

COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,
wife and husband,

Plaintiffs,

-vs-

REMINGTON ARMS COMPANY, INC.,
a Delaware corporation,

Defendant.

No. 81-886

DEPOSITION OF STEPHEN D. BOUDREAU

(Taken as a Material Witness on behalf of Plaintiffs.)

March 2, 1982

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REMINGTON ARMS COMPANY, INC.,)
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DEPOSITION OF STEPHEN D. BOUDREAU

(Taken as a Material Witness on behalf of Plaintiffs.)

BE IT REMEMBERED That, pursuant to notice on
file herein, the deposition of STEPHEN D. BOUDREAU, a
Material Witness called for examination by Plaintiffs, was
taken before S. Richard Adams, a Notary Public for the State
of Oregon and Official Court Reporter of the Circuit Court of
Oregon, for the County of Clatsop, in the law office of
Ronald L. Miller, 555 Bond Street, Astoria, Oregon,
beginning Tuesday, March 2, 1982, at the hour of 10:05
o'clock a.m.

S. RICHARD ADAMS
COURT REPORTER
P.O. BOX 835
ASTORIA, OREGON 97103

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APPEARANCES:

Bodyfelt, Mount, Stroup & Chamberlain
(By Mr. Peter R. Chamberlain), and
Mr. Philip L. Nelson, Attorneys for
Plaintiffs;

Schwabe, Williamson, Wyatt, Moore &
Roberts (By Mr. James D. Huegli),
Attorneys for Defendant.

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Whereupon the following proceedings were had, to-wit:

STIPULATION

At said time and place, the following stipulation was entered into by counsel present for the respective parties:

It is hereby stipulated and agreed by and between the part es hereto, through their respective counsel, that the deposition of STEPHEN D. BOUDREAU, a Material Witness called for examination by Plaintiffs, may be taken before S. Richard Adams, a Notary Public, at this time and place, on oral interrogatories, direct and cross, to be propounded to the deponent.

It is further stipulated that all irregularities as to notice of time and place and manner of taking said deposition are hereby waived, except that each party reserves the right to object at the time of trial to any question or answer, but that objections as to the form of the questions or irresponsiveness of answers are waived unless made at the time of taking said deposition.

S. RICHARD ADAMS
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P.O. BOX 835
ASTORIA, OREGON 97103

1 STEPHEN D. BOUDREAU, a Material Witness
2 called for examination by Plaintiffs, having been
3 first duly sworn by the Notary, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CHAMBERLAIN:

7 Q Mr. Boudreau, could you spell your full name for the
8 record, please?

9 A My first or last?

10 Q Both.

11 A S-t-e-p-h-e-n B-o-u-d-r-e-a-u.

12 Q Do you have a middle name?

13 A Donald.

14 Q My name is Pete Chamberlain; we've been introduced. I
15 represent Mr. and Mrs. See in a lawsuit that they've
16 brought against Remington Arms Company. Remington is
17 represented here in this deposition by Mr. Huegli. The
18 purpose of the deposition is to ask you some questions
19 about the incident that gave rise to Mrs. See's
20 injuries and the lawsuit that's resulted from that.

21 Have you ever had your deposition taken before?

22 A No, I don't think so. What is it?

23 Q That's what we're doing now. What it is is a chance to
24 ask you some questions under oath. The court reporter
25 here is taking down what we're saying and will type it

1 up in a booklet form; then, if it's necessary for you
2 to testify at a trial, we have a record of your testi-
3 mony here today, and if you -- if your testimony at
4 trial is contrary to what it is here today, that may be
5 pointed out to you. It's primarily an effort or a
6 device by which we can learn a little bit more about
7 this incident and what happened, and it's called a
8 discovery deposition.

9 Have you ever testified in court before?

10 A No.

11 Q Okay.

12 A Oh, well, yes, I have, not for -- just from a cedar
13 deal is all.

14 Q Were you a party to the lawsuit that you were testify-
15 ing in or was--

16 A No.

17 Q --it a criminal case or what?

18 A Yeah. They put me on a year's probation.

19 Q Okay. The court reporter here takes down our answers,
20 so it's important that you answer my questions out loud;
21 and since you're under oath and since he will be typing
22 this up, it's also important that you make sure you
23 understand my question before you answer it. Okay?

24 A Okay.

25 Q I don't want you to think you know what I'm talking

1 about and give me a wrong answer. I want you to make
2 sure you understand the question; ask me to repeat it
3 if necessary and I'll do so and make it clear before
4 you answer. All right?

5 A Uh-huh.

6 Q Okay. Where's your present address, Mr. Boudreau?

7 A Route 1, Box 893, Astoria, Oregon.

8 Q How long have you lived there?

9 A Oh, probably four years.

10 Q Okay. And are you employed here in the area?

11 A Yes.

12 Q How long have you been employed here?

13 A For the outfit I'm working for now a little over two
14 years.

15 Q Okay. Do you have any relatives in this area?

16 A Yes, my mom and step-dad.

17 Q Where do they live?

18 A They live on Alameda Street in Astoria here.

19 Q Okay. Do you happen to know their phone number?

20 A No, I don't. My wife does.

21 Q She does. Okay. Would they -- do you have any plans to
22 leave this area in the near future?

23 A No.

24 Q If you did for some reason, would they know where you
25 would be?

1 A Oh, yes; yes.

2 Q Now, the subpoena that was served on you requiring you
3 to appear here today asked you to bring with you
4 certain documents. Did you read the subpoena?

5 A Yeah, but it didn't say anything about that.

6 Q Well, I'll read to you what it says and I'll ask you if
7 you have any such documents. You didn't bring any with
8 you, I take it?

9 A No.

10 Q Okay. I have the original of the subpoena, and it asks
11 for you to bring with you any and all documents
12 relating to your purchase, ownership, maintenance, and
13 use and sale of your Remington model 700 rifle.

14 A That's right. I read that. But the guy that I got it
15 from, the gunsmith in Warrenton, he died about two or
16 three years ago, and his wife's died, too, so I don't
17 have nothing on it, and I can't find it at home or
18 nothing.

19 Q You didn't have, for instance, the bill of sale?

20 A It was brand new when I bought it, but I didn't -- I
21 don't have any of that stuff. I don't keep none of that.

22 Q No owner's manual, anything like that?

23 A No. I got an owner's manual on a new one that I got
24 here last year that my wife bought me, a Remington.

25 Q How about box, did it come in a box?

1 A Yeah.

2 Q And you probably threw that away?

3 A Yeah. It's been a long time ago.

4 Q Okay. So you're telling me that the documents I

5 described, you don't have any of those?

6 A No.

7 Q All right. The subpoena also asks that you bring with

8 you any and all statements, notes, narratives or other

9 writings in your possession which relate to the gunshot

10 injuries suffered by Teri See on October 27th, 1979.

11 Do you have any documents that fall within that

12 description?

13 A My lawyer and Mr. Nelson took some. That's all that --

14 I never got any.

15 Q Okay. You don't have any in your possession?

16 A No.

17 Q Could you give me a brief background of your education?

18 A I went through to the ninth grade and I quit and went

19 to work to help my mom, and then I got drafted.

20 Q What year was that that you got drafted?

21 A 1967.

22 Q Did you go in the service?

23 A Yes.

24 Q What branch?

25 A Army.

1 Q Where were you stationed?

2 A Fort Lewis.

3 Q The whole time?

4 A No. And then Fort Knox, Kentucky; from there to
5 Vietnam.

6 Q Okay. How long were you in the service?

7 A Nineteen months.

8 Q Were you infantry or what?

9 A In the "cav."

10 Q In the what?

11 A Cav; calvary. It was a mechanized unit in Vietnam.

12 Q Did you get some training in use of firearms while you
13 were in the service?

14 A Yes.

15 Q Why don't you describe briefly the kind of weapons you
16 were trained in and the nature of the training that you
17 received?

18 A A .45 caliber pistol, M-16, M-14, .50 caliber, 79
19 grenade launcher, and that's about it -- and an M-60
20 machine gun.

21 Q Was part of the training with each weapon safety?

22 A Yeah, all of the safety and how to use them, tear them
23 apart.

24 Q You were born, what, 1950?

25 A No, 1947.

1 Q '47. So you were 20 when you went in the service?

2 A Yes.

3 Q Had you owned any guns prior to that time?

4 A Yes.

5 Q When did you first start owning guns?

6 A When I was probably 10 or 11.

7 Q So pretty much all of your adult life and your teenage
8 life you owned and used guns?

9 A Yes.

10 Q For what do you use them, hunting?

11 A Hunting, and just plinking a lot.

12 Q Plinking?

13 A Yeah. We go to Eastern Oregon and shoot sage rats
14 every year.

15 Q I always wondered what plinking was.

16 Have you owned any other Remington guns besides
17 the Remington 700 that was involved in this incident
18 involving Teri See?

19 A Yes, I have another, new one that I got -- my wife
20 bought me last year.

21 Q That's since this incident, then?

22 A After, yes.

23 Q And how about before, did you own any before?

24 A Yeah, I've had a couple .22 Remingtons, pumps, older
25 ones.

1 Q Okay. Could you give me a brief summary of your work
2 history from whenever you started working?

3 A Well, when I quit school I went to Bumble Bee and
4 worked there for a couple years, and then got drafted,
5 and when I got out, why, I started working in the
6 woods, and I've been working in the woods since.

7 Q Working wood?

8 A In the woods.

9 Q What do you do?

10 A Oh, I fall timber and run skidder, and "cat"
11 occasionally.

12 Q And you're still working now at that?

13 A Yes.

14 Q One of the lucky ones, huh?

15 A Yeah. We just got back to work, though; we've been off
16 for three months.

17 Q Okay. You know Teri See and Darrel See; right?

18 A Yes.

19 Q Could you tell me how long you've known them?

20 A Probably four years, three, four -- four at the most.

21 Q So we're going back to 1978, huh?

22 A Yeah -- '77, I think.

23 Q How did you meet them?

24 A Oh, he was a contract logger for Crown Zellerbach, and
25 I went up there and helped him when I was off work and

1 stuff like that; got to know him real well.

2 Q And became friends?

3 A Yeah.

4 Q Would you socialize with the Sees?

5 A I haven't seen them for a long time, since last summer.

6 Q Okay. Let's go back before October of '79 when this
7 incident happened, did you socialize with them before
8 that?

9 A Well, I went to the hospital and stuff when she was in
10 the hospital.

11 Q Okay. That's a good example of not understanding what
12 I -- my question. I'm asking you to look at the time
13 before this accident, before the--

14 A Oh.

15 Q --incident when she was shot, and tell me what your
16 relationship was with them at that time.

17 A Just friends; and I helped Darrel log on weekends when
18 he needed some help.

19 Q And had you gone hunting together before?

20 A Well, we've gone target practicing before and stuff like
21 that, but....

22 Q Okay. What is your usual practice as far as keeping
23 guns in the house, do you keep them in the house loaded
24 or unloaded?

25 A Some of them I keep loaded, a lot of them I don't.

- 1 Q You have several guns?
- 2 A Yes, I have quite a few.
- 3 Q In 1979 about how many did you have?
- 4 A Oh, probably 10, 11.
- 5 Q Was the Remington 700 that was involved in the shooting
6 of Mrs. See the only Remington you had at that time?
- 7 A No.
- 8 Q You had others?
- 9 A I had a .22 pump I still have.
- 10 Q Any others besides those two?
- 11 A Not Remingtons.
- 12 Q What was your usual practice regarding the use of the
13 safety, would you -- if the gun was loaded would you
14 leave the safety on, or did you ever notice?
- 15 A Well, usually I don't even use a safety; when I get
16 ready to shoot, I usually close the bolt on a gun to
17 shoot.
- 18 Q Okay. You're talking about when you're hunting, say;
19 right?
- 20 A Yeah.
- 21 Q How about when you're transporting the gun by car to
22 and from the place you're going to do hunting?
- 23 A Well, it all depends. I leave it on the dashboard and
24 with the bolt open.
- 25 Q Okay. Will the gun fire with the bolt open?

