

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DAVID KEENUM and
TERRI KEENUM,

Plaintiffs,

vs.

CASE NO.
CIV-86-1727W

REMINGTON ARMS COMPANY, INC.,
a Delaware Corporation; Peterson
Publishing Company, a California
Corporation, and BOB MILEK,

Defendants.

HELD AT:

The Prospect Inn
400 North Prospect Street
Herkimer, New York
April 7, 1988

EXAMINATION BEFORE TRIAL of ROBERT B.

SPERLING, held pursuant to Notice.

APPEARANCES:

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Attorneys for Plaintiffs
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Oklahoma City, Oklahoma
BY: RON COLLIER, ESQ., of Counsel

BAKER, BAKER & SMITH,
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2140 Liberty Tower
Oklahoma City, Oklahoma
BY: ROBERT S. BAKER, ESQ., of Counsel

Martin Murphy, C.S.R., P. C.

APPEARANCES (Cont'd.):

JOHN W. SHAW, ESQ.
Attorney for Remington Arms Company, Inc.
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Kathleen Boyle,
Reporter.

Martin Murphy, C.S.R., P. C.

S T I P U L A T I O N S

IT IS STIPULATED by and between the attorneys for the respective parties that the testimony contained herein may be used upon the trial of this action; that all objections, except objections as to form, are reserved until the time of trial, and that objections as to form shall be noted on the record; that the examining party will furnish the examined party a copy of the transcript of testimony free of charge and that the testimony be taken before Kathleen Boyle, a Shorthand Reporter and Notary Public in and for the State of New York, whose oath is waived.

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MR. BAKER: The record should reflect that we're present for the deposition of Bob Sperling here in Herkimer, New York, on April 7th, 1988. The record should further reflect that counsel for the plaintiff has indicated his intent and desire to video this deposition and that defendant Remington has previously objected to any of the these discovery depositions being videoed. However, we are not prohibiting the accomplishment of the video, but we are reserving all our rights and objecting to the use of the video for any purpose relative to the trial of this case, in that the video is not being accomplished within the Federal rules of procedure.

We have possibly one housekeeping matter which we discussed just before going on the record here, and that relates to the final depositions that will be taken in this case next week in Wilmington, Delaware. We are planning to take two depositions, that of Mr. Linde and of Mr. Sienkiewicz. Mr. Sienkiewicz

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is definitely scheduled for Tuesday of next week in Wilmington and counsel for the plaintiff advised us yesterday as to the location of the deposition which will take place at 10:00 a.m. We are making every effort to have Mr. Linde available for deposition on Monday of next week at 10 a.m. at the same location required by counsel for the plaintiff in Wilmington, Delaware and we may be able to do that. If not, we'll produce him on Wednesday of next week rather than Monday. It depends on whether he's back in the United States and is available. We have advised plaintiffs' counsel that we certainly will know something this Friday, and we'll advise him as to whether it's Monday or Wednesday, so that necessary travel plans can be made over the weekend. And I believe that that would conclude for the purposes of the record all of the matters that we discussed off the record.

MR. COLLIER: I think we should include here, also, so we don't have to do it after the
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witness is sworn and we begin the questioning procedure, that in the past, we have gone over our Request for Documents and other types of discovery pursuant to, first, a Request for Production, then the following Request for Production by subpoenas, and following the subpoenas, by subpoenas again. And I would assume, if we go through this with Mr.

Sperling, that it would be the same that our Request for Documents and things that he brings is denied based upon the 30-day notice. Is --

MR. BAKER: No, sir. As we stated on several previous occasions, it will be the same here, that the plaintiffs have filed, as have the defendants in this case, a request for documents under the Federal Rules of Civil Procedure. The defendant Remington has responded by agreeing to produce certain information and objections to certain information. That response has been properly filed and will be handled in the normal manner under the Federal Rules. We, as a matter of

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fact, discussed that we would tentatively plan the defendants and plaintiffs on Thursday of next week getting together, and the plaintiffs will review the documents both relative to discovery request and exhibits of the defendant Remington; and the defendant Remington will review plaintiffs' exhibits and documents relative to our discovery request on Thursday of next week in Oklahoma City. As far as any subpoena that has been issued here, it has been consistently the position of the plaintiff -- defendant Remington, plaintiff's well aware of, does not necessarily concur in that opinion that an attempt to use a subpoena duces tecum to require production of documents that otherwise have been sought under the Federal Rules properly under a Request Production of Documents is an inappropriate manner, and you can't circumvent the Federal rules requiring the 30-day allowance of time to produce documents. We have responded, it's a matter of simply plaintiff having an

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opportunity to review those documents, to which we have responded Thursday of next week, and that is our position in this area.

MR. COLLIER: The other thing, we have met and conferred one with the other, face-to-face, in an effort to resolve discovery difficulties, and although it wasn't done on the record, that has been accomplished. We have discussed all of the items of disagreement so far as discovery was concerned.

MR. BAKER: Yes, there's many items that we have been requesting, and you've mentioned some to us. We have discussed several of those. I don't think we need to, again, go back into all those, such as the video we have been asking for for forever and ever and ever. And you told us you would not give it to us. I don't see any reason, though, to go into all those matters.

MR. COLLIER: I agree.

MR. SHAW: Off the record.

(Discussion off the record.)

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R O B E R T B . S P E R L I N G ,

having been first duly sworn by a Notary Public
of the State of New York, testified as follows:

BY MR. COLLIER:

Q. Could you state your name for the record,
please.

A. Robert B. Sperling.

Q. Mr. Sperling, where do you live?

A. Wilmington, Delaware.

Q. And what is your business or occupation?

A. Corporate attorney.

Q. For whom are you employed?

A. DuPont Company.

Q. What relationship do you have, if any, to the
defendant in this case, Remington Arms Company, Inc.?

A. I was employed by Remington Arms as a corporate
counsel from 1970 to 1985, and I continue to do work that
relates to Remington Arms Company in my present position.

Q. And is there a subsidiary and controlling
corporation relationship between the two corporations?

A. Yes. Remington is a subsidiary of DuPont.

Q. Is it wholly-owned so that all of the stock of

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Remington is owned by DuPont?

A. Yes.

Q. So that in 1985, when you changed employers, you went from Remington, and I suppose that you were officed here at that time?

A. I was officed in 1985 at Bridgeport, Connecticut.

Q. And, then, you have since then moved to Wilmington, when you changed the corporation under whom you're employed?

A. That's correct.

Q. All right. During the time of your employment with Remington Arms Company, did you participate in what was called a Safety Subcommittee?

A. I attended meetings.

Q. And what position, if any, did you have with that committee?

A. I had no official position with the committee. On occasion I acted as an acting secretary.

Q. And was this for a fairly long period of time?

MR. SHAW: I don't understand that.

Q. How long a period of time?

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MR. SHAW: Was what?

MR. COLLIER: That he was associated with the Safety Committee.

MR. SHAW: Well, I think he said he attended meetings on occasions and had no official position, so I'll object to your question, to the extent that it's misleading, whereby you're suggesting that he had an association with the committee that was long-standing or permanent. Although, maybe he can clarify that in his answer.

BY MR. COLLIER:

Q. All right. When did you first begin sitting with the Safety Committee?

A. I think I first attended a meeting of the Safety Committee, probably 1973, '74, around that area. And I continued to attend meetings -- and I'm not sure that they were all the meetings -- but I attended meetings up through, probably, 1985.

Q. Would you tell us what kind of proceedings the Safety Committee has?

A. Well, the meetings I attended were meetings in
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which various issues or problems were discussed concerning products, Remington products, and status reports were given. And the committee would vote on certain actions to be taken or certain assignments that were given to members of the committee to further research or develop an issue or situation, and reports were made to the committee. It was sort of a -- It wasn't that structured. People would sit around a table, such as this, and talk about problems that were raised by members of the committee and maybe perhaps someone outside the committee would want to talk about the problem and the committee would be -- would schedule a meeting and sit around to discuss it.

Q. During your -- During the time that you sat with this committee, did the committee ever consider complaints from consumers or, perhaps, retail outlets, whatever, of accidental discharge of the Remington Model 700 rifle, where it was claimed no one touched the trigger?

A. Well, the committee didn't -- the purpose of the committee was not to discuss complaints from consumers or retailers. Those complaints would come into

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the company vis-a-vis the product service department and they would be handled on an individual basis. If there was a problem that was more -- more universal or more pervasive, that is the kind of problem that would be discussed at the level of the Product Safety Subcommittee. It wouldn't be an individual complaint. It would be a question of do we have a problem with this lot of ammunition that went out in August of 1972? It would be discussed about what the testing on that particular day showed by the ammunition that had been tested or perhaps we've got a series of eight or nine complaints about that ammunition. So we looked at the - - the committee looked at it from more of a universal standpoint, rather than to sit and talk about each individual complaint that may or may not come into the company.

Q. Then in that connection, was then it ever brought to the attention of the Safety Committee of reports of accidental discharges of the Remington Model 700 where it was claimed that no one touched the trigger?

A. I'm trying to think back over the years. I would say that of the committee meetings that I remember

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that had discussed the 700, we talked about specific allegations with relationship to another model. And the question was whether that -- those allegations would be also applicable to the Model 700. I don't remember ever sitting at a meeting where people would discuss individual complaints.

Q. Oh, I didn't mean it on an individual basis, but, rather, was a review or survey or audit or whatever you might want to call it, done of rifles, specifically, the Model 700 rifle, to determine whether or not there was any foundation for claim of accidental discharge where there was a claim made that no one touched the trigger?

MR. SHAW: Bob, if you recall specifically -- and it may be that counsel will have some documents that he wants to present to you that might nail this down more specifically. I have some problem with that question, Mr. Collier, which we have announced with regard to similar questions in other depositions when you just want to refer in blanket fashion to an accidental discharge

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without one's finger being on the trigger. And as we understand and contend, the allegation in this case that the particular Model 700 in question discharged upon raising the bolt in the unloading process. And you're getting rather generalized here, over-generalized, I believe, in trying to group everything into one category merely by virtue of a claim of accidental discharge. So I object to the form of the question being overly broad and vague.

MR. COLLIER: Now, find out if we can find that question again, because I'll never be able to ask it that way again, unless --

THE WITNESS: I think I remember the gist of the question.

A. I remember -- I remember being in -- in attendance at two meetings at which the Product Safety Subcommittee discussed a question in relation to the 700, which would involve an allegation that you could move the safety lever to the mid-position and pull the trigger and then move the safety lever to the off position, and the gun would fire at that point. That was the issue that

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was being discussed. Whether that fact had happened with the Model 700 --

Q. And was this discussion pursuant to reports or communications or information from the public or consumers or gun owners that there were accidental discharges and where the person making the report claimed that no one had touched the trigger?

MR. SHAW: Now, I object to that, 'cause I think it's ambiguous and compound when you're linking together communication, report, claim, complaint. Is the thrust of your question, whether to Mr. Sperling's recollection any customer had written in and said, "My Model 700 fired when I had placed it in the mid-position, squeezed the trigger, and pushed it off," which is the frame of reference that he just gave to you in his answer, or are you back to the question of mere accidental discharge?

MR. COLLIER: I think I hazard to guess, you don't have a single communication from the public on that particular set of facts. So I'll just start my questioning again and ask,

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what term should I use to be appropriate with you in asking questions on a report or complaint or a communication from someone in the public that there was an accidental discharge where they claimed that there was no one touching the trigger? And all I'm asking for now is should I use complaint, should I use -- a term that is acceptable and I can just use it, or a --

MR. BAKER: Mr. Collier, the question is, you asked the witness what he remembers. You haven't yet -- You're sitting there, it looks like, with six depositions and a sackful of documents that might refresh his memory, I don't know, but you haven't asked him anything specific, other than what he remembers he has told you. The question's been asked and answered. That he remembers there was two meetings. There was the discussions about the Model 700 and a particular phenomena that had been alleged. I think it would be better to ask the witness -- he's already answered your

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question. So we're really ready to move to another area of concern.

MR. COLLIER: The witness has answered my question?

MR. BAKER: Yes, sir.

MR. COLLIER: All right. Obviously, I need to ask another question. I'll just do that.

BY MR. COLLIER:

Q. Was there, by the Safety Committee, a survey ordered to determine whether or not there were accidental discharges of the Remington Model 700 rifle when no one would be touching the trigger?

A. I'm not sure if the subcommittee ordered it. I remember the first meeting we discussed on this problem, there had been an audit going on for about six months prior to the meeting. Now, what originated that audit, I don't know.

Q. And was the audit or survey made, if you know?

A. As I -- As my recollection of that -- that meeting was, that there was -- had been an audit of incoming 700 rifles. Incoming, meaning rifles would be

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returned to the plant for repair, service or whatever reason they would come in to the Ilion plant. And starting about, I guess it was the summer of 1978, those 700s would be tested to see if they could trick. And the trick condition is what I described previously, you put the safety lever in the mid-position between off and on, pull the trigger, and remove the safety to the fire position, or off position, and the gun at that time would fire.

Q. And was this survey or report or whatever, was it acted upon by the committee in making a determination of whether or not to recall the Model 700?

MR. BAKER: I object to the form of the question. There has not been a question asked or any suggestion or any evidence here that there was a determination made nor that there ever was a recall during this time frame that you're talking about here. Ron, you must have some sort of documents or information that could help the witness along on some of these matters that occurred in '78 or '76 or whenever we're talking.

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MR. COLLIER: I do, and I'm going to present those to the witness. And I'm trying to put together the framework in which those -- the exhibits will be placed. And so I'm doing it, perhaps tediously, and I'm sorry about that. That was --

BY MR. COLLIER:

Q. My question is, was there a determination to recall the Model 700 and --

MR. BAKER: I didn't understand that to be your question. That can be answered yes or not. Excuse me. I didn't understand that.

MR. SHAW: I think the witness is trying to be helpful. And it's clear on the record that he has some recollection of these events, but as you have acknowledged, I think you have got some documents or exhibits that might be fair to present to the witness, rather than have him try through independent recollection to recall details that might more appropriately be contained in exhibits and then we would have the unfortunately situation otherwise of him

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inadequately recalling a particular detail. I know you want to be fair with the witness and not have him make an effort of independent recall that would have the date out of order, or some mistake with regard to the numbers involved or some other detail. I know that you're just trying to get some general information, but I think you have more specific information contained in the documents, themselves, that could assist him with this testimony.

