16 The three elements in the firing mechanism are
17 the trigger, the sear, which is a connecting link between
18 the trigger and the firing pin, and the firing pin.

19 The three basic types of safeties are you can
20 block the trigger, you can block or put a clearance
21 between the sear and the trigger, or you can block and
22 retract the firing pin.

23 Q All right. But--as far as--we've heard a lot of

1 testimony over the last week about two-position,
2 three-position. What types of safeties in that kind of
3 terminology were prevalent in 1973?

4 A Okay.

5 MR. AMDURSKY: Object to it. "Prevalent."

6 THE COURT: The word "prevalent"
7 sustained.

8 MR. DE MORE: Well, I will withdraw the
9 question and ask it this way:

10 Q Mr. Linde, were you familiar with the various
11 types of safeties that were utilized in 1973?

12 A Yes, I was.

13 Q And not only utilized by the Remington Arms
14 Company but also by competitors of the Remington Arms
15 Company?

16 A Yes.

17 Q Did you become familiar with the various types
18 of safety at some time prior to 1973 as relates to your
19 competitors?

20 A Yes, I was.

21 Q Who in 1973, sir, were the leading rifle
22 manufacturers, bolt-action manufacturers that were
23 competitors to Remington?

LEWY

1 A The market is rather skewed. The biggest
2 manufacturers are Remington, Ruger, Winchester and
3 Weatherby.

4 Those four people would control probably 70
5 percent of the market.

LEWY

6 Q All right. And are you familiar with, sir, the
7 various products, and were you so familiar, from these
8 competitors back in 1973?

9 A Yes.

10 Q Would Remington purchase their products and
11 bring them back to their own plant and test them, for
12 example?

13 A Yes, we do. We do that--

14 Q Did you have occasion to do that?

15 A We do that on a continuing basis with all
16 competitive products.

17 Q And are you yourself personally familiar with
18 the workings of these guns put out by these other
19 manufacturers?

20 A Yes, I am.

21 Q And you were so familiar back in 1973?

22 A Yes.

23 Q Now, and also bringing it into focus as to the

1 type of safety that was utilized by each of these
2 manufacturers, including Remington?

3 A Yes.

4 Q All right. Now, would you tell us, sir, the
5 various types of safeties in the terms that we have heard
6 here in the courtroom, two-position, three-position, the
7 kinds of safeties that were on the market utilized by
8 these manufacturers in 1973?

9 A There is basically the three types we have
10 talked about. There is a three-position safety, a
11 two-position safety and a two-position safety without a
12 bolt lock.

13 Q All right. And those were the three safety
14 designs, if you will, that were in existence in 1973, and
15 that were utilized by these--

16 A Not--

17 Q --people?

18 A You really can't say designs per se because
19 design, you know, designates the whole mechanism.

20 Q Let's just talk about the safeties.

21 A But what there--what the customer sees, yes,
22 that's the three types of safeties the customer would be
23 aware of.

1 Q All right. And you are familiar or are you
2 familiar with the various guns, again restricting our
3 inquiry to bolt action, bolt-action rifles, that were put
4 out by the competitors?

5 A Yes.

6 Q Now, you mentioned Winchester?

7 A Definitely.

8 Q Weatherby, Ruger?

9 A Yes.

10 Q And one other?

11 A Well, I mentioned the Remington first.

12 Q All right. Now, tell me about Ruger. What
13 was--are you familiar with what was their bolt-action
14 rifle, their leading selling gun?

15 A It's a Ruger Model 77.

16 Q All right. And what kind of a safety did that
17 gun have on it?

18 A It has a two-position with a bolt lock.

19 Q Now, the Remington 700 that's the subject of
20 this lawsuit has a two-position safety with a bolt lock.
21 Is that correct?

22 A Yes, it does.

23 Q And you also mentioned the Weatherby?

1 A That's right.

2 Q Now, the Weatherby, did they put out a
3 high-powered bolt-action rifle?

4 A Yes, they did.

5 Q And what was that gun called?

6 A They had two models. They had what they called
7 a Mark V and the Vanguard. The Mark V was their
8 real premium, the Vanguard was more in what you say
9 moderate to high price range.

10 Q And what type of safety did they have on that
11 gun?

12 A On the Mark V they had a two-position safety
13 with bolt lock. The safety was mounted on the bolt plug.

14 Q All right. And how about the Vanguard?

15 A The Vanguard has got a two-position safety with
16 a bolt lock and the safety is located pretty much where
17 the Model 700 safety is.

18 Q And as far as your knowledge is concerned, the
19 Weatherby gun, the Mark V, and the Vanguard, were those
20 their two leading bolt-action rifles back in 1973?

21 A Well, they were thought very highly of in the
22 trade, yes.

23 MR. BATTAGLIA: Objection. I move to strike

1 as not responsive.

2 THE COURT: Sustained. That's not
3 responsive.

4 Q My question is, were they their two leading
5 selling guns in that area?

6 A Oh, yes.

7 Q Okay. And the Ruger 77?

8 A Yes.

9 Q Was that their leading selling bolt action rifle
10 back in 1973?

11 A Yes, it was.

12 Q Now, you mentioned Winchester. What did
13 Winchester manufacture?

14 A They had two models. They had a Winchester 670
15 and they had the Winchester Model 70.

16 Q Now, we heard yesterday that the Winchester 70
17 has a three-position safety on it.

18 A Yes, it does.

19 Q How about the 670? What kind of a safety did
20 that have?

21 A The 670 started with a two-position safety
22 without a bolt lock and they later went to a
23 three-position safety on the bolt plug.

LEWY

1 Q Okay. Did Winchester also manufacture what has
2 been known as Winchester 94?

3 A Very definitely. That's their most popular
4 rifle.

5 Q Was it so back in 1973?

6 A Yes, it's been so in recent history.

7 MR. BATTAGLIA: Excuse me, your Honor. Can I
8 object to this as irrelevant. This is a lever
9 action, not a bolt.

10 MR. AMDURSKY: I join in that objection.
11 It's not a bolt-action rifle.

12 THE COURT: You will get the opportunity
13 to show that. Overruled. Go ahead, Mr. DeMore.
14 94.

15 Q Now, the 94, sir, is a lever-action gun?

16 A Yes, it is.

17 Q Does that gun have a safety on it?

18 A No, it doesn't.

19 Q Then you talked about the Remington. Back in
20 1973, you were, then, as you have told us, familiar with
21 the design of the leading guns sold by your competitors.
22 You have told us about--

23 MR. BATTAGLIA: Objection as repetitious and

1 leading.

2 THE COURT: Yes. Sustained. Yes, go
3 ahead.

4 Q In 1973, sir, based upon your knowledge of the
5 trade, not only what Remington was doing but your leading
6 competitors were doing, what was the leading--or what was
7 the most prevalent design of safeties at that time?

8 MR. BATTAGLIA: Objection.

9 MR. AMDURSKY: I object.

10 THE COURT: Well, if he can qualify it--I
11 will sustain. Have him qualify it and be able
12 to give that judgment.

13 Q Were you familiar, sir, with the guns made by
14 the competitors of Remington, and in particular the type
15 of safeties that they used?

16 A Yes, I am.

17 Q And you told us who the leading manufacturers
18 were in the marketplace?

19 A Yes, I did.

20 Q And I think you told us that they, along with
21 Remington, comprised a substantial segment of the
22 marketplace?

23 A Yes, they did.

1 Q And was it part of your responsibility to become
2 familiar with the design of safeties that was utilized by
3 not only these manufacturers but any other manufacturers
4 in the field?

5 A Yes, it was.

6 Q And did you become so familiarized?

7 A Yes, I was.

8 Q Do you know which of the safety designs that you
9 have testified to was the most prevalent design in
10 existence back in 1973?

11 MR. BATTAGLIA: Same objection.

12 MR. AMDURSKY: Same objection.

13 THE COURT: Overruled. Do you know?

14 THE WITNESS: Yes, I do.

15 BY MR. DE MORE:

16 Q And what was that?

17 MR. BATTAGLIA: Objection.

18 MR. AMDURSKY: Objection.

19 THE COURT: Overruled.

20 A It's a two-position safety with a bolt lock.

21 Q Okay. There has been a lot of talk about the
22 term "safety." Would you--do you understand what the
23 purpose of a safety is?

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A Yes, I do.

Q And what its function is to be?

A Yes.

Q What is the function and purpose of a safety?

A It's an aid to--it's a safety aid to the shooter. It's a mechanism in a firearm that deactivates the trigger.

Q All right. And is a safety considered a substitute--to be a substitute for safe gun handling?

MR. BATTAGLIA: Objection as to foundation.

MR. AMDURSKY: Objection.

THE COURT: Sustained. Sustained.

Q Are you familiar with the rules of safe gun handling?

A Yes, I am.

Q Are you familiar with the criteria that are utilized by safety designers in arriving at the design of a particular safety?

A Yes.

Q And based on that knowledge, is a safety intended to be a substitute for safe gun handling?

MR. BATTAGLIA: Objection as argumentative.

MR. AMDURSKY: Objection.

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THE COURT: Sustained on the basis that that is a question in fact for the jury, not for a person not ably qualified.

Q When you set out to design safeties, ~~and~~ do you intend that safety as designed to make that ~~and~~ foolproof as far as being to avoid accidents?

MR. BATTAGLIA: Objection.

MR. AMDURSKY: Objection.

THE COURT: I will sustain as to form. To form, yes.

MR. DE MORE: Okay.

Q You have been involved in and were involved, I think you told us, in the design of safeties and safety mechanisms?

MR. BATTAGLIA: Objection as leading and repetitious.

THE COURT: Overruled.

A Yes, I have.

Q All right. And as such, did you become familiar with the design criteria or what the parameters are, what factors you take into account as a designer in arriving at a particular type of safety mechanism?

A Yes.

1 Q Now, does the Remington Arms Company have people
2 on staff in addition to yourself who become involved in
3 the design of safeties?

4 A Yes, we have.

5 Q Among other parts of the company?

6 A Yes. We have a research and development
7 facility.

8 Q Okay. Would you tell the jury what factors, as
9 a designer--and let's just restrict our comments to a
10 safety mechanism--that a designer would take into account
11 in deciding on what type or coming up with a design of a
12 particular type of safety?

13 A Okay. There--when you're working on a firearm,
14 the safety is only, of course, one part of it. There are
15 many other factors that you have to consider. Of course,
16 one of the first and foremost is you are dealing with
17 something that's a very high pressure center fire rifle.

18 MR. BATTAGLIA: Excuse me, your Honor. I am
19 having trouble hearing the witness.

20 THE COURT: Could you raise your voice
21 volume a little bit, if you will.

22 THE WITNESS: Sure.

23 A On a center fire rifle, the cartridge you are

LEWY

1 talking that you are going to ignite, you are talking
2 pressures in the neighborhood of 54,000 pounds per square
3 inch. So when it comes to safety in a firearm, one of the
4 first things you are concerned about is containing that
5 tremendous pressure.

6 So the basis of a firearm is built around that,
7 around that containment, with your barrel, with your
8 action, with your bolt.

9 And, of course, from what you heard, that's one
10 of the advantages of a bolt-action rifle. It's simple.
11 It has a very strong locking system. It's very strong for
12 its weight ratio.