1 A No, no way.

2 Q Is that true of all guns?

3 A Yeah.

4 Q And, then, that's at least true of the Remington 700
5 we're talking about?

6 A Uh-huh.

7 Q Was that a "yes?"

8 A Yes.

9 Q You have to -- he doesn't know "uh-huhs;" he writes
10 them down but they come out funny.

11 A Sorry.

12 Q That's all right.

13 Do you know what kind of ammunition you were
14 using in your Remington 700 on the day that Teri See
15 was shot?

16 A I have -- I hand load for all my guns, usually, and I
17 think it was a 100 grain Spitzer.

18 Q What's "Spitzer" mean?

19 A Oh, it's kind of like a -- it's just a name of a bullet.

20 Q That's the lead part out in front, it's--

21 A Yes.

22 Q --not the powder?

23 A No.

24 Q And you load those yourself?

25 A Yes.

1 Q Do you have one of these machines in your garage?
2 A Yes -- well, not in the garage, but I have a reloading
3 outfit.
4 Q Have you ever had any problem with the bullets you've
5 loaded going off other than when you're pulling the
6 trigger on the gun?
7 A No. Well, I've had it go off before that way, yes.
8 Q On this Remington 700?
9 A Yes.
10 Q When did that happen?
11 A Oh, a couple months after I'd had it.
12 Q Describe what happened on that occasion, if you would.
13 A Well, I stuck it out the window to shoot a fish duck, I
14 guess -- and it could have been me, too, but -- I don't
15 know, but when I flipped the safety for it, it went off.
16 Q Do you recall, at that time did you have your hand near
17 the safety?
18 A That's what I don't know, if -- on the trigger you mean?
19 Q Right, on the trigger.
20 A I don't know.
21 Q Okay. Now, we're talking about the occasion that you
22 were shooting out the window; right?
23 A Uh-huh.
24 Q Now, other than the time when Mrs. See was shot, had
25 that ever happened to you on any other occasion?

1 A No.

2 Q Now, I want to talk a little bit about the Remington
3 700 that was involved in this incident with Mrs. See,
4 and what I'd like is as complete a history of the gun
5 as you can give me from the date you purchased it,
6 where you purchased it; sort of a chronological history
7 of your ownership of that gun. Can you do that for me?

8 A Yeah. I bought it from Marx. I don't know his last
9 name, but he lived in Warrenton; he was an old gun-
10 smith, and he got it for me pretty reasonable. It was
11 brand new. I think it was in '68 or '69 -- '69 or '70,
12 maybe. I can't remember. I have so many, I don't know.
13 But anyway, when I got it, well, he done some work on
14 it and glass bedded it to make it shoot good.

15 Q He glass bedded it for you?

16 A Yeah.

17 MR. HUEGLI: Who was that?

18 THE DEPONENT: Marx. I don't know his last -- my
19 wife might know his last name.

20 MR. HUEGLI: In about 1968?

21 THE DEPONENT: No, about '70, because I was in the
22 service; I didn't get out until '69.

23 Q (Mr. Chamberlain) Would you have anything that would
24 indicate with a little more specificity what date you
25 purchased the gun, a canceled check or...?

1 A No. I paid for it cash.
2 Q Paid cash. And your recollection is that was 1970?
3 A Yeah.
4 Q Okay. And you were in the service from '67--
5 A '67 to '69.
6 Q What month did you go in the service, do you remember?
7 A November 1st, 1967.
8 Q And what month were you discharged?
9 A June of '69.
10 Q And this fellow -- is it Mark or Marx?
11 A Well, it was always Mark's Gun Shop.
12 Q Okay. M-a-r-k--
13 A Yeah.
14 Q --apostrophe s?
15 A I guess.
16 Q And you don't know his last name?
17 A No.
18 Q But he's located in Warrenton?
19 A He was.
20 Q And he's dead now?
21 A Yeah. He's been dead for probably three years, maybe
22 longer.
23 Q And did you say his wife's also deceased?
24 A Yes.
25 Q Does he have any relatives in this area, do you know?

1 A I don't know.

2 Q When he died did someone take over his gun shop, or did
3 it just--

4 A No. The place went -- maybe the state got it, I don't
5 know.

6 Q It's no longer open?

7 A It no longer exists, no.

8 Q Okay. Do you remember the price you paid for the gun?

9 A \$164, in that neighborhood somewhere.

10 Q Now, what's -- you said he glass bedded the stock?

11 A Yeah.

12 Q What is that?

13 A Well, he hollowed the fore-end out and glassed it so
14 the barrel wouldn't move. When you get it warm, they
15 have a tendency of moving from one side to the other,
16 and--

17 Q Which makes it difficult to aim?

18 A Well, on targets it would be off. And this way it's
19 always in line.

20 Q And is the glass a fiberglass?

21 A Yeah, it's kind of like fiberglass.

22 Q Did this gun have a wooden stock?

23 A Yes.

24 Q So the wooden stock is taken off the gun and this
25 glass is--

1 A Yes, and it's carved out, and then the glass is set in
2 there, and then I guess he puts the barrel over the top
3 of that and waits until it hardens, and then takes it
4 back off again and--

5 Q Was the trigger function different at all on the gun
6 before and after this glassing, or did you shoot it
7 before the glassing?

8 A I shot it before the glassing, yeah.

9 Q Did the trigger function seem different at all after
10 the glassing?

11 A No, it didn't seem -- it always had a light trigger
12 pull on it.

13 Q Did you ever measure it?

14 A What, the--

15 Q The trigger pull.

16 A No.

17 Q When you say "light," can you estimate in pounds or
18 ounces?

19 A Not really.

20 Q You know, sometimes when you buy a product -- I always
21 think of toasters, but if you buy a product, you get a
22 card with it that's a warranty card -- do you know what
23 I'm talking about?

24 A Yeah.

25 Q --that you're supposed to fill out and send in to the

1 company. Do you remember if you got one on this gun?
2 A Probably; but I never sent it in.
3 Q How do you know that?
4 A Because I got a new one right now and I never sent it
5 in. Usually, a gun will last forever, you don't have
6 to--
7 Q So it's just your practice when you buy something to
8 throw that card away rather than sending it in?
9 A Well, I keep it around, but then I don't know where it
10 would be. Probably threw it away.
11 Q Do you remember, did you -- you said the gun came in a
12 box; right?
13 A Uh-huh.
14 Q Was there any literature in that box in the form of an
15 instruction manual?
16 A Yeah, I think so.
17 Q And did you read that, do you think?
18 A Well, I'm kind of -- kind of looking towards this new
19 one I got because I've got all that stuff and I've
20 looked at it, but--
21 Q You don't recall if you did on this old one or not?
22 A I don't know. I don't think so.
23 Q Okay. Do you remember reading any material that was
24 maybe headed "Warning" or "Safety Precautions" or any-
25 thing like that?

1 A No. The only warning I'd read on that was two years
2 ago, about, Remington came out with a faulty safety
3 deal.
4 Q What gun was that on, do you know?
5 A That was that Remington 700.
6 Q Where did you read that?
7 A I think in "American Rifleman."
8 Q Do you have that article?
9 A Yes.
10 Q You do?
11 A Oh. Well, no, I don't have the article; no. But it
12 come out in some sports magazines, too.
13 Q Do you remember which one -- which ones?
14 A "Field and Stream," maybe.
15 Q Is that something you subscribe to?
16 A No. I get the "American Rifleman," but....
17 Q Now, is this an article you remember reading yourself?
18 A Yes.
19 Q And it dealt with the Remington 700?
20 A Yeah.
21 Q What did it tell you about the safety on the gun?
22 A Sometimes if you have it on safe and you flip the safety
23 forward, it might go -- it might go off.
24 Q And do you remember when you read that?
25 A Oh, it was after that -- the accident.

1 Q After the accident?

2 A Yes.

3 Q Okay. So it would be after--

4 A It might have not have been in that model, either; it
5 could have been in the ones made after that year, too,
6 I don't know.

7 Q This warning that you remember reading or this article
8 you remember reading was at some time after October of
9 '79 when Teri See was shot?

10 A It might have, I don't know. I'd have to find out. I
11 know a friend that collects them "American Rifleman"
12 and maybe I can find that article.

13 Q Okay. Was this like an article about a lot of things
14 and just mentioned that, or was it an article, a
15 published warning?

16 A It was a warning.

17 Q Like an advertisement maybe taken out by Remington?

18 A Yeah, I think it was Remington that put it out.

19 Q Okay.

20 MR. CHAMBERLAIN: Off the record a second.

21 (Colloquy off the record.)

22 MR. CHAMBERLAIN: Let's go back on the record a
23 second.

24 Q (Mr. Chamberlain) I have some information that there
25 was a problem with the Model 600 Remington. Is that

1 what you're thinking of?

2 A I just remembered a Remington; I didn't know for sure.
3 That's why I said I didn't know if it could have been
4 this model or not. It's been a couple years since I
5 read that article.

6 Q Now, did the fellow that -- well, let me strike that.
7 When you decided to buy this gun, did you do your own
8 research and decide to buy it?

9 A Yeah.

10 Q It wasn't a matter of this fellow Mark selling you on
11 that gun?

12 A No. I read a lot of articles on 6 MMs, how flat
13 shooting they were, and I hunt in Eastern Oregon some-
14 times and I'd like to have something that shot a little
15 ways, anyway, flat shooting.

16 Q Have you ever talked to anyone who represents Remington
17 Arms Company, either a lawyer or a--

18 A No.

19 Q --claims representative, anything like that?

20 A No.

21 Q Either before or after this incident?

22 A No.

23 Q Okay. And you've never talked to their attorneys?

24 A No.

25 Q Before this deposition today did you review anything

1 written, any written material, any photographs, any-
2 thing like that in preparation?

3 A No.

4 Q You mentioned that you subscribe to the National
5 Rifleman -- or "American Rifleman?"

6 A Yeah.

7 Q Now, is that a publication you get as part of your
8 membership in NRA?

9 A Yeah.

10 Q How long have you been a member of NRA?

11 A Oh, off and on; now and then I join it and let it
12 expire. And like I think it's expired now so I don't
13 belong to it yet, but I plan on probably getting back
14 with it.

15 Q Are there any other gun magazines that you subscribe to?

16 A No.

17 Q Any other sports or hunting type magazines?

18 A No.

19 Q Or that you did back in the '70s?

20 A Well, I just get hand-me-down ones.

21 Q From friends, that sort of thing?

22 A Uh-huh.

23 Q During the time you owned this Remington 700, did --
24 other than the incident with Teri See and this incident
25 where you were shooting out the window of your car,

1 have you had any problem with the gun at all?
2 A No.
3 Q Okay. Never had it misfire?
4 A Oh, I've had them misfire because -- I think it's my
5 reloading, some of the primers get damp and....
6 Q Okay. Let me see if I understand what a misfire is,
7 then. Is that where you pull the trigger and the
8 bullet does not go off?
9 A Right, it just don't do nothing.
10 Q Have you ever had any other occasion where it fired
11 when you didn't think it should have?
12 A Not that I recall.
13 Q Did you ever adjust the trigger on the rifle?
14 A No. I've had it apart, though.
15 Q You've had the trigger mechanism apart?
16 A Well, when I cleaned it I -- there's two pins that
17 drops everything, and I cleaned it.
18 Q Okay. When you say it drops everything, the trigger
19 mechanism comes out of the rifle; right?
20 A Yeah.
21 Q Now, you haven't taken that trigger mechanism apart,
22 though, have you?
23 A No.
24 Q For our court reporter's benefit, if you will wait
25 until I finish asking my question before you start to

1 answer it, it will help. He has trouble getting the
2 crosswinds.

3 I want to talk a little bit now about the day that
4 Teri See was shot. My information is that occurred on
5 November -- excuse me, October 27 of 1979. Does that
6 sound about right?

7 A Yeah; yes.

8 Q If you would, let's do the same thing we did with the
9 rifle, just apply it to October 27th: Take me through
10 that day, what you did from the moment you got up
11 through Teri See's injury. Can you do that?

12 A Uh-huh. We was hunting, and--

13 Q Let's start before that. You live in this area so you
14 were at home that night, say?

15 A Yeah. We'd just got home from hunting.

16 Q Okay. Well, what day of the week did this accident
17 happen on?

18 A I think it happened on a Saturday.

19 Q Were you working that day?

20 A I don't think so.

21 Q Okay. What had you done before you went hunting that
22 day?

23 A I think we hunted all day.

24 Q When you do that, what time do you usually start?

25 A Early in the morning.

1 Q Dawn?

2 A Yes.

3 Q So you would have gotten up and, what, had breakfast,
4 maybe?

5 A Yes.

6 Q And went right to hunting?

7 A Yeah.

8 Q Where would you have been hunting, what part of the
9 county?

10 A Clatsop County.

11 Q And whereabouts in Clatsop County?

12 A Off Simmons Ridge Road.

13 Q Now, you said "we" were hunting. Who would have been
14 with you; who was with you?

15 A Well, my wife was with me and Darrel was with me and
16 Teri--

17 Q That's Darrel See and Teri See?

18 A Yes. And Jim McDermott, and that was it.

19 Q Who's Jim McDermott?

20 A A friend of mine. He's a fireman in town here.

21 Q Now, when you go out with that many people are you in
22 one car or more than one?

23 A No, we had two rigs.

24 Q Okay. Whose rigs were they?

25 A My Blazer, and Darrel and Teri See were in their

1 pickup.