MR. COLLIER: I agree with that. And we'll get to that point. And I'm still working on the outline. And this -- I'm trying, first, to go just -- We're talking now. I'm sure this will not ever be displayed to the jury. I'm working trying to set things in on the 700 and then I'm going to ask the question, which I think will be proper, but it may be ruled out, about the 600. So I'm skirted away from this area. I'm going to go at it in a quick form here, and then we'll go to the

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documents.

MR. SHAW: All right. Let's have the question back, and I think your question was, was it ever determined that the 700 should be recalled?

MR. COLLIER: I'm going to go back to another question.

MR. SHAW: All right.

BY MR. COLLIER:

Q. Mr. Sperling, what called the attention of the Safety Committee to the Model 700? You suggested in an earlier answer that the attention was called to the 700 by some other event?

A. Yes. The event was the Model 600.

MR. BAKER: At this point, Counsel, obviously he knew what the answer was going to be to that question and counsel elicited that answer. If it's satisfactory, Mr. Collier, we'll ask to have a continuing, complete, constant, substantive objection to any reference to the Model 600, and that Model 600 is not involved in this lawsuit. It's not

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relevant to the issues in the lawsuit. It has a different fire control mechanism. It was a different rifle. If we may have that continuing objection relative to anything having to do with the Model 600 or any other model than the 700, it will obviate the necessity of us making that continuing objection and interrupting your line of thinking. Is that satisfactory, sir?

MR. COLLIER: Yes, that has been your practice all the way through, and we understand that, and that's why I've been doing it in the way I have.

BY MR. COLLIER:

Q. Mr. Sperling, would you tell us about what problem the Model 600 had for which some investigation was made?

A. Well, the problem that was being investigated on the Model 600 was what we referred to as the trick condition.

Q. And you described the trick condition for us earlier?

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A. Yes.

Q. And how did you find out about this problem or trick condition in the beginning?

A. My recollection is that sometime in the mid-70s, we received a letter from an individual down in Texas. The gist of it was that he claimed he was playing with the safety of his rifle, which was the Model 600, and he put in -- pretty well described the trick condition. And he was playing with it at a time when he had a live round in the chamber. And when he moved the safety off, after pulling on the trigger, and setting up the trick condition as I have previously described, his gun discharged, and did quite a bit of damage to the pickup truck. We asked to see the gun -- when I say we, I'm talking about Remington, now -- and we looked at the gun, and did what he claimed he did, and the gun did trick. And at that time there was an audit taken of Model 600s, and I'm not sure of the percentage, but there was a rather large percentage of that audit showing guns would be susceptible to being tricked.

Q. The 600, more than 50 percent of them would trick, would they not?

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A. About that figure. I'm really not clear now what exactly was -- the percentage was, but it was around a 50-percent figure.

Q. And then the Safety Subcommittee had this information in hand, and considered at that time recalling the Model 600, is that correct?

MR. SHAW: If you know. I'll object to your leading the witness. And again, I know you're trying to be fair with him, but you may have some documents that you could present to him to refresh his recollection as to what happened some 13 years or so ago, if it would have been in the mid-70s, as he recalls, and now you're asking him fairly specific details. And you're even referring to percentages which he, himself, cannot recall, probably because you went over these documents yourself last night.

MR. COLLIER: Well, that's true. What I was finding was that when I tried to find the document and get it ready and then ask the question, I'm being disjointed. Whereas when I

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ask the questions one right after another, as I recall them -- I might not be on the mark. I'm certainly not going to try to mislead the witness -- that then I can put together the sequence of events, I think, in a reasonable way, and that's why I'm doing it here. Certainly, I'm going to go back and you're going to have the documents, and we'll understand that this is just your best recollection at this time.

MR. SHAW: But the trouble I have with that, Ron, then when it comes time to your wanting to make use of this deposition, and this deposition will have some longevity, as apparently do other depositions that you've got stacked before you this morning. Someone may not be as fair as you indicate you're going to be and not rely upon the excerpt where we're going with general recollections, but rather, that's all they'll pick out, is this generalized testimony without the witness having the benefit of the exhibits or

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documents. And you're saying you're going to get to it later, and then we're going to have two depositions.

MR. COLLIER: We'll get to it later.

MR. SHAW: I just think it would be fairer to the witness if you're going to try to get to details, to let him have the documents at his disposal, so that he can refer to them rather than saying what did you do 13 years ago.

MR. COLLIER: On the night of January 12th, to be precise. I understand the objection. Nevertheless, I'm just going to insist on handling it in this fashion. If I'm wrong in it, my questions will all be thrown out.

MR. BAKER: It's almost going to be necessary, Ron, unfortunately, for the witness to preface every statement, every answer that he gives you, that these are matters that occurred somewhere between 10 and 13 years ago, and that he does not have an immediate recall and definite recollection, and he'll be

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required, to some extent, to guess, to speculate without the documents that you have in your possession. And I think he'll almost be required to preface his statements that way, so that the record will be clear for your use and as is suggested by Mr. Shaw, for someone who might not be as fair and might attempt to excerpt from this deposition something that would not be in fairness with the witness. It's going to burden the record to some extent, but I think that the question will have to be answered in each instance. But this was a matter that occurred some 10, 13 years ago, not having the document available to look at or that you have in your possession, he'll have to do guessing. We don't want him to guess or speculate. We prefer that he look at the actual documents and be as accurate as possible.

MR. COLLIER: Now, that is something that is a concern, because I find it a strange position that I have your documents, and

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evidently, you do not have your documents. And I'm going to ask about that, because the documents that I have are -- we'll be going over them in just a moment -- they are hardly legible in many cases, and I wonder if, particularly the minutes of the Safety Subcommittee, if those minutes are intact somewhere in a nice clean form that we might have?

MR. SHAW: You mean here in Ilion?

MR. COLLIER: No, just in existence.

THE WITNESS: I'm sure they're still in existence.

BY MR. COLLIER:

Q. How about Gun Exam Reports, do you know if they are still in existence from -- back from the time about 1975 down to the present time?

A. I wouldn't know.

Q. All right. Did Gun Exam Reports come across your desk in your capacity at that time?

A. No.

Q. Were Gun Exam Reports ever directed to your

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attention, say in a blind copy or a copy for your use in connection with any kind of litigation or whatever?

MR. SHAW: Well, I'll object to the form of that question, insofar as --

MR. COLLIER: I'll withdraw it.

MR. SHAW: Thank you.

Q. Did you ever receive, to your knowledge, as a routine for even a short time, copies of the Gun Exam Reports?

A. Not that I remember. I may have gotten them in compiling documents for discovery, but in the ordinary course of business, I wouldn't have received them.

Q. When the reports or survey of the number of Model 600 rifles was communicated to the Safety Committee, was there a decision made at that time not to recall the rifle, but rather to go on a process or public education process of safe gun handling?

MR. SHAW: Again, I object to that question. It's vague and ambiguous, and the witness is now being asked to generally recall things. And I think, from my understanding, you've got things confused, Mr. Collier, by

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your question. It was misleading.

A. If I understand your question correctly, you said when we had the survey and audit of the Model 600?

Q. Right, that when you got that survey back, the report was a very large percentage, certainly over 50 percent, I don't know exactly on that figure, the guns could be tricked, but that then taking that information to the Safety Subcommittee, said what we're going to do is we're going to educate the public, because of this fact, because of this condition?

MR. BAKER: The problem is, that is a leading question. Maybe it would be better if you ask him a question, Ron, based on his recollection of some 10, 13 years ago, when they received the audit that he's told you about, very frankly, he does recall from way back then what was done, rather than and you attempting to characterize in your own words, and leading him into something that may or may not be inaccurate. Ask what happened.

MR. COLLIER: I'm going to ask the question my way.

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MR. BAKER: We object to the form of the question.

A. I don't remember that being decided at that time.

Q. All right. Was -- Was there then a decision made based upon the report to recall the Model 600? Let's just go to those records. I can find those records.

MR. COLLIER: Let's go off the record for the moment.

(Discussion off the record.)

MR. BAKER: Mr. Collier has been kind enough to start going through and locating a group of documents from his file. He's indicated what the first one is that he's referred to and we'll refer to as Number 39. The record should reflect that the document actually handed to the witness in each of these instances do not really have the Number 39 on them. However, they come from a file that Mr. Collier is maintaining that will indicate that the document in there is Number 39. Mr.

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Collier has agreed that he will retain the documents, actually get the number on to the document, itself, and that he'll white out or clean up the extraneous writings which may be from other persons not associated with Remington, exhibit stickers and so forth, about whitening them out or whatever process, so that we'll have clean copies of these various documents. Likewise, it has been agreed that defendant Remington, does have a continuing objection substantively to any of these documents relative to the Model 600 or any other model than the 700 and relative to any alleged problem other than the allegations that are in this lawsuit. We are reserving all of our substantive objections concerning hearsay, best evidence, irrelevance, immateriality, and so forth, until the point in time there might be an attempt to introduce any of these documents. And I think that is in essence where we have been all the way through, Ron, is that accurate?

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MR. COLLIER: That is correct.

BY MR. COLLIER:

Q. With that -- With those conditions placed upon it, and that understanding, I ask the witness now to identify, if he can, Document Number 39. And having examined it, Mr. Sperling, can you identify that document?

MR. SHAW: By identify, I'm not sure I understand. You're asking him if he's seen it before or can we read what it says?

MR. COLLIER: Well, identify it first. I'm sure if he tells me, yes, I know what it is or I can identify it for you, then he can explain what it is and which parts of it he recognizes, if he does recognize any part of it.

MR. SHAW: Well, again, before the witness starts in, we have offered outside of the confines of the depositions and without having to take up the time in the depositions so that you might get on to other sorts of questions, to work with you to identify particular

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documents. And with regard to your questions with Mr. Sperling as to whether he's seen particular documents before, I know that you're not attempting to invade the province of attorney/client privilege or work product with respect to he may or may not have seen them in his capacity as house counsel and in assisting Remington in the defense of lawsuits, preparations of response to discovery, so on and so forth. And I take it, what you're asking him, is if you get down to whether he's seen documents, whether he's seen them in his capacity as is the frame of reference for these questions and his capacity as a member of the -- Strike that. Being present, his capacity of being present at times in the Safety Subcommittee meetings, is that --

MR. COLLIER: Yes.

MR. SHAW: You're not trying to get into what he's done as an attorney for Remington?

MR. COLLIER: No.

BY MR. COLLIER:

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Q. Can you identify Document Number 39 for us?

A. Well, given the discussion we just had, I don't remember seeing this document in the context of a Product Safety Subcommittee meeting.

Q. Let me ask you if you have testified at prior times in cases involving accidental discharges of Remington rifles concerning that very document?

MR. SHAW: Well, I'll object to the form of that question, if that's an attempt to impeach Mr. Sperling, then you have to provide Mr. Sperling with more information regarding that prior testimony than you have.

MR. BAKER: The problem would be, Ron, what we're dealing with is the matter of privilege. And we obviously must make that objection and we continue to. You have indicated you don't wish to go beyond that. If you were inclined to ask him a question concerning that, whether or not he recalls testifying on that document, as to having recalled seeing it, having been present at the Product Subcommittee meeting, that might be all

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right. If you have something you wish to impeach him on, you should then show him the testimony if it was earlier and it would be an assistance to him in his memory recall.

MR. COLLIER: I only went this direction because I thought that was the way you wanted me to go. I'm withdrawing the document.

MR. SHAW: We can't force you to do it any way, and I wouldn't pretend to you Ron. I thought what you were going to do when you pulled the documents out, since we were talking about Product Safety Subcommittee, and what happened at a particular point in time, that you were going to pull out the Product Safety Subcommittee minutes for my review of the box full of information that you presented to us last week, you got, and go through those and -- But that was not the Product Safety Subcommittee minute. And he told you he doesn't believe he saw it by the virtue of being on this committee, but there's other exhibits that would get you to where you're

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trying to get in terms of what happened back in
the 1970s.

BY MR. COLLIER:

Q. Mr. Sperling, I'm going to hand you what has
been identified as Document Number 21 and ask if you can
identify that for us, please?

A. This document is a minute of the Product Safety
Subcommittee meeting held on April 2, 1975.

Q. And can you tell us in quick summary of what
-- of course, you may not have reviewed that document
recently. Is this the first survey done of the Model 600
rifles?

MR. SHAW: I'll object to the form.

MR. COLLIER: I'll withdraw it.

BY MR. COLLIER:

Q. Would you read the document for us, please,
second page?

A. Into the record?

Q. Yes, sir, please.

A. "E.F. Barrett reported to the subcommittee that
Remington's examination of approximately 300 Model 600s
drawn from the stock of a Texas dealer revealed that

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about 80 percent of the sample could be 'tricked,' (using the safety to the midway position, then pulling the trigger) so as to cause the gun to fire when the safety is moved to the off position. More guns were found to fire under the following sequence of events. The trigger is pulled with the safety on and then the safety is taken off (hereinafter referred to as 'full safe condition'). These four guns have been returned to Ilion for further examination. At Ilion, a recheck produced consistent repetition of the problem in only one of the four guns. It was estimated that approximately 1,000 Model 600s were shipped from Ilion in January to return from this quantity should provide an adequate sample to analyze the nature and magnitude of the problem and calculate the number of guns that may be out in the field in 'full safe condition.' Committee action, immediate request to all Remington wholesalers to whom the Model 600s were shipped in January 1975, to return said inventory to Ilion for a quality audit. Every gun Remington examines and every gun which is returned to Ilion for any reason will be modified by substituting a longer safety lever, if it's found to be necessary to prevent tricking of the gun or

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to correct the full safe condition. The next meeting will be held at the call of the chairman."

Q. Did you sit in on that particular meeting?

A. Yes, I did.

Q. Do you recall if that is a business record, then, of Remington Arms Company?

A. Yes. That would have been the minutes of the meeting.

Q. Do you recall, then, if there was a recall of the Model 600 done that year, the year of this report, 1975?

A. I recall there was no recall of the 600 during that year.

Q. Can -- Do you recall whether or not that a similar condition was found to exist at that time, also from Texas, from the either Ewell Cross Gun Shop in Fort Worth, Texas, wherein or not several Model 700s were found to malfunction in a similar fashion?

