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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TERI SEE and DARREL SEE,)
husband and wife,)
Plaintiffs,)
vs.) Case No. 81-886
REMINGTON ARMS COMPANY, INC.,)
Defendant.)

Before: Honorable Edward Leavy, Magistrate
United States District Court

TESTIMONY OF ROBERT LEE HILLBERG
March 4, 1983

For the Plaintiffs: BODYFELT, MOUNT & STROUP
By: Peter R. Chamberlain
Kathryn R. Janssen
Attorneys at Law
222 SW Morrison, Rm. 229
Portland, OR 97204
502/243-1022

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

VIOLA JOYNER, RPR
Court Reporter
225 U.S. Courthouse
Portland, OR 97205
Portland, OR 97205
503/221-3113

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1 PORTLAND, OREGON, FRIDAY, MARCH 4, 1983, 11:11 A.M.

2

3

ROBERT LEE HILLBERG,

4

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

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

9 THE WITNESS: Robert Lee Hillberg, H-i-l-l-b-e-r-g.

10

11

DIRECT EXAMINATION

12

13 BY MR. HUEGLI:

14 Q Mr. Hillberg, where do you live, please.

15 A I live in Cheshire, Connecticut.

16 Q And where did you--

17 How old are you?

18 A I'm 66 years old.

19 Q Okay. Mr. Hillberg, where did you grow up when you
20 were young, where did you live?

21 A Well, my earlier home is Minneapolis, Minnesota.

22 Q Okay. And did you go through grade school there?

23 A Yes.

24 Q And where did you go to high school? Same place?

25 A Same place.

1 Q And when you graduated from high school, would you
2 please tell the jury what you then did; when did you graduate
3 would be the first question.

4 A A long time ago.

5 Q Okay.

6 A I went to the University of Minnesota; I spent two
7 years there. During that time, I had designed a submachine
8 gun. My father was an ardent hunter, and sportsman, and I
9 accompanied my dad on many hunting trips in Minnesota and
10 throughout South Dakota and the Midwest.

11 And I was fascinated with firearms. It became a
12 hobby. I was motivated by things mechanical, and I felt that
13 I would like to follow it up as a career, as a gun designer,
14 or work in the gun industry.

15 And my first attempt was to design a submachine gun.
16 I took this gun, in 1938, to the Colt Patent Firearms Manu-
17 facturing Company, in Hartford, Connecticut.

18 Colt had no interest in the gun, because at that time
19 they were in full production with the Thompson submachine gun
20 of their own, and the Thompson was not selling. We were not at
21 war at that point, and there was no requirements for sub-
22 machine guns. It was actually a very poor weapon for police
23 use, and the military wasn't interested. So I struck out as
24 far as selling my gun to the Colt Company.

25 Incidentally, I built the model of it at the Wilt

1 Chamberlain Air Force Base, where I was a Member of the Navy
2 Scouting Squad on the reserve, while I was going to school.

3 However, the Colt Company did have an interest in
4 hiring me, and since this was my ultimate desire, to get into
5 the gun industry, I accepted the job. It was sort of an
6 indoctrination to the gun industry, because they moved me from
7 department to department as a sort of form of education.

8 I worked for the assembly departments, for quality
9 control, and inspection. I worked in the manufacturing
10 division to learn how the firearms were made. I worked in the
11 engineering department predominantly.

12 And while at Colt, I designed a miniaturized single
13 action pistol, the old John Wayne-type of cowboy pistol. It was
14 merely a copy of the old Colt, but it was a reduced seven-
15 eighths scale. This gun was ultimately produced by Colt many
16 years later.

17 I also designed a so-called short action rifle while
18 at Colt, which meant that the hammer didn't have to go back
19 through the large arc but had a very short throw.

20 The advantage of this was to make it a faster firing
21 weapon. For-- it was valuable in terms of a combat weapon,
22 because you could fire it faster.

23 I left Colt in 1940 and went to Pratt & Whitney
24 Aircraft.

25 Q In 1940, you said?

1 A. Yes.

2 Q. Okay. And what did you do at Pratt Whitney?

3 A. Well, I worked in the Engineering Department of Pratt
4 Whitney, and I was working on experimental engines and
5 experimental installations on fighter aircraft. And we tested
6 the results of our new machines in the various aircraft and
7 compared them to other aircraft with other engines. This was
8 strictly promotion on the part of Pratt Whitney to determine
9 whether our engines could equal or outperform the competitive.