2 Q McDermott with you?

3 A Yeah. He left his truck over at my house.

4 Q Okay. So you had three people in your car?

5 A Yes.

6 Q And how many rifles did you have?

7 A I think I had three.

8 Q Were they all yours?

9 A Three of them was, yes.

10 Q And that would be the Remington 700 was one of them?

11 A Yes.

12 Q What were the other two, if you remember?

13 A A 45-70 and a .357 mag rifle.

14 Q Okay. Who was using the Remington that day?

15 A My wife.

16 Q Okay. You went out hunting. From our discussion

17 before we started the deposition, I think you mentioned

18 you didn't get any deer that day.

19 A No.

20 Q Okay. What time would you have headed back into town,

21 then?

22 A Oh, it was probably a 30 minute drive from my house.

23 We left about -- just at dark, just getting dark.

24 Q Just getting dark?

25 A Yeah.

1 Q So you'd hunted from daylight to dark?
2 A Yeah.
3 Q And you drove back to your house?
4 A Yes.
5 Q Was it dark by then?
6 A Yeah, it was -- you had to have headlights.
7 Q Did both vehicles go to your house?
8 A Yes.
9 Q Okay. And was anyone home at your house at that time?
10 A No.
11 Q Okay. What happened next?
12 A I brought the three rifles in that I owned and laid
13 them on the chair in my house, and my wife was calling
14 up the baby-sitter saying that she was going to pick up
15 the kids, I believe, and I knew that the guns were
16 loaded and I happened to lift the bolt up on the 6 MM,
17 the model 700, and the bolt won't come open, so I
18 flipped the safety forward and then it went off.
19 Q Okay. Were the other two guns loaded?
20 A Yeah.
21 Q Was the Remington 700 the first one you picked up?
22 A Yes.
23 Q Or first one you touched?
24 A (Nods affirmatively.)
25 Q Is that "yes?"

1 A Yes.

2 Q Okay. They were -- where were they laying, on an easy
3 chair or what?

4 A Yeah, on a big sofa-type chair.

5 Q Were they all pointing the same direction?

6 A Yeah.

7 Q What direction was that?

8 A It would be towards the kitchen.

9 Q Okay. How were you dressed that day, if you remember?

10 A Warm.

11 Q Warm. Because it was a cold day?

12 A Yes.

13 Q Would you wear gloves when you go hunting?

14 A No.

15 Q But a coat, say, or--

16 A I had a heavy army coat.

17 Q Would you be wearing sunglasses?

18 A No.

19 Q Or do you wear glasses at all?

20 A I don't wear glasses at all.

21 Q Now, I want you to describe again for me what happened
22 as you were reaching for the gun and what you did
23 exactly.

24 A Well, I put them all on the chair, and then I went down
25 to take the bullet out of the 6 MM, and when I went to

1 jack the shell out, well, you can't open the bolt
2 unless the safety is slid onto fire.

3 Q Okay. Is that normal for that gun?

4 A Yeah, that's the way they make them.

5 Q That's how it's always been?

6 A Uh-huh.

7 Q For you, I mean.

8 Now, you're gesturing as you're talking to me
9 here and you're using one hand. Would you have been
10 doing this with one hand?

11 A Well, I think I had my hand on the barrel, too, when I
12 went to do that. Well, then I flipped the safety and
13 that's when it went off.

14 Q Okay. You had your left hand on the barrel?

15 A Right.

16 Q Does that mean correct or does that mean right hand?

17 A Left.

18 Q Left hand. Okay. And you're right-handed, aren't you?

19 A Yes.

20 Q And you were -- this is a bolt action gun; right?

21 A Right.

22 Q Okay. Now, I want to make sure I understand this. I'm
23 not a hunter but I think I know what you're talking
24 about. When the bolt's closed, if the safety is off
25 the gun could be fired by pulling the trigger if there's

1 a bullet in it; right?

2 A Right, if the safety isn't on.

3 Q Okay. And if the safety isn't on and you want to take

4 a bullet out, you've got to crank the bolt up and pull

5 it toward you?

6 A You would have to--

7 Q Or pull it toward the stock?

8 A Yes.

9 Q And then the bullet pops out or what?

10 A Yes.

11 Q Okay. Did the gun only have one bullet in it?

12 A No, I think there was four more in it.

13 Q And do they -- does it work such that you have to work

14 this bolt to put one in the chamber?

15 A Right.

16 Q And then if you fire...?

17 A You have to extract it out to put another one in it.

18 Q Okay. And that's a semi-automatic function, is it, or

19 not?

20 A Well, as fast as you can move that bolt it will push

21 one more in.

22 Q Okay. Until you've used all that are--

23 A Yeah.

24 Q Were they stored in a--

25 A In a magazine-like -- not a magazine, but it's -- I

1 don't know what you'd call it. Kind of like a built in
2 magazine, I suppose.

3 Q Now, when you laid the gun on the chair the safety was
4 on?

5 A Yes.

6 Q Okay. And then you said you--

7 A And the bolt will not come open when that safety is on.

8 Q You wanted to open the bolt to take the bullet out?

9 A To get the round out.

10 Q So the gun would be in effect disarmed?

11 A Uh-huh.

12 Q And you tried to open it and the safety wouldn't permit
13 you to do that?

14 A Right.

15 Q So the next thing you did is--

16 A Put it on fire, just moved the safety forward to put it
17 on fire, and then that would let the bolt -- you could
18 take the round out.

19 Q Okay. As you flipped that safety were either of your
20 hands touching the trigger?

21 A That's what I don't know.

22 Q You don't know?

23 A Uh-huh.

24 Q Was there anything there on the chair that would have
25 been pushing on the trigger?

1 A No.

2 MR. HUEGLI: Would you mark that spot in the tape,
3 please.

4 Q (Mr. Chamberlain) Now, at any time in the past have
5 you.... You say you don't know if your finger was
6 touching the trigger. Did you think about that right
7 after the accident?

8 A Yes.

9 Q And at that time you didn't know?

10 A Well, it's kind of hard to say. It's kind of shocking
11 that it happened, and -- you know.

12 Q Now, after this gun fired you then -- it hit Teri See;
13 right?

14 A Uh-huh.

15 Q And what happened then, did someone call an ambulance?

16 A Yes.

17 Q And she was taken to the hospital?

18 A Yes.

19 Q Okay. What did you do after it was fired, after it
20 went off?

21 A I helped Teri there.

22 Q Okay. And did you go with her to the hospital?

23 A Yes, after a little bit, because her husband went in
24 the ambulance and then we went later on.

25 Q You followed by car?

1 A Not followed the ambulance, no.

2 Q Okay. But went that same evening, anyway?

3 A Yes.

4 Q Where was the gun during the time that Teri was being
5 administered to?

6 A It was at home.

7 Q Okay. I'm talking about the time from -- like maybe
8 the half hour from when it fired and then Teri was, say,
9 taken to the hospital, where was the gun during that
10 period of time?

11 A Right where I had put it when I walked in the door.

12 Q Okay. And who touched it next? Were you the next one
13 to touch it?

14 A Yes.

15 Q What did you do with it then?

16 A Well, I couldn't believe that it had happened and I
17 kept trying it, and then it went off one other time,
18 too, that same night.

19 Q Okay. Describe that for me, what you did and what
20 happened.

21 A The same -- the same thing: I closed the bolt and put
22 the safety on where you couldn't fire it, and then--

23 Q You're talking now with a bullet in the chamber?

24 A No, empty.

25 Q Okay.

1 A And kept doing it for a long -- many times. And then
2 the sheriff came--

3 Q Let me interrupt you. When you say you kept doing it,
4 you mean flipping the safety on and off?

5 A Yeah.

6 Q Trying to recreate what you were doing when Teri was
7 hurt?

8 A Right.

9 Q Okay. And you'd done it a number of times and nothing
10 happened?

11 A A couple times when the sheriff was there, too; he did
12 it once.

13 Q Did he make it go off?

14 A Yeah.

15 Q What's his name?

16 A I don't know.

17 Q Would you recognize it if you heard it?

18 A Not really.

19 MR. HUEGLI: Do we have a police report on that?

20 MR. CHAMBERLAIN: Yeah, there is one. I'll give
21 you a copy.

22 THE DEPONENT: Whoever took the report it was him,
23 then, the sheriff.

24 Q (Mr. Chamberlain) Now, you said you tried to make it
25 happen a few times after the accident?

1 A Uh-huh.

2 Q And you flipped it back and forth and then it went off
3 or it -- what do you mean by "went off," it clicked?

4 A Well, it clicked.

5 Q And it would have fired a bullet if there'd been one in
6 the chamber?

7 A Right.

8 Q Now, when you were doing it, was anyone present; was
9 the sheriff there then?

10 A I think he did it himself and it went off, too.

11 Q Okay. But back to my question. Did he see it happen
12 when you were doing it?

13 A I don't think so.

14 Q Okay. And then he got there and he did the same thing?

15 A Uh-huh.

16 Q And it went off for him?

17 A Yeah; but we was there for a long time before it did
18 it, I mean maybe an hour.

19 Q Flipping it back and forth?

20 A Right.

21 Q Anyone else experiment with the gun like that?

22 A No, not that I know of.

23 Q And then what happened to the gun after that?

24 A My insurance company wanted it.

25 Q Okay. And you gave it over to them?

1 A Yeah.

2 Q And eventually you were paid for it?

3 A Yeah.

4 Q Okay. Did you ever clean the gun after this incident?

5 A I'd clean it all the time, every time I shoot it.

6 Q Okay. Did you ever clean it after the day that Teri

7 was injured?

8 A Yes.

9 Q You did?

10 A (Nods affirmatively.)

11 Q When did you do that?

12 A Next day.

13 Q Did you ever fire it again after this incident?

14 A I think I did.

15 Q Hunting?

16 A Yeah; and target shooting.

17 Q How long did you keep the gun, then, after October of

18 '79 before you turned it over to your insurance company?

19 A November or December.

20 Q A couple months?

21 A Yeah; yes.

22 Q Okay. Now, I want you to go through, if you could,

23 the -- you mentioned that you cleaned the gun every

24 time you used it. Give me a little history of how you

25 maintained that gun and what you would do to it and

1 what's involved in the cleaning of the gun.

2 A Well, I don't do this all the time but usually I take
3 the stock off the barrel and then clean around the
4 firing mechanism and stuff like that. But usually, I
5 go through the breech end and clean it, make sure I get
6 it clean, because they shoot so fast that you could
7 copper file your barrel and then they don't shoot so
8 good.

9 Q The breech end is the end where the bullet comes out?

10 A Where it goes in.

11 Q Okay. You clean the gun every time you use it?

12 A Yes.

13 Q How about if you go out hunting and you've loaded it
14 for the day to go hunting but you don't actually fire
15 it because you don't see anything to fire at, is it
16 necessary to clean it after that?

17 A No. I just wipe it off, wipe the rain off of it all
18 the time, because it does rain all the time here.

19 Q Are there any inspections that you have to go through
20 in the cleaning process, do you look at the parts or...?

21 A No.

22 Q Nothing in particular?

23 A No.

24 Q Is there any maintenance or any cleaning you have to do
25 on the safety mechanism itself?

- 1 A Well, I take a toothbrush and get the dust and stuff
2 off of it.
- 3 Q How about on the trigger mechanism? You mentioned
4 before that you can pull a couple of pins and drop that
5 mechanism out.
- 6 A Yeah.
- 7 Q Do you do anything to the mechanism itself?
- 8 A No. Soak it in solvent or something.
- 9 Q And then wipe it off?
- 10 A Uh-huh.
- 11 Q Have you ever had occasion to repair the gun?
- 12 A No. I always had that old gunsmith. But I don't
13 think -- other than just glass bedding it, I don't
14 think there has been any repairs on it.
- 15 Q Then it's your recollection that he never did any
16 trigger adjustments on it?
- 17 A I don't think so. I don't know, he could have; I don't
18 know. But it was always light pull, trigger pull.
- 19 Q That stayed the same for the entire time you owned the
20 gun?
- 21 A Uh-huh.
- 22 Q Is that "yes?"
- 23 A Yes.
- 24 Q Anyone else that you might have taken it to or that
25 might have "birggled" with it or adjusted it?

1 A No.

2 Q When the safety is on on this gun, rifle, if you put
3 your finger on the trigger does it swing freely, or
4 could you pull it back just as you could if you were
5 firing it, or does it stop solid?