MR. SHAW: I'll object to the form of the question. It's ambiguous as to the phrase similar condition or similar occurrence, for one thing.

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BY MR. COLLIER:

Q. Well, let me ask you if it wasn't reported to the president that 13 Model 700s, with some sort of another justified or unjustified malfunction, and the one that is most concerning, Fred Woodrick's Call Report on Ewell Cross Gun Shop, Fort Worth, Texas, and in that the writer of the memo, G.W. Martin, goes on to say, "I personally called Malcolm Cross to confirm that he did encounter 6 Model 700s that were malfunctioning."

MR. BAKER: Ron, the problem with that question would be, number one, it would take a quarter of a page to even write down; secondly, that there's no time frame involved; and thirdly, you're asking the witness to recall some very specific things that weren't even said to him that might have occurred some 10 or 13 years ago. I think we have to object to the form of the question.

BY MR. COLLIER:

Q. I, perhaps, did not give the date of that communication. May 20th, 1975. Do you recall such communication having been made to Mr. Barrett who was the
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head of the Safety Subcommittee?

MR. SHAW: You're asking him whether he recalls it, because he personally knew it back in 1975?

MR. COLLIER: No. I don't care how he recalls it, really. I think this witness knows this. I'm just going to ask him if that's happened, and what I'm asking for, did Remington know this back in 1975.

MR. SHAW: I'll object to the form of the question, Ron, because you have not laid the foundation for this witness to speak for Remington as to what Remington knew or did not know at a certain point in time. In fairness, you presented the witness with the very exhibit that you're now reading from with it sitting on your lap. And he said that he did not receive that exhibit to his recollection as part of his attending Product Safety Subcommittee minutes. Now you're reading from the exhibit, which you have given him an opportunity to briefly to look at. The exhibit may say what you have

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read, but to try to say, do you know that and can you speak for Remington as to that occurring, I believe is an improper question, because you haven't laid the foundation that he can speak for Remington on that.

MR. BAKER: Beyond the attorney/client privilege.

MR. COLLIER: Well, then, let's do it a different way.

BY MR. COLLIER:

Q. I'm going to hand you the document and ask you to review it. And this is Document Number 48. I have earlier handed you that document and after some difficulties, I withdrew it. And I'm asking you to look at it again. And further, I ask you in connection with your --

MR. BAKER: I don't believe -- I don't have any note of Exhibit 48. I may be mistaken.

MR. SHAW: You handed him 39 before.

MR. BAKER: I don't remember you handing him Number 48.

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MR. COLLIER: Okay. What happened, this is a duplicate.

MR. BAKER: Here we go again. So that's the same thing, then?

MR. COLLIER: I believe so. Certainly I don't mean to --

MR. BAKER: Except on top of everything else, this has got some of your famous red writing on it.

MR. COLLIER: That is why that one was not presented before.

MR. BAKER: Do you want to take that back, assuming Number 48 is garbage?

MR. COLLIER: Yes.

BY MR. COLLIER:

Q. I have duplicated that document and here it is under its name 39, and ask you to look at Document Number 39 one more time and I'll ask this in the way of whether or not you can identify that document for us beginning with the first page, that first page, without the court and jury, please, approximately how many times have you reviewed that particular page?

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MR. SHAW: I'll object to the form of that question. First of all, again, I thought that we had an understanding, Mr. Collier, we weren't going to be invading the attorney/client privilege or work product. If you're asking if he reviewed this in his capacity as an attorney for Remington with regard to particular cases, I think that's a highly objectionable question and it may be somewhat innocuous on its face, just asking him, first off, whether he reviewed something. I'm inclined, if you will tell me that's your intent, to get into the attorney/client privilege materials and issues, to instruct him not to answer. If you want to ask if he reviewed this document in preparation for this deposition, that may be a more appropriate question. If you want to take up your time to have him read it into the record, even though he says it's not addressed to him, it's not something that he saw with regard to the activities with regard to the Product Safety

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Subcommittee, that is your choice, but I'll object to that question.

MR. COLLIER: I'm well satisfied with the question. Counsel has interposed, I think, an objection based upon this witness can't understand what's in this report because he's just seen it today. Maybe he doesn't have it in his file or whatever.

MR. SHAW: No, no, that's not what I'm doing. What I'm doing, Ron, is I'm saying this is a memo from a Mr. Martin to Mr. Barrett. You have taken, for example, Mr. Barrett's deposition in January. And I can't recall at this time whether you presented him with this document, because he certainly could have discussed it with you. But now at this juncture of the case to present this document to a witness who's neither an addressee of the document nor the author of the document, and ask him to speak to it and explain it is an improper question. And you haven't laid the foundation for the witness to have the

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competency. And I don't mean intellectually, you may as well ask me the same question, to read it and give you my interpretation of it. I'm talking about basic evidentiary requirements that the witness have the competency to sponsor this document and explain it.

MR. BAKER: Ron, the problem is, the witness told you early on that he had not seen this document outside of the attorney/client privilege situation. He had no recollection of having seen it while being present at one of the committee meetings that you inquired into. That, then, puts him into the position, as Mr. Shaw would say, if you're asking the same question of Mr. Shaw, with an attorney/client privilege, which I know you wouldn't ask, that is our concern. We're not intending to be tedious. I think that's inappropriate. And you have deposed the person that your document would indicate, in fact, was involved in the memo.

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MR. COLLIER: Well, that just mystifies and amazes me. If it does indeed do what you claim attorney/client relationship, privilege, on a document from one officer of your corporate defendant to another officer of your corporate defendant, all I'm asking this corporate employee is whether or not he reviewed this document and knows if they got it at that time.

MR. BAKER: He already said he doesn't recall that document, having seen it while he was on that committee, which would be the time referred, and he's already testified to that, he doesn't recall seeing it in that context. He told you that.

MR. SHAW: But your question is to him, do you know if Mr. Barrett received Mr. Martin's memo, is that your question?

MR. COLLIER: I don't know what the first question was -- Here's what I want.

MR. BAKER: Try to frame it within the understanding of our attorney/client privilege

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requirements. And I think he's answered the question.

MR. SHAW: We're concerned about that, of course, and we're certainly not going to waive that, but that is not the only issue, and I think you understand that.

BY MR. COLLIER:

Q. I want to know if you can tell the court and the jury whether or not the management of Remington Arms Company had the information that is on that document before it as of the date shown on the document?

A. I don't know.

Q. Tell me who Mr. Barrett is? At that time, what was his position?

MR. SHAW: If you recall, in 1975. And again, this is only his general recall. Since you had Mr. Barrett for his deposition, you could have --

MR. COLLIER: I have asked him in terms of what he was doing in 1975, in terms of his position.

A. I would have to guess between two positions.

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MR. SHAW: We don't want you to guess.

BY MR. COLLIER:

Q. What two positions?

A. He was either assistant to the Director of Research or he was the Director of Research.

Q. Now, and unless I have had a serious lapse of memory and unless his job description changed in one month's time, he was head of the Safety Committee for Remington Arms at that time?

MR. SHAW: If you recall.

MR. COLLIER: Well, the witness has testified just one brief moment ago -- Well, not a very brief moment ago, maybe it was 10, 30 minutes, yes, here are the minutes and yes, our chairman was E.F. Barrett. That was Document Number 21.

MR. BAKER: Well, you can ask him if that is what he recollects, Ron. You didn't ask him that question before who was the chairman of the committee at that time, but you can hand it to him and ask him that.

BY MR. COLLIER:

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Q. I want to establish here -- and all of this is for reasons of foundation -- and I notice that in April and May of 1975, it had been brought to the attention of the Safety Subcommittee that there were malfunctions reported for the Model 700 and Model 600, but I'm dealing right now with the 700. So the question is, did the Safety Subcommittee have this report and the information available to it in April and May of 1975?

A. My participation, as I remember it in 1975, the Safety Subcommittee didn't discuss this report or, as I remember, any information on the 700s. Ed Barrett was either Director of Research or assistant Director of Research. That was his position in the company. He also chaired various committees as other officers did, also. He was the chairman of the Product Safety Subcommittee. This memo is addressed as of May 20, 1975, to Ed Barrett. Whether he received it, I don't know. I have no information one way or the other.

MR. COLLIER: This may be a separate memo.

It may be a part of the same one in the file that I have as part of the same document number, and it's for limited distribution

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entitled, "Product Safety Meeting, Bolt Action Fire Controls, April 23, 1975." It shows that it was directed to various individuals in Remington including Mr. Sperling. And I ask for him now to look it over and see if it refreshes his recollection as to whether or not the Model 700 was also to be investigated.

MR. BAKER: Now, Ron, so we have our record straight, that is from your little file, for Exhibit 48, of what you had just handed the witness and you just identified verbally, is that correct, sir?

MR. COLLIER: Yes. That is from 48, and 48 and 37 are the same.

MR. BAKER: You mean 48 and 39. But in -- I haven't -- You took that out of your little 48 file. And, likewise, isn't marked with the numbers, I guess, from the things that come from the same file, that have the same file. You'll simply have to identify it by its date and what it is, and that it would end up having the same number when you get them all

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organized for us, is that right?

MR. COLLIER: I see why we have two different document numbers. That has only the front page, in the first place, and this one has the first page, second page.

BY MR. COLLIER:

Q. I'm going to ask you to look at both of these, please.

MR. BAKER: Of the same memo?

MR. COLLIER: Same.

MR. BAKER: Are you going to just get rid of just the first page?

MR. SHAW: Can we go off the record?

MR. COLLIER: Yes.

(Discussion off the record.)

(A short recess was taken.)

MR. COLLIER: We're back on the record after our recess for lunch. The video is off because we're going to do some record identification that would be tedious and we may have to do just heavy editing with it.

BY MR. COLLIER:

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Q. I hand to the witness Document Number 81 and ask him if he can identify that as a business record of Remington Arms?

MR. SHAW: As an outset and standing objection, I may have some trouble for your calling to -- for this witness to make a legal conclusion to what is or is not a business record, but I'm not going to instruct him not to answer. I do want an objection. Can I have that as a running objection as to form?

MR. COLLIER: Yes.

MR. BAKER: Off the record.

(Discussion off the record.)

MR. SHAW: With regard to this exhibit, which is Document Number 81, I would point out that it's the copy of an excerpt. One problem I've got with it, is part of it is lopped off and there's a gray line that I pointed out to the witness, which indicates something may or may not have been copied very well.

A. Yes. I recognize this as a copy of one of the
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pages of Remington's Record Control Schedule.

Q. Do you know whether or not Gun Exam Reports would fit into the category of Gun Repair Records or Repair Guns?

MR. SHAW: If you know.

Q. If you know.

A. I don't know.

Q. All right. Thank you. I hand you what has been numbered Document Number 40 and ask if you can identify this as a business record of Remington Arms?

A. This is a copy of a memo from -- from a Remington employee to another Remington employee. It looks like a business record of Remington Arms.

Q. And the heading of that is, "Instruction Folder, M.H. Walker has requested to change the falter to no trigger. Adjustments are not recommended."

MR. SHAW: Well, the heading is, "Model 700 Instruction Folder."

A. Yes, that's right.

Q. I hand you what has been numbered Document 166 and ask you if you can identify this as a business record of Remington Arms, specifically Minute Number 3 of the

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Operations Committee, Product Safety Subcommittee? We may have done that earlier.

MR. SHAW: Again, this is one with red writing on it. I understand that I need not worry about that, because we're going to white all this stuff out, is that correct?

MR. COLLIER: That's correct.

A. This is a minute that was taken of the meeting of the Remington Arms Product Safety Subcommittee.

Q. Thank you. I hand you what has been marked for identification purposes Document 76, and ask you if that is a business record of Remington Arms?

MR. SHAW: With regard to this one, this is a similar type document as before, which is one that does not reflect on the face of it any involvement Mr. Sperling had with it, although he may be able to identify the names of the individuals as being employees or former employees of Remington, I don't know.

A. This is a memo from E.F. Barrett, who we have previously described his position, to R.L. Hall. As I remember, he was at that time the plant manager in Ilion,

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New York. And it looks like a memo that would be a business record of Remington Arms.

Q. I hand you, again, what we originally went over as Document Number 48, and because I don't believe this was ever acknowledged or definitely identified either as a business record or either as a document, I ask you to take a look at Document Number 48 and see if you can identify those as business records of Remington Arms?

MR. SHAW: How many of the things within this folder do you want him to identify?

MR. COLLIER: I want to know if all of those were -- are business records, because this is just the way we have submitted the documents to you earlier, so that, to match up, this is how we must do it.

MR. SHAW: So you have within this folder at least two separate stapled documents, is that correct?

MR. COLLIER: That's correct.

MR. SHAW: And you want to look at each one separately?

MR. COLLIER: That was the one we went Martin Murphy, C.S.R., P. C.

over earlier.

A. This is a cover sheet, a memo from G.W. Martin, who I recognize as a Remington employee, to E.F. Barrett, who we previously identified as a Remington employee, May 20th, 1975. It's on Remington letterhead and it's got various attachments, Gunsmith Call Reports and other documents. It looks like a memo that would have been written in the course of business in Remington Arms.

MR. SHAW: Mr. Sperling, can you speak to whether all the attachments there were originally stapled to this memo or go with it?

THE WITNESS: No. They're just attached right now. I don't know if they were originally attached.

BY MR. COLLIER:

Q. Would you look, also, at the two additional pages comprising one memorandum, but also under Document Number 48, and see if you can recognize that as a business record, also?

A. This is a -- seems to be a memo from E.F. Barrett to seven individuals who I recognize as employees of Remington Arms Company -- copies to six individuals

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who I recognize as Remington Arms employees, describing actions that were to be taken after a meeting of the Product Safety Subcommittee, which is -- it looks like a memo to be written by Mr. Barrett in the course of Remington business.

Q. Thank you. If you would hand me that document, I'll -- I hand you what has been marked Document Number 3 and ask you if you can identify that as an excerpt from a Remington document?

A. I don't recognize the format, but I recognize the subject matter of this particular excerpt having to do with the Model 700 and the Mohawk 600, but that's my only familiarity with it. I don't recognize where this may have come from.

Q. We need to put that in a separate stack, I believe. I'm handing you what has been marked Document Number 2 and ask if you can identify it as an excerpt from a Remington document?