13 So, now that you have this, you are containing
14 it, and you have a method to contain it, that dictates how
15 certain elements or components have to be.

16 You also have to have a trigger or a firing
17 mechanism, and on a bolt-action rifle, because a
18 bolt-action rifle you use high velocity cartridges, high
19 pressure, one of the advantages of bolt-action rifles are
20 their accuracy potential.

21 So the customer who buys a bolt-action rifle
22 wants a very good trigger pull. That is, he doesn't want
23 creep in it when he pulls the trigger. He wants it to

1 break like if you broke a little icicle. He wants it to
2 be sharp and quick.

3 So this necessitates that you tie ~~this firing~~ **LEWY**
4 mechanism in with the other, the breaching, to contain the
5 pressure.

6 So you've got to start tying all these things
7 together. So when you make a change, like on how you hold
8 the gun together, how you fire it, your safety, how the
9 stock is attached, they continually affect each other. So
10 you just can't go in and say, "Well, I'm going to make a
11 change in this," or, "I'm going to make a change in that."
12 You've always got to consider what are the consequences of
13 the other elements.

14 When it comes to a safety, you have--there is a
15 number of things that you have to consider. You have to
16 consider, is it in the area where the customer can readily
17 operate it? That is, is it positioned where he can
18 operate it, he can see what he's doing, he can sense in
19 some way whether the rifle is on fire or on safe
20 condition?

21 The safety has to be such that he has to go
22 through a discernable action. That is, he has to push
23 like with a certain force, say four to six pounds, to push

1 the safety from the on safe to the fire, or from the fire
2 to the on safe position.

3 That's so the customer goes through in his mind
4 that, yes, it is positioned, I have moved it to safety.

5 Another important criteria is the detenting or
6 the stopped position. Okay. That's the stopped position.
7 if you push it, you want it to be in a positive stop. You
8 want it to be in an area where you can definitely feel
9 that it's on safe or it's off safe. You don't want it to
10 be like mushy, where if you positioned this lever, that
11 you can't tell where it's at, whether it's on or off. So
12 you want it to be a positive on safe, off safe.

13 The safety has to be designed such that it can't
14 be easily kicked off or kicked on. You want the operator
15 to be in control of the safety. You don't want it to
16 become dislodged with brush, with a coat, or by actually
17 the action of cycling the gun itself.

18 The safety should be simple. You want the
19 safety to be simple. That is, you want to minimize the
20 number of parts in the safety. The fewer the parts you
21 use, of course, the more reliable the system is going to
22 be. From the reliability standpoint, you want the safety
23 design to be such that it can be cycled thousands and

1 thousands of times and never wear itself into an unsafe
2 condition.

3 It's advantageous on safety design to make this
4 safety design evident. That is, like to a repairperson.
5 You want it so he can take and take a look at the safety
6 and say yes, the safety is working or not working. You
7 don't want to take the components and hide them in such a
8 manner to make it difficult for the customer or for the
9 repairman to see if the safety is functioning correctly.

10 On bolt-action rifles or, in fact, any firearms,
11 another criteria is you want the system to be positive.
12 if you put the rifle on safe, you want it to be able to
13 take a certain degree of abuse, for example, if it's on
14 safe and he was climbing up in a tree stand, you wouldn't
15 want that rifle to discharge if he dropped it
16 accidentally. So you want the safety to be positive, you
17 want it to be mechanically--mechanically lock the gun on
18 safe. You want the safety system to--to give you a good
19 degree of control.

20 When you manufacture something, you look at
21 something and say, "I can control these operations, and I
22 will have a real high probability with a minimum amount of
23 testing that I've got a good product," as opposed to

1 something that you manufacture where you've got to
2 continually, day after day, make sure that the product is
3 okay.

4 On safety systems, what you want is you want
5 something, you want a system that you can control the
6 parts of and you can control the assembly of.

7 Q Okay. Have you told us in general all of the
8 factors that one would consider?

9 A There is a number of other factors but I--I
10 think that's a good idea.

11 Q Now, with all those factors in mind, the
12 Remington Arms Company adopted the safety system for the
13 700 rifle--

14 MR. BATTAGLIA: Objection. Leading. The
15 word "adopted."

16 THE COURT: Overruled.

17 Q --that is here in the courtroom, is that right?

18 A Yes.

19 Q Now, sir, the two-position safety with the bolt
20 lock, do you know how long that design theory or that type
21 of safety had been in existence prior to, say, 1962?

22 A Yes, it went back to the turn of the century.

23 Q All right. And were there well known rifles

1 made at that time, that had that type of system?

2 A Very definitely.

3 Q What were they?

4 A Well, one that we're probably the most familiar
5 with is the Model 17 Enfield, which was used in the First
6 World War by the United States. And there were over two
7 and a quarter million rifles made. And the safety, as the
8 customer sees it, is almost identical to what we have on
9 the Model 700.

10 Q Who made that gun?

11 A The rifles were made by Winchester, Remington,
12 and Edistone. Edistone was a plant that was under the
13 direction of Remington. They had Remington people there
14 to help set it up.

15 Q But this particular gun, the Enfield, was made
16 both by Winchester and by Remington?

17 A Yes. In fact, the Enfield, the design was from
18 Great Britain, or part of it. And the Enfield that the
19 British use is also a two-position safety with a bolt
20 lock.

21 Q All right. Now, are you familiar with
22 Remington's position referable to the suitability of this
23 design, namely, the two-position safety with a bolt lock?

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A What do you mean, "suitability"?

Q Well, as to the--they have chosen to put that design on the Model 700, correct?

A Yes.

Q And are you familiar with the procedure on the basis for that decision on behalf of Remington to utilize that particular design?

LEWY

MR. BATTAGLIA: Objection.

THE COURT: Sustained as to form of the question, unless it relates to the 700.

Q As it relates to the 700.

MR. BATTAGLIA: Same objection, as to foundation, no showing of competence.

THE COURT: Sustained. Does he know?

Q Are you familiar, sir?

A Yes. Yes.

THE COURT: All right. Overruled. Go ahead.

Q Let's just restrict our questions and answers until I tell you otherwise to the 700. Okay?

A Okay.

Q What is the position of Remington?

A The position of Remington is that the

1 two-position bolt lock with the bolt lock in 1973, when
2 you measure the marketing conditions that existed and
3 design characteristics that you have to take into
4 consideration for a safety, was the best mechanism to use.

5 Q All right. And let's talk about the 700 gun
6 itself. Do you know when that was originally designed?

7 A Yes. It was designed in the early '60s. It was
8 first marketed in 1962.

9 Q As a Model 700?

10 A As a Model 700.

11 Q Was that Model 700, did that evolve from another
12 gun?

13 A Yes, it did.

14 Q Or did it come about as--by itself?

15 A The 700 evolved from the Model 721 and 722.

16 Q All right. And has Remington--did Remington
17 manufacture the 700, then, between 1962 or the early '60s,
18 I think you said, and 1973?

19 A Yes, we did.

20 Q And are you familiar with the number of guns
21 that were made and sold by Remington of the number Model
22 700 between 1962 and 1973?

23 A Yes, I am.

1 Q These are records that were kept in the ordinary
2 course of business by the Remington Arms Company?

3 A Very definitely.

4 Q And you are familiar with those and you know
5 those figures?

6 A Yes.

7 Q What is that?

8 MR. BATTAGLIA: Objection, as irrelevant.

9 MR. AMDURSKY: I am going to object to it
10 unless he restricts it as to what came into the
11 hands of the public.

12 THE COURT: Well, Mr. Amdursky's
13 objection as to foundation I will sustain.

14 Does the manufacturer of the
15 700, is that manufactured for the purpose of
16 sale to the general public? I think that's the
17 inquiry that Mr. Amdursky seeks to have as a
18 part of the foundation.

19 BY MR. DE MORE:

20 Q Can you answer that?

21 A Yes, the numbers that I know are shipments.

22 MR. AMDURSKY: To whom? That's the point I
23 make.

LEWY

1 THE COURT: No. We'll let Mister--
2 MR. AMDURSKY: All right.
3 THE COURT: --DeMore worry about that.
4 It's his witness at this point.
5 BY MR. DE MORE:
6 Q And you are familiar with the number of guns
7 that were made by Remington during that time period?
8 A The number shipped?
9 Q The number shipped.
10 A Yeah.
11 Q And where would they be shipped to?
12 A The wholesalers.
13 Q All right. And what is that number?
14 MR. AMDURSKY: We will object.
15 MR. BATTAGLIA: Your Honor, same objection.
16 THE COURT: Overruled.
17 A I don't know the exact number but it would be
18 around 800,000 guns.
19 Q Okay. Now--
20 MR. DE MORE: May I approach the bench,
21 please?
22 (Discussion off the record at the bench)
23 THE COURT: All right.

LEWY

1 (Recess taken)

2 BY MR. DE MORE:

3 Q Mr. Linde, I think--I am not sure where we left
4 off this morning, but we were talking about the design of
5 the two-position safety with the bolt lock that was
6 employed on the Remington Model 700 and in conjunction
7 with that, is there likewise a trigger assembly that is
8 part and parcel of this safety system?

9 A Yes, it's an integral system.

10 Q All right. And have you yourself become
11 involved or were you involved at any time in the design of
12 triggers and safety systems?

13 A Yes, I have.

14 Q All right. And you are familiar, or are you
15 familiar with the various parts that are involved that
16 make up a trigger system, that make up a safety system,
17 and how one works, one in relation to the other?

18 A Yes, I am.

19 Q And in particular, as it relates here to the
20 Model 700?

21 A Yes, I am familiar with the 700.

22 Q Okay.

23 (Defendants' Exhibit G marked)

1 MR. DE MORE: May I approach the witness,
2 your Honor?

3 THE COURT: Yes.

4 Q Mr. Linde, I will show you what we have marked
5 as Exhibit G for identification, first of all, and ask if
6 you recognize what that is.

7 A Yes, I do.

8 Q And will you tell the jury what Exhibit G is?

9 A That's a cross--

10 MR. DE MORE: Excuse me, your Honor, I
11 would ask that counsel go back over here and sit
12 down.

13 MR. AMDURSKY: Well, I will be glad to go
14 where anybody wants me to go. I thought I ought
15 to look at the exhibit.

16 THE COURT: Well, Mr. Amdursky kindly
17 complied with your request, so I guess you can
18 continue, Mr. DeMore.

19 MR. DE MORE: Thank you. Thank you.

20 MR. AMDURSKY: You are entirely welcome.

21 Q Let's go back to the question. What is
22 Exhibit G?

23 A This is a cross section of a Model 700 BDL.

LEWY

1 It's like if you took a knife or a saw and cut right
2 through the center of the rifle, so that you can see what
3 the internal workings of the various parts are.

4 Q Is that drawn to scale?

5 A It's drawn three times its normal size.

6 Q And does that Exhibit G, that--the drawing
7 there, show the various components that make up the
8 trigger and the safety assembly in the Model 700 that's
9 the subject of this lawsuit?

10 A Yes, it does.

11 Q Now, you mention that's the Model 700 BDL. The
12 gun in question, is that a BDL or an ADL?

13 A It's an ADL.

14 Q What's the difference between the ADL or BDL?

15 A The BDL has a little nicer structure and it
16 has a trigger guard foreplate that rides in the bottom,
17 so that you can open it up and let the cartridges come
18 out. It also has a sling swivel, sling swivels and a
19 sling.