6 A It stopped solid.

7 Q Okay. I'm talking about with the safety on.

8 A Yeah.

9 Q Is that right?

10 A Yeah.

11 Q Did you have some sort of a gun bag or case that you
12 kept the gun in?

13 A I used to, but I don't -- didn't at that time, no.

14 Q Where would you keep it?

15 A In a gun cabinet or underneath the sofa or something.

16 Q In your house?

17 A Yeah.

18 Q Had you been drinking the day of this accident?

19 A Yes.

20 Q What had you had to drink?

21 A A couple beers.

22 Q When you say a "couple" do you mean two?

23 A Yes.

24 Q Over what period of time?

25 A Well, like I said earlier, we was only about 30 minutes

1 from the house and we got to go by the store, and I had
2 bought some beer.

3 Q After you finished hunting?

4 A Yes.

5 Q Where is Jim McDermott now?

6 A Probably working, I don't know.

7 Q He still lives in this area?

8 A Yeah.

9 Q How do you spell his last name?

10 A I really don't know.

11 Q Do you know his address?

12 A No.

13 Q Do you know his phone number?

14 A I've got it at the house.

15 Q Is it in the phone book, do you know?

16 A Yes.

17 Q You've mentioned that you were aware that this gun had
18 a light pull on the trigger.

19 A Yes.

20 Q Did you take that into account in handling the gun?

21 A Yes.

22 Q How would you take that into account?

23 A Well, usually it was just me using it all the time.

24 Q Okay. But how did you -- did you treat the gun
25 differently or did you handle it differently because--

1 A I handled it differently, yes.

2 Q How so?

3 A Well, like I never keep it on safety or anything, I'd
4 just usually -- if I got one in there, I'd just leave
5 the bolt open until I get ready to shoot it.

6 Q The gun won't fire with the bolt open, will it?

7 A No way.

8 Q I guess what I'm asking, did you try to keep your hand
9 away from the trigger because you knew it had a light
10 trigger?

11 A No, not really; I mean I've got guns at home probably
12 lighter trigger yet.

13 Q So the way you insured against having it go off
14 accidentally was to keep the bolt open if you weren't
15 intending to use it?

16 A Right. Actually, it's just a target rifle; it's not a
17 hunting rifle, really.

18 Q Have you ever gotten a deer with it?

19 A Yes.

20 Q Was Jim McDermott present when you did your testing of
21 this -- after Teri was injured and you said you flipped
22 the safety back and forth and it discharged, was
23 McDermott there then?

24 A No, I think he'd left, but I'm not positive.

25 MR. CHAMBERLAIN: Okay. That's all the questions

1 I have.

2 ---

3 CROSS-EXAMINATION

4 BY MR. HUEGLI:

5 Q Okay. Mr. Boudreau, I'd like to ask you some questions
6 specifically about the date of the accident, first, and
7 then I'd like to go into some general background infor-
8 mation.

9 Now, as I understand it, you and your wife were
10 both hunting that day?

11 A Yes.

12 Q Which gun was she using?

13 A This 6 MM, the Remington.

14 Q And during that day when you were hunting, I understand
15 that you didn't get a deer.

16 A No.

17 Q So as I understand it, the first time that rifle was
18 discharged that particular day was when it shot Mrs.
19 See.

20 A Probably, yes.

21 Q Well, was it or was it not?

22 A Yes.

23 Q Okay. And that was the only shot that went out of it
24 that day?

25 A (Nods affirmatively.)

1 Q Okay. Now, when you got home -- you say you stopped
2 by before you got to the house, you stopped by and got
3 some beer; is that right?
4 A Yes.
5 Q What store did you buy it at?
6 A Olney Store.
7 Q Okay. Had you or anybody in the party been drinking
8 any alcoholic beverages before you bought that beer?
9 A I don't think so.
10 Q Do you remember?
11 A No.
12 Q You didn't have any beer in the truck on your way to
13 the store?
14 A I don't think so, no.
15 Q How many beers did you have before the accident
16 occurred?
17 A Oh, probably two.
18 Q How many beers did you buy at the store?
19 A A six pack.
20 Q How many beers did the other people have?
21 A I don't think -- I don't know if my wife had one or
22 not. Like I say, we was in two rigs, and I stopped.
23 Q So you and your wife bought a six pack for your rig?
24 A Yeah.
25 Q How long was it from the time you got to the store and

1 bought the beer until the time Mrs. See was shot?
2 A Oh, probably 20 minutes or so.
3 Q Okay. You're certain you didn't have any more than
4 two beers and also certain you didn't have any less
5 than two?
6 A Yes.
7 Q Okay. Now, the home that Mrs. See was shot in, was it
8 your home?
9 A Yes.
10 Q It was your home?
11 A Uh-huh.
12 Q And you're renting or buying that home?
13 A Buying.
14 Q Okay. And when you walked in the house, I assume you'd
15 finished deer hunting for that day, there was no
16 intention of hunting deer any more?
17 A No.
18 Q Okay. Now, you've indicated to Mr. Chamberlain that
19 you generally keep your guns loaded in the house; is
20 that correct?
21 A Yes.
22 Q Why is that?
23 A Oh, I just had that habit, I guess.
24 Q Okay. And when you keep your guns loaded in the house,
25 do you leave them loaded with the bolt closed and the

1 safety on?

2 A No. I usually keep them loaded without any in the
3 barrel at all.

4 Q Okay. So just in the chamber -- or just in the
5 magazine?

6 A Just in the magazine, yes.

7 Q Okay. And when you store the 7 millimeter -- or 6
8 millimeter, do you store it with the bolt closed so
9 dirt doesn't get in the chamber?

10 A Right. But I make sure there are no rounds in it when
11 I do.

12 Q Rounds in the chamber?

13 A Right.

14 Q Okay. Now, as I understand it, you laid it down on a
15 chair or a couch.

16 A Kind of like a sofa chair, an easy chair.

17 Q Okay. And it was your intention to take the live round
18 out of the gun?

19 A Yes, sir.

20 Q Why didn't you take the live round out of the gun out-
21 side the house, away from other people?

22 A Because I had three in my arms.

23 Q At the same time?

24 A Yes.

25 Q Okay. So let's go over that for just a moment. You

1 went into the house; you had three guns in your arms?
2 A Yeah.
3 Q Okay. And you put one down on the couch, which was the
4 6 millimeter?
5 A I put all of them like that.
6 Q Okay. All right next to each other?
7 A Yes.
8 Q And the other two guns were the .357 magnum...?
9 A Rifle, and the 45-70 rifle.
10 Q Okay. Any of them have scopes?
11 A Just the 6 MM.
12 Q Okay. So I assume the guns were just about touching
13 each other if you laid three guns down on a couch.
14 A Well, it's a pretty big sofa chair, I mean it's.... No,
15 they had six, seven inches apart.
16 Q Were the other guns loaded?
17 A Yes.
18 Q Were the other guns on safety?
19 A There's no safeties. I got Marlin lever actions and
20 you have to have the hammer pulled all the way back on
21 them.
22 Q So the other two were lever actions and this was a bolt
23 action?
24 A Yes; right.
25 Q All right. And you reached down and grabbed the gun to

1 open the bolt?

2 A Right.

3 Q And discovered the safety was on; is that right?

4 A Yes.

5 Q And then you pushed the safety forward or pulled it

6 backward?

7 A I pushed it forward.

8 Q Okay. Is the safety up on top?

9 A The safety is located by the bolt.

10 Q Okay. Is it a flip safety that goes from side to side

11 or from back to front on the gun?

12 A Back -- side -- from front to back.

13 Q Front to back?

14 A (Nods affirmatively.)

15 Q So you push the safety forward and it's off?

16 A Yes.

17 Q You pull it back and it's on?

18 A It's on safety, yes.

19 Q Okay. So you grabbed the gun with your right hand and

20 pushed the safety forward and the gun immediately

21 discharged?

22 A Well, I took and held it. When I tried to get the bolt

23 open, then I knew that there was one in it, so when I

24 went to flip the safety to fire to get the bolt open,

25 when I pushed that forward, that's when it went off.

1 Q Okay. When was the last time you'd cleaned that rifle,
2 do you remember?

3 A Probably the weekend before.

4 Q Okay. Had you taken the trigger mechanism apart in
5 order to clean it at that time?

6 A I don't think so.

7 Q You indicated that sometimes you dropped that mechanism
8 out and soaked it in shellac or varnish or solvent?

9 A Cleaning solvent, WD-40 or whatever I use.

10 Q Okay. What kind of solvent did you soak it in the
11 weekend before?

12 A It might have been diesel.

13 Q Diesel?

14 A Yeah.

15 Q Does diesel work pretty good?

16 A Yes.

17 Q And is that ordinarily what you would soak the trigger
18 mechanism in?

19 A Usually.

20 Q Okay. How many times do you suppose this trigger
21 mechanism had been soaked in diesel, considering you'd
22 had the gun a few years?

23 A Probably three or four times.

24 Q Okay. So in the total period of time you'd used the
25 gun, you'd only taken the trigger mechanism out three

1 or four times?

2 A Yes.

3 Q And each time you soaked it in diesel?

4 A Uh-huh.

5 Q Nothing else?

6 A I might have sprayed it with WD-40 a couple times.

7 Q Okay. Anything else; any 3-in-1 oil or light oil?

8 A I don't think so.

9 Q Okay. Other than the written statement -- or the
10 recorded statement that you gave to your insurance
11 company, have you given anybody else any other written
12 statements regarding this accident?

13 A Mr. Nelson here.

14 Q Okay. Other than your lawyer.

15 A And my lawyer, yes.

16 Q Oh, you've given one to Mr. Nelson?

17 A Well, he had--

18 MR. HUEGLI: Do you have a written statement from
19 him besides this one?

20 A --one about the accident.

21 MR. CHAMBERLAIN: What we have is one he did not
22 sign.

23 MR. HUEGLI: Okay. Can I see that?

24 MR. CHAMBERLAIN: No.

25 MR. HUEGLI: Why not?

1 MR. CHAMBERLAIN: He didn't sign it; it's not a
2 written statement. In other words, we talked to him
3 and we prepared a statement; he did not sign it.

4 Q (Mr. Huegli) Did you talk to these attorneys about
5 this accident before this deposition, Mr. Nelson or
6 any--

7 A No. Just talked to Mr. Nelson is all.

8 Q Okay. And he took a statement from you?

9 A Yes.

10 Q And did you read the statement after he took it to make
11 sure it was accurate?

12 A Well, it was about like you're asking me now.

13 Q Okay. But I just wondered if you read it after you gave
14 it to him.

15 A I think I did.

16 Q Was it accurate?

17 A Yes.

18 MR. HUEGLI: I think we're probably entitled to
19 that, don't you?

20 MR. CHAMBERLAIN: Yeah, you probably are.

21 Let's go off the record a second.

22 (Colloquy off the record.)

23 MR. HUEGLI: Back on the record.

24 Q (Mr. Huegli) Other than the statement that we're going
25 to look at now, have you given any other statements to

1 anybody,--

2 A No.

3 Q --written statements?

4 MR. CHAMBERLAIN: Did you ask him about Grange?

5 MR. HUEGLI: Well, I asked him about the recorded.
6 He gave a recorded statement to Grange Insurance.

7 Q (Mr. Huegli) You didn't give them a written statement,
8 though, did you; you didn't sign anything, statements
9 that--

10 A You'd have to ask my wife; I don't know, sir.

11 Q Okay. Thank you.

12 Have you ever had any accidents with guns before
13 this, ever shot anybody?

14 A Except for in Vietnam?

15 Q Other than in Vietnam.

16 A No.

17 Q Okay.

18 A I shot myself once, yes.

19 Q Okay. That's what I'm talking about. How did you
20 shoot yourself?

21 A Unloading a damn automatic pistol.

22 Q What happened?

23 A I had ahold of it and I tried to get the round out and
24 it wouldn't catch,--

25 Q You're talking about a .45?

1 A No, .22 automatic.

2 Q Okay. You're pulling the--

3 A --and I kept pulling the slide back trying to grab the
4 .22 shell out of the chamber, and I must have let it go
5 too hard or something but it went off and shot me in
6 the leg.

7 Q Did you have your finger on the trigger at that time?

8 A I don't think so.

9 Q Okay. Any other accidents with pistols?

10 A No.

11 Q Or rifles?

12 A (Shakes head negatively.)

13 Q Have you ever had -- strike that, please.

14 I'd like to ask you some questions now about Mr.
15 and Mrs. See. You knew them before this accident, as
16 I understand it, as friends, neighbors and acquaintances?