10 While I was at Pratt Whitney Aircraft, however, I
11 spent a tremendous amount of time on my own, evenings, and
12 when I had-- the opportunity arose to work on a 20 millimeter
13 cannon, and I also started working on a carbine.

14 The United States Army was soliciting certain
15 inventors, and certain gun companies throughout the country
16 at that time to design a U.S. carbine rifle. And I spent a
17 considerable amount of time on that particular development.

18 That pretty much covers my ordnance activity while
19 I was at Pratt Whitney.

20 Q. Where did you then go from Pratt Whitney, Mr.
21 Hillberg?

22 A. Well, in 1942 I went with the Ordnance Division of
23 Bell Aircraft.

24 At the start of the war Bell Aircraft had an
25 ordnance division in Burlington, Vermont that was created

1 specifically to design and build ordnance for the Air Force.

2 I was a Project Engineer at Bell, and I designed a
3 great number of ordnance oriented equipment. Just to name a
4 few of them, I designed the-- or shall I say I was a designer
5 working on various-- I don't want to infer that all of the
6 projects that I'm going to mention were mine exclusively. Many
7 times a project is not a one-man development.

8 What I'm saying is that I worked on these various
9 things in charge of the operation, but I had other engineers
10 working for me on them. One of them would be a tail and waste
11 turret for the famous B17 bomber. I worked on Graumann turrets
12 and many others.

13 We developed continuous belt feed mechanisms for
14 various aircraft. We developed radar gun sight installations,
15 many, many things that were ordnance oriented, as I said
16 before.

17 The carbine that I started at Pratt Whitney Aircraft
18 on my own, Bell took an interest in, and they decided to build
19 a prototype of it and submit it into the competition. This was
20 kind of late in the schedule, but we built the gun, and the
21 tests at Aberdeen were already under way. And, unfortunately,
22 my gun never did enter the trials.

23 However, Canada was looking for a similar weapon,
24 and we submitted the gun to Canada, and later on during the
25 war, we were-- Bell was doing a lot of business with Russia;

1 they were very friendly, and the P63 Fighter, we were in full
2 production on that, that particular aircraft was sent in
3 quantity to Russia and sold. So was the P39 Bell Single
4 Engine Fighter; so we had Russian contacts, and I must say that
5 they received all of the drawings for the guns, and photographs,
6 and data, but we never heard anything further from the project.

7 Without going into a lot of boring detail and the
8 length and number of projects that I worked on, that pretty
9 much covers the type of things that I was doing at Bell.

10 Q And after you left Bell Aviation, did you then go to
11 Republic Aviation?

12 A Yes, sir, I did.

13 Q What did you do at Republic, Mr. Hillberg?

14 A Well, at Republic Aviation, I was in the armament
15 section, and I designed the gun mounts, the ammunition
16 selection system, and discharge system for the F84 Fighter,
17 which was a jet fighter. I designed the bomb rack, which
18 retracted on bomb release.

19 And then later on in the F91 Fighter, which was an
20 experimental interceptor fighter, which was rocket powered and
21 jet powered, I designed the very complex throttle system for
22 the rocket engines on that particular aircraft.

23 I was Project Engineer on the armament, which
24 consisted of 20 millimeter cannons, and I worked on other
25 details of the airplane, such as the impenaj, some work on the

1 landing gear.

2 But my main work at Republic as armament expert, I
3 was assigned to the Ready Room, the Secret Room, as Republic
4 Aviation was working on advanced fighter aircraft which would
5 appear six, seven years from the date that we would start the
6 design. The Air Force generally laid down advance future plans,
7 and all of the aircraft companies had a Secret Room, which we
8 would develop the aircraft.

9 And the reason for this is that up to that point in
10 time, all military aircraft were generally built, and then as
11 an afterthought, you would hang a machine gun on it, or some
12 other type of ordnance, and the speeds were becoming so exotic
13 that you just don't do that anymore, because of the structure
14 and strength, you have to make them within the envelope of
15 the air frame. So that the armament became, all of a sudden,
16 a very integral and important phase of aircraft design, and we
17 were working in the Secret Room with exotic armament. In most
18 cases, guns and rocket missiles that hadn't even been produced
19 yet, because we were working with ordnance that was in the
20 future with an aircraft that was in the future.