20 Q All right. But as far as the trigger assembly
21 and the safety are concerned, is there any difference?

22 A They're identical.

23 Q And does Exhibit G fairly and accurately depict

1 the parts that make up the trigger assembly and safety
2 assembly of the Model 700 as it existed in 1973?

3 A Yes. It's about as close as you can with a
4 drawing.

5 Q All right. And does it show the relationship of
6 one part to the other?

7 A Yes, it does.

8 MR. DE MORE: I will offer Exhibit G, your
9 Honor.

10 THE COURT: Now you have your opportunity
11 to look at it, Mr. Amdursky.

12 MR. AMDURSKY: Thank you, your Honor.

13 THE COURT: And while you are doing that,
14 get a chance to look at it, I will see if we
15 can't find an easel somewhere, can we?

16 THE CLERK: I'll take a look.

17 THE COURT: All right. The first issue
18 is as to whether or not, Mr. Battaglia, you wish
19 to have a voir dire examination as to the
20 exhibit.

21 MR. BATTAGLIA: Yes, I do.

22 VOIR DIRE

23 BY MR. BATTAGLIA:

LEWY

1 Q Mr. Linde, do you know who prepared this
2 document?

3 A Yes, I do.

4 Q Who did that?

5 A Brad Boskay.

6 Q Is he employed by Remington?

7 A Yes, he is.

8 Q With regard to the dimensioning of the pieces in
9 the exhibit, did he use--well, I will withdraw that.

10 To what dimensions are the pieces in the exhibit
11 expanded? Let me withdraw that. I will try to be more
12 precise.

13 Did he use the specifications of the interior
14 components as they existed in 1973 or as they existed at
15 some later time?

16 A He used them as they existed in 1973.

17 Q Are the documents that he used with regard to
18 those specifications available?

19 A I don't believe so. What I mean by that is the
20 individual prints that he pulled to make this drawing, I
21 am sure are not--he didn't save them in his desk or
22 anything.

23 Q This diagram has Model 700 BDLLA on it. What

LEWY

1 does "LA" stand for?

2 A He told me and George DeMore asked me this at
3 lunch, but I can't remember. I can give him a call and
4 ask him, though.

5 MR. BATTAGLIA: That's all I have, your
6 Honor. Thank you. LEWY

7 THE COURT: All right. Mr. Amdursky?

8 VOIR DIRE

9 BY MR. AMDURSKY:

10 Q Was that prepared for use in this lawsuit?

11 A No. I will tell you what it was prepared for--

12 THE COURT: That doesn't make any
13 difference. Was it prepared for use in this
14 lawsuit? It was not?

15 THE WITNESS: No.

16 BY MR. AMDURSKY:

17 Q Do you have one of an ADL?

18 A No, I do not.

19 THE COURT: All right. Upon the offer,
20 Mr. Battaglia?

21 MR. BATTAGLIA: I have no objection, your
22 Honor.

23 THE COURT: No objection.

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MR. AMDURSKY: I have no objection.

THE COURT: Mr. Amdursky, no objection.
Exhibit G is received.

(Defendants' Exhibit G received)

THE COURT: We haven't solved the problem
of the easel. I know Mr. Fuller is working on
it.

LEWY

MR. DE MORE: While he is doing that,
Judge, maybe Mr. Linde could step down or help
me. I want to move something over here. I've
got another exhibit I want to mark.

THE COURT: All right. We'll have you
step down, ladies and gentlemen. We'll give
Miss Wade the opportunity to do her thing.
We'll take a short recess while we get that
marked. The attorneys can have a look at it.

(Defendants' Exhibit H marked)

(Jury left the courtroom)

THE COURT: Ready?

MR. DE MORE: Yes, sir.

THE COURT: Bring the jury in.

(Jury entered the courtroom)

THE COURT: Mr. DeMore?

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MR. DE MORE: Thank you, your Honor.

THE COURT: Yes, sir.

BY MR. DE MORE:

Q Mr. Linde, during the recess we had this item marked as Exhibit H for identification and I will ask you if you, first of all, know what that is.

LEWIS

A Yes, I do.

Q And what is Exhibit H?

A It's a training replica of a Model 700 trigger assembly.

Q All right. Does this Exhibit H fairly and accurately depict the basic parts that make up the trigger assembly of the Model 700 that are components of the rifle which I believe is Exhibit 1 in this proceeding?

A They depict the major components. The major components were made to scale, but yet it does not have all the minor cuts or little intricacies that you might find in the components themselves. The parts also were not--what you might say are not the same material. For example, we are using the aluminum where it's lightweight--we're using plastic for the side plates instead of steel. The springs, when you make something like a ten to one scale, the springs can't be to the

1 drawing, because the springs would be like a truck spring
2 in there. So to make it for the model and to make it
3 represent and to show the inner workings of the part, you
4 do have to make changes, and it can't be a complete
5 replica.

6 Q You mentioned this is a training aid?

7 A Yes, it is.

8 Q How does Remington utilize Exhibit H as a
9 training aid?

10 A Well, the trigger assembly, you have seen them,
11 they're like a black container, and you can't fully look
12 in, you can't actually see what the cause and effect is.
13 You can take an assembler or subassembler in to put the
14 trigger assembly together, you can sit down for a few
15 minutes with this, you can explain the inner workings of
16 the system and how it works, and they can readily see the
17 cause and effects.

18 Q But subject to the qualifications that you
19 described, does Exhibit H fairly and accurately depict the
20 parts that comprise the basic trigger assembly for the
21 Model 700 as it existed in 1977?

22 A Yes, it does.

23 Q And as those parts relate one to the other?

1 A That's right. That's what it shows.

2 MR. DE MORE: All right. I will offer

3 Exhibit H, your Honor.

4 THE COURT: Upon the offer, ~~voir dire~~ **LEWY**

5 examination, Mr. Battaglia?

6 MR. BATTAGLIA: No voir dire, your Honor.

7 THE COURT: And Mr. Amdursky, voir dire?

8 MR. AMDURSKY: No, your Honor.

9 THE COURT: On the offer, Mr. Battaglia?

10 MR. BATTAGLIA: I object to its relevance and

11 to foundation.

12 THE COURT: Objection by Mr. Battaglia.

13 Mr. Amdursky?

14 MR. AMDURSKY: I will join in the objection.

15 THE COURT: The objection is overruled.

16 The exhibit is received on the basis that it may

17 be of aid or assistance to the jury in

18 understanding the function of the trigger

19 assembly and helping them or aiding them in

20 making determinations of fact.

21 Go ahead.

22 (Defendants' Exhibit H received)

23 MR. DE MORE: And, your Honor, with your

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permission, I would ask that Mr. Linde be permitted to step down and explain to the jury, utilizing Exhibits G and H, the interrelationship of the various parts, identifying them and how one works in relation to the other.

LEWY

THE COURT: Go ahead.

(Witness left the witness stand)

MR. DE MORE: Maybe we could put that blind shut.

THE COURT: Sure can.

A This is similar to the trigger assembly. The parts are drawn in here from the drawings. They do not include every cut, but what they are is they show the representation of how the major components work with respect to one another.

Now, on a bolt-action rifle, two things happen as far as the operator is concerned, external. That is, you pull the trigger, here. Firing pin comes forward, strikes the framework on the cartridge in yellow, and the bullet, due to the hot gases, is propelled out the end of the muzzle.

So here we have a bullet leaving when the

1 trigger is pulled. Now, instead of just going through the
2 terms, I will just put it into the simplest form, because
3 it's really so often that the things are made more complex
4 just by the terms we use. But really this is quite a
5 simple mechanism.

6 You have a trigger right here in blue, and the
7 trigger rides underneath this yellow part. This is called
8 a sear. And right here is a firing pin, the long blue
9 part. And it's propelled by this spring. So when the gun
10 is cocked, this spring is compressed, this firing pin is
11 being held right back here by that little abutment on what
12 we call the sear. And the sear is free to pivot about
13 this thing coming down, and it's held by the trigger.

14 So what happens when you fire the 700, you pull
15 the trigger, pop this pin, the top comes forward, sear
16 drops down, firing pin comes forward, hits the primer, and
17 the cartridge fires.

18 Okay. Let me just--I will step through it
19 again. In the drawing you can see the wood is in brown.
20 The red is the bolt that holds the cartridge in the
21 chamber. That's the strength I was talking about this
22 morning. Back in here, this is a trigger assembly that's
23 attached to the bottom of the receiver, which has the trigger

1 and these parts in it. So for it to fire the gun, you
2 pull the trigger, the trigger pivots out from underneath
3 the sear, the sear drops down, and the firing pin comes
4 forward.

5 And as I was saying, that's the three major
6 components in the bolt-action rifle.

7 MR. BATTAGLIA: I object. I think the
8 question has been answered, if I recall the
9 question.

10 THE COURT: Overruled. Go ahead.

11 A The three major components that we're talking
12 about are the firing pin, the sear, and the trigger.

13 Now, when it comes to the safety, first I will
14 go through that with the model. This is the assembly with
15 these two pins that's held into that receiver right here, this
16 pin here and this pin here.

17 This assembly is held up into the receiver. And
18 like what I was saying, the firing pin would be up against
19 this surface right here. Push down. When you pull the
20 trigger, this drops, the sear drops, and the firing pin
21 comes forward, comes forward about three to four tenths of
22 an inch, and ignites the cartridge.

23 Pull the trigger, it drops, it fires.

1 The safety that we're talking about is this
2 lever right here, and it's kind of like the brown right
3 here. And the bolt lock that we have been referring to is
4 this projection right here and this projection. When the
5 rifle is on safety, the projection comes up into a recess
6 in the bolt and locks the--locks the bolt from turning.

7 The safety also has a cam on it right here,
8 which comes under a cam and positively locks the sear.

9 Q Let me interrupt you right here, Mr. Linde.

10 A Okay.

11 Q What do you mean by the word "cam"?

12 A Okay. I will show you in the model. This part
13 right here is a cam. So when I put the safety on, you can
14 see it. It's camming up the sear. And you see when it's
15 cammed up, it takes right here and it pushes back on the
16 firing pin and retracts the firing pin and locks the
17 firing pin back.

18 So when the gun is on safety, through this pin
19 I've got a solid steel up from the cam up to the--to the
20 sear holding the firing pin positively, so if the gun is
21 jarred or what have you, you know, you've got this support
22 with this cam, so the gun will not fire.

23 Now, it rotates 289 degrees when you go from on

1 safe to off safe or off safe to on safe, either way, as
2 opposed to 68 degrees, with the one we were talking about
3 yesterday.

4 Q What was--is that?

5 A The Winchester Model 70. The detent positions I
6 was talking about.

7 Q Excuse me. Let me interrupt you. You use the
8 expression a detent position. Explain what that is.

9 A On this safety it's either on or it's off. It's
10 like a light switch. It's either on or it's off. The
11 detent is also like a light switch, how it wants to flop
12 one way or flop the other way. There is a ball right here
13 with a spring and here it's in the fire position. It
14 detents, cocks, and slaps into the safety position.
15 Likewise, if you go from the safety to the fire, it's
16 detented in each position. So you've got two positive
17 positions, where the safety is--goes either on safe or off
18 safe.