17 A Yes.

18 Q Do you know if they were -- strike that, please.

19 Have you seen the Sees during the last year? You
20 said you saw them last summer.

21 A I saw Darrel, her husband.

22 Q How about Mrs. See, the lady that was shot?

23 A No.

24 Q Have you seen her in the last year?

25 A Just driving a car. She don't visit us or nothing any

1 more so I don't know.

2 Q How is she doing? Do you know if she's recovered?

3 A As far as I know she's doing real good.

4 Q Do you talk to Darrel about it at all?

5 A No.

6 Q Has he told you whether or not she's pretty well

7 recovered from this accident?

8 A As far as I know, yeah, she is recovered from it.

9 Q Okay. Now, you said about two months before this

10 accident you had the gun go off when you were shooting

11 at a--

12 A Fish duck.

13 Q Fish duck. Merganser or something like that?

14 A Yes.

15 Q And did you have the gun aimed out the window?

16 A Yes.

17 Q Okay. And it had the scope on it?

18 A (Nods affirmatively.)

19 Q Were you sighting down the scope when the gun went off?

20 A Yes, kind of; yes.

21 Q Okay. So when you flipped the safety forward--

22 A Well, I didn't flip the safety that time.

23 Q What happened?

24 A I closed the bolt real hard, and it could have went off

25 that way, too, I don't know.

1 Q Okay. So when you looked out the window you were
2 sighting the merganser in the scope; the safety was
3 already off, it was already on fire position?
4 A Yes.
5 Q You closed the bolt--
6 A I had the bolt closed.
7 Q And the gun went off some way. It apparently didn't
8 have anything to do with the safety that time?
9 A No.
10 Q Now, on the day of this accident -- strike that, please.
11 Had you ever taken the safety off of this gun
12 altogether before?
13 A Well, it just comes in one great big mechanism, just
14 drop two pins and it comes off.
15 Q Uh-huh. So--
16 MR. CHAMBERLAIN: I think he understood trigger,
17 not safety.
18 A Oh.
19 Q (Mr. Huegli) The safety itself, can you take the safety
20 off altogether so the gun doesn't have a safety on it?
21 A I think you could.
22 Q Have you done that to this gun?
23 A No.
24 Q You're sure of that?
25 A Yes.

1 Q I suppose that you've thought about this accident over
2 the last couple of years several times, as to how it
3 happened?

4 A Yes.

5 Q And you've been asked a lot of questions by a lot of
6 different people about it, and you've thought through
7 your answers pretty carefully, haven't you?

8 A Yes.

9 Q Now, a question that I asked you -- or was asked you
10 not too long ago and I asked the court reporter to mark
11 it on the tape. Do you remember when I asked him to do
12 that? I'm going to have that question read back to you,
13 and the answer, and I want you to listen to it very
14 carefully.

15 (Prior questions and answers read as follows:

16 "Q Okay. As you flipped that safety were
17 either of your hands touching the trigger?

18 "A That's what I don't know.

19 "Q You don't know?

20 "A Uh-huh.")

21 Q Okay. The court reporter has just now read you back a
22 question that you testified to under oath here today
23 where you indicated that you'd thought about this and
24 you simply don't know whether or not your finger was on
25 the trigger on that day or not.

1 A (Nods affirmatively.)
2 Q I'm going to ask you the same question; would you give
3 me the same answer?
4 A Yes.
5 Q Okay. Now, you told us also that later the same night
6 you flipped the safety on and off and nothing happened,
7 and then you tried it again and it made the gun click.
8 A Yes.
9 Q Now, you also told us under oath that the sheriff was
10 in the same room and he did it and the same thing
11 happened for him.
12 A Yes.
13 Q And you also told us--
14 A Or it could have been me and he could have been
15 watching me. This is -- this has been a couple years
16 ago; I don't know for sure. But I know he was there
17 when it did go click.
18 Q Did you and he discuss it?
19 A No. As a matter of fact, I think he was one of them
20 that told me there was an article out about a
21 Remington, and so I just kept asking around and found
22 one of these articles in one of these magazines.
23 Q Okay. Is there any question at all in your mind that
24 the sheriff was told and you told the sheriff right
25 there on the spot, some few hours after the accident,

1 and you showed him how the gun went off accidentally or
2 he did it himself, one of the two?
3 A Yeah.
4 Q No question at all; if we took his deposition, you're
5 satisfied he'd tell us that?
6 A Yes.
7 Q Officer--
8 A I don't know his name.
9 Q --Laughlin?
10 MR. NELSON: Laughman, L-a-u-g-h-m-a-n.
11 Q Officer Laughman, do you know him?
12 A I've seen him around before, yes.
13 Q Other than drinking beer, you hadn't been smoking any
14 grass or anything that day?
15 A No. Not all Vietnam guys come home being dopers, you
16 know. That pisses me off every time people ask that.
17 Q Well, some come back and smoke grass and it doesn't
18 mean they're dopers, though, does it?
19 A I don't know. Drunks, maybe.
20 Q When you went into the house, you told us you were not
21 intending to use the rifle; you were done for the day?
22 A Right.
23 Q Why was the bolt not opened when you were driving
24 around in your car? You told us that when you drive
25 around in the car, you have the bolt open.

1 A Well, my wife was using the gun that day. Usually, if
2 I use it, I just use that one particular; I don't need
3 a bunch of other, more guns. But, she was using it.

4 Q So she evidently forgot to leave the bolt open?

5 A Well, she's not really that familiar with a gun, any-
6 way, that one. She shot it a few times.

7 Q Okay. When you got home and put this gun on the chair,
8 was the barrel of the gun on one arm and the butt of
9 the gun on the other arm?

10 A Yes.

11 Q So as I understand it, the gun would be upside down?

12 A Right.

13 Q With the scope towards the seat?

14 A Right.

15 Q And the trigger pointing up?

16 A Yes.

17 Q So when you went to open the chamber, you necessarily
18 had to open the bolt downwards,--

19 A Yes, sir.

20 Q --towards the seat of the chair?

21 A Right.

22 Q Okay. So when you released the safety -- which is
23 located on the top of the gun, by the scope, but when
24 it was on the chair it was actually on the bottom?

25 A Bottom.

1 Q You had to reach underneath the gun and flip the safety
2 basically when the gun was upside down?

3 A Right.

4 Q I'm going to do the best I can here to draw a picture
5 of a chair -- not necessarily the exact chair that
6 we're talking about but just two arms -- and lay the
7 gun across (drawing). Is that basically what we're
8 talking about?

9 A That's just exactly.

10 MR. HUEGLI: Okay. Let's mark that as an exhibit,
11 please.

12 (Deposition Exhibit number 1 marked for
13 identification.)

14 Q Now, would you please take this ballpoint pen, Mr.
15 Boudreau, and mark on the gun where the safety is
16 located?

17 A It would be on the other side.

18 Q Okay. Why don't you just put an "S" -- or just an "X"
19 on the opposite side the safety is located, if you
20 would.

21 A Okay. It would be down here (marking).

22 Q Okay.

23 A On the other side.

24 Q All right. So you put an "X" where the safety is
25 located but it's on the other side?

1 A Yeah, basically.

2 Q Okay. And would you please initial that picture for
3 me, just put your initials on it anywhere near the gun.

4 (Deponent marks on diagram.)

5 Q Thank you. You can give that to the court reporter,
6 if you would.

7 Are you absolutely certain that you had somebody
8 else glass bed the stock, or did you do it yourself?

9 A That old Marx did it from Warrenton, the gunsmith.

10 Q Have you ever glass bedded stocks yourself?

11 A Yeah, I've tried it, but I never got one completed.

12 Q Now, about three years before this happened did the gun
13 fire one time when you were resting it on some sandbags?

14 A Shooting at a fish duck, yes.

15 Q Oh, that's the same incident?

16 A That's the same incident.

17 Q Okay. Is that when you closed the bolt and it fired?

18 A Yes.

19 Q Okay.

20 A See, I have an 18 power scope on that thing, and now and
21 then I moved the damn thing around a lot and it could
22 have gone off, you know, that time, and I can't
23 remember if -- I'm sure it wasn't from the safety deal
24 that time.

25 Q Okay. On the evening of October 27th, the date of this

1 accident, was anybody else present when you and the
2 sheriff were testing this gun?
3 A I don't know for sure. My wife might have been.
4 Q Well, other than your wife.
5 A I don't know for sure.
6 Q Okay. The sheriff came into your house, and you were
7 flipping the safety back and forth and back and forth
8 and back and forth to see what happened?
9 A Yes.
10 Q The sheriff was present?
11 A Yes.
12 Q And you don't know whether your wife was present or not?
13 A She could have -- she was there, I'm sure.
14 Q Okay. Was Jim McDermott there?
15 A That's what I was wondering. I don't know for sure or
16 not.
17 Q Have you talked to Mr. McDermott about this shooting
18 incident since it happened?
19 A No.
20 Q Have you seen him anymore?
21 A Yeah, he's -- he's a friend; he comes down now and then.
22 Q Okay. Immediately after you shot Mrs. See -- the gun
23 shot Mrs. See, if you will, what was the first thing
24 you said, do you remember?
25 A 'Oh, shit,' I think.

1 Q Anything else?

2 A I was kind of upset that it happened because when I was
3 doing all this shit everybody seemed to me like they
4 were coming in the door, and all of a sudden when it
5 went off, Teri happened to be right there.

6 Q Okay. So as I understand your testimony -- and
7 remember, I asked the court reporter to mark that
8 section in the tape and we went over it again carefully
9 here today; you've had a chance to think about it --
10 as far as you know, that gun could have gone off
11 because you moved the safety forward and it fired or
12 you accidentally pulled the trigger, one of the two; is
13 that fair to say, you don't know for sure?

14 A I don't know for sure but I don't think that I was
15 close to that trigger.

16 Q Well, you don't know, though, do you?

17 A No.

18 Q Have you ever been convicted of a crime?

19 A What kind of crime?

20 Q Well, let's just start with the first one and go to the
21 last one. Other than traffic violations.

22 A Oh, just from taking some cedar from the woods one
23 time, and that's just recently.

24 Q When did that happen?

25 A Oh, November of this year.

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1 Q Of 1981?

2 A Yes.

3 Q Federal court?

4 A No, just district court.

5 Q Okay. Any other crimes?

6 A No. I don't know if that's a crime or not. I guess
7 they try to make it a crime, but....

8 MR. HUEGLI: That's all I have. Thank you.

9

10

REDIRECT EXAMINATION

11

BY MR. CHAMBERLAIN:

12

Q I've got three other areas I want to cover.

13

MR. CHAMBERLAIN: Would you mark those when you
14 get a chance.

15

(Deposition exhibits numbers 2, 3 and 4

16

marked for identification.)

17

Q Mr. Boudreau, I want to talk to you about a couple of
18 things that I didn't cover completely. I'll start with
19 this deposition exhibit 3. Have you ever seen the
20 Clatsop County Sheriff Department officer's report on
21 this incident?

22

A No.

23

Q Why don't you take a minute there and read that.

24

(Exhibit handed to deponent.)

25

A This is wrong here, "The victim was walking from the

1 kitchen into the living room." She was walking from
2 the living room into the kitchen.

3 Q Okay. So the report is mistaken there?

4 A Right.

5 Q Okay. Have you had a chance to read the whole thing?

6 A (Shakes head negatively.)

7 Q Have you read the whole of exhibit 3?

8 A Yeah. This Laughman, the sheriff, he was the one that
9 was telling me about this incident, I mean about the
10 trigger deal.

11 Q The rifleman--

12 A He says that I told him. Is that the way that letter
13 reads, or...? I'm sure he was the one that was telling
14 me that there was a Remington that had a malfunction.

15 Q In other words, when you testified earlier about having
16 seen that article, you think you maybe didn't see it
17 but--

18 A He told me first -- no -- and then I went and found an
19 article, but I don't know which book it was in.

20 Q Do you recognize this name, Daniel Laughman,
21 L-a-u-g-h-m-a-n?

22 A I don't know the guy personally, no, but I've seen him
23 driving patrol car.

24 Q And this was the person that was out there that day--

25 A Yes.

1 Q --investigating?

2 A Yes.

3 Q Okay.

4 A That same night -- evening.

5 Q I want to refer you to the third sentence in the next
6 to the last paragraph, and I'll just read it to you,
7 and I want to ask you if this refreshes your recollection
8 about where your hand was in relation to the trigger.

9 The sentence states:

10 "Mr. Boudreau told writer that he never
11 touched the trigger, but that the releasing
of the safety discharged the weapon."

12 Do you remember telling Deputy Laughman that?

13 A Yes.

14 Q Does that refresh your recollection at all as to whether
15 or not your hand was near the trigger at the time the
16 gun discharged?