21 Q Okay. After you left Republic, did you then go to
22 work for the High Standard Firearm Company?

23 A Yes, sir, I did.

24 Q What did you do at High Standard; was your function
25 once again that of a designer of firearms?

1 A. Initially when I went there, yes. I was in the
2 Engineering Department. I was a designer there. And I
3 designed several guns as a designer, and after I was there for
4 one year in that capacity, I became Chief Engineer and Head of
5 Research and Development for the High Standard Company.

6 Q. Can you tell the jury any of the firearms that you
7 did design there at High Standard.

8 A. Well, at High Standard we were really very versatile,
9 inasmuch as that during the war, we produced machine guns,
10 commercial rifles, commercial shotguns and pistols. In other
11 words, we covered the whole spectrum of firearms design.

12 My endeavors were in practically all of these areas.
13 At High Standard I developed and designed and built the World's
14 first production gas operated shotgun.

15 By gas operated, I mean shotguns up to that point had,
16 by and large, been recoil operated automatically.

17 Q. Let me interrupt you again for a moment.

18 Does Remington produce a prototype or what I will
19 call an offspring of a gas operated shotgun?

20 A. Yes. Remington followed suit a few years later with
21 their own gas operated shotgun, and they were very similar in
22 many ways.

23 They both had sleeve pistons which were unique to the
24 industry, and my patents on the sleeve piston preceded any of
25 their work.

1 Q. Okay.

2 A. And, incidentally, the Remington 1100 gas operated
3 shotgun is the high production shotgun in the World.

4 Q. Do you hold patents on the guns that you designed?

5 A. Yes, sir. I have about, well,-- well, over thirty
6 patents, United States and foreign patents on firearms.

7 I have three or four more that I have been notified
8 by the Patent Office that they are about to release. I also
9 have five or six more pending.

10 Q. Okay. After you left High Standard, did you then go
11 to work for someone else at a company called Whitney?

12 A. Well, sir, Whitney Firearms, actually I went to
13 Bellmore Johnson Tool (phonetic) after I left High Standard.

14 Q. Tell us how Whitney Firearms came into existence?

15 A. I designed an automatic pistol, a ten-shot automatic
16 pistol.

17 Since we were within a shadow of Eli Whitney's
18 original plant, we chose the name Whitney for the pistol, and
19 the Whitney Company was formulated to manufacture this pistol.

20 And I hired a lot of employees that I worked with
21 from High Standard, some from Winchester, and we set up a
22 manufacturing plant in East-- excuse me. East Haven,
23 Connecticut, although, the address was New Haven.

24 And the Whitney Firearms Company was formulated
25 specifically with Bellmore Johnson tool management, of which I

1 was a member. I was Chief Engineer of Bellmore Johnson, and
2 we manufactured 10,000 pistols before we sold it. We did that
3 in a period of about one year.

4 Q After you sold Whitney, and what year was that in?
5 About '56?

6 A Yes, it was somewhere in '56. I can't remember the
7 exact month.

8 Q From 1956 up until the present time, Mr. Hillberg,
9 what has been your occupation?

10 A From 1956 to the present time, I have been a
11 professional gun designer and consultant, doing work for
12 various gun companies.

13 At one time or another, I worked for a large number
14 of the gun manufacturers in this country.

15 Q Okay. Now, I'm talking now about working for gun
16 manufacturing versus testifying for them in court and being an
17 expert witness for a lawyer.

18 What gun manufacturers have come to you and asked for
19 your professional guidance and expertise in the design and
20 production of firearms unrelated to lawsuits or court cases?

21 A Well, there have been many. I have tabulated them
22 here. I have worked in one way or capacity or another, mostly,
23 however, in the capacity of designing firearms to their
24 specifications for these various companies: Colt Patent
25 Firearms, in Hartford; the High Standard Manufacturing Company

1 in Hamlin, Connecticut; Winchester, in New Haven; Marlin
2 Firearms; Mosburg & Sons, Remington; Savage Arms; Ithica
3 Brown Arms, in Morgan Utah; Springfield Armory; and several
4 Pentagon agencies in Washington on a confidential basis.

5 Q. Okay.

6 A. CIA.

7 Q. To move forward, then, we will come back here. There
8 has been such testimony that Mr. Boudreau took into his house
9 a Marlin Lever Action Firearm. I can't remember what the
10 number of it was. You were here in the courtroom and heard
11 it, I think; who designed that firearm?