19 When the rifle is on safe, there is an
20 inspection code and you can see the clearance between the
21 top of the trigger and the bottom of the sear. And that's
22 the clearance where we have disengaged the trigger from
23 the sear.

LEWY

1 And so you can check your safety merely by
2 putting the gun on safe, such as this is, and you can
3 check your clearance and see if the safety is functioning.

LEWY

4 Q Is that it?

5 A Yes.

6 (Witness returned to the witness stand)

7 Q Just one last question, Mr. Linde. You use the
8 expression a positive safety, this being a positive
9 safety. What do you mean by that?

10 A Well, it has a mechanical means that securely
11 locks the rifle in a safe position.

12 Q All right. And how does that relate to the
13 person utilizing the safety as far as operation goes?

14 A Really, from his standpoint, he wouldn't know
15 whether it was a positive safety or not. That's really a
16 concern of the manufacturer, to make sure that you have a
17 safe product.

18 Q But as far as a two-position safety goes, there
19 is two positions, on or off?

20 A Yes.

21 Q Is that referred to as a positive safety?

22 A Not necessarily.

23 Q Well, as far as the user goes, what effect, if

1 any, does the two-position have on him as far as his use
2 of it?

3 A As far as the use of it?

4 Q Yeah, as it relates, I guess as it relates to,
5 say, a three-position safety or this intermediate
6 position?

7 A Okay. As far as two-position safety, it would
8 relate to the customer, he--gives him a safe, whether it's
9 on safe or it's off safe, and it tends to be less
10 confusing.

11 Q As opposed to a three-position safety, which is
12 what?

13 A Well, on a three-position safety, you would have
14 in the fire position, full on safe, and then you've got an
15 intermediate position.

16 MR. DE MORE: All right. Thank you. I
17 have nothing further.

18 THE COURT: Mr. Battaglia.

19 MR. BATTAGLIA: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. BATTAGLIA:

22 Q Mr. Linde, in 1973, can you tell me what your
23 position was with Remington?

LEWY

1 A Yes, I was the supervisor in product design.

2 Q Supervisor in product design?

3 A Yes.

4 Q And in that capacity, did you design ~~any~~ **LEWY** of the
5 components of the safety of the Model 700?

6 A Not at that time, no.

7 Q You designed components later on?

8 A Yes, I worked on the design later on.

9 Q But as to the design of the weapon that's
10 involved in this litigation, you had no design function?

11 A Not in 1973, no.

12 Q What's your job title now at Remington, sir?

13 A Superintendent of product engineering and
14 control.

15 Q And in that capacity, do your duties include
16 testifying in claims such as this?

17 A Not normally, no.

18 Q Is this the first time that you have done this?

19 A No, it's not.

20 Q You have done this on other occasions, haven't
21 you?

22 MR. DE MORE: Objection.

23 THE COURT: Overruled.

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A Yes, I have.

Q And you have done that in both the pre-trial and the trial setting, isn't that correct?

LEWY

A Yes, I have.

Q Who is your superior at Remington, sir?

A Harvey Boyle.

Q Do you report to him on a regular basis?

A Yes, when I am there every day.

Q Excuse me, I didn't hear your answer.

A I said when I am at the plant I talk to him every day.

Q You're not at the plant on a regular basis?

A Not today, I'm not. I say you bet, I am at the plant on a regular basis.

Q When you are in Ilion, sir, is it part of your job to assemble information for use by Remington?

A I have.

Q You have on occasion?

A Yes.

Q You said you hold four patents, sir. When did you last receive a patent?

A I think the last one was in '77.

Q '77. Do any of those patents relate to the

1 safety mechanism of the Model 700?

2 A No, they do not.

3 Q Now, you indicated earlier in your testimony
4 when Mr. DeMore was examining you that the two-position
5 safety with the bolt lock was first used, I think you
6 said, in 1917, on models of the 1917 Enfield?

7 A No, I said it was first used around the turn of
8 the century.

9 Q Around the turn of the century?

10 A Yes.

11 Q Is it Remington's position in this litigation
12 that the art of safety design has not advanced since the
13 turn of the century until 1973?

14 MR. DE MORE: Objection.

15 THE COURT: Sustained.

16 Q Did Remington, in adopting a two-position safety
17 with a bolt lock for use on the Model 700, conduct any
18 safety studies of any kind before adopting that safety
19 design?

20 A If you say "safety studies," what they did do
21 before they adopted the design--

22 Q Sir, that calls for a yes or no, as you
23 interpret the term "safety studies."

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MR. DE MORE: I object to that.

THE COURT: Sustained.

Q Sir, can you answer yes or no as to whether you have any knowledge of any safety studies which were done by Remington prior to its use of the two-position safety with a bolt lock on the Model 700?

A I would have to say in the terminology you are using, yes.

Q All right. When were those studies done?

A It would have been done when they did the trial and pilot on the rifle.

Q You are dropping your voice.

A It would have been done when they did the trial and pilot on the rifle.

Q Trial and pilot on the rifle?

A Yes.

Q That was before you were employed by Remington?

A Yes, it would have been.

Q And are there some reports or documents which reflect what you claim are those safety studies?

A I don't know if there are or not, now. I would doubt it.

Q You don't have any here with you in court today?

1 A No, I do not.

2 Q Would you agree, sir, that as of 1973 there
3 existed a field of science called human factors
4 engineering?

5 A Yes, there was.

6 Q You are familiar with that term, aren't you?

7 A Yes.

8 Q Can you tell the jury what that field consists
9 of?

10 A That's where you--there--an individual will take
11 a look at a mechanism or the way you do something from a
12 human factor standpoint, that is to say, what would a
13 normal individual or an individual do, if he was working,
14 like working this piece of equipment? What could you
15 reasonably expect him to do?

16 Q To your knowledge, did Remington conduct any
17 human factors investigation of the two-position safety on
18 the bolt--on the--

19 A Not to my knowledge.

20 Q --on the Model 700 safety?

21 A That's right.

22 Q Do you think, sir, that having such a study
23 would have been helpful in the design of an appropriate

1 safety on the Model 700?

2 MR. DE MORE: Objection.

3 THE COURT: Sustained.

4 Q Human factors engineering involves evaluating
5 the psychology of consumers as they use a product, and/or
6 misuse it, doesn't it?

7 MR. DE MORE: Objection.

8 THE COURT: Sustained.

9 Q Human factors engineering, sir, is a practice
10 that is regularly undertaken by most manufacturers of
11 consumer products today, isn't that so?

12 MR. DE MORE: Objection.

13 THE COURT: Sustained.

14 Q Human factors engineering is something that you
15 said you have familiarity with, is that correct?

16 A I know that it exists, yes.

17 Q You know that it exists?

18 A The discipline, yes.

19 Q Have you ever seen a human factors study done at
20 any time by Remington prior to October 21, '78, with
21 regard to the Model 700?

22 MR. DE MORE: Objection.

23 THE COURT: Sustained.

1 Q Have you ever seen such a study done at any time
2 prior to October--strike that--prior to 1973?

3 A No, I have not.

4 MR. DE MORE: Same--

5 Q Did Remington, at that time in 1973 or at any
6 time before, have a practice of requesting human factors
7 engineering studies with regard to new products that it
8 was designing or developing?

9 A No, they did not.

10 MR. DE MORE: Objection.

11 THE COURT: He has answered.

12 Q Isn't it true, sir, that when the two-position
13 safety with the bolt lock was first used around the turn
14 of the century, the field of human factors engineering
15 didn't even exist?

16 MR. DE MORE: Objection.

17 THE COURT: Sustained.

18 Q Do you have any knowledge, sir, as to whether
19 there was such a discipline known as human factors
20 engineering around the turn of the century?

21 A No, I do not.

22 Q In fact, you are aware that around the turn of
23 the century, there wasn't much in the nature of consumer

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research done--

MR. DE MORE: Objection.

THE COURT: Sustained.

Q Mr. Linde, this weapon has a bolt lock on it, doesn't it?

A Yes, it does.

Q And you described to the jury with your elaborate model that this protrusion here is a bolt lock, isn't it?

A That's right.

Q And to remove the bolt lock from this weapon, isn't it also true that you need only saw off this protrusion?

A That's all you would have to do.

Q And then this weapon would be able to be loaded and unloaded with the safety in the safe position, isn't that correct?

A Yes, it could be.

Q And that operation would cost a few cents during the manufacturing process, wouldn't it?

A It would be like a trade-off.

Q You could design the piece so that the bolt lock was simply not on the part as it's fabricated, isn't that

LEWIS

1 true?

2 A That's right.

3 Q So it would be a no-cost operation if you
4 decided to design it in that fashion?

5 A No cost or minimal cost.

6 Q Now, what's the value of the bolt lock?

7 A The value of the bolt lock is it keeps the gun
8 in the ready to fire position on the--

9 MR. DE MORE: Let him finish his answer.

10 MR. BATTAGLIA: Well, I didn't --

11 A When you have a bolt action rifle, the bolt
12 handle projects. It--it's a member that projects out. If
13 that projection is brought up even a small amount, it
14 deactivates the rifle. That is if you pull the trigger
15 and the bolt is up, the rifle will not fire. The--the
16 firing pin will come forward, hit the cam, follow the cam
17 down and will not fire.

18 This is similar to other guns, such as the pump
19 actions, where you have a bolt release. It's common in
20 firearms to have a bolt lock.

21 Q But the benefit to the hunter is that he doesn't
22 miss a shot if the bolt should inadvertently open. Isn't
23 that correct?

LEWIS

1 A He doesn't miss a shot, or he doesn't have a
2 situation where his bolt comes uncocked and his cartridge
3 falls out.

4 Q It's no safety-related feature to the bolt lock,
5 is there?

6 A Only if you were in a situation where your life
7 was threatened.

8 Q Well, you didn't make this gun for self defense,
9 did you?

10 MR. DE MORE: Objection. Argumentative.

11 THE COURT: Sustained. It is
12 argumentative.

13 Q Wasn't this gun marketed as a hunting weapon?

14 A Yes, it is.

15 Q Right. And so the bolt lock was evaluated by
16 Remington with the knowledge that this gun would be used
17 primarily as a hunting weapon, wasn't it?

18 A That's right.

19 Q Did Remington ever perform any studies before
20 1973 of bolt-action rifles, a two-position safety and a
21 bolt lock, comparing the value of a bolt lock with the
22 risks associated with having a rifle that couldn't be
23 unloaded except in the fire position?

1 A I don't believe so.

2 Q Remington conducted no studies to determine how
3 many potentially lost shots hunters suffered because of
4 the presence of a bolt lock on the Model 700?

5 MR. DE MORE: Objection.

6 THE COURT: Sustained.

7 Q Did Remington conduct any studies, sir, to
8 evaluate the benefit of a bolt lock to hunters in the
9 field?

10 MR. DE MORE: Same objection.

11 THE COURT: Sustained.

12 Q Sir, did Remington ever engage any consultant to
13 conduct any studies with regard to the utility of the bolt
14 lock to hunters prior to 1973?

15 MR. DE MORE: Same objection.

16 THE COURT: Sustained.

17 Q Did Remington evaluate the risks associated with
18 the bolt lock on a gun with a two-position safety before
19 marketing the Model 700 in that condition?