17 A Well, can I see that drawing?

18 Q Sure.

19 (Exhibit handed to deponent.)

20 A Your hand -- with that safety -- being in the chair
21 like that, your hand would have to go around the whole
22 thing to flip that safety.

23 Q Around the whole stock of the gun?

24 A Yeah, the way this was laying, just like he's drew the
25 picture.

1 Q Okay. And around the trigger is there one of these
2 little rings that protect it from--
3 A Oh, yes; yeah.
4 Q Was your finger in that ring?
5 A No.
6 Q Was it behind the ring?
7 A It was probably over the top of the whole works when
8 I -- and I think I flipped the safety with my thumb,
9 but two years ago I don't -- or that's quite a long
10 time.
11 Q Okay. Does this statement that I read to you help at
12 all, though; do you remember telling him that you didn't
13 have your hand on the trigger?
14 A Yes.
15 Q Okay. Now, do you remember when you talked to someone
16 from your home insurance company, Grange Insurance?
17 A Yes, I remember now, on the phone, over the phone.
18 Q A lady by the name of Jean Erickson?
19 A Yes.
20 Q And you remember she asked if she could take your state-
21 ment by a tape recording?
22 A Yes.
23 Q And you said sure?
24 A Yes.
25 Q Okay. Have you ever seen that statement?

1 A No. I think it was on tape.

2 Q Okay. I'll just represent to you that Deposition
3 exhibit 4 is a partial transcript or as complete a
4 transcript as we could get from that tape recording,
5 and I'll ask you a couple of questions. On page two
6 of the statement--

7 MR. HUEGLI: For the record, if the statement is
8 going to go into -- or going to be offered at the time
9 of trial, can we have the tape present, too?

10 MR. CHAMBERLAIN: Can you then, you mean?

11 MR. HUEGLI: Yeah. I don't want it now, but if we
12 go to trial on this case would you make sure you bring
13 the tape?

14 MR. CHAMBERLAIN: Grange has it. I returned it.

15 MR. HUEGLI: Okay.

16 Q (Mr. Chamberlain) I changed gears here a second. I
17 want to refer to page five of this Deposition exhibit
18 4, and I'll read you what purports at least to be the
19 transcript of your conversation with Jean Erickson. At
20 line two the question was:

21 "Q Uh hum. Okay. and how long have you
22 had this rifle?"

23 And the answer that was given in this transcript was:

24 "A About two years _____."

25 And I'll show you page five of exhibit 4. Would you

1 take a look at that, and then I'll ask you a question
2 about it.

3 A That's true. I have so many God-damn guns I don't know
4 for sure, but I'm sure that was one of the first ones I
5 bought when I got out of the service.

6 Q Okay. So we'll have to trace that down somewhere else,
7 then; you can't remember exactly how long you had it?

8 A Right.

9 Q Then if you would read on this same exhibit from line
10 20 down to the end and the first little bit of page six.

11 A In this question here in five,--

12 Q You're on page six of exhibit 4?

13 A --"...this particular model you have to release the
14 safety in order to get the bullets out."

15 Q That's true; right?

16 A Well, there's a little catch down there that you can
17 drop them all out, but it don't have nothing to do with
18 the safety. The one that's in the chamber is the one
19 that you've got to have the safety forward to get the
20 bullet out.

21 Q That's the only way you can get that one out?

22 A One out, right. You can't get them all out of it by
23 pushing the safety forward.

24 Q In particular I was -- wanted to ask you about on page
25 five of exhibit 4 the question was:

1 "Q Okay. Is there anything else about the
2 incident you could add?"

3 And then it says:

4 "Concerning the _____ of the gun
5 or..."

6 And your answer was:

7 "A "Well, ah, _____ went off because
8 of the, I never had any hold of the trigger
9 at all."

10 Does that help you refresh your recollection about
11 whether or not you had your finger near the trigger?
12 Do you remember telling Jean Erickson that?

13 A Yeah, but.... I don't know for sure. That thing has
14 had lots of rounds shot through it; it's probably worn
15 out, anyway.

16 Q And then at the bottom of page five:

17 "A And I just pushed that, I just pushed
18 the safety forward and that made the gun
19 discharge and it wasn't close to anything
20 where it could have touched the trigger..."

21 Do you remember telling her that?

22 A That's probably from being in the chair when I told her
23 that.

24 Q You mean it wasn't close to anything in the chair;
25 right?

1 A Well, the other guns there; but they were pretty far
2 away. That chair is pretty good-sized.

3 Q The last thing I want to talk about here is exhibit 2,
4 which is an unsigned statement that was prepared for
5 your signature, as I understand it, based on some
6 conversations you had with Mr. Nelson, who's here in
7 the room with me. Do you remember talking to him on
8 the phone about this incident?

9 A No, I came to his office.

10 Q You did. Okay. And as a result of that, did he prepare
11 a summary of your conversation and send it to you for
12 your signature?

13 A I think so.

14 Q Do you remember whether or not you signed that
15 statement?

16 A I don't know.

17 Q Do you remember what happened to it?

18 A I think we sent it back.

19 Q Okay.

20 A I don't know.

21 Q And you don't remember if you signed it or not?

22 A No.

23 Q Okay. Do you remember if you had any advice from your
24 lawyer about that, such as maybe you shouldn't sign it,
25 from Robert Moberg?

1 A He could have but I don't know. My wife was with me
2 when we was down at Moberg's, too, so I don't know.

3 Q The reason I'm asking you is that some of the state-
4 ments contained in this typewritten statement are not
5 totally consistent with what you've told us here today,
6 and I just want to make sure -- you know, we weren't
7 trying to put words in your mouth -- by comparing the
8 statement--

9 A Well, I think you are. God, everybody asks the same
10 question, and I told what happened.

11 Q Okay. Let's go through the statement, then, and I will
12 read what's here, and if there's anything that's
13 inconsistent or not true, tell me; if there's anything
14 that is -- that you don't understand or you don't
15 remember, tell me; and if there's anything that's true,
16 you tell me, and we'll just take it statement by state-
17 ment, because I'm not trying to put words in your
18 mouth, I'm just trying to find out what you remember.
19 Okay? I think--

20 A Well, that's why they shouldn't drag this son-of-a-bitch
21 on for two years, they should have it right away.

22 Q I appreciate that.

23 A I sure would, too.

24 MR. HUEGLI: I think I'm going to object to the
25 form of the question unless Mr. Boudreau is asked

1 whether it's true or whether it's false or whether he
2 gives no opinion. In other words, I'm concerned that
3 we'll read a sentence to him and say, what do you
4 think, and then he'll have to explain it or--

5 Q Well, you can add that. If you don't have an opinion
6 one way or another on something that's in here, that's
7 fine, you can state that. If you do have an opinion
8 and you want to state it, that's fine, too. All right?
9 Now, I'm just going to take the entire statement
10 sentence by sentence. The first one is:

11 "On July 15, 1980 at approximately 10:00
12 a.m. my wife, Starr Boudreau and I met with
13 Philip L. Nelson at his office in Astoria,
14 Oregon."

15 Is that true?

16 A Yes.

17 Q Okay.

18 A But I don't know the date.

19 Q All right, you don't remember the date.

20 A Right.

21 Q Fine.

22 "The purpose of this meeting was to discuss
23 the shooting incident at our home at Route 1
24 Box 893, Astoria, Oregon."

25 A True.

1 Q "As a result of the conversation with Mr.
2 Nelson, a written summary has been prepared."
3 A Yes.
4 Q "This summary was written by Mr. Nelson based
5 upon our conversation and then reviewed and
6 edited by me."
7 A Yes.
8 Q "On the day of October 27, 1979, Teri
9 See, Darrell See, Starr Boudreau and I were
10 deer hunting."
11 A Yes, other than Jim McDermott was with us, too.
12 Q Okay.
13 "The Sees rode in their pickup while my wife
14 and I rode in our pickup."
15 A Right.
16 Q "I was using a Marlin rifle that day while my
17 wife had the Model 700 Remington rifle."
18 A Yes.
19 Q "Most of the hunting was done from the dash-
20 board of the pickup with the chamber open to
21 prevent firing."
22 A Right.
23 Q "The Remington was not fired that day."
24 A Right.
25 Q Other than the Sees' accident.

1 A The accident.

2 Q "Upon returning home, I took the Remington
3 into the living room of my home and placed it
4 upon a chair."

5 A With the other two that I had.

6 Q "The gun was resting upside down, with the
7 trigger pointing up and with the barrel on
8 one arm of the chair and the stock on the
9 other arm."

10 A The trigger was pointing up, right.

11 Q Just as it's portrayed in exhibit--

12 A Just like this.

13 Q --1. Okay.

14 "The gun was pointed towards the kitchen area."

15 A Yes.

16 Q "The gun was in the chair for approximately
17 two minutes."

18 A Two to five, I'd say.

19 Q And that would be the time before you went to unload it?

20 A Because I went -- I unlocked the door -- well, my wife
21 unlocked the door and she was on the phone, and I
22 brought the guns in and laid them on the chair, and was
23 taking this one out when it went off. Teri was coming
24 from behind me, into the kitchen.

25 Q "I knew it had a live round in it and wanted

1 to remove it before everybody came into the
2 house."

3 A Right.

4 Q "I walked over to the gun and while it
5 remained in the chair, I attempted to open
6 the bolt."

7 A And the bolt wouldn't open, and so I flipped the safety
8 forward to get the bolt open, and before -- when I
9 put -- slipped the safety forward, it went off.

10 Q Okay. That's the next part of the sentence. It says:
11 "The bolt would not open since the safety was
12 on."

13 Right?

14 A Right.

15 Q "I then released the safety and the gun
16 immediately fired."

17 A Uh-huh.

18 Q All right.

19 "I did not know at the time but Teri See was
20 walking behind me and towards the kitchen."

21 A Yes.

22 Q "She was in a direct line with the gun when
23 it fired and eight or nine feet from it."

24 A Yeah, she was that distance, about.

25 Q "My hands did not touch the trigger or the

1 trigger area of the Remington."
2 A As far as I know it didn't -- wasn't.
3 Q "The trigger did not touch or come into
4 contact with the chair."
5 A No.
6 Q No, it did not?
7 A No.
8 Q "There were only three people in the
9 house when the gun fired, Teri See, Starr
10 Boudreau and myself."
11 A I think so, but I don't know for sure if Jim was there.
12 I think he left right -- because his truck was at my
13 house.
14 Q That's what we want, see. I don't want to hold you to
15 something that isn't true. If you have an explanation
16 of any part of this question, I want to hear it. Okay?
17 A Yes. But I'd have to ask him.
18 Q All right.
19 A He might have been there.
20 Q "My wife was on the phone talking to the baby-
21 sitter about picking up our daughter."
22 A And boy.
23 Q "She did not see the incident until she looked
24 up after the Remington fired."
25 A Right. And Teri was laying on the floor.

1 Q "Another friend, Jim McDermitt was just
2 coming into my house when the shooting
3 happened."

4 A Evidently.

5 Q "He called an ambulance."

6 A Yes, I think he did call the ambulance because he was --
7 used to be the fire -- well, he's still a fireman, and
8 he was -- he knew something about that, so he called
9 the ambulance right away.

10 Q "Darrell See was still outside when the shot
11 was fired."

12 A I don't know for sure. I thought he was in there, too.

13 Q "I am thirty-two years old and was born
14 August 29, 1947."

15 A Yes.

16 Q Are you 33 now?

17 A I'm 34.

18 Q Thirty-four. Okay.

19 "I have been around guns all my life and have
20 hunted as soon as it was legal to do so."

21 A Yes.

22 Q "I spend considerable time hunting and target-
23 shooting now."

24 A Yes.

25 Q "I have never had a hunter's safety course

1 but I did handle firearms while in the Army."
2 A Yes.
3 Q "I purchased the Remington from William
4 Marx--"
5 M-a-r-x.
6 "--of Warrenton, Oregon--"
7 A That's his name, yes.
8 Q Okay.
9 "I purchased (it) * * * in 1974."
10 A That's -- I think that's the year I got it, in 1974.
11 Q "Marx died about two years ago."
12 A Yes.
13 Q Would that be more like three years ago now?
14 A It probably would be almost four, I don't know -- yeah,
15 it would be almost four.
16 Q "He ordered the gun from Remington for me."
17 A Yes.
18 Q "Marx was a gunsmith but did not make any
19 changes or adjustments to the rifle."
20 A Not that I know of.
21 Q What about the--
22 A Just the glass bedding.
23 Q "I paid cash for the rifle;--"
24 A Yes.
25 Q "--I believe it was \$170.00."