MR. SHAW: Mr. Sperling, is this similar to Number 3?

THE WITNESS: Yes. This is similar to the previous one.

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A. It's the same format. I recognize the subject matter, but I don't recognize the format, the subject.

MR. SHAW: Do you want to go one by one?

MR. COLLIER: I would rather do it this way, because it kind of highlights our problem. We've got hooked up pages from documents, which we have difficulty even knowing what all the documents are or whatever, so we are trying to find out what we need to complete those documents.

BY MR. COLLIER:

Q. I hand you now what has been marked Document Number 4, and ask if you can identify that as an excerpt from a Remington document?

A. I recognize the subject matter. It's familiar to me, but I don't recognize the format.

Q. If you will return it?

MR. COLLIER: Counsel, I believe that our problem here -- my problem is that in prior cases, that the court has ruled that the rest of the documents could not be introduced, and so it's been whited out or whatever. So we

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have a portion of the document on which the court has ruled before, and I believe Counsel should be familiar with the ruling, I'm not positive on that, and perhaps can't bring it to mind at this time, but I'm wondering if -- if I could be made aware of whether or not my suppositions are correct that that is why we have a partial document here?

MR. SHAW: Well, that supposition is wrong, but I'm not really here to have my deposition taken. But this is the kind of thing we're willing to work off the record with you to get some of these things taken care of. Maybe we'll find the time to do that at some point.

BY MR. COLLIER:

Q. I hand you what has been marked Document Number 168 and ask if you can identify that as a Remington business record?

MR. SHAW: I do not believe that this is a Remington business record. I think it's something that has been retyped.

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MR. COLLIER: Could you clarify that for us?

MR. SHAW: Well, again, I'm not here to have -- I'm just trying to be helpful and also advise the witness with regards to something that I may observe or pick up on since he has not seen these documents for some time.

MR. COLLIER: If we were sitting here without the witness here, we couldn't be going any faster than we are right now. We're not going fast. It looks like we can say it is a business record, although you have to know it's been retyped. For instance, I can tell there's some change, because handing this to the witness now has the same wording, but we have different lines on that.

MR. BAKER: It's out of the same folder?

MR. COLLIER: Yes, same wording but different lines.

MR. SHAW: Well, something's been crossed through, obviously.

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MR. BAKER: Something's been blacked out. That's the problem. Neither of them have the same appearance as the same document, as the document that you asked the witness to look at previously.

THE WITNESS: Is there a question pending?

MR. SHAW: Not really, I don't think.

I'm willing to spend some time to authenticate things with you, but I don't think it's appropriate we do it with the court reporter and you asking me questions, whatever. I think that is if -- that is the way you can do it, but you can take your deposition of Mr. Sperling.

MR. COLLIER: I think I'll take my deposition with Mr. Sperling.

MR. SHAW: You can work with me and try to get this resolved, as I'm willing to do.

BY MR. COLLIER:

Q. The answer, then, is -- Mr. Sperling, is that -- that is not a business record of Remington Arms or is a business record?

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A. Well, certainly, I recognize the format and subject. That was the minutes of the Product Safety Subcommittee. Where my only concern is, that it's not signed. It may have been retyped or -- but I certainly recognize the subject matter and format.

Q. And it purports to have been authorized by you or --

A. That's right.

Q. Okay. Well, return that to me, please. Thank you. The answer, then, is it looks like a business record, it seems to have the same context as a business record, but it's not identical to a business record?

A. It may not be a copy of the business record. It looks like a duplication should of a business record.

Q. I hand you what has been marked for identification purposes Document 24 and ask you if you can identify those as business records of Remington Arms Company? Let me exchange that document for this document. It has two more pages to it.

MR. BAKER: Is the first page the same one?

MR. COLLIER: The first two pages of the Martin Murphy, C.S.R., P. C.

exhibit is attached. And this one did not have the exhibit attached.

MR. BAKER: I think I ought to take out the one that does not.

A. This certainly is. It looks -- I'm familiar with the format, familiar with the subject matter. This is a copy of the minutes of the Product Safety Subcommittee, Remington Arms.

Q. Thank you. I hand you what has been marked Document Number 29 and ask you if this document, entitled "Mohawk Model 600," et cetera, is a business record of Remington Arms?

A. Yes. It is the minutes of the Product Safety Subcommittee, Remington.

Q. All right. Thank you. I hand you what has been marked Document 27 and ask you if you can identify that document as a business record of Remington Arms?

A. Yes. It's the Product Safety Subcommittee minutes.

Q. I hand you what has been marked Document 26 and ask you if you can identify that as a business record of Remington Arms?

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A. Yes. This is the minutes of the Product Safety Subcommittee meeting of Remington.

Q. I hand you what has been marked for identification purposes as Document 41, and will point out to you, also, there's another designation on it of Plaintiffs' Exhibit 57 from a prior deposition. But referring to the document, could you identify it for us as a business record of Remington Arms?

MR. BAKER: With the understanding that the prior designation is going to go off of the exhibit and certainly won't be included in the record here.

A. This is a record from a Remington employee to nine people, who I recognize as Remington employees. It looks like it's written in the course of business for Remington.

Q. I hand you what has been numbered for identification purposes as Document 57 and ask you if you can identify the documents as business records of Remington Arms?

A. This is a list of serial numbers broken down to various models of 600 rifles to E.F. Barrett, we

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previously identified, to six other employees, who I recognize as Remington employees, by H.K. Boyle, who I recognize as a Remington employee and what was written in the course of business.

Q. I hand you what has been marked Document 58 and ask if you can identify it as a business record of Remington Arms?

A. Yes. This is a memo written by E.F. Barrett to four people, who I recognize as Remington employees. The subject matter is such that it would be written in the course of business.

Q. I hand you what has been marked Document 28 and ask if you can identify that document as being a business record of Remington Arms?

A. Yes. This is the minutes of the Product Safety Subcommittee.

Q. I hand you what has been marked as Document 25 and ask if you can identify this as a business record of Remington Arms?

A. Yes. This is the minutes of the Product Safety Subcommittee with attachments, which was attached at that time when it was written.

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Q. I hand you what has been marked for identification purposes as Document 30 and ask if you can identify that as a document -- business record of Remington Arms?

A. This is a document that is the minutes of the Product Safety Subcommittee. It's an original and a copy of it. I guess it's the same minutes. And the attachments I recognize as being attached at the time it was written.

Q. I hand you what has been marked Document 18 and ask you if you can identify that document as a business record of Remington Arms?

A. Yes. This is the minutes of the Product Safety Subcommittee.

Q. I hand you what has been marked Document 19 and ask if you can identify that as the business records of Remington Arms?

A. Yes. This is the minutes of the Product Safety Subcommittee.

MR. SHAW: What number was that, 19?

MR. COLLIER: 19.

BY MR. COLLIER:

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Q. I hand you what has been marked as Document Number 63 and ask you if you can identify that document as a business record of Remington Arms? Take into mind that it appears that certain portions of it have been excised or covered over in duplication. I would think that is what it is.

A. Yes, this looks like the excerpt from the minutes of the Product Safety Subcommittee.

Q. I hand you what has been marked for identification purposes as Document 83 and ask if you can identify this as a business record of Remington Arms?

MR. SHAW: Could I see 163 back, again?

MR. COLLIER: This is the first page. Are the first pages similar?

MR. SHAW: I think that this is the same as 163, it appears to me. You can check them out.

MR. COLLIER: Okay. The first three pages are the same as 163 and then this -- there are additional pages here, being a bulletin to Remington Arms and dealers, so that we obviously obtained the documents from two

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different places and one didn't have the bulletin on it.

MR. SHAW: Now, it appears that this one, which is 83, has an attachment, what may be referred to in the memo itself. It says there's a letter being made. A copy of this letter is attached by reference to a memo and to a letter, which makes reference to the date of February 8, 1979. That is probably the case. And, if so, maybe you don't need 163's excerpt, since 163 is only partial.

MR. BAKER: You want to pull 163?

MR. SHAW: You can just leave it. I'm just trying to make it clear.

MR. COLLIER: It will be a duplicate and we'll have to take it out.

BY MR. COLLIER:

Q. I hand you what has been marked for purposes of identification Document 163 and ask you if you can identify that as a business record of Remington Arms?

A. Yes. This looks like an excerpt from the minutes of the Product Safety Subcommittee.

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Q. I hand you what has been marked for purposes of identification Document 20 and ask if you can identify that as a document of Remington Arms?

A. Yes. This is the Product Safety Subcommittee minutes with an attachment, which was attached at the time it was written.

Q. I hand you what has been marked Document 82 and ask if you can identify that as a record -- business record of Remington Arms?

MR. SHAW: Let me see 165. Off the record.

(Discussion off the record.)

BY MR. COLLIER:

Q. Is Document 82 a business record of Remington Arms?

A. Yes. It's an excerpt from the Product Safety Subcommittee minute meeting and it has attachments that I recognize as attachments that would have been attached at the time it was written.

Q. Okay. Let's go to the next one. I hand you what has been marked Document 43 and ask if you can identify that document as a business record of Remington

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Arms?

A. Yes. This is a letter written to the Field Force of Remington recommending -- gunsmiths, I should say, B.R.L. St. John, who I recognize as a Remington employee, who would write this memo in the course of his business.

Q. I hand you what has been marked Document 31 and ask you if this is a document that you recognize as a business record of Remington Arms? And it appears to be an excerpt. And I would like to ask you, on the front of it, does it say "Minute Number 10"?

A. Yes.

Q. This is -- One is a more complete copy, because it has the attachments that I don't believe -- Yes, that one. And, if you would, see if those attachments are the proper attachments to the document.

A. Yes. This is an excerpt from the minutes of the Product Safety Subcommittee meeting and is an attachment. I recognize that as something that would have been attached at the time of its generation.

Q. Okay. Thank you. I hand you what has been marked for purposes of identification as Document 5 and

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ask if you can recognize that as an excerpt from the business documents of Remington Arms?

MR. SHAW: That appears to be, like, two, three, four and -- that we saw earlier?

MR. COLLIER: That's correct. That's correct.

A. Well, I recognize the subject matter. Model 700 indicates it's Remington. I don't recognize the format.

Q. We'll put it in our to-be-continued stack. I hand you what has been marked for purposes of identification -- Nope. This goes straight to be continued. I hand you what has been marked as Document 32 and ask if you can identify that document as a business record of Remington Arms?

A. This appears to be the Product Safety Subcommittee minutes. And there's one attachment that I recognize as being attached at the time it was written.

Q. I hand you what has been marked Document 64 and, although you do not appear to be one of the parties shown on the document, I ask you if you can identify that for us as a business record of Remington Arms?

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A. This is a memo from J.H. Hennings to J.R. Snedeker, with copies to Mr. Workman, Mr. Brooks and Mr. Fanelli, all of whom I recognize as Remington employees. It's written on a Remington letterhead. It looks like a memo written in the general course of business for Remington Arms.

Q. I hand you what has been marked Document 59, which purports to be a Remington Arms Company memo from A.J. Long to J.H. Hennings, and ask you if you can identify that for us as a business record of Remington Arms?

A. This is a memo written on Remington format from A.J. Long to J.H. Hennings, copies to four individuals, all of whom I recognize as Remington employees. It looks like it would have been written in the regular course of business.

Q. I hand you what has been marked Document 173 and ask you if you can identify this as a business record of Remington Arms?

MR. BAKER: Was that 173?

MR. COLLIER: 173.

Q. This one has an attachment. I don't know if

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it's supposed to or not.

MR. SHAW: That document goes with it.

MR. COLLIER: That doesn't go with it.

Let me tear it up.

A. This appears to be a letter to or from two gunsmiths. There's a copy to an E.B. Spencer, who I don't recognize, who I -- E.G. Larson, as an employee who I do. The subject matter seems to concern 3200 Model 700s. And there's a reference to Model 1100. All I -- which I recognize as Remington firearms. That's all I can say here.

Q. Okay. I hand you what has been marked as Document 158, which purports to be a Gunsmith Call Report, and ask if you can identify that as a business record of Remington Arms?

A. This document is a Gunsmith Call Report written -- The reporter is F. Woodrick, who I recognize as a Remington employee, concerning his visit to the gun shop. It looks like it would be a Remington document written in the course of business.

Q. I'm not going to give the rest of these documents to you, because they concern, for the most

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part, Gersk, G-e-r-s-k, which I understand did not go to you?

A. Right.

Q. I'm ready to go back on the record. We have done as much --

MR. SHAW: Go back on the video, because Kathleen has been working assiduously in keeping up with you.

MR. COLLIER: All right.

BY MR. COLLIER:

Q. We have been going over some records to get them identified as best we can. And I now have gone back to the format of various questions based upon the facts in general as opposed to facts very specifically as to who was at certain meetings, and so forth. Mr. Sperling, did you have an opportunity while you were a member of the Product Safety Committee -- |

MR. SHAW: Why don't you amend that question so I don't have to object, since I think the record reflects he was not a member of the committee, although he attended certain meetings.

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BY MR. COLLIER:

Q. Is that the case, Mr. Sperling?

A. That's right.

Q. You were recording secretary, is that correct?

MR. SHAW: No, that's not true.

A. No. I attended the meetings, and on occasions, when the secretary was not there, I would be acting secretary.

Q. I see. As such, did you get to listen in and know most of what the Product Safety Subcommittee took up in the way of an investigation into the fire control system of the Remington Model 700 rifle?

A. I was present at the meeting where this was discussed. The actual investigation, examination and evaluation would have been outside the committee. The committee would have delegated that to the technical engineers, and so forth.

Q. Was anything brought to the committee, if you know, of the high number of reports of accidental discharges with -- that occurred at a time of unloading the rifle?

MR. SHAW: Now, I'll object to the form of
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the question as being argumentative and also a misstatement of the record with regard to whether there were a high number of claims with regard to the Model 700 rifles and all the ambiguity of it, as to claims of accidental discharge, or however you worded it, with the rifle being unloaded, which is not the claim in this case as inappropriately framed.

MR. COLLIER: I meant to say, if I did not say, of reports of accidental discharge while the rifle was being unloaded. Is that not what I said?

MR. SHAW: If you said it, that is still my objection. I think that is what I said and I still see that as objectionable, because I think that is overly broad and vague. But those are my objections, if you want your question.