20 MR. DE MORE: Same objection.

21 THE COURT: Sustained as to form.

22 Q Did Remington conduct any investigation into
23 whether any risks were presented by the Model 700 with the

1 bolt lock to hunters as a result of the two-position
2 safety with the bolt lock?

3 MR. DE MORE: Objection.

4 THE COURT: Sustained as to form.

5 Q Mr. Linde, did Remington conduct any
6 cost/benefit analysis whatsoever prior to 1973 concerning
7 the bolt lock?

8 MR. DE MORE: Objection.

9 THE COURT: Sustained.

10 Q Do you know what cost/benefit analysis is,
11 Mr. Linde?

12 A I know how I interpret the term.

13 Q Tell us how you interpret the term, sir.

14 A It's in the manufacturing sense, if you have an
15 operation and you can improve the operation, it costs you
16 so much money to improve the operation, whether it be a
17 new machine, new fixture, and it would give you some
18 benefit, it might make you more productive, or you put
19 less hours into the job.

20 So what you do is you take your improved
21 productivity and over a period of time determine what your
22 pay-back would be.

23 Q And that's in a dollars and cents term, isn't

1 it, dollars and cents analysis?

2 A That's how I understand it, yes.

3 Q Have you ever used the term "cost/benefit
4 analysis" in terms of the design of new products?

5 A I never have, no.

6 Q You are a designer, aren't you?

7 A Yes, I am.

8 Q And as a professional experienced designer, is
9 it your testimony that you have not weighed the possible
10 consequences of the use of your particular designs against
11 alternative designs?

12 MR. DE MORE: Objection.

13 THE COURT: Sustained. It's
14 argumentative in the manner in which it was
15 asked.

16 Q Sir, have you ever, as a professional designer,
17 weighed the competing benefits or risks associated with
18 various designs of products on which you have worked?

19 MR. DE MORE: Object to the form of that.

20 THE COURT: Overrule it. If the witness
21 can answer, understands it and can answer it.
22 Can you?

23 THE WITNESS: I'm starting to get confused.

1 THE COURT: All right. Do one at a time.
2 BY MR. BATTAGLIA:
3 Q You are a professional designer, sir?
4 A Yes.
5 Q You claim to be a designer of firearm parts,
6 employed by Remington for approximately 17 or 18 years?
7 A Since '65, yes.
8 Q Since '65. And in your job capacity, you have
9 designed parts for firearms, haven't you?
10 A Yes, I have.
11 Q Numerous parts?
12 A Yes, I have.
13 Q Some of those parts have related to the safeties
14 of rifles, haven't they?
15 A Yes, they have.
16 Q And in designing various parts for safeties, you
17 have considered alternatives to the designs which you
18 eventually chose as the design for the product?
19 A Definitely.
20 Q And in making the analysis of which part to
21 adopt for your particular design, have you ever considered
22 the risks associated with various alternative designs
23 under your consideration?

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A Yes.

Q And is that a standard practice of a professional designer who is designing a product that has many possible configurations?

A You have to look at all the different characteristics and you have to come to a conclusion, that's right.

Q Did Remington ever do such an analysis in the design of the Model 700 with the two-position safety and the bolt lock?

A Define what you mean by "analysis." Of what?

Q Did Remington ever consider and evaluate the risks associated, if any, with the use of a bolt lock as compared to the benefit to the consumer expected from the inclusion of the bolt lock on the safety mechanism?

A Not that I know of.

MR. DE MORE: Object to form.

THE COURT: Sustained as to form.

Q Did Remington, to your knowledge, ever conduct any analysis whatsoever of the actual benefit of a bolt lock to a hunter with a two-position safety?

THE COURT: I think the question was directed at whether you know. Do you know?

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THE WITNESS: No, I do not.

BY MR. BATTAGLIA:

Q Does good design practice require that such an analysis be done with regard to the design of products which have a safety element or feature?

MR. DE MORE: Objection.

THE COURT: Sustained.

Q Sir, are you familiar with good design practice?

A Yes, I am.

Q And you are familiar with that in the history of firearms design, aren't you?

A Yes.

Q Do you have designers who work under your supervision and control?

A I had designers, yes, that worked under my supervision.

Q And they worked in the design of firearms, did they not?

A They sure did.

Q So you are familiar with the standards and procedures that are customarily followed in Remington, at least as to the design of firearm mechanisms, aren't you?

A That's right.

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Q In Remington's design operation for firearms--strike that.

Has Remington's standards and procedures for the design of firearm components changed since 1973?

MR. DE MORE: Object to the form of since 1973, Judge.

THE COURT: Yes. The question is double edged. In addition to that, the question could--well, the averages may well be different to both--I will sustain the question. There's just two in one.

MR. BATTAGLIA: I will rephrase.

BY MR. BATTAGLIA:

Q To your knowledge, Mr. Linde, has Remington--have the standards and procedures followed by Remington as to Remington firearms designers, at the time you became familiar with those standards and procedures, changed, to your knowledge, from the procedures that were followed at the time the Model 700 was designed?

A They're basically the same.

Q Basically the same. Now, according to those procedures and standards, is it considered good practice to weigh the possible risks associated with various design

LEWY

1 alternatives from the consumer's standpoint?

2 A You do that.

3 Q You do that. It's normal procedure, isn't it?

4 A In the context that I'm understanding you.

5 Q That's a yes?

6 A I don't know. I'm not clear on the context that
7 you're getting to.

8 Q Would you like the question read back, sir?

9 A Go ahead.

10 (Record read)

11 A I said yes.

12 Q Was such consideration undertaken with regard to
13 the use of a bolt lock on the Model 700 with the
14 two-position safety, to your knowledge?

15 MR. DE MORE: Objection.

16 THE COURT: Sustained. The witness has
17 said that he was not there when it happened. He
18 doesn't know the background in the design, Mr.
19 Battaglia. So as to this witness, he can say
20 only what he knows to be the case prior to the
21 time when these guns were being produced.

22 MR. BATTAGLIA: Yes, your Honor. Thank you.

23 BY MR. BATTAGLIA:

1 Q Have you seen any records, Mr. Linde, of
2 Remington which indicate or record any such consideration?

3 MR. DE MORE: Objection.

4 THE COURT: Sustained as to form of the
5 question. Are you familiar with any records
6 having to do with the development of the--of the
7 700 series or the 700 ADL?

8 THE WITNESS: Yes, I have seen records on
9 that development.

10 THE COURT: You have seen them. All
11 right, sir.

12 BY MR. BATTAGLIA:

13 Q And among those records were there any records
14 which indicate that the kind of design analysis and
15 weighing that we have been discussing was conducted with
16 regard to the Model 700?

17 MR. DE MORE: Objection.

18 THE COURT: Sustained until you find out
19 what the records are. That's our problem now,
20 Mr. Battaglia.

21 Q You said you have seen some records with regard
22 to the design of the Model 700?

23 A Yes.

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Q When did you do that?

A In the course of my jobs over the years

Q And all of the records that Remington possesses
were at your disposal, weren't they?

A I could get them if I wanted them.

Q They're accessible to you?

A Yes, they are, very much so.

Q As part of your job. And isn't it true that in
those records which you reviewed and saw, you saw no
records which indicated that there was an analysis of
consideration such as we have been discussing?

MR. DE MORE: Objection.

THE COURT: Sustained. It assumes facts
not in evidence. If the witness has looked for
them and not found them or did not look for
them, that's the thing that makes the
difference. The foundation is inappropriate.

MR. BATTAGLIA: I'm only asking him with
regard to the records.

THE COURT: I know what you're asking.
I'm trying to listen carefully. I may be
missing it, but--

BY MR. BATTAGLIA:

LEWY

1 Q Have you seen--strike that.

2 In the course of your work as a designer of
3 firearm parts for Remington, did you have occasion to
4 regularly or routinely consult various records that were
5 on file at the Remington plant?

6 A Yes.

7 Q Did the subordinates who worked for you have
8 similar occasions to consult those records?

9 A Yes.

10 Q Among the records which you have had occasion to
11 see in your 17 years with Remington, were there any
12 records such as we have been discussing?

13 A Not on the bolt lock, no.

14 Q Now, you are familiar with the rule of hunter's
15 safety, I take it, which provides or directs that a hunter
16 not place his gun on fire unless he intends to shoot it?

17 A I have heard it in this courtroom. It's not one
18 of the ten commandments of safe gun handling.

19 Q It's a rule of common sense and good practice,
20 is it not?

21 MR. DE MORE: Objection.

22 THE COURT: Sustained.

23 Q You have heard that, you say?

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A Yes.

Q Where did you hear it?

A I heard it in the courtroom yesterday or the day before.

Q Is that the first time you heard it, sir?

A No, it makes sense. Maybe I have heard it before.

Q Makes sense, as you say?

A Yes.

Q Did Remington give any consideration in the design of the Model 700 with the bolt lock and the two-position safety to that common sense rule of hunting?

A Yes, I would say they did.

Q And isn't it true that Remington nevertheless designed and made a gun that couldn't be unloaded unless the weapon was placed in the fire position?

A That's right.

Q Can you tell me, sir, what the total trigger travel on the Model 700 is?

A Well, it would depend upon the adjustment that would be right around--well, just a minute. Where do you mean, trigger travel at what location?

Q That's--let me simplify it. You examined--

1 strike that.

2 Remington had this weapon examined, didn't it?

3 A That's right.

4 THE COURT: That's the Exhibit you are
5 referring to, Mr. Battaglia?

6 MR. BATTAGLIA: Exhibit 1.

7 Q And Remington determined the total trigger
8 travel on this one, didn't it?

9 A I don't know if they did or not.

10 Q What's the average trigger travel--strike that.
11 What's the range of trigger travel distances on
12 the Model 700 and according to the design specifications?

13 A At what point?

14 Q At the midpoint of the trigger?

15 A At the midpoint of the trigger would be the pin.

16 Q Talking of the center position.

17 A Oh, the center. Okay. It would be about, oh,
18 20 to--well, maybe--maybe about 25/1000 of an inch.

19 Q 25/1000 of an inch? And do I understand trigger
20 travel to mean the distance that the trigger must travel
21 in order to fire the gun?

22 A That's right.

23 Q 25/1000 of an inch is about the thickness of a

LEWY

1 couple sheets of tablet paper, is it not?

2 A Not, it's not.

3 Q How big is 25/1000 of an inch, sir?

4 A It would be--it would be about the thickness,
5 maybe, of 15 pieces of paper.

6 Q Fifteen pieces of paper?

7 A (Nodded head yes)

8 Q And when the sear in the operation of the safety
9 is moved upward, how much distance is that displacement in
10 thousandths of an inch?

11 A It can vary on the Model 700.

12 Q Why does it vary, sir?

13 A It varies depending upon the tolerances of the
14 parts that you are using in the assembly.

15 Q What are the tolerances of the parts that are
16 critical to the functioning of the safety?

17 A It's the tolerance on the cam, the hole
18 positions, the tolerances on the trigger and the
19 connector.

20 Q What percentage of variation occurs in the
21 manufacture of those parts?

22 A Oh, depends upon the part and the dimension.

23 Q What is acceptable, according to the design

1 specifications, as a degree of variation?