1 A 170, 174.

2 Q "The gun was purchased mainly for target
3 practice but I did use it for hunting,
4 particularly for long-range shots."

5 A Yes.

6 Q "Shortly after I purchased the rifle, I
7 used it for target practice. I was unhappy
8 with its performance and decided to glass-bed
9 the stock."

10 A Right.

11 Q "In effect, this would prevent the barrel and
12 trigger area from moving away from the stock."

13 A Yes. But I didn't do it.

14 Q Okay. The next statement says:

15 "I did the work myself."

16 That's not true?

17 A That's not true. I done some to another one but it
18 wasn't that gun.

19 Q "The Remington rifle does have an
20 adjustable trigger but I have never adjusted
21 it."

22 A Right.

23 Q "The pull of the trigger was light from the
24 first day I had the gun."

25 A Right.

1 Q "I would estimate that the pull is less than
2 three pounds."
3 A Yes.
4 Q "It has remained--"
5 A But I don't really know for sure; I've never had
6 nothing to put on there and try it.
7 Q So that's more of a guess than an estimate?
8 A That's more of a guess. It might be less.
9 Q "It has remained constant since I have owned it."
10 A What do you mean?
11 Q The pull of the trigger.
12 A It's always been light, yeah. Is that what it means?
13 Q Well, I'll read it again. I don't want to tell you what
14 it means, I want you to tell me. I'll read the two or
15 three sentences together here:
16 "The pull of the trigger was light from the
17 first day I had the gun. I would estimate
18 that the pull is less than three pounds. It
19 has remained constant since I have owned it."
20 A Yeah. But I thought maybe it might be getting a little
21 lighter because I've used it a lot.
22 Q Okay.
23 "I knew that I had to be careful handling the
24 gun when loaded because of the light pull of
25 the trigger."

1 A Right.

2 Q "I have never experienced a similar
3 problem with the rifle."

4 A Well,--

5 Q Other than possibly--

6 A --I did have that one time.

7 Q With the duck?

8 A With the merganser.

9 Q "I have seldom used the rifle (sic) in the
10 past since the gun was used for target
11 practice."

12 A Yes.

13 Q "When I was ready to shoot, I would just load
14 and fire or keep the bolt open until ready to
15 fire."

16 A Yes.

17 Q "The gun did--"

18 MR. HUEGLI: May I interrupt you for a moment. I
19 think you misread the two sentences before.

20 MR. CHAMBERLAIN: Okay.

21 MR. HUEGLI: Could you read that back.

22 MR. CHAMBERLAIN: Oh, you're right, I did.

23 MR. HUEGLI: I've seldom used the safety in the
24 past.

25 Q (Mr. Chamberlain) I'll start at the top of page three

1 of exhibit 2 and I'll read the first two sentences, and
2 you can comment on those.

3 "I have never experienced a similar
4 problem with the rifle. I have seldom used
5 the safety in the past since the gun was used
6 for target practice."

7 Is that true?

8 A Read that over again.

9 Q "I have seldom used the safety in the past
10 since the gun was used for target practice."

11 A Right.

12 Q "When I was ready to shoot, I would just load
13 and fire or keep the bolt open until ready to
14 fire."

15 A Right.

16 Q "The gun did fire about three years ago when
17 I closed the bolt, but since I was resting
18 the trigger area upon sand bags, the pressure
19 of the bag may have caused the rifle to fire."

20 A That could have been, yes.

21 Q Earlier, I thought you said you were shooting out of a
22 car.

23 A Yeah, but I had it -- I keep sandbags in my truck, and
24 when I'd shoot I'd just lay everything on a mirror I
25 swing in and put sandbags on the mirror and on the

1 window, and I get -- set her down and it went off.
2 Q Okay.
3 "The rifle was kept in top condition."
4 A The what?
5 Q "The rifle was kept in top condition."
6 A As far as I know, yes.
7 Q "After each use, I would give it a thorough
8 cleaning."
9 A Not complete thorough, but a good cleaning, yes.
10 Q "This would include removing the barrel from
11 the stock to allow thorough cleaning around
12 the trigger system."
13 A Not all the time.
14 Q Sometimes?
15 A Sometimes, yes.
16 Q "The trigger system could be removed from the
17 rest of the gun for cleaning by releasing two
18 pins."
19 A Yes.
20 Q "The trigger system itself has never been
21 taken apart."
22 A Not that I know of.
23 Q "The gun is kept in a special corner in my
24 house. Nobody is allowed to use the gun
25 unless I am present."

1 A Right -- well, or in the gun cabinet.

2 Q "I have no instructions or sales
3 literature on the rifle."

4 A That's right.

5 Q "I do not recall receiving any such instruc-
6 tions or sales literature when I took
7 possession of the gun."

8 A That means I don't recall; that means I don't know for
9 sure.

10 Q Okay. It's not that you recall not getting them?

11 A I probably got them, but they were probably, right from
12 the box, thrown away.

13 Q "On the evening of October 27, 1979, and
14 after Teri was taken to the hospital, I again
15 tested the safety on the gun."

16 A Yes.

17 Q "Present were Jim McDermitt and Deputy
18 Daniel P. Laughman of the Clatsop County
19 Sheriff's Office."

20 A I don't know if Jim was there or not. I thought Darrel
21 was there, too.

22 Q Okay. You don't recall about Jim, though?

23 A No.

24 Q And you think maybe Darrel was there?

25 A I think Darrel, he -- no, Darrel went.... There was

1 somebody there.

2 Q Okay.

3 A It was either Darrel or Jim. Probably Jim. I don't
4 know.

5 Q Plus this Deputy Laughman?

6 A Yes.

7 Q "With the gun empty, I would release the
8 safety to see if it would fire. After
9 approximately twenty tries, the firing pin
10 again fired."

11 A Right.

12 Q "Since that time, I have not used the rifle
13 or cleaned it."

14 A Oh, yeah, I used it during elk season.

15 Q Okay. So this is inaccurate; right?

16 A That's inaccurate, yes.

17 Q And you testified to that earlier, that you used it for,
18 what, a couple months after this incident?

19 A Yes.

20 Q "After the shooting incident, I took the
21 rifle with me to Eastern Oregon. The gun
22 stayed in the car and was not touched. I
23 returned, the rifle was turned over to my
24 Grange Insurance agent, Dutch Kulland,"
25 and his address. Is that right?

1 A Yes.

2 Q Okay.

3 A But in them two months -- when I took it over to
4 Eastern Oregon I didn't get to shoot it, no, but I shot
5 it after that accident.

6 Q Okay.

7 A And I cleaned it really good after the accident.

8 MR. CHAMBERLAIN: Fine. Thank you. That's all I
9 have.

10 ---

11 RE-CROSS-EXAMINATION

12 BY MR. HUEGLI:

13 Q How many rounds do you suppose you shot through that
14 rifle in the years that you've had it?

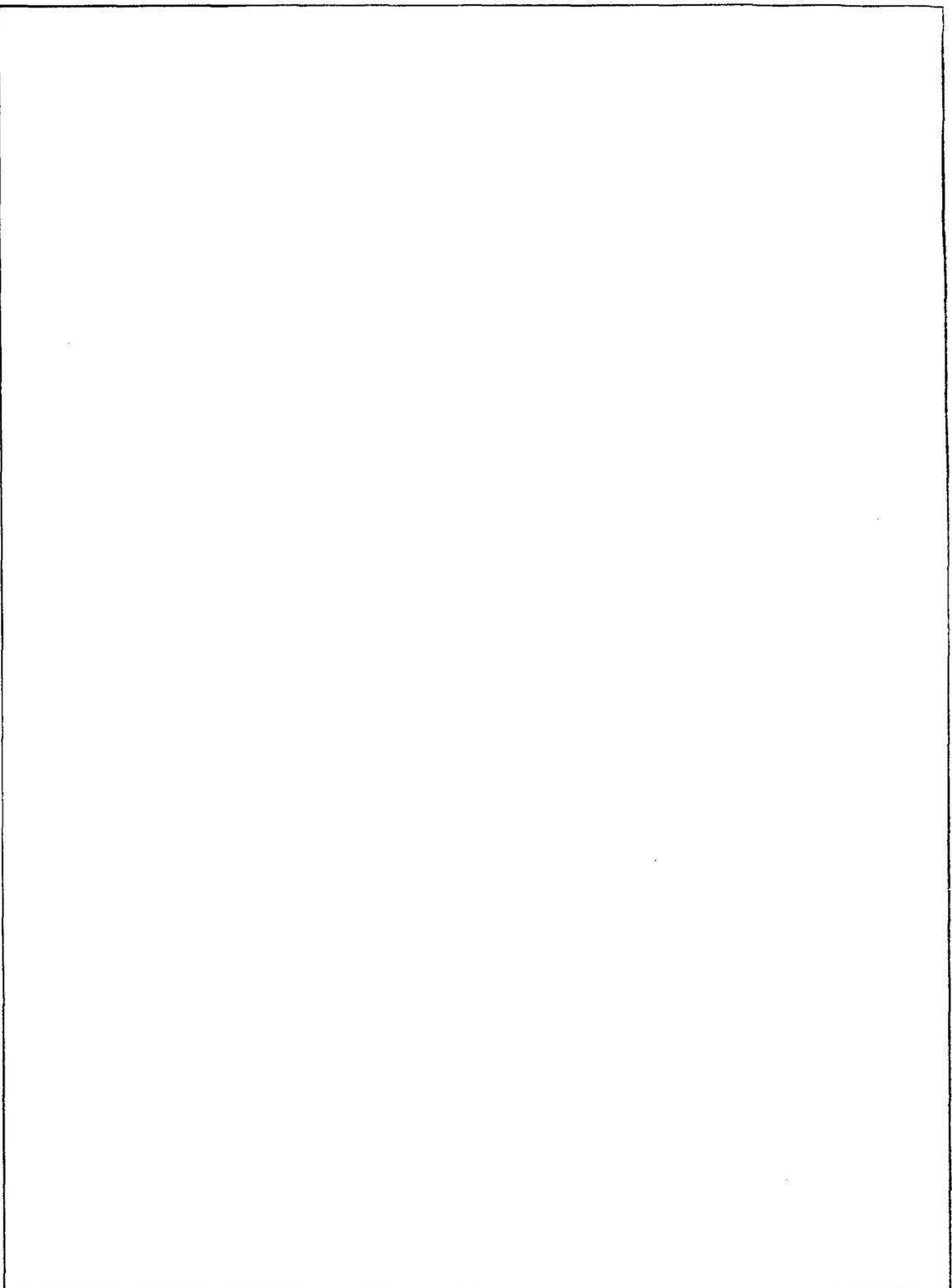
15 A Well, I got 500 rounds for it, and I must have reloaded
16 them over five times, easy.

17 Q So over a couple thousand shots?

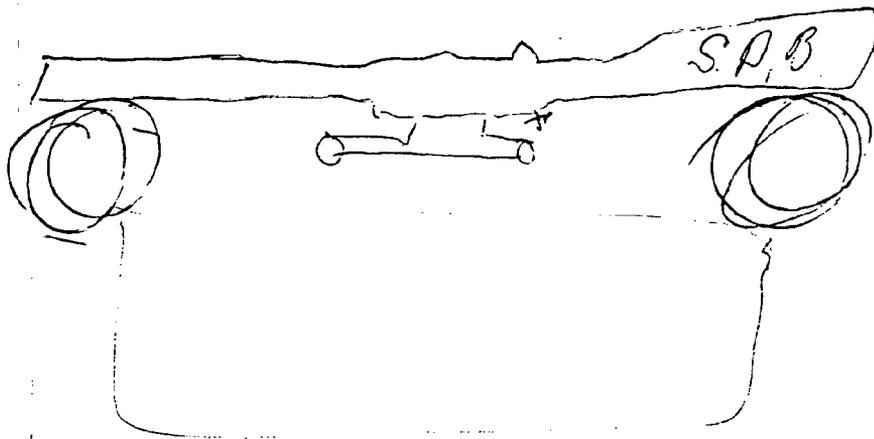
18 A Oh, way over a couple thousand rounds through it. But
19 like I say, I cleaned it to get the copper filing out
20 of it, too, and that's what ruins barrels. And you
21 don't want to shoot a lot of them to get the barrel
22 hot, either; that's what ruins them, too. But it has
23 had quite a few rounds shot through it. I don't know
24 approximately, but quite a few.