MR. COLLIER: I'm going to break them down and take it one at a time.

BY MR. COLLIER:

Q. Did the time -- During the time when you were
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sitting with the Product Safety committee, did they receive reports of accidental discharges of the Model 700 Remington rifle?

MR. SHAW: I'll object to the form of the question, because I think that one that has been asked and answered, when the witness said that each individual complaint with regard to any product would not have been brought to the attention of the committee on an individual basis.

BY MR. COLLIER:

Q. Okay. The question, if you could answer it?

A. Of course, I could answer that better if I saw the minutes of the particular meetings we're talking about. But just thinking here, as I sit here, independently, I can't think -- I can remember a discussion of the Product Safety Subcommittee about problems with the 700 from the standpoint of unloading.

Q. Do you understand, personally, yourself, how the Model 700 fire control system was constituted at a time prior to 1982?

MR. SHAW: Objection, vague, beyond the
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comprehension.

MR. COLLIER: Let me do it again. I can do it again. I can ask another question.

BY MR. COLLIER:

Q. And the question will be, starting in 1975, which, from the records, I see is a time when something was called to the attention of the Remington Arms administration --

MR. BAKER: Ron, we've got to object right there, because that's not a question. You're testifying. Could you ask him a question? It will shorten up this. I'm sorry I interrupted. That is the only reason I object. I didn't want you to finish a whole long diatribe. Understand, it will shorten it up.

MR. COLLIER: I certainly appreciate it.

BY MR. COLLIER:

Q. In 1975, were there -- Did Remington Arms receive any notice about an inadvertent firings of the 700 rifles?

MR. SHAW: I object. First of all, that calls for a conclusion, which even may be a
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legal conclusion with respect to the phrasing "notice."

Second, I believe the witness has already indicated that his lack of competency to speak, in particular for Remington Arms, regarding what notice Remington received at any period of time --

BY MR. COLLIER:

Q. Could you answer that question, Mr. Sperling?

MR. SHAW: Do you want it read back so he can hear the question?

THE WITNESS: Well, maybe I better.

(The last question was read by the reporter.)

A. I guess the question is, in 1975 do I know of any notice that Remington received about the 700 inadvertently firing?

Q. Yes.

A. As I sit here today, I don't remember any particular notice in a particular year. It's just -- I just can't think that far back.

Q. Do you recall the report from Ewell Cross Gun
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Shop in Texas?

MR. SHAW: Are you asking -- I think you have been through that as an exhibit or as an attachment to an exhibit, which the witness said he does not recall seeing.

MR. COLLIER: If that's the witness's answer, I'll go with it, but I need to know if that is the witness's answer.

A. In 1975, as I remember it or don't remember it, I don't remember any report from Ewell Cross.

Subsequently --

MR. SHAW: Then that's your answer, I guess. You don't remember a report from Ewell Cross.

A. (Cont'g.) -- in 1975, I don't remember knowing of a Ewell Cross.

Q. Subsequently, have you learned of a notice from Ewell Cross Gun Shop?

MR. SHAW: Now, I'll object to that, insofar as it seeks to invade the attorney/client privilege or the protection of the work product doctrine with regard to

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what Mr. Sperling may or may not have learned in his capacity for attorney for Remington Arms in defense of Remington cases. And I don't think you're trying to get at that, Ron, isn't that correct?

MR. COLLIER: Well, if -- that was not the point of the question. The question was, I thought this man had sat with -- I want to know what he did. He sat with the Safety Subcommittee. And I'm quite convinced that the record will show, if I can ever get to the record to show, that they got a report of some 700 rifles misfiring or inadvertently firing. And I thought it was in 1975. And that's what I -- it's wrong, I want to finally nail down, when did they get this information from the Ewell Cross Gun Shop.

MR. BAKER: Well, Ron, you asked about that earlier in relation to specific exhibits.

MR. COLLIER: I think I had just about as much success as I'm having at this time, and I'm worried about that.

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MR. BAKER: Well, you ought to get the exhibits in front of him, if you wish to ask about a specific -- I remember you had some exhibit that said something about Cross. And my memory is the witness indicated that he had no independent memory of seeing that at the point in time of whenever the exhibit was originated.

MR. COLLIER: I think --

BY MR. COLLIER:

Q. Would you remind me of that, what that answer was?

A. What I'm trying to say, in 1975, as I sat with the Product Safety Committee, as I remember it, without seeing the minutes in front of me, I can't remember any discussion about the 700. All I remember at this point is discussions about the 600 and examinations of the general bolt action rifles in general. I don't remember anything about a particular claim against the 700. Since then, I have become aware, through my capacity as corporate counsel, that there was a memo apparently written by a Remington employee concerning his trip to

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a Ewell Cross Gunsmith. I don't remember knowing that in 1975.

MR. BAKER: As we've indicated previously, although the witness has been allowed to answer the question, the question elicited an appropriate response, which is an objectionable question and response, and we do object.

MR. COLLIER: Well, it's difficult here to try to ask the witness questions that are proper as by reason of his being acting secretary of the Safety Subcommittee and steering away from any privileged positions that he would have.

MR. BAKER: It's not difficult, Ron. In fact, you've done it rather well. You asked him what do you remember being -- as being on occasion as acting secretary of the committee, not a member of the committee. As a member, he told you if he did or did not remember specific things, and you stopped there. That is our only problem.

MR. SHAW: The problem, Ron, is you have Martin Murphy, C.S.R., P. C.

the wrong witness here.

MR. COLLIER: Whisper the name of the witness.

MR. BAKER: You have already taken the witnesses that were on the committee and members of the committee.

MR. SHAW: Well, not bad. And then the witness, Mr. Barrett, who was the recipient of the memo that you keep asking questions about.

MR. BAKER: You've taken his deposition, Ron.

MR. COLLIER: I realize that. I thought that this witness knew that I had that information and would agree that, yes, they did have notice in 1975 of the guns in Texas, both 600s, of which he recalls, and the 700s, of which there were a report of 13 in the memo.

MR. SHAW: Well, he has not -- Off the record.

(Discussion off the record.)

BY MR. COLLIER:

Q. This, perhaps, then, this has never been done
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by you as the recording secretary or acting recording secretary for the Product Safety Committee. Has there been any type of profile brought before the Product Safety Subcommittee while you were there, present, outlining that a typical claim of accidental discharge when no one touches the trigger of a Model 700?

MR. SHAW: Objection, vague.

A. I really don't follow that profile.

Q. Here is what I'm wondering. If -- Wasn't the job and didn't the Safety Committee look into the claims of accidental discharge of the Model 700?

MR. SHAW: That one's been asked and answered.

MR. COLLIER: Yes, but I've got to make a continuity of questions, or none of this makes sense. And so I've got to find out, what -- establish that, then you can go on to the next.

MR. BAKER: But, Ron, he's been asked and answered that as he sits here today, without some minutes laid in front of him, any concern of the claims in the 700 back in 1975. So, by definition, the question's been asked and

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answered without the aid of foundation on the next question you want to ask.

BY MR. COLLIER:

Q. Did you tell me that you couldn't remember, is that what it was the last time?

A. In 1975, I don't remember the topic focusing in on the 700 as such. I remember the 600.

Q. All right.

A. Now, are you asking me in '75?

Q. I want us to go forward in time, then, and I ask if you if, then, and subsequent to 1975, if later on the focus was on the 700?

MR. BAKER: And you're asking if he remembers that as sitting the committee and as secretary, as opposed to being a lawyer for Remington?

MR. COLLIER: That's correct.

A. I remember several meetings in '79 and '80 that discussed the 700.

Q. And did they explain the type of claims or complaints that were received?

MR. SHAW: I'll object to the form. It's Martin Murphy, C.S.R., P. C.

vague. I don't know who "they" is in that matter.

MR. COLLIER: I can do it better than that.

BY MR. COLLIER:

Q. Were the people making the reports to the committee, whomever they might have been, did they outline for the committee the way in which the claim that accidental firing where no one touched the trigger occurred?

A. My memory of these two meetings were that the issue before the committee was whether the 700 could be tricked, as I previously described, as could the 600 rifle. And all the reports and figures and data that I remember were directed and focused towards that tricking condition or lack of tricking condition in the 700.

Q. And did they find that the Model 700 could be tricked?

A. My best answer would be -- if I had the minutes in front of me, because there was a whole series of data, but as I remember, the first minute in 1979, indicated of our sample of something like 200 rifles that

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were returned to Remington for various reasons, service, repairs, complaints. Of those 200 pre-1975 rifles, several could be tricked, but some of the reasons for that would have been out of -- out of factory alterations. I think it came down to two in which it would be much easier if I could read this, because I'm trying to remember what was said.

Q. Let's see if we can find that Safety Subcommittee memo for you, if Counsel will hand me those.

A. Early 1979, as I remember it.

MR. COLLIER: For the witness who we hope to take tomorrow, they have not been able to serve the witness who we had the subpoena out for, I think, next Wednesday. If he was served, we were going to produce him tomorrow. I've asked them to call me if the last effort was successful. They haven't called, so I suspect that it was not. Therefore, I assume we are not going to get to take that witness. I have asked Counsel if he would present that witness tomorrow rather than have us -- without taking the deposition of the witness

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that you're going to call at trial, who will be your expert witness, as I understand it, which we wish and want and need to take that deposition.

MR. BAKER: I understand. We discussed this on several occasions, just as we discussed the problem with your expert witnesses, only six or seven were listed and none were produced by the Plaintiff. And we were required to serve subpoenas, and then they were all withdrawn except for one. And in this instance, the witness to whom you're referring, was one of the experts that has been listed on behalf of Remington. We did have an agreement that if you got him served, as we were required to serve all your witnesses, that we would produce him as a convenience to all the parties, bring him here and produce him tomorrow. We agreed -- also agreed if you did not get him served, so that we could be advised by him that he's been served, or you could tell us and we would rely upon you, then

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the deposition wouldn't be taken. And that still is our agreement. We were willing to comply if he had been served, and we would have made every effort to have him here tomorrow. That apparently has not been the case. I think we've all been anxious to know if he did or did not get served, and I have not been in touch with him one way or another. I must rely upon you, Mr. Collier. Unless you're advised here by completion of this deposition he's been served, we can, at least, all make our travel arrangements for tomorrow, assuming that he has or has not been served. And that, essentially, is our deal, and we're still there.

MR. COLLIER: I think that's true. We have not been able to serve him, so far as I know. Now, we didn't say that we didn't think we had a right to take that deposition. We have never taken the position that we didn't have the right to take that deposition. It was just simply to -- we are not giving up that right, just for this trip, we aren't going to

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be able to get it done.

MR. BAKER: The agreement was, if you were able to get him served, we wouldn't require that you issue another subpoena. The agreement was that if you got him served, he would be produced today. If you didn't -- or excuse me, to tomorrow -- the witness would not be given a deposition, and we could finally conclude this happy situation in that we yet have substantial depositions to take in Delaware and Oklahoma. And so, that witness, unless you advise me -- and I'll rely upon what you tell me -- you advise me by completion of the deposition here today that he's been served, then, or that witness will not be deposed. I realize that you tried to do it all along, just as you required us to do it by subpoena, but this is where we find ourselves.

MR. COLLIER: We have furnished Counsel a list of prior testimony, which we have designated as former testimony of witnesses
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that we may use at this trial. I think Mr. Hillberg's deposition taken in a separate trial and is among those designated. If not, I want to say now for sure that his deposition, which we have from another trial, will be one of those depositions that we may use at trial.

MR. BAKER: We have advised you continually that we do object to the inappropriate use beyond the rules of Federal Procedure and rules of evidence of any deposition from any other case having to do with any other matter. And our position, yours and ours, is well known and stated in that regard. I'm not sure whether you designated Hillberg or not, one way or another. And, most instances, where something's designated, here comes a full trial transcript. So I have no idea, and of course you don't either, and we won't speak specifically to that.

BY MR. COLLIER:

Q. Before we went on our walk-about, what were we
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doing, so far as that identification of this record was concerned?

A. This. I have been shown the minutes of the Product Safety Subcommittee held on January 2nd, 1979, wherein the Model 700 was being discussed in the context of whether or not it could be tricked. And at that time there had been an ongoing audit of returned Model 700 guns, returned to the plant. And there were 700 returned guns at the time this minute was written, 500 of which were guns that were produced after 1975. None of those 500 guns could be tricked. 200 of those guns, the Model 700 that were returned to the plant during the period, of those, it was found that two could be tricked, one because of insufficient clearance, another one because of a warped connector.

Q. Do you know how many tests or attempts to trick a rifle the test procedure utilizes?

MR. SHAW: Do you understand the question?

I guess I have got an objection, because I believe it's vague.

A. If you're asking me, do I know what we do in the plant to check the gun, a bolt action rifle, before

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it leaves the plant to see if it tricks?

Q. That, yes, and also if you brought in a 700 rifle, do you use -- is that the same test that you would run as when you first put it out for the trick?

MR. SHAW: I object to the form. It's compound, no foundation for this witness, who is not a plant worker to know in fact, I don't believe he's the most appropriate witness. He can, with qualifications, tell you what his understanding is, if he has one. And the second one calls for him to speculate as to what may or may not be done with any particular returned gun, is that your question? A gun comes back in with a complaint, and your question is what is done with it by way of testing?

MR. COLLIER: Yes, what kind of tests do they run for a trick test when it comes back in.

MR. SHAW: Calls for speculation, vague.

BY MR. COLLIER:

Q. Could you answer that question?

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A. Well, the first part of your question about, do I know what happens in the factory before the gun leaves the factor, as I sit here, I remember -- and I don't remember exactly the year that I heard this, the Product Safety Subcommittee -- as I understood it, the recommendation was that all bolt action rifles would be checked for tricking approximately nine times, three times in assembly, three times in gallery testing, I believe, and three times at final inspection. I have no understanding or knowledge of what happens if a gun comes back with a complaint, how they test that.

Q. Was it discussed by the Safety Subcommittee on whether or not to recall the Model 600 Remington rifle?

A. As I remember it, the discussion was what to do, if anything, in 1975 about the 600. And the 600 was not recalled. The 600 model was recalled at the end of 1978.