2 A It depends upon the part.

3 Q What is the variation that's allowable with
4 regard to the cam--strike that--the sear?

5 A It's in the--would be on the drawing, depending
6 on the surface, depends which dimension you would use and
7 what the tolerance would be.

8 Q Am I correct that all of these parts do have an
9 acceptable degree of variation according to the
10 specifications?

11 A That's right.

12 Q And the degrees of variation, you stated, are in
13 thousandths of an inch?

14 A Yes.

15 Q Now, on this diagram that's in front of the
16 jury, you have indicated that the large piece at the top
17 is the sear safety cam, is that correct?

18 A No, I just called it the sear because it's not
19 as confusing if you call it the sear.

20 Q That's the sear. We'll use your terminology.

21 A Yes.

22 Q Was this piece, as designed in 1973, used in any
23 other model weapons manufactured by Remington in 1973?

1 A Yes, it was.

2 Q What other models was that used?

3 A It was used in the Model 600.

4 Q Does this diagram that we have in front of us
5 contain a sear spring? Is that this spring right here?

6 A Yes, it is.

7 Q Was that spring used in any other model weapons
8 made by Remington in 1973?

9 A Yes, it was.

10 Q What other models?

11 A The Model 600.

12 Q Is there a sear pin somewhere in this diagram or
13 model?

14 A Yes.

15 Q Where is the sear pin, sir?

16 A It would be the front pin.

17 Q Is that this?

18 A It would be the front cross pin.

19 Q Could you show us that?

20 A It has a slave pin in it now.

21 Q It's not present on this model?

22 A Yes. Well, the hole is. It would be this hole
23 right here that goes to the receiver. It would be a longer

LEWIS

1 pin, if it was in the gun.

2 Q All right. Was that piece used on any other
3 model weapons in 1973 made by Remington?

4 A Sear pin?

5 Q Yes.

6 A I don't know.

7 Q Is there an ejector pin?

8 A Ejector pin?

9 Q On this model?

10 A Not on that.

11 Q All right. Is there a safety pivot pin on this
12 model?

13 A Yes, there is.

14 Q Where is that?

15 A It's the projection just right below your hand.

16 Q This?

17 A That pin, yes.

18 Q You're indicating this projection right here?

19 A That's right.

20 Q Was that used in any other model weapon made by
21 Remington in 1973?

22 A Yes, it was.

23 Q What model?

LEWIS

- 1 A It was used in the Model 600.
- 2 Q Is there a safety snap washer?
- 3 A That's it.
- 4 Q In this model?
- 5 A Yes.
- 6 Q Is that this big washer over here?
- 7 A Yes, it is.
- 8 Q And that was used in the Model 600, too, wasn't
- 9 it?
- 10 A Yes.
- 11 Q Is there a trigger pin located in this model?
- 12 A Yes.
- 13 Q Where is that?
- 14 A It's the trigger pin.
- 15 Q This right here?
- 16 A Yes.
- 17 Q And that was used in the Model 600, too, wasn't
- 18 it?
- 19 A Yes, it is.
- 20 Q Is there a trigger cross pin in this model?
- 21 A Trigger cross--
- 22 Q Cross pin?
- 23 A I don't know what a trigger cross pin is.

LEVY

1 Q All right. How about a trigger adjustment
2 screw?

3 A Okay. Yes.

4 Q Is that this screw right here which adjusts the
5 trigger?

6 A No, it would be the top, I believe it's that
7 right there.

8 Q This one right here?

9 A Yes.

10 Q And that was used in the Model 600 as well,
11 wasn't it, in 1973?

12 A Yes, it was.

13 Q Mr. Linde, you testified that from, I think,
14 1962 or '63 until 1973, Remington shipped 800,000 rifles.
15 I think that's what you said.

16 A I said around 800,000. That would be through
17 '73.

18 Q And that was to wholesalers, wasn't it?

19 A Yes, it was.

20 Q Did that include Army purchases?

21 A No, it would not. Well, let me think. Yes, it
22 would.

23 Q And aside from the deliveries to the Army, you

LEWIS

1 have no knowledge of the identity of the purchasers who
2 ultimately received those weapons, do you?

3 A No.

4 Q Ultimate consumers. In fact, you have no
5 knowledge as to when those weapons were eventually sold to
6 the consumers?

7 A No, we do not.

8 Q Now, in 1973, as I understand your testimony, it
9 was feasible to design the Model 700 with a three-position
10 safety, is that correct?

11 A Model 700?

12 Q Yes.

13 A With the three-position safety?

14 Q Yes.

15 A Yes, it could be done.

16 Q Could be done. And as I understand your
17 testimony regarding the benefit of a three-position--
18 strike that--the benefit of a two-position safety over a
19 three-position safety is more complex to understand?

20 A That's one of the objections, yes.

21 Q Was that objection the objection that Remington
22 considered and used at the time that it designed the
23 Model 700?

LEWY

1 A I have no idea.

2 Q When did that conclusion become a conclusion
3 that Remington reached?

4 MR. DE MORE: Objection.

5 THE COURT: Sustained.

6 Q Do you know where you first came across any
7 contention on the part of Remington that a two-position
8 safety is easier for a hunter to understand?

9 MR. DE MORE: Objection.

10 THE COURT: Sustained.

11 Q Sir, is that your conclusion, that a
12 two-position safety is easier to understand for a hunter
13 than a three-position safety?

14 A In this particular model, yes.

15 Q Is that Remington's official position with
16 regard to the benefit of the two-position safety as
17 opposed to a three-position safety?

18 A No, that would just be one factor.

19 Q Was that--is that Remington's position or just
20 your position individually?

21 A No, I said--

22 MR. DE MORE: Objection.

23 THE COURT: Sustained. That's

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argumentative.

Q Sir, with regard to hunters understanding two-position safeties as opposed to three-position safeties, did Remington ever conduct any studies with regard to that subject?

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MR. DE MORE: Objection.

THE COURT: Sustained.

Q Did Remington, to your knowledge, prior to 1973 conduct any such studies?

THE COURT: Of what?

Q Of the ability of hunters to understand and use two-position safeties as opposed to three-position safeties?

A I do not know.

Q Now, Mr. Linde, Remington does have a public relations department, does it not?

A Yes, it does.

Q And Remington does cause advertisements and news releases to be published in gun magazines from time to time?

A Yes, we do.

Q The public relations department is in Connecticut, isn't it?

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A Yes, it is.

Q Sir, I would like to show you what has been previously marked as Exhibit D and ask you if you have ever seen that before.

A Yes.

Q Sir, have you seen that before?

A Yes, I have.

Q Is that an advertisement that Remington caused to be published in trade magazines and gun journals?

A Yes, it is.

Q And, sir, do you agree with the statement--

MR. DE MORE: Well, wait a minute. I object to that, your Honor.

THE COURT: Sustained.

Q Sir, is it true that the safeties on bolt-action rifles--

MR. DE MORE: Objection.

THE COURT: Sustained. It relates to Exhibit D.

MR. BATTAGLIA: Your Honor, could we have a momentary recess to discuss this?

THE COURT: Step down, ladies and gentlemen.

LEWIS

1 (Jury left the courtroom)

2 THE COURT: Mr. Battaglia.

3 MR. BATTAGLIA: Your Honor, I wish to ask
4 this witness a simple question concerning
5 whether he has any knowledge as to whether the
6 safeties of bolt-action rifles can be
7 manipulated so as to cause the rifles to fire,
8 in some instances, when the safety is put in the
9 fire position.

10 THE COURT: There is an objection as to
11 form. I will sustain as to form because the
12 term "manipulated" certainly doesn't indicate
13 anything that this witness has said.

14 In the second place, Mr.
15 Battaglia, at this point in the testimony you
16 have made this witness your own. You have made
17 him your expert. You are now talking about
18 matters which, based on other testimony here, is
19 post-1973. He is, therefore, your expert.
20 Therefore, you may not lead the witness. You
21 may ask him what he now knows about certain
22 items, if you choose to do so, make him your
23 own, but to some degree at least you are bound

1 by his answers.

2 It is not a case in which
3 this witness should show hostility, prejudice or
4 bias. He has answered the questions, at least
5 in my judgment, as they have been asked. He has
6 done so, at least my impression, he has done so
7 without hostility, bias or prejudice.

8 If you choose him--to make
9 him your own witness rather than calling him, I
10 am afraid you are going to have to be bound by
11 his answers. They are not the subject to the
12 type of the questions you have been asking. Any
13 relationship between the 700 and the 600,
14 notwithstanding the cases you have submitted,
15 all of which except with the two federal cases I
16 have examined at least on three occasions, do
17 not make testimony with regard to what happened
18 in 1978 applicable to the facts here, that is,
19 what may have happened in 1973.

20 In addition to that, the fact
21 that this witness is now asked to, based on
22 something that happened in 1978, to make a
23 judgment as to what happened in 1973, is pure

1 THE COURT: --and in Opera. In each of
2 those cases, the design defect was made as of
3 that time. As a matter of fact, Justice Simons,
4 who seems--whose opinion seems to run
5 throughout, has said that this is a matter of
6 negligence. If the design defect falls within
7 the rules--as if they find that there was a
8 design defect within the rules--then they can
9 find that the party was negligent.

10 If the party is negligent,
11 then that negligence has to be a proximate
12 cause, a substantial cause of the happening of
13 the event which is the subject of our suit here,
14 or inquiry.

15 What was designed in 1978 has
16 to do with it, I don't know. What the ad has to
17 do, I don't know. But on two occasions, I have
18 given you the opportunity to offer it so that
19 the others can be made--the ad can be made known
20 to the others. And you have elected, which is
21 perfectly legitimately so, not to do so.

22 In addition thereto, you have
23 indicated you had not examined the weapon so

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that there will be no--there will be no testimony from any expert with regard to a malfunction in the particular weapon, Exhibit 1.

So, on that basis, my ruling is with regard to any prospective matters which you may wish to watch or wish to see, they will remain as they have been.

MR. BATTAGLIA: Your Honor reserved on some offers of proof for questions earlier?

THE COURT: Yes, I did.

MR. BATTAGLIA: With regard to notice of claims and complaints post-1973, but pre the date of the accident, as I recall. And do I understand your Honor's ruling--

THE COURT: No, you don't understand anything. What's your question?

MR. BATTAGLIA: My question is, your Honor, are--in the Court's view, is proof of claims and complaints brought to Remington's attention concerning the Model 700 prior to the date of the accident but after 1973 improper and inadmissible? I understand the--

THE COURT: In the first place, the

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bringing of a lawsuit is not notice. I found no case, either in the cases that were submitted to me for citation or in other cases that I found in which the bringing of a lawsuit was in fact notice.

LEWY

Now, perhaps you have some law on that. I couldn't find any. Nor, let me say this, a lawsuit is nothing more than an allegation of a claim and in some instances, although I certainly wouldn't want to say this other than the fact that sometimes, generally, in conversation among lawyers it is known as the search for the deep pot.

Now, I can't say without the result of the lawsuit that that would in fact entail some type of notice to Remington.

Now, as far as the other claims are concerned, claims before 1973 were admitted without objection by Mr. DeMore. So those are there. Whether or not they relate to the particular complaint made in this instance, of course, would be for the finders of fact to determine. I have no idea what it is that Mr.