12 A. I designed that firearm.

13 Q. Okay. Now, have you been consulted by any Government
14 agencies besides the CIA to do testing, or has most of your
15 testing been civilian?

16 A. Did you say testing?

17 Q. Testing or designing.

18 A. Or designing. Yes. I have been involved very
19 heavily in military projects through the years. One of them
20 was the design and development of attack machine gun.

21 Our contract came through the Springfield Armory,
22 and there was later another contract with the Detroit Tanker
23 Sentinel (phonetic), and I developed an automatic pistol, the
24 T3, for the ordnance department.

25 We had other contracts, such as machine gun charging

1 systems, various military projects.

2 Q Okay. Mr. Hillberg, as a firearms expert, your
3 area of expertise, then, versus Mr. Davis' expertise, his was
4 testing; yours is design, as I understand?

5 A I would say primarily, our expertise is at opposite
6 ends of the spectrum, although we have certain commonalities
7 where our expertise meets.

8 Q Okay. Have you--

9 You have testified in other court cases for
10 plaintiffs and defendants; is that correct?

11 A That is correct.

12 Q Do you mostly testify for defendants versus the
13 plaintiff;

14 A Yes, most of my testimony has been for defendant.

15 Q Why is that?

16 A Well, there is a very good reason for it. I'm not
17 very well known to the general public. I am quite well known
18 to the arms industry because of the various design guns that
19 I have made, and, also, because of the number of patents that
20 I hold, etcetera.

21 So it's only natural that the gun industry is
22 familiar with me; and by the same token, it's only natural that
23 the general public isn't.

24 Q Okay. Have you been involved with any law enforce-
25 ment agencies over the years?

1 A. Yes, sir, I have.

2 Q. Which ones?

3 A. Well, I'm a member of the New England Chiefs of
4 Police; I'm also a member of the International Association of
5 Chiefs of Police; I'm a New Haven County Deputy Sheriff; I'm
6 a member of the Connecticut Police Chiefs Association; and now
7 Confederation of Police, just to name a few. I believe that
8 covers them.

9 Q. Have you published any articles about firearms, or
10 have any articles been written about you?

11 A. Yes, sir. I'm not a writer, although I did write
12 several things for the NRA many years ago. I don't even know
13 if they were published.

14 However, there have been numerous articles published
15 about me, in several books, several articles in them about
16 my work.

17 Just to name a few-- or do you want to know?

18 Q. That's all right. I think your qualifications speak
19 for themselves up to this point in time.

20 I'd like now to ask you some questions about your
21 design expertise. Have you actually designed safety for
22 firearms?

23 A. Virtually every time I design a firearm, I have to
24 design a safety system for it. Yes, it's one of the prime
25 considerations.

1 Q. I'd like to call your attention specifically now to
2 the history of the art of the bolt action rifle, because we are
3 not concerned in this lawsuit with pistols or machine guns or
4 short guns, or anything else. We are concerned with bolt
5 action rifle.

6 I'd like you to tell this jury when the bolt action
7 rifle was first developed and give us a very brief history of
8 the production of the bolt action rifle from that point forward.

9 A. The heritage of the bolt action rifle goes back to
10 about 1838. Up to that point in time, all rifles were single
11 shot.

12 And through the years, there was a great demand for
13 a rifle that you could fire rapidly, and the prime objective
14 was to get more shots on target. The quicker the better.

15 And in 1838, a German by the name of Nicholas
16 Dreyse developed a bolt action rifle. And the Prussian
17 Government immediately recognized its advantages and adopted
18 it as an official weapon.

19 And this started a tremendous chain of development
20 and research throughout the entire World.

21 And all of the major Army and, in fact, all Armies
22 rapidly became equipped with many versions of bolt action rifles.

23 The Dreyse gun was greatly improved upon throughout
24 the years, and the bolt action gun became a standard for
25 every Nation in the World.

1 And the same attempt to get more shots on targets
2 rapidly spurred the development of many other types of fire-
3 arms.

4 In our country, you are all familiar with the John
5 Wayne lever action and the advantage of this speed of firing
6 was that you didn't have to lift a bolt up, pull it back, push
7 it forward, and close it, and then fire. You merely went like
8 that (demonstrating). It had a lever that swung. You saw one
9 here today. It was much faster.

10 And then the pump action or trombone action was
11 developed, and this had