25 MR. HUEGLI: Okay. Thanks.

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S. RICHARD ADAMS
COURT REPORTER
P.O. BOX 835
ASTORIA, OREGON 97103



DEPO. EX.
1

JUL 17 1980

DEPO. Ex.
2

On July 15, 1980 at approximately 10:00 a.m. my wife, Starr Boudreau and I met with Philip L. Nelson at his office in Astoria, Oregon. The purpose of this meeting was to discuss the shooting incident at our home at Route 1 Box 893, Astoria, Oregon. As a result of the conversation with Mr. Nelson, a written summary has been prepared. This summary was written by Mr. Nelson based upon our conversation and then reviewed and edited by me.

On the day of October 27, 1979, Teri See, Darrell See, Starr Boudreau and I were deer hunting. The Sees rode in their pickup while my wife and I rode in our pickup. I was using a Marlin rifle that day while my wife had the Model 700 Remington rifle. Most of the hunting was done from the dashboard of the pickup with the chamber open to prevent firing. The Remington was not fired that day.

Upon returning home, I took the Remington into the living room of my home and placed it upon a chair. The gun was resting upside down, with the trigger pointing up and with the barrel on one arm of the chair and the stock on the other arm. The gun was pointed towards the kitchen area. The gun was in the chair for approximately two minutes. I knew it had a live round in it and wanted to remove it before everybody came into the house. I walked over to the gun and while it remained in the chair, I attempted to open the bolt. The bolt would not open since the safety was on. I then released the safety and the gun immediately fired. I did not know at the time but Teri See was walking behind me and towards the kitchen. She was in a direct line with the gun when it fired and eight or nine feet from it.

My hands did not touch the trigger or the trigger area of the Remington. The trigger did not touch or come into contact with the chair.

There were only three people in the house when the gun fired, Teri See, Starr Boudreau and myself. My wife was on the phone talking to the babysitter about picking up our daughter. She did not see the incident until she looked up after the Remington fired. Another friend, Jim McDermitt was just coming into my house when the shooting happened. He called an ambulance. Darrell See was still outside when the shot was fired.

I am thirty-two years old and was born August 29, 1947. I have been around guns all my life and have hunted as soon as it was legal to do so. I spend considerable time hunting and target-shooting now. I have never had a hunter's safety course but I did handle firearms while in the Army.

I purchased the Remington from William Marx of Warrenton, Oregon in 1974. Marx died about two years ago. He ordered the gun from Remington for me. Marx was a gunsmith but did not make any changes or adjustments to the rifle. I paid cash for the rifle; I believe it was \$170.00. The gun was purchased mainly for target practice but I did use it for hunting, particularly for long-range shots.

Shortly after I purchased the rifle, I used it for target practice. I was unhappy with its performance and decided to glass-bed the stock. In effect, this would prevent the barrel and trigger area from moving away from the stock. I did the work myself; I have done this to other guns before.

The Remington rifle does have an adjustable trigger but I have never adjusted it. The pull of the trigger was light from the first day I had the gun. I would estimate that the pull is less than three pounds. It has remained constant since I have owned it. I knew that I had to be careful handling the

gun when loaded because of the light pull of the trigger.

I have never experienced a similar problem with the rifle. I have seldom used the safety in the past since the gun was used for target practice. When I was ready to shoot, I would just load and fire or keep the bolt open until ready to fire. The gun did fire about three years ago when I closed the bolt, but since I was resting the trigger area upon sand bags, the pressure of the bag may have caused the rifle to fire.

The rifle was kept in top condition. After each use, I would give it a thorough cleaning. This would include removing the barrel from the stock to allow thorough cleaning around the trigger system. The trigger system could be removed from the rest of the gun for cleaning by releasing two pins. The trigger system itself has never been taken apart. The gun is kept in a special corner in my house. Nobody is allowed to use the gun unless I am present.

I have no instructions or sales literature on the rifle. I do not recall receiving any such instructions or sales literature when I took possession of the gun.

On the evening of October 27, 1979, and after Teri was taken to the hospital, I again tested the safety on the gun. Present were Jim McDermitt and Deputy Daniel P. Laughman of the Clatsop County Sheriff's Office. With the gun empty, I would release the safety to see if it would fire. After approximately twenty tries, the firing pin again fired. Since that time, I have not used the rifle or cleaned it.

After the shooting incident, I took the rifle with me to Eastern Oregon. The gun stayed in the car and was not touched. I returned, the rifle was turned over to my Grange Insurance agent, Dutch Kulland, 562 Pacific Way, Gearhart, Oregon.

Steven Boudreau

Dated: July ____, 1980

WASOP COUNTY SHERIFF'S DEPT.

DEPO. Ex

OFFICER'S REPORT

3

TIME: 1245

CITATION: _____

PLACE: Rt 1 Box 893 Astoria, OregonCASE NO: #79-0646SUBJECT: ACCIDENTAL SHOOTING

NAME: _____

DATE: 27 October 1979

COURT DATE: _____

~~XXXXXX~~VICTIM: TERRY SEE WFA
2060 S.E. Front St.
Astoria, Oregon
27 years oldWEAPON: MODEL 700 REMINGTON BOLT ACTION RIFLE
6 mm Cal. Ser # A6391951

HUSBAND: DARREL SEE

At 6:59 PM, date, writer received information from Cental Dispatch that a female was shot at Rt 1 Box 893, Astoria, Oregon.

At 7:05 PM, date, writer contacted Mr. Stephen D. Boudreau at ablove listed address and learned the following:

After arriving home from hunting, Stephen layed listed rifle on a chair in the living room. Noting that the rifle had the bolt closed he tried to open it, but found that the safety was on and it had to be released to open the bolt. When releasing the safety, the rifle discharged hitting victim 3" above the left knee. The bullet went through both legs into and out of a kitchen cabinet door along the north wall. Victim was transported to Columbia Memorial Hospital in Astoria by Medix.

The victim was walking from the kitchen into the living room when the shooting took place. All the persons at the residence told writer the shooting was a accident. Mr. Boudreau told writer that he never touched the trigger, but that the releasing of the safety discharged the weapon.

This type of accident with the Model 700 Remington rifle has happened before and was reported in the American Rifleman Magazine recently. The trigger is sometimes released by letting off the safety. However, this has not been confirmed.

Daniel P. Laughman, Deputy Sheriff

D.F.P.O. T.A.

#4

1 Q. This is Jean Erickson calling from _____ S.E. Madison,
2 October 29, 19__ at approximately 11:30 a.m. I'm interview-
3 ing Steven _____ regarding the accident that occurred
4 _____, 1979. Do I have your permission to
5 record this?

6 A. Yes.

7 Q. State your full name and spell your last name for me.

8 A. (inaudible)

9 Q. Pardon me, what?

10 A. (inaudible)

11 Q. Okay, and your Social Security number?

12 A. 544-_____

13 Q. And your residence address.

14 A. Route 1, Box 893, Astoria, Oregon.

15 Q. Okay and what highway are you on?

16 A. 202.

17 Q. And what are the approximate directions to your place?

18 A. From Astoria?

19 Q. Or, say from the highway 26.

20 A. Oh I'm just 6 1/2 miles from Astoria.

21 Q. Oh, okay, 6 1/2 miles from Astoria, right on the highway?

22 A. Yes.

23 Q. Okay. And your occupation?

24 A. I'm a logger but I'm not working now.

25 Q. Okay, are you self-employed or _____. Who do you
26 usually work for?

1 A. _____
2 Q. Pardon me?
3 A. Charlie Hartell.
4 Q. Okay, is he out of Astoria?
5 A. He's out of Warrenton, Oregon.
6 Q. Okay. Have you worked for him full-time?
7 A. I've worked for him for about 5 years.
8 Q. Okay. Okay, did this accident happen on the 27th? Is
9 that right?
10 A. Yes.
11 Q. Okay. And where were you when it happened?
12 A. Right here at my home.
13 Q. Okay and can you explain what transpired?
14 A. Well, _____ the gun into the house...
15 Q. Had you been hunting?
16 A. Yes, we'd been hunting.
17 Q. Okay.
18 A. Packed them in the house and I had two and I laid them
19 on the chair and I knew the one, the Remington was loaded so
20 I reached down to get the bolt open and the bolt was open so
21 the safety was on but I pushed the safety off and it went
22 off. By that time Terry was _____ at about the same
23 time from the kitchen...
24 Q. Uh hum.
25 A. And it discharged off hitting him in the leg.
26 Q. Okay, that was Terry C?

1 A. Yes.

2 Q. Okay. Who else was present in the room when it happened?

3 A. Jim McDermott...

4 Q. Jim McDermott?

5 A. Yeah.

6 Q. Okay.

7 A. And my wife _____.

8 Q. Uh huh.

9 A. And Terry C.

10 Q. Uh huh.

11 A. And Darrell C.

12 Q. That's her husband?

13 A. Yes.

14 Q. Okay.

15 A. _____ all the kids.

16 Q. Your children?

17 A. Huh?

18 Q. Your children?

19 A. And Terry's children and some of our relatives.

20 Q. Uh huh, okay. How many children does she have?

21 A. Two.

22 Q. Two children? Okay, _____ approximate ages?

23 A. _____ five and eight.

24 Q. Do you know if she is employed?

25 A. Yes, she works for Alaska Packers.

26 Q. Okay. And how long have you known her and her husband?

1 A. Ah, a little over a year.

2 Q. Okay. And had you all been hunting together?

3 A. Yes. The people I mentioned, the kids were here with a

4 babysitter.

5 Q. Uh hum. And you'd just come in from a hunting exhibi-

6 tion when this all happened?

7 A. Yes.

8 Q. Okay. Had she been shooting a rifle herself at all?

9 A. No.

10 Q. Okay. When you say you reached down to the gun, did

11 you pick the gun up when...

12 A. No, I never picked the gun up at all.

13 Q. It was laying on the chair?

14 A. Yes.

15 Q. And have you ever had a prior incident with this gun

16 going off? By itself?

17 A. No.

18 Q. Okay. And what...when she was hit, what happened after

19 that?

20 A. Jimmy McDermott got on the phone and called the ambu-

21 lance right away and she didn't bleed much so we just took

22 part of her jeans off and then the ambulance got here real

23 shortly and then she went into the surgery.

24 Q. Uh huh. Okay. Did you say anything to her before she,

25 when she came through the door, or was there any opportunity?

26 A. No, I didn't even...I thought they were all coming in

1 cause I was the first one cause I had to unlock the door.
2 Q. Uh hum. Okay, and how long have you had this rifle?
3 A. About two years _____.
4 Q. It's a Remington, you said a six millimeter Remington?
5 A. Yes.
6 Q. Have you used it frequently?
7 A. I use it all the time for target shooting and stuff.
8 Q. Uh hum. And you never had a prior accident with it as
9 I recall?
10 A. No.
11 Q. Do you usually have your gun loaded or unloaded in the
12 house?
13 A. Well I usually keep them all loaded in the house,
14 that's my policy.
15 Q. Uh huh. You say you keep them loaded? or unloaded?
16 A. Loaded.
17 Q. Loaded in the house. Okay and where do, do you keep
18 them in a gun cabinet or anything like that?
19 A. Usually, yes.
20 Q. Okay. Is there anything else about the incident you
21 could add? Concerning the _____ of the gun or...
22 A. Well, ah, _____ went off because of the, I never
23 had any hold of the trigger at all.
24 Q. Uh huh.
25 A. And I just pushed that, I just pushed the safety forward
26 and that made the gun discharge and it wasn't close to

1 anything where it could have touched the trigger...

2 Q. Uh huh. The function of the safety is to prevent it, a
3 gun from going off, right? While you're...

4 A. Right.

5 Q. I mean, and you say this particular model you have to
6 release the safety in order to get the bullets out?

7 A. You have to release the safety to get the bolt open to
8 take the live round out.

9 Q. I see. Is there any way to get the round out of the
10 chamber without doing that? Other than shooting it?

11 A. Shooting it is the only way.

12 Q. Okay.

13 A. Unless you take the safety off, but it doesn't look
14 like it's too safe that way.

15 Q. Yeah. Okay.

16 A. Getting back to the loading deal, I have _____ in the
17 magazine but not in the chamber.

18 Q. Uh huh.

19 A. _____ not too bad if I, I don't keep them loaded in
20 the chamber, I keep them in the magazine usually.

21 Q. I see. Okay, and about how many guns do you own?

22 A. Oh, I suppose I have about ten, eleven.

23 Q. Okay, do you hunt frequently and target practice and
24 that sort of thing?

25 A. Yes.

26 Q. Okay. I think that's all the questions I have while we

- 1 have the recorder on. Have you understood that this has
2 been a recorded interview?
3 A. Yes.
4 Q. And you acknowledge that the answers you gave were true
5 to the best of your recollection?
6 A. Yes.
7 Q. Okay. I'll conclude the interview at this time.