1 DeMore plans to do. He hasn't had his proof
2 before us yet or, for that matter, what you
3 intend to do.

4 As far as anything happening
5 after 1973, Opera seems to say it is not
6 admissible. As a matter of fact, a third chart
7 in Opera was not admissible, according to Judge
8 Simons, either, as illustrative of the state of
9 the art at the time that the first chart or the
10 manual is issued. Then, in Torrogrossa against
11 Towmotor, the attempt to put in, as Mr. Duell
12 did the other day, a change in the manual, "Be
13 careful, don't point this gun at anybody while
14 you are loading it or unloading it," I think
15 falls within the category of a bromide which I
16 think was the words used by the Court of
17 Appeals, in saying, well, even if they did give
18 notice, all they said was don't drive it around
19 corners too fast. Therefore, a bromide, setting
20 forth nothing more than good common sense would
21 say, i.e., in this case, don't point it at
22 someone else.

23 Therefore, in my judgment,

1 the kind of notice you seek to show by virtue of
2 any change in the catalog itself, falls within
3 the rule of Opera--I'll try to pronounce
4 it--Torrogrossa against Towmotor, the Court of
5 Appeals, which citation I would be glad to give.

6 Your next question is what
7 prospective--what--

8 MR. BATTAGLIA: Prospectively claims between
9 1973 and the time of the accident. I understand
10 the Court says they're not appropriate. I won't
11 try to offer them. I just want to be sure I
12 understand.

13 THE COURT: Anything further?

14 MR. DUELL: May I be heard on that,
15 because I offered those claims?

16 THE COURT: Yes.

17 MR. DUELL: I would like to say to the
18 Court the plaintiff--or, excuse me, the
19 defendant Remington Arms has yet now shown that
20 over 800,000 rifles of this model were shipped
21 between 1965, I believe it was, and 1973. Now,
22 there was an objection to that question on the
23 grounds that it was irrelevant and immaterial

1 through--Mr. Battaglia, I think, made the
2 objection. That evidence was permitted.

3 Now, the number that was
4 shipped have nothing, whatsoever, to do with
5 this particular lawsuit. Now, it puts the
6 plaintiff in an incomparable position because
7 you have got them shipped. We don't know when
8 these 800,000 rifles, or any portion of them,
9 actually reached the hands of the ultimate user.
10 So we've got a situation that the plaintiff can
11 argue we've got 800,000 rifles that we've had 14
12 claims out of, when it's not true, because in
13 there, there are some, I don't know, 68 or 100
14 claims, and they could be from these very
15 identical rifles that were shipped during that
16 period of time.

17 And I think now, because they
18 have put that evidence, they have opened the
19 door to permit us to show the balance of these
20 claims because it could be very relevant to this
21 jury.

22 THE COURT: Is that all?

23 MR. DUELL: That's all.

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THE COURT: What do you propose, other than the fact that you are arguing?

MR. DUELL: My argument is that the exhibit should now be admissible.

THE COURT: What exhibit?

MR. DUELL: What's the exhibit? ^{The one}
with all the claims.

LEWIS

MR. BATTAGLIA: The one with all the claims, that's your exhibit.

MR. DUELL: I can't tell you the exhibit number because I can't find it, but there is one.

THE COURT: They were the result of interrogatories asked and answers given to interrogatories to which Mr.--to which the counsel, by virtue of his position, answered from information provided to him. Mr. Sperling answered information provided to him. Why does that, under these circumstances, have any relationship to the issues here?

 The sole issue in this case, was Remington negligent and was its negligence the proximate cause of the injury to the

1 plaintiff? It isn't speculation, Mr. Duell.
2 And that's the whole trouble here. We're in a
3 whole group of speculative matters. It's solely
4 a question of whether the finders of fact find
5 that under negligence rule, that the defendants
6 here, Remington and Mr. Mathis, were negligent.
7 Was the proximate cause either both or a
8 combination, was the proximate cause of the
9 injury to this plaintiff?

10 And as far as subsequent
11 notice is concerned, as far as notices are
12 concerned, as far as Mr. Battaglia's action
13 overt is concerned, Mr. Battaglia has not put in
14 proof yet. So I don't know what he is going to
15 claim on his action overt against Remington.

16 But the rest of it is
17 speculative.

18 MR. DUELL: That's what I am saying to
19 this Court. I am saying to the Court, if you
20 hold it to that narrow issue, fine. But the
21 evidence has already been put in by the
22 defendant Remington--

23 THE COURT: Yeah.

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MR. DUELL: --of over 800,000 guns being put out.

THE COURT: That's right.

MR. DUELL: And I think they have opened the door to permit the showing of how many claims they have had.

THE COURT: I respectfully disagree. Anything further, now, gentlemen?

MR. DE MORE: I just would like to add, your Honor, for the benefit of the Court in understanding Exhibit D, I think if this witness was asked if that was in response or replied to the 700 model, I think the answer would be no.

THE COURT: It doesn't make any difference. Mr. Battaglia is examining and I have explained my position to him, and what I feel the status of the witness is, at this time, and therefore, we'll take a short recess.

(Recess taken)

THE COURT: Bring the jury in.

(Jury entered the courtroom)

BY MR. BATTAGLIA:

Q Just have a couple of more questions for Mr.

LEWY

1 Linde. Mr. Linde, could you look at Exhibit 6 and tell
2 me what that is, sir?

3 A It's a design change request.

4 Q Exhibit 6 is the entire pile, sir.

5 THE COURT: Pardon me?

6 Q Exhibit 6 is the entire group of documents,
7 okay?

8 A Design change requests.

9 Q Are those records that were kept by Remington?

10 A Yes, they are.

11 Q I believe Exhibit 6 is in evidence. Can you
12 tell me whether the design requests reflected in Exhibit 6
13 show the design requests that were made with regard to the
14 Model 700 rifle?

15 A Would you like me to go through them and see if
16 they all are?

17 Q Yes, if you would.

18 ((Witness reviewed documents))

19 Q I assume you have completed reviewing--

20 A This pile here is 700 and this pile here does
21 not concern the 700.

22 Q I couldn't hear your answer.

23 A I say this pile concerns the 700; this pile does

LEWIS

1 not.

2 Q What is in the other pile?

3 A Model 600 and XP100.

4 Q Which pile is covered by the design change
5 request which is Exhibit 6, which is in evidence?

6 A You go from 2/25 to 12/10/80.

7 Q Are there any design change requests referable
8 to the 700 in Exhibit 6 which you are aware of but which
9 are not included in that pile?

10 A If they are design change requests they would be
11 here.

12 MR. BATTAGLIA: Thank you. That's all I
13 have.

14 THE COURT: Mr. Amdursky?

15 CROSS-EXAMINATION

16 BY MR. DUELL:

17 Q Mr Linde, this morning, when you were being
18 examined by Mr. DeMore, you stated, did you not, that back
19 in '73 Remington, Ruger, Winchester and Weatherby were the
20 leading exponents or sellers of bolt-action rifles, isn't
21 that correct?

22 A That's correct.

23 Q Now, you talked about the Weatherby Mark V and

1 the Weatherby Vanguard, correct?

2 A Yes, I did.

3 Q Where are the Weatherby rifles made?

4 A The Weatherby rifles have been made in a number
5 of different places. The Mark V, I believe, in 1973 was
6 made in Germany.

7 Q Any made in Japan?

8 A The Vanguard, I believe, is made in Japan.

9 Q Any made in the United States?

10 A As far as the Weatherby?

11 Q Yes.

12 A No, the only thing they do in the United States
13 is the stocks.

14 Q Now, is there also a--I will withdraw that.
15 You talked about the Ruger. Where is the Ruger
16 made?

17 A It's made in New Hampshire.

18 Q Beg pardon?

19 A New Hampshire.

20 Q And as to whether or not that has a trigger
21 block--

22 A Yes.

23 Q Yes? Does it have a trigger block?

1 A Yes, it does.

2 Q Now, does the Remington Model 700 have a trigger
3 block?

4 A What do you mean by "trigger block"?

5 Q Well, what did you mean by saying that the Ruger
6 had a trigger block?

7 A I was inferring from your question that you
8 meant do they block the trigger as their means of safety
9 mechanism.

10 Q Does the Remington 700 have the same type of
11 trigger block?

12 A No, it does not.

13 Q Now, you did state that the Winchester 600 and
14 70 has a two-position safety without the bolt lock, isn't
15 that correct?

16 A That's right.

17 Q That is the design that Mr. Olson suggested for
18 the Model 700, is it not?

19 A It wouldn't be the design, it would be the same
20 kind of principle.

21 Q And I think you stated that they later changed
22 that model to the three-position safety, is that correct?

23 A That's what I understand, yes.

LEWIS

1 Q And I think you stated the Winchester also puts
2 out a Model 70, which has a three-position safety block,
3 isn't that correct, sir?

4 A Yes, they do.

5 Q Let me ask you, with a gun on safety position,
6 can it fire?

7 A Not if it's functioning correctly, no, it can't.

8 Q Now, you talked a great deal this morning about
9 the 1917 Enfield, which you stated was made by Winchester
10 and Remington, isn't that correct, sir?

11 A Yes, it was.

12 Q And I think you said that had a two-position
13 safety?

14 A Yes, it does.

15 Q Is that still on the market?

16 A No, it's not.

17 Q How long has it been since the 1917 Enfield has
18 been on the market?

19 A The 1917 Enfield was made for the government.

20 Q My question is, how long since it's been on the
21 market?

22 A The last time it was sold to the government is
23 1918 and 1919.

LEWIS

1 Q Beg pardon?
2 Q 1918?
3 A 1919.
4 Q They haven't sold them for some 30 or 40 years?
5 A No, they haven't.
6 Q They--beg pardon?
7 A No, they haven't.
8 Q Beg pardon?
9 A No, they haven't.
10 Q Did you talk about the 1903 Springfield this
11 morning?
12 A No, we never--
13 Q Manufactured by Remington?
14 A It has been, yes.
15 Q Gun they used in World War One and for training
16 in World War Two, correct?
17 A They have, yes.
18 Q Three-position safety?
19 A Yes, it has.
20 Q When did you make Exhibit 6 marked for
21 identification?
22 A Oh, it must be at least five or six years old.
23 Q Didn't you actually make it, sir, to be used as

LEWIS

1 an exhibit in court?

2 MR. DE MORE: Objection.

3 THE COURT: Sustained.

4 Q What do you say you did make it for?

5 A We made it for training.

6 Q For training?

7 A Yes.

8 Q Do you still use it for training?

9 A Yes, we do.

10 Q Now, incidentally, you also told us this morning
11 that you had some patents that you--some designs that you
12 developed and had patented?

13 A Yes, I have.

14 Q Is that correct? And I think you said that you
15 had four patents?

16 A Four that I know of.

17 Q Four that you know of, all right. And they were
18 patents on what?

19 A There is one patent on a trap. There is one.

20 Q A what?

21 A A trap. It's a mechanical device to throw a
22 clay target. There is one patent on a trigger mechanism.
23 There is one patent on a firearm. And there is one patent

LEWY

1 on a sighting device.