Q. Do you know why?

A. I know generally why. It was in response to a situation which involved litigation, serious injury, down in Texas where the claim was that the Model 600 involved in the accident tricked at a time when the gun fired

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because of the tricking and caused the injury. Remington examined the gun and found that if it, in fact, would trick. And in evaluating the case, it became clear to us that with so many guns of the Model 600 variety that could be tricked, that it would be extremely difficult to ever defend an accidental discharge when the gun involved in the claim was involved -- indeed, a trickable 600. So it was decided that we would stop production of the 600, that we would recall the gun, and put out notices to the public about the trick situation.

Q. Now, was that specifically with the Model 600?

A. Yes.

Q. Was there a --

A. Well, let me amend that. The recall was specifically to the 600.

Q. All right.

A. The notices to the public and the subsequent action concerning publicity about the trick condition was in generic form, which covered all bolt action rifles, regardless of who the manufacturer was.

Q. You didn't say, then, that Remington Model 600 and Remington Model 700 can fire inadvertently without

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anyone touching the trigger or words to that effect?

A. No. The ads would have been directly to the 600, and then there would have been ads concerning the trick situation in a bolt rifle.

Q. Were there ads that actually said the Remington 600?

A. I believe some of the notices about the recall on the 600 mentioned -- mentioned the 600 and may have mentioned -- I would have to see one of the ads -- may have mentioned the condition, I'm not sure, the condition of the 600 in greater detail.

Q. In your connection with the Safety Subcommittee and any input or contribution that you might have had on it, have you assessed the similarities of the design of the Model 700 trigger assembly and the Model 600 trigger assembly?

MR. SHAW: Are you asking the witness if he personally has assessed it?

MR. COLLIER: Well, by assessed, that would mean taking all the research that would be available and assessed it.

A. I know the Product Safety Subcommittee had

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examinations done, evaluations done on all bolt action fire controls that we manufactured. And as I remember it, the committee assessment was that the -- that -- See, we keep going back to two time frames, here. In 1975 or thereabouts, as I remember it, one of the ways the Model 600 was going to be manufactured was to incorporate some of the design features of the Model 700 fire control into it in order to alleviate the possibility or the susceptibility of the 600 to be tricked into firing. In the time frame of 1979, when we're talking about the 700, I think conversations came up alluding to those initial evaluations. I don't know if we had any separate evaluations. It was clear to us at the time, as I remember it, that we had two separate fire controls, one susceptible to tricking and one was not. The 600 was and the 700 was not.

Q. So then the assessment, if one was made -- Well, we have to go back to see whether or not if there was an assessment made and any kind of report given as to it being similar in design. Do you know whether or not that was done?

A. I'm sure there was. I don't recall seeing a
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report on that, but it seems reasonable that there would have been one generated, but I don't know.

Q. In your capacity as acting recording secretary of the Safety Subcommittee, have you learned of the design of the Model 700 Remington rifle sufficiently to know that it employs what is called a trigger connector?

MR. SHAW: Objection. Lack of foundation and competency for this witness to testify regarding design features, if that is what you're headed. He may or may not know the name of some of the components, but I hope you would be fair with the witness and not try to pin him down to particular design features.

MR. COLLIER: I'll be fair to the witness.

MR. SHAW: Let the record reflect that Counsel is smiling when he says that.

MR. COLLIER: I'll be smiling, cheerful and polite.

A. I don't remember learning about the trigger connector and its functiond at a Safety Subcommittee. I learned about it in other capacities.

Q. Are those privileged capacities, do you

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maintain?

MR. BAKER: Well, it's not a matter of what he maintains. If it was in a capacity other than as you have agreed earlier, you have been restricting your questions to that recording secretary of the committee, those other capacities would be, by definition, would be as counsel.

MR. COLLIER: Well, that's not true. Someone may have talked to him without saying this is confidential, or --

MR. SHAW: I don't want to get inordinately worked up about this. I just think that it's unfair for you, when you had the witnesses with engineering degrees, witnesses that were in the research department, witnesses like Mr. Hutton to make inquiry regarding the Model 700 and its constituent parts, to now when you have got a house counsel that may have made some effort to learn about the inner workings of one of his company's products, to try to go into that, I would

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object to it. There's no foundation. And that we would strenuously object if at trial you tried to offer testimony from this witness regarding the design or operation of the fire control or of any Remington product. He's simply not a competent witness in that area, even if he has some knowledge, any more than you would be, even though you've probably been studying this fire control.

BY MR. COLLIER:

Q. Could you answer that question to -- bearing in mind your attorney's objections? I have really asked you, first of all, if you formed an opinion outside the area of your privilege or if you have an opinion as to similarities between the two trigger designs outside of the areas of your privilege as a lawyer for Remington Arms?

MR. BAKER: Counsel, you haven't asked him what his opinions were. You asked him whether he understood the case when he would sit on this committee and occasionally as secretary of the committee as to whether or not they were

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similar or dissimilar. And he told you it was his understanding that the fire control on the 600 and 700 were dissimilar, that they were different, that they were not the same, and so your question's been asked and answered.

MR. SHAW: Your question right before we got into the colloquy, had to do with the connector and what his understanding was of the function of the connector. I think, Ron, I think we've already got past the 600 and 700 matter.

MR. COLLIER: You're right.

MR. SHAW: Thank you.

MR. COLLIER: We're talking trigger connectors now.

MR. BAKER: That too has been asked and answered, because he told you, Ron, just a moment ago, sitting with the committee and occasionally as secretary of the committee that he had no memory of any specific discussions relative to the trigger connectors.

MR. COLLIER: And then I asked him about Martin Murphy, C.S.R., P. C.

beyond the Safety Subcommittee, but not within his area of privilege as an attorney, did he learn about the trigger connector.

MR. BAKER: You didn't ask that question, and that's a good question. That's an appropriate question, if it's beyond something he determined as counsel within the framework of being a counsel, and being involved as counsel.

A. No. It was within that framework that I learned about the function of the connector.

Q. Have you advised the members of the Safety Subcommittee in an area other than as their counsel about the similarity in design of the Model 700 or 600 based upon information you have obtained?

A. I have never offered an opinion in front of the Safety Subcommittee on technical matters like that, no.

Q. Are you familiar with the Gun Exam Reports and how they're handled by Jim -- or how they were handled by Jim Stekl from approximately 1979 until 1982?

MR. BAKER: Ron, that's been asked and answered quite some time ago.

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A. Gun Examination Reports?

Q. Yes.

A. I have a very general understanding of what -- what goes on, but I never sat through one.

Q. I see. And are you, then, aware of any letter or the makeup or format of the letter that is returned to a person submitting a complaint to Remington?

MR. BAKER: You mean, is he aware of that outside of the scope as counsel for the company, as a lawyer for Remington?

MR. COLLIER: Yes. I'm going to restate that. A short recess while I reload.

(A short recess was taken.)

BY MR. COLLIER:

Q. All right. We're back on the record after a short recess. And just prior to our recess, I was asking you, sir, if you had come into any information that would have provided you with an opinion or led you to have some opinion as to an analysis of the design of the trigger connector and if this information that you received could have been received outside the area of your privilege as a corporate lawyer?

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MR. SHAW: Same objections to this whole line of inquiry.

A. Whatever information I have on the connector and its function is very, very general. Being a layman, I don't really understand all the technical ramifications, but it would have gotten received by me in format of my duties as corporate attorney.

Q. If you will hand me back that document, now we'll go onto another point. Was a decision made by the Safety Subcommittee to recommend a recall of the Model 700 or to not recommend a recall of the 700 at any time in your recollection of that committee's function?

MR. SHAW: You're focusing in here on what we're talking about here?

MR. COLLIER: 700.

MR. SHAW: Yes.

A. As I remember it, the outcome of focusing on the 700 and whether it could not trick, the decision was to not recall the gun and to go out through the public with the general generic warning about various misuses could do with a bolt action rifle that could cause accidents, one of which being -- putting the safety in

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the half-safe position or mid-position and going through the trick description.

Q. Do you recall the reasoning expressed by the committee, Safety Subcommittee, in making that determination as to not do a recall but instead to have an education or public knowledge or information program?

A. Yes, generally.

Q. Why was that?

A. As I recall it, the reasons were several. One, we found that Remington really never believed that a trick condition, as we describe it, is a defect condition of the firearms. It's a description of the misuse of the firearm. In that context, we recalling the firearm would give the public the wrong opinion of what we were doing. They would consider it something defective with the gun. We wanted to get out to the public that the way you alleviate a lot of accidents that may be formed through poor gun handling is to alleviate poor gun handling habits. What we found with the Model 700 is that, statistically, it was probably so rare an instance that mechanically a 700 could be tricked. And we also found that no evidence that anyone ever does this, anyone ever

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tricks the bolt action rifle, more in the academic range. That the only feasible thing to do -- and you have to realize we were considering this all in the light of publicity of the 600 and the 600 accident. So now, our assumption that nobody would be tricking a gun or didn't even know how to trick the gun was somewhat undercut by the publicity given this case in Texas, and the recall of the 600. We have to assume now people are reading, hey, you can do something with the bolt action rifle when you possibly you can fire the gun when you move the safety off. Given that circumstance, we thought the best way to alleviate that situation is to say, hey, do not trick your gun. There is nothing that you do in the tricking situation that you have to do in the normal function of the Model 700 which requires you to trick it, so let's not. So if you're in mind of the trick, it doesn't, because there's a danger, danger in playing with your safety, danger not only putting it in the mid-position, but danger of just pulling the trigger at any time when you don't intend to shoot it. Whether the safety is in the mid-position or on the full-on position, you should never pull the trigger unless you're intending the gun to

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discharge. So we're trying to cover a myriad of problems. So we really didn't -- after the examination of this, we really didn't think the trick situation was a big problem out in the public, if a problem at all. But what we did find with people was that accidental discharge of a gun, the gun discharges when the gun user didn't want it to discharge, whatever, the safety was off and inadvertently pulling the trigger was a problem. If we could get the gun handler to realize that whether the safety was on or off, he should always treat that gun as a dangerous instrument, loaded and ready to fire. In that context, try to keep his finger away from the trigger, unless he's ready to shoot. That would alleviate about 98 percent of the accidental discharges that were happening in the industry. So we piggy-backed our approach to the trick by getting before the public a whole myriad of safety rules that if followed, would alleviate a lot of the accidental discharges that we attributed to poor gun handling.

MR. COLLIER: Mr. Sperling, I'm going to move the answer -- to strike that answer as being non-responsive, but it was very good.

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BY MR. COLLIER:

Q. And I'll ask you about this. And that is on the Model 700, what percentage of the Model 700 rifles was the Safety Subcommittee informed or advised that was susceptible to tricking?

MR. SHAW: I object to the form. I think that calls for speculation. I think the witness has told you the numbers that the committee received information with respect to which there were two Model 700s out of 200 returned guns.

BY MR. COLLIER:

Q. Well, later in some of those documents, I'll put it this way that I saw, I don't know if it was from that or other studies, but the advice that was given, it seemed to me to be the Safety Subcommittee, that they believed that one percent or less of the Model 700 was susceptible to tricking, is that a fair representation of what the Safety Subcommittee may have been advised at the time that they were considering recall?

MR. SHAW: Objection. Misleading.

A. Well, what we decided in -- there were two
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minutes on this, a year apart, one in '79, one in '80, in 1979 we had six months' audit in front of us. At that time the figures that I quoted before, two out of 200. If you take that percentage, which is one percent, and you use that as a typical example of an audit sample, that represents what is out in the field, which in itself is susceptible to attack, because it's not a true sample for statistical purposes, because these were guns that were sent back with problems. You're taking problem guns and trying to make a sample, statistical sample out of problem guns to cover the whole sample. But if you do that, what the Product Safety Subcommittee was informed, was that if you take that one percent, it would be one percent of the pre-1975 Model 700s that could possibly be susceptible to tricking. The second meeting we had on this issue was a year later, and the audit had continued on, we had other figures. And if you take the same, what I call kind of a suspect statistical analysis, if you spread that across, then that figure came to be, as I remember, .4 percent of the pre-1975 Model 700 out there could be susceptible to tricking. And statistically, the committee wasn't deciding whether it's one percent or two

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percent or .3 percent. What they were saying is, statistically, it's just there's nothing out there that has a problem mechanically. Even if you have many, many guns out there that could be tricked, the question is, in our minds, that is not a defective gun. That is a form of misuse of the gun.

Q. Didn't you make a decision in the Safety Subcommittee based upon percentages, though, because the percentages were so high?

A. So high?

Q. As to the 600.

MR. SHAW: Objection. That's a misstatement of the record. I think the record told you what the situation was with regard to the 600. I don't believe that he explained that it had a basis with regard to the statistics, so much as publicity and other aspects.

MR. COLLIER: I thought he said that that influenced them and the fact that there were over 50 percent of those 600s that could be tricked. Therefore, they made it based upon

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the percentage.

A. If I may, let me try to clarify that, because there is elements of truth in both statements. In 1975, we knew what the percentage of 600s susceptible to tricking was. At that time, as I said, we didn't consider that a defect. We had no indication whatsoever that anybody was tricking guns out in the field, except for the one person out in Texas who wrote about it. As I remember it, there were people sitting on the committee who had been long-time Remington employees and never heard such a complaint, didn't even know it was possible to do that with a gun. We also determined at that time that competitive models of bolt action rifles could be tricked, also, and we had never heard anybody in the industry talking about tricking or complaints about it. So it indicated that what we had here was one of these rare instances. I can't tell you, everyone was just shocked that it could happen, that it could even happen, that it ever happened or if it will ever happen again. It's like putting -- As you know, you've heard the old saw, you can put 100 chimpanzees in a room with 100 typewriters, given enough time, you'll get War and Peace.