2 Q Now, the patent on the trigger--

3 A Yes.

4 Q --has that ever been used?

5 A Yes, it has.

6 Q By whom?

7 A By Remington Arms.

8 Q And which gun?

9 A In the Model 3200.

10 Q 3200?

11 A Yes.

12 Q Is that a bolt action?

13 A No, it's not.

14 Q And what was the third one? I didn't understand
15 you.

16 A The adjustable sighting--the adjustable sight.

17 Q Adjustable sight?

18 A Yes.

19 Q Okay. What was the fourth one?

20 A Oh, there is a patent on an overall gun.

21 Q And has that patent been used?

22 A Yes, it has.

23 Q By whom?

LEWY

1 A By Remington.

2 Q Is that a bolt-action gun?

3 A No, it's not.

4 Q Now, you told Mr. Battaglia that a
5 three-position safety was more complex to understand, is
6 that correct?

7 A Yes, I did.

8 Q Why do you say a three position safety is more
9 complex to understand than a two-position safety?

10 A Because if you have a three-position safety on a
11 gun you either have safe or you have fire. If you have an
12 intermediate position, what does that mean? Does that
13 mean half safe, partially safe? What you are doing, you
14 are combining one mechanism and you are--to me it's not
15 clear. To me, like a light switch, either it's on or it's
16 off, is the clearest thing to present to a customer.

17 Q I am not so sure I understand you.

18 A Okay. Let me define it. On the Springfield
19 that you used as an example, on the lever--on the
20 three-position safe, you flop it one way, it says safe.
21 You flop it the other way and it says fire. You flop it
22 straight up and it doesn't say anything.

23 Q Does Remington make a three-position safety on

LEWIS

1 any of its bolt-action rifles?

2 MR. DE MORE: Object to the form other
3 than--unless there is a qualification, as of
4 1973.

5 THE COURT: Yes, sustained. Did they in
6 1973 make a bolt-action rifle with a
7 three-position safety?

8 MR. DUELL: I will withdraw it, if that's
9 the objection.

10 THE COURT: Go ahead. The question is
11 withdrawn.

12 BY MR. DUELL:

13 Q Back in 1973, did Remington have any
14 three-position safety bolt-action rifles?

15 A No.

16 Q Does it now?

17 MR. DE MORE: Objection.

18 THE COURT: Sustained.

19 Q Where is the safety on the Weatherby Vanguard
20 located?

21 A On the Vanguard the safety is located right on
22 the right rear tang, very similar to the Model 700.

23 Q I'm sorry?

1 A The safety is located right on the right rear
2 tang, very similar the same as the 700.

3 Q To engage or disengage the safety in that
4 position, how do you go about it? Do you have to push it
5 forward the same as you do on your Model 700? **LEWIS**

6 A I am not positive.

7 Q Where is the safety located on the Weatherby
8 Mark V?

9 A It's located on the bolt plug.

10 Q Where is that?

11 A On the bolt plug on the top of the breach bolt
12 that goes back and forth right on the back rear, it would
13 be that similar to the Winchester, as far as position.

14 Q The Winchester bolt action?

15 A The Winchester bolt action Model 70.

16 Q That's the one with the three-position safety?

17 A That's right.

18 Q Where is the safety located on the Ruger?

19 A The Ruger is right on the middle of the grip,
20 it's right behind--it would be the back of the firing pin
21 on the display. It would be right in here some place.

22 Q How do you operate that safety?

23 A You pull it back for on safe and push it forward

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for the fire position.

Q When did Remington cease making the 1903 Springfield?

A It would be--the only time Remington made it was during the Second World War, so it would be 1944-1945.

Q There is no question that Remington did know or were familiar with a three-position safety during the years of 1965 through 1973?

A That's right. Remington is familiar with the three-position safety.

Q There is no question that Remington, during the years 1965 through 1973, were familiar with a two-position safety without a bolt lock, is there?

A That's right.

MR. DUELL: That's all.

THE COURT: Mr. DeMore?

MR. DE MORE: I have no questions.

THE COURT: Mr. Battaglia?

MR. BATTAGLIA: Nothing further, your Honor.

THE COURT: All right. You may step down, Mr. Linde. Thank you very much.

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(Continuation of the testimony of John Linde
2-16-84, out of the presence of the jury.)

THE COURT: Ready Mr. Amdursky?

MR. AMDURSKY: May it please the Court. With
the Court's permission, I would like to recall
the last witness, Mr. Linde, for some amount to be
an offer of proof.

DEMY

THE COURT: Mr. DeMore.

MR. DE MORE: Well, at this juncture, I have
no objection.

THE COURT: Mr. Linde, would you return
to the stand, please. You are reminded, Mr.
Linde, you have been sworn and still under oath.

J O H N L I N D E, called as witness on behalf of
the Defendant Remington, having been previously duly sworn,
was examined and testified further as follows:

THE COURT: The nature of the inquirey is
an offer of proof.

(Plaintiffs' Exhibit G marked)

MR. DE MORE: Judge, before we started
the offer of proof, since Mr. Amdursky has already
indicated to me what he intends to do, could I
just have a standing objection to the whole line

1 of questioning rather than object to each point?

2 THE COURT: It's my understanding Mr.
3 Amdursky, based upon rulings that I have made, now
4 seeks to place on the record certain evidence
5 which he assumes would be objectionable, which is
6 to protect the record, with regard to incidents
7 which occurred subsequent to 1973, upon which
8 I have ruled several times.

9 My understanding is that you
10 would continue to object to any such testimony and
11 that Mr. Amdursky has, therefore, made this in an
12 offer of proof, outside the presence of the jury
13 solely to place on the record matters which I have
14 excluded in the past and would continue to
15 exclude under what I believe to be the law which
16 applies to the facts in this case. Go ahead,
17 Mr. Amdursky.

18 MR. AMDURSKY: That's the way I understand
19 it, your Honor.

20 (Plaintiffs' Exhibit 44 and 45 marked)

21 CROSS EXAMINATION

22 BY MR. AMDURSKY:

23 Q Mr. Linde, is it true that prior to 1973, the

1 788 rifle that Remington manufactured had a two-position--
2 let me withdraw that. That in the year 1973 and for some
3 years prior, therefore, that Remington manufactured and
4 marketed a rifle with a two-position safety and a bolt
5 lock which required placing the safety on a ~~fire~~ position
6 in order to discharge the gun, is that correct?

7 A That's right.

8 Q And is it true that in 1974, on or about May
9 1st, 1974, the bolt locks were removed from the 788 rifle?

10 A It was as part of another change, yes.

11 Q Yes. And I show you Exhibit 43 marked for
12 identification. And is that the design change order?

13 A That's the design change request.

14 MR. AMDURSKY: Offer it in evidence.

15 MR. DE MORE: Object.

16 BY MR. AMDURSKY:

17 Q Mr. Linde, is it also true --

18 THE COURT: I got to rule on it.

19 MR. AMDURSKY: Beg your Honor's pardon.

20 THE COURT: Design change request from the
21 788 model rifle. Upon the offer in the context of
22 an offer of proof, there being an objection by Mr.
23 DeMore, Mr. Battaglia, do you wish to be heard?

1 MR. BATTAGLIA: Your Honor, I join in the offer.

2 THE COURT: Join. I will receive it within
3 the context of the -- of the offer of proof

4 BY MR. AMDURSKY:

5 Q And is it also true that on or about October 21,
6 1981, Remington removed the bolt locks from their 700 gun
7 like the gun that's -- in question, here?

8 A Yes.

9 Q And have been manufacturing them without the bolt
10 lock since that date?

11 A No.

12 Q How long were they off?

13 A Um, it's been manufactured, I think, it was
14 implimented into production, it would be like January or
15 February of '82.

16 Q Oh, I mean it was some time from the time of the
17 design change until the time they took the bolt locks off?

18 A That's right, yes.

19 Q And I show you Exhibit marked for identification
20 as number 44. And ask you if that's the order/request to
21 eliminate the bolt locks from the 700 models and bearing the
22 words "Reason for change: eliminate moving -- having to put
23 safety in the off position to open bolt by removing bolt

1 locks arm." What is that last word?

2 A Thats "arm" but you didn't read the first sentence
3 right.

4 Q All right. Let me read it right.

5 "Eliminate having to put safety in the 'off' position,"
6 with quotation marks around off, "to open bolt (by removing
7 bolt lock arm)"

8 A Yes.

9 Q Have I read it right, now?

10 A Yes.

11 Q And is that a true and correct copy of the--of
12 the order?

13 A Yes, that is.

14 Q And I show you a letter that's been previously
15 marked in examination before trial that is now marked
16 for Exhibit 45 for identification in this case on the
17 stationery of Remington Arms Company and addressed to
18 Recommended Gun Smiths Information Bulletin and with the words
19 "Model 700 change in operation." Do you recognize that
20 letter?

21 A I -- I recognize it because you showed it to me
22 just before the --

23 Q Appears to be a--

1 A Appears to be a--definitely a Remington letter,
2 but I have no previous knowledge of it.

3 Q Was this letter a notification to Recommended
4 Gun Smiths, Remington Recommended Gun Smiths, I assume that--
5 saying that, "Market research over the past several years shows
6 that customer in--in the bolt lock feature in our Model 700
7 rifle has declined, as a result, we have moved it"

8 A That's what the first paragraph says.

9 Q And you did remove it?

10 A Yes, we did.

11 Q And ghe guns you are making, now, has the bolt
12 lock off?

13 A That's right.

14 MR. AMDURSKY: Offer both Exhibits 43, 44 and
15 45 in evidence as part of my offer of proof.

16 THE COURT: 43 has been offered and received.
17 44, Mr. DeMOre.

18 MR. DE MORE: I object.

19 THE COURT: 44 objection by Mr. DeMore.
20 Mr. Battaglia.

21 MR. BATTAGLIA: I join in the offer of the
22 exhibit. Also, in the offer of proof, generally,
23 of Mr. Linde's testimony.

1 THE COURT: Join in the offer of 44 and I
2 will receive it within the context of the offer
3 of proof. As to Exhibit 45, Mr. DeMore.
4 MR. DE MORE: I also object.
5 THE COURT: Mr. Battaglia.
6 MR. BATTAGLIA: Join in the offer.
7 THE COURT: Exhibit 45--I don't note a date
8 on Exhibit 45.
9 MR. AMDURSKY: May I hand it to your Honor.
10 THE COURT: May 13, 1982. Mr. Battaglia
11 joins in the offer. I will overrule the objection,
12 in the context of the offer of proof, and I will
13 receive the letter and Exhibit 45 for the purpose
14 of the offer of proof. I find all of the proof
15 offered by Mr. Amdursky, joined in by Mr. Battaglia,
16 are or is not within the--within the proof which
17 is admissible to establish design defect in 1973.
18 And therefore, rule that the offer of proof and the
19 facts contained in the offer of proof is not
20 admissible in consideration on the issues here.
21 That is, the design defect of the weapon in 1973
22 Anything further you would like
23 the record to show, Mr. Amdursky, in this matter?

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MR. AMDURSKY: No, I think no, your Honor.

THE COURT: All right, sir. Are we ready, then,
to proceed with further--you may step down,
Mr. Linde. Thank you very much, sir.

* * * * *

LEWIS

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I, Ann A. Wade, RPR, an Official Reporter of the
Supreme Court, Fifth Judicial District, State of New
York, do hereby certify that the foregoing is a true
and correct transcript of my stenographic notes taken
in the above-entitled matter at the time and place
first above mentioned.

LEWY

Ann A. Wade, RPR

DATED: _____