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Well, the guy down in Texas may have written his War and Peace with the Model 600. It was a situation we never thought we'd hear of again. The question is, what we did was we corrected what we thought was the problem in the 600, by taking the elements of the 700 and putting it in to alleviate the mechanical situation that allows someone to trick the gun, but we didn't want to go out at that time and say, hey, public, you know, you can trick this gun. Here's how you trick it, but don't do it. It's like telling somebody you can make a gun go automatic if you do certain things, but no one's doing it, so why publicise it? Let's correct it on the ongoing basis and let's just keep a very good monitoring situation, see if we've got any other problems out there. But we don't really believe anybody is going to trick the gun. It's an intentional kind of thing. You don't trick a gun accidentally. You have to find a mid-point. You have to balance the safety in the mid-point, and then when you get it there, it has to stay there. You have to pull the trigger at the same time, while in mid-position, then you've got to point the gun at something you don't want to shoot and move the safety to fire position, knowing

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that gun is loaded. It's a situation you do not do accidentally. So we didn't recall the gun at that point. Now, we did recall the gun in 1978 because of the publicity given to the trick situation in the Model 600. Now, that did two things. One, it informed the public what a trick situation was. The people said, if you can play with the safety, you can do something here. We had that problem to face, which we didn't have in 1975. And we also had a lot of publicity with the settlement of this litigation, covered by Walter Cronkite on his newscast. It was pretty well known throughout the public about the 600. The integrity of the gun was suspect in the minds of the public. The question is, should we continue with the 600. We said no, because if we knew if we were going to recall it, we're going to use a lot of trigger assemblies of the 600. The 600s we recalled were pre-1975. All the 600s that were made after 1975 with a new concept of the 700 fire control in it plus the nine checks that we put in at the plant to be sure that no gun would trick. We didn't recall those guns. We recalled the pre-1975 guns. We did so. And one of the elements, what you're referring to, was that we now understood that

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with that many guns out there that could be tricked, over 50 percent of the pre-1975 600s, that that didn't increase the exposure to the public of injury from tricking, but it increased Remington's exposure to a feigned -- well, it increased feigned reasons why an accident may have occurred with the Model 600. I mean, every -- every accident that would have occurred from now on with the Model 600 that could be tricked, would be blamed upon the tricking condition. There would be no way that Remington could prove that that is how the gun misfired. So we decided that was one of the reasons, along with the publicity and along with the integrity of the gun which was in jeopardy at that time, that we recall 600. In the same situation, the 700 didn't apply. We didn't have the tricking situation in the 700 as people saw it. The way to cure any problem that may come about through publicity with a trick condition was to tell the public not to do it, you don't have to do it, and it's unsafe to do it, then that alleviated the problem, whatever problem there was with the bolt action rifles besides the 600.

MR. COLLIER: Mr. Sperling, I'll have to
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move to strike the answer as unresponsive, but, again, it was one of your better answers.

MR. SHAW: I think it was responsive, and we'll argue about that later.

BY MR. COLLIER:

Q. The trick condition is actually not what causes a misfire or a firing where no one touches the trigger, is it?

MR. SHAW: I object to that. I think that's argumentative, leading, and a misstatement of the record.

MR. BAKER: Ron, he's described on about five occasions during this last five hours exactly what he understands the trick condition to be. And I think having done that, that description the last five times really is adequate. That's been asked and answered several times. And interestingly enough, though we objected way early on to all discussion about trick conditions, that there's no suggestion by any evidence in the lawsuit we're involved with here that we are dealing

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with a trick connection or trick situation whatsoever. So all of this line of testimony is, of course, incompetent, irrelevant and immaterial. We have been continuing been objecting, suggesting we ought to get back to sworn testimony from the people involved in the lawsuit.

BY MR. COLLIER:

Q. Mr. Sperling, have you been advised of the facts surrounding the injury to David Keenum wherein he was shot by a rifle held by his friend, who his friend says never touched the trigger, and the shot into his leg caused his leg to be amputated, have you been given any of the facts upon which this lawsuit is based?

MR. BAKER: You mean outside of the scope of counsel for the company and as the lawyer for Remington?

MR. COLLIER: If you're going to be -- However, just so that I can ask you about these things, do you understand that's our claim?

MR. SHAW: Why don't you tell him what it is, so we don't have to worry about whether he
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knew about it before or because he's a lawyer for Remington.

MR. COLLIER: All right. I'll head that way.

MR. BAKER: You understand, counsel. I don't believe you're proffering this witness as an expert engineer or any experty in these technical areas, and it has not been suggested that he was such by anybody involved.

MR. COLLIER: That's correct, but I do have to have the witness know that this -- this claim, this lawsuit, is based upon an injury caused by the reason of facts as set out in our complaint that the Remington Model 700 discharged without anyone touching the trigger when the bolt was being raised to unload the rifle. Do you -- Can you take that as a given?

MR. BAKER: Ron, I don't mean to be cantankerous, but I'm not sure that your Complaint says that. I think you're telling the witness as a lawyer that it does, and I'm

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not sure you want to do that. I don't believe your Complaint says that. Now, if you wanted to show him the testimony of the witness who was holding the rifle, Bob Milek, the person who fired the rifle, possibly you could do that, and ask him if he's aware of it. I'm afraid you might be misstating unintentionally what your complaint says. I don't remember that exact description of facts in your complaint or interpretation.

MR. COLLIER: Well, I'll state the facts the way that I understand them, the way I want this witness to know.

BY MR. COLLIER:

Q. We have stated the facts. Will you answer, then, assuming that to be the facts underlying the injuries to David Keenum?

A. Yes.

Q. Now, do you -- Have you, as a member of the Safety Subcommittee, ever been provided any information as to --

MR. BAKER: He's not a member of the
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committee.

MR. COLLIER: I keep saying that. I keep saying that.

Q. -- as recording secretary or acting secretary of the Safety Subcommittee, have you in that capacity heard information or been provided information as to instances of accidental discharge on the raising of the bolt of the Model 700 to unload?

A. I never heard that discussed in the Safety Committee meetings that I have attended.

Q. All right. So, so far as the Safety Committee is concerned, they have not received that kind of reports on any accidental discharges like that?

MR. BAKER: No, Ron. He didn't say that. He said he doesn't attend all the meetings. He's there on occasion. On occasion he's the acting secretary. What he said was he had no memory of have heard that at any meeting he attended. He can't speak from what might have gone on with others. You would want him to, of course.

MR. COLLIER: I'm trying to find out if Martin Murphy, C.S.R., P. C.

there's a gap between the people who received the complaint and the hierarchy of Remington who should be able to guide the company away from a certain area or in a certain area.

BY MR. COLLIER:

Q. So, are complaints, then -- To your knowledge, does the Safety Committee even know that there's any complaints these rifles will discharge when you're raising the bolt to unload it?

MR. BAKER: Again, we have to object. You can only ask this witness what he knows, not as a member of the committee, 'cause he's not, but on the occasions when he's attended the meetings, and that's the best you can ask this witness.

MR. SHAW: I object to the form, insofar as the prologue that had the speech with it about gaps and what-have-you. It's argumentative.

A. As I understood it, a particular complaint would come into -- Depending upon the product, let's say, a complaint on the 700, as an example, would come to

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the Iliion plant, with a letter saying my gun did so-and-so. At that time, the person receiving that would ask to have the gun sent in for examination. The gun would be sent in for examination, assuming. The examination would be made and a letter would be written to the plaintiff, potential plaintiff or complainant, explaining what the examination found, and proposing a course of action. If that particular complaint was found not to be -- Well, if facts were found to indicate that either the gun did not perform the way it was claimed to have performed or it did perform in that way, but there was a reason for it that indicated customer alterations or something to that effect, that would be sent to the customer. Those kinds of complaints would never reach the subcommittee. But if there was a series of complaints that proved to be true and showed a product defect, that would be the kind of complaint or kind of situation that would be brought to the attention of the subcommittee. At that point, they would look at it, decide whether or not there was a product defect, and if it was, whether recall was required, and if it was required, the Product Safety Subcommittee would recommend such action to Remington

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management. So the process would be the people down examining the guns, the engineers and so forth, would be expected to let the subcommittee know -- you can see, the members of the subcommittee were in the management someplace, presidents of various departments. They weren't day-to-day, hands-on people who would examine the guns. People who would examine the guns would make the determination whether there was a problem with the product or whether there wasn't, and they would filter those problems with the Safety Subcommittee.

Q. And that is precisely what I'm asking here, because that is what I see developing, is that if the Gun Exam Reports are worked, as we have had earlier witnesses testify that they were worked, and that the result was that they found and concluded that the accidental discharge did not happen the way the gun owner said it happened, and they write them back a letter saying to that effect, saying you had to touch the trigger, then I would assume, based upon what you just said, then that the report is never going to go to the Safety Subcommittee or anyone who can make a change, because the people who have done that down below have just said

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that's not true, is that where we are in Remington?

MR. SHAW: Objection, argumentative.

A. Basically, the Safety Subcommittee was only to look at local issues which indicated a problem with the gun. If there is no problem, it would never get to the Safety Subcommittee.

Q. So as far as the Safety Subcommittee is concerned, so far as you know, personally, there is no problem with accidental discharge with the Remington Model 700 rifle?

A. As I remember, thinking back today, looking over the committee meetings I attended, I can't remember a discussion of the 700 accidentally discharging with the bolt being raised. I just don't remember that as an issue.

Q. And have you ever had any reports of that by virtue of your position on the Product Safety Subcommittee of the Model 700 Remington discharging when the bolt was being closed?

A. No. I can't remember any.

Q. When the action was being worked?

A. Could you describe that a little more?

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Q. Yes. I'm just using terms the same way I have seen them on Gun Exam Reports. On some of them, they would say that the guns discharged when the bolt was raised and then some of them it said that when the bolt was closed, and then on others, it would say on opening, which we assume, or I assumed, that meant when you opened the bolt, and then finally when the action was worked and that's all we had to go on as to exactly what was meant.

MR. SHAW: Objection to the form of the question, insofar as you're trying to characterize what Gun Examination Reports say or do not say, whether it is a claim, whether it is an actual occurrence and then loading your question with what your assumption is. The witness merely asked what you meant by action being worked, and I think your response to him is you don't really know. You just heard the phrase action being worked.

MR. COLLIER: I'm going to retreat the statement earlier that he was not being cross-examined here.

BY MR. COLLIER:

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Q. We'll do it this way, though, because that is all I have to go on. that if the report says the rifle discharged while the action was being worked --

MR. SHAW: Same objection.

MR. BAKER: Ron, the problem is, nothing is lying before the witness. And again, you're referring to these gun examinations reports, which for four or five hours you have inquired about those, and the witness indicated they did not all come to him. He had no familiarity with them. And if you have a report that you would like to ask the witness about -- and here again, he's not an expert in this area, he said that he didn't see those routinely. But if you want to use the time in that way, but I'd rather you not conjure up something in your own mind and tell him what you didn't know, or what you believe you saw.

MR. SHAW: Maybe you have used the phrase and maybe the phrase cropped up in a document that we have seen in the past several days. Maybe since you can't define it for him, the

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appropriate question would be just using that phrase, is he aware of whether it came to the attention of the committee that the gun fired when the action was being worked and it doesn't matter whether he understands it, if he recalls that question.

BY MR. COLLIER:

Q. Exactly, because what the point is, what I'm inquiring about, is what notice the Safety Subcommittee had of this and so it doesn't matter exactly what is done when you say action is worked. Did you receive any notice of discharging or claims of discharge of the Model 700 where the trigger was not touched, but the action was being worked?

A. I don't remember ever being in a meeting where that phrase was used.

Q. All right. It would seem to me, then, as far as I hear, that the Safety Subcommittee does not or has not considered the matter of accidental discharges of the Model 700 where there's a claim that it discharges where no one touches the trigger. in much part at all?

MR. BAKER: I object to the form of the
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question. You have asked the witness many times, for example, concerning the matter of intentionally tricking. And you asked him about many various and sundry things, but your summary, which is not a question of what you may understand is an inappropriate way to ask a question. And you -- We must object to the form. If you have any additional questions that haven't been asked and answered to ask a question.

MR. SHAW: But that is argumentative, on top of everything else.

MR. COLLIER: You guys are going to have to stop jumping on me two at a time. He didn't think of that.

Q. I'm going to re-ask the question. I'll ask at this time, what knowledge do you have as a member of the Safety Subcommittee?

MR. BAKER: Now, Ron, he is not a member. He has never been a member.

BY MR. COLLIER:

Q. As a person who's sitting with the committee,
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what information did they receive, if any, about accidental discharges of the Model 700 rifle since 1979 down to 1983?

A. I don't know what information the committee members received. All I can tell you, that as I sit here today, I don't remember any discussions at any meeting I attended of the subcommittee about 700s discharging and the action is worked or the bolt is raised or the bolt is closed.

Q. Did the Safety Subcommittee, made up of the top men of Remington Arms, receive information and were they advised that in order to unload the Remington Model 700 rifle, prior to the time of 1982, at least, that you have to put the gun on fire?

A. Do I know if they were advised of that?

Q. Yes.

A. Well, I'm assuming that management of Remington knew the features of their products, and one of the features of the Model 700, prior to 1982, was the bolt lock feature, and the way you put the bolt lock on or activated it was move the safety to the safe position. That locked down the bolt, so that it couldn't be

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inadvertently raised. In order to raise the bolt, you had to take the safety to the fire position in order to take the bolt lock off to raise the bolt. I'm sure those features were known by people, but I can't tell you when they knew it or who informed them of that.

Q. As a person who acted as the recording secretary for the Safety Subcommittee, did that committee get the information presented to it and did they make any determination on the information that a large number of the complaints of accidental discharge, a large percentage, I'll make it that way, more than 50 percent of the claims of accidental discharging where no one touches the trigger are in connection with unloading the rifle?

MR. SHAW: I'll object to that. First of all, to attempt to characterize the record, and I'm not sure, especially since you're trying to give percentages, that that is an appropriate characterization. I think it assumes facts not in evidence.

A. I have never heard in meetings that I have attended, a discussion about where the accidents are

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most alleged to have occurred.

Q. Well, and the reason for my asking those questions, of course, is, and now I'm skirting the area that you are a lawyer for Remington, but I'm saying, did the subcommittee know -- did the subcommittee ever really know that there were alleged occurrences of accidental discharges where no one touched the trigger in a significant number, in a number of, oh, I don't know the numbers, so I'll have to say -- I'm not going to say significant, that would be objectionable, but that there were reports of these kinds of discharges?

MR. SHAW: Objection. That's been asked and answered.

MR. BAKER: Several times, Ron.

MR. COLLIER: Strike it. Withdraw. Start the question again.

BY MR. COLLIER:

Q. The question is, did that Safety Subcommittee, to your knowledge, determine that the facts that you had to put the gun on fire to unload it was not a safety matter?

MR. SHAW: I'll object to the form of the Martin Murphy, C.S.R., P. C.

question. It's misleading, a misstatement of the record.

A. I wonder if I can have that reread?

(The last question was read by the reporter.)

MR. SHAW: That's argumentative, Counsel. If you want to refer to the bolt lock feature -- Part of the difficulty is the way you phrase your interpretation of the bolt lock feature.

A. I don't remember any discussions at the meetings that I attended of the Product Safety Subcommittee of the bolt lock.

MR. BAKER: Off the record.

(Discussion off the record.)

BY MR. COLLIER:

Q. Mr. Sperling, could you tell me about the Operations Committee and whether or not you sat on that committee?

A. I never sat on the committee nor did I ever attend a committee meeting.

Q. What is the Operations Committee?

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A. I understand it's a committee that is charged with the day-to-day operation of a certain -- I guess, it was certain products, like, the firearm, makes determinations on which way to go on a day-to-day basis.

Q. I have located the document that I would like for you to examine, and this is Document Number 169, which has earlier been furnished to you, and it shows that you were the secretary. I don't know if that means acting secretary or not, but it does say that you were secretary, but then the minutes that I'm going to hand you are -- and supposedly are going to be a second page, shows someone else as the secretary -- oh, I think I understand it now. You were there, but you were not the secretary of this particular minute -- meeting. I don't know. I'll hand you that and let you tell me. First, tell me what the date of that is.

A. This is December 7th, 1981. It's the minutes of the Product Safety Subcommittee.

Q. Pearl Harbor, a day that will live in infamy.

A. And it indicates that I was here, but that the minutes were taken at that time by a C.A. Nash, who I

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remember was a formally elected secretary of the committee at that time.

MR. SHAW: Does the minute indicate whether you were present for the entire meeting?

THE WITNESS: The minutes were not that formally kept. If you were there at the time he was taking notes at the beginning, you were present.

BY MR. COLLIER:

Q. Does it indicate, Mr. Sperling, if whether or not you were there all during the meeting, if you received a copy of these minutes?

A. Yes. It indicates I was a recipient of the minutes.

Q. Would you read for us the minute of December 7th, 1981, what the company determined in reference to the bolt lock?

A. "There was discussion of procedures to be followed in repairing firearms and bolt locks, so that the absence or presence of a bolt lock is not a safety problem. Determination of the policy to follow in these

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circumstances was not a problem for the Product Safety Subcommittee.

Q. So that the Product Safety Subcommittee determined that this did not involve safety as to whether or not you could unload the gun with it on safe?

MR. SHAW: I'll object to the form of the question. That is a misstatement of what that record says, which has to do with procedure with regards to replacements of fire controls and the Model 700 and Model 40X. And that is what it says. Now you're trying to recharacterize it.

MR. BAKER: Whatever the minute says, the minutes says. And, of course, he wasn't a member of the committee, nor would he be one of the persons that made that decision. He told you that several times. The minutes says what it says, Ron.

MR. COLLIER: I had earlier asked the witness that very question and he said that he didn't remember that the Safety Subcommittee ever took it up. And here, obviously, and

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I couched my question appropriately, prior to 1982 and this is December 7th, 1981, at that time absolutely they took it up and absolutely they made a determination. And it seemed to me that I was, perhaps, being redundant, but I wanted to make sure that this minute says what I think it does and it says that it's not a safety matter whether or not --

MR. BAKER: The minutes says what it says. You haven't yet asked him, if, independently of you putting this piece of paper from six years ago in front of him, if he remembers the meeting or if he remembers what went on. You haven't asked him that. The minute does speak for itself, though.

MR. COLLIER: You're right, Counsel, and we're going to go on. The minutes speak for itself.

BY MR. COLLIER:

Q. And the next question is, do you know whether or not replacement of a bolt lock, which would require putting the gun on fire before loading with a bolt or

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safety that did not incorporate the bolt lock was an involved thing to do?

MR. BAKER: Are you asking him to be an expert or to come here as an expert concerning the technical aspects of that rifle or any other rifle, Ron? He's not tendered, nor is he suggested -- Or you said you were not calling him for that purpose.

MR. COLLIER: If he could answer those questions. I would certainly like to ask him those questions. In this case, I don't think it's an expert question. I think it's one that seems evidenced from things that I've seen, as far as the safety is concerned, that my question asked, first of all -- Well, I'll ask it this way.

BY MR. COLLIER:

Q. Isn't the only thing that's required to remove the bolt lock from your safety in the Model 700 is to have the bolt lock arm on the safety cut off?

MR. BAKER: Again, I'm assuming that you're couching it. I wish you would couch it

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in the frame of does he have any information, beyond the scope of his position as the lawyer for Remington and beyond the privilege concerning this area of concern at all.

MR. COLLIER: I can't see how this could get into a privileged area.

MR. BAKER: I'm not certain if an engineer or an expert in this area would be privy to this information. You haven't established this to the case.

BY MR. COLLIER:

Q. Could you answer the question, Mr. Sperling?

A. Better read it back. I lost it.

(The last question was read by the reporter.)

A. That's my understanding.

Q. That's not going to involve very much time or effort or money, is it?

MR. SHAW: I'll object to the form of that question. It's argumentative. It's a gross overgeneralization, and it's confusing and misleading and ambiguous. If you're just

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asking about mechanically what has to be done with regard to the bolt lock feature, the witness has told you what his understanding is. For you now to try to get him to characterize with regards to that feature and perhaps any design change, what may or may not be involved, how easy it is or easy it ain't, that's objectionable for all the reasons stated.

BY MR. COLLIER:

Q. Can you answer that question for me?

A. Do I know if it costs a lot of money to do this?

Q. Right.

A. I wouldn't think so.

Q. Does it take much time?

MR. SHAW: Again, are you talking about just the act of taking off the bolt lock arm?

MR. COLLIER: Yes. That's all I'm asking.

A. Just cutting it off, I wouldn't think so.

Q. When you were warning the public about safe gun handling techniques and you were concerned about telling them about the trick condition, because then you felt

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sure they were going to go out and see if they could trick their guns, did the membership of the Product Safety Subcommittee ever consider just giving a warning that the Remington rifle may fire inadvertently without your touching the trigger?

MR. SHAW: Objection. Argumentative, assumes facts not in evidence.

A. Since we don't believe that happens, we didn't consider warning against it.

Q. And you don't believe that it happens, because to this day as you sit here today, isn't it the position of Remington Arms Company, so far as you know, that there has never been a single instance where a Remington rifle fired without someone touching the trigger?

MR. SHAW: Objection. Argumentative, calls for speculation and lack of competency of this witness.

MR. BAKER: Ron, this is the not the witness, as you told us way, way on, you're attempting to call him as a witness for Remington on the myriad of policy or engineering and technical questions. You were
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asking him to help you identify some documents, and he's been very kind to do that, that he might have been aware of when he was present at the meetings. He's done that. Beyond that scope, he's a lawyer. That gets into the attorney/client privilege, and you know that.

MR. COLLIER: This doesn't, I'm sure. I'm asking the position of Remington Arms Company so far as he knows it, with his connection as --

MR. BAKER: That's been asked and answered. He stated the position several times during the deposition. And you framed something in an argumentative manner. We object to that, Ron. You asked all these questions many times during the last several hours here and you received answers, responsive answers.

MR. COLLIER: It's always so confusing. I'm told by Counsel I received answers. I don't know the answers, then I'm hesitant to ask the questions again. I still don't know

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this answer.

BY MR. COLLIER:

Q. And the answer is, what I'm asking for from this witness, if you know whether or not Remington Arms Company, to this very day, maintains that there has never been a Model 700 Remington rifle fired where no one touched the trigger?

A. Where no one touched the trigger that would activate the gun?

Q. Right.

A. No. I believe Remington has seen guns that have been altered out in the field that are fired by other means, other than pulling the trigger.

Q. So now that -- Let's factor out, then, altered rifles. If the gun's not altered, if it's still within the specifications, is it Remington's position, so far as you know it, that a Remington rifle Model 700 can simply not fire inadvertently without someone touching the trigger?

MR. SHAW: Objection. There's no foundation laid for this witness. You're trying to turn this witness into a company

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spokesman and ask him to speculate or speak for what the entire company and all of its personnel may have seen, may not have seen or what their "position," is, but you may answer. That is an objection for the record. If you would like your question read back, that would be fine.

A. Well, from my own knowledge, that's all I can speak to, I don't know of any Model 700 rifle that's been brought to my attention that has been within specifications and considered factory condition that would fire other than through the normal channel of pulling the trigger with the safety off.

Q. And that's in the face of several --

MR. BAKER: Well, I'll object to that question as being argumentative, before you go any further.

MR. COLLIER: That's argumentative?

BY MR. COLLIER:

Q. I'm going to retreat from argumentative. And I'm going to ask, instead, have you heard sworn testimony from individuals that their Model 700 rifle discharged

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without them touching the trigger?

MR. SHAW: Objection. That's, first of all, an attempt to inject other claims with no foundation laid as to their similarity into this case, it's over-broad, vague, it's ambiguous.

BY MR. COLLIER:

Q. Could you answer?

A. Yes, I have.

Q. And in those, have there been more than one instance when you have been presented with sworn testimony?

MR. SHAW: Same objection. May I have this continuing objection with respect to the line of questioning with regard to testimony from other lawsuits, which is hearsay, vague, ambiguous and lacking in foundation.

A. Yes, I have.

Q. And are the facts alleged similar to those which are alleged in this case, the case of Terri and David Keenum against Remington Arms Company?

MR. SHAW: Again, objection, lack of Martin Murphy, C.S.R., P. C.

foundation. You certainly haven't given him all the particulars to make that kind of conclusion, which you're calling for him to make a conclusion, which might even be a legal conclusion with regard to admissibility of evidence. You've got your own obligations with regard to admissibility of this evidence with regard to prior occurrences without trying to serve it up to the witness in a generalized question and ask him to conclude without particulars whether something is similar in claim to this lawsuit.

MR. BAKER: Ron, the terrible problem we get into here, the sworn testimony in this case established is that you have a rifle that had been adjusted in the field, the intent being to lap the trigger, among other things. It was not in factory condition according to sworn testimony in the case. You have a totally dissimilar situation from any other situation you might want to outline. It's for that reason, we have a continually been objecting

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and do continue the objection to attempt to bring in other matters not germane to this lawsuit. And it's inappropriate for this witness. Almost by definition, you're going into matters that he could not have been aware of, or privy to, other than in the attorney/client privilege, also.

THE WITNESS: Could we go off the record?

MR. COLLIER: Sure.

(Discussion off the record.)

BY MR. COLLIER:

Q. Mr. Sperling, you have just alerted me to the fact that in order for you to make a flight back to Wilmington, that you need to be departing. I'm going to accommodate you and ask this follow-up question. I'm going to ask you now to use your legal knowledge in a way not connected with Remington, and that is, if I ask you, are you familiar with the term, "similar prior occurrences, as a legal term?

MR. SHAW: Objection. You're calling for a legal conclusion.

MR. COLLIER: It certainly does, and the Martin Murphy, C.S.R., P. C.

man is an attorney.

MR. SHAW: Well, that's not an area for expert testimony in this case.

MR. COLLIER: I'm trying to short-circuit, counselor.

MR. SHAW: All right, go on.

A. I have heard the term. |

Q. Now, by that, you have to be close in facts to your case that is being tried, use of prior similars, is that correct?

MR. SHAW: I object to -- to this entire line of questioning on legal conclusions and it's leading.

A. Yes, that is my understanding.

Q. Are there prior similar occurrences, cases that you know of, to the Keenum case?

MR. SHAW: Objection, lack of foundation.

Calls for a legal conclusion.

A. The Keenum case being the accidental discharging allegation when the bolt is raised?

Q. Yes.

A. I can't remember any right now.

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Q. Would talking about accidental discharge cases involving Remington Model 700 rifles where there's allegation that the rifle discharged without anyone touching the trigger, just that business right there, have you testified in cases involving this at prior times?

MR. SHAW: Just with that general description, the Model 700 accidental discharge case?

MR. COLLIER: Yes.

A. Yes, I have.

Q. And have you reviewed the very records that we have gone over today and testified about those in those prior cases?

MR. SHAW: Objection, over-broad, ambiguous.

MR. BAKER: How would he know whether he went through some time ago in a five or six-hour deposition just like this, each and every one of those? That's an impossible question for the witness.

MR. COLLIER: If the witness can --

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A. I have in depositions and in trial been shown various documents and asked if they were Remington documents. And I remember saying yes, but I can't say it's the same set, but I have done that.

Q. Tell me, if you can, is the number more than or less than 10?

MR. SHAW: Lawsuits that he's testified in by deposition or at trial?

MR. BAKER: To identify documents?

MR. SHAW: That involve the Model 700.

BY MR. COLLIER:

Q. The Model 700, accidental discharge, where there are allegations that no one touched the trigger.

A. Less than 10.

Q. More than five?

A. When you say testify, do you mean at trial?

Q. No. I meant in a deposition or at trial, itself.

A. I'd probably say, then, taking everything into consideration, depositions and trial, probably between five and 10, but that's a guess.

MR. COLLIER: All right. It's time to
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complete the deposition. I thank you for your attendance. I had more questions, but that's how we have to do these things, it's time for you to leave.

THE WITNESS: Five more minutes.

MR. COLLIER: No, we don't want to do it that closely.

You, at an attorney, know you have a right to read this. Do you want to have this read by yourself and inspected and then signed?

THE WITNESS: Yes.

(Whereupon, the proceedings were adjourned.)

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C E R T I F I C A T E

I, KATHLEEN BOYLE, a Shorthand Reporter
and Notary Public in and for the State of New York,
DO HEREBY CERTIFY that the foregoing is a true and
accurate transcript of my stenographic notes in the
above-entitled matter.

Dated: June 9, 1988.

Kathleen Boyle

Martin Murphy, C.S.R., P. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

I, ROBERT B. SPERLING, being duly sworn,
hereby state that I have read the above deposition
of my testimony in the above-entitled action taken
on April 7, 1988, before Kathleen Boyle, a Shorthand
Reporter and Notary Public, at the Prospect Inn, 400
North Prospect Street, Herkimer, New York, and that
the same is true and correct.

Sworn to before me this _____
day of _____, 1988.

Martin Murphy, C.S.R., P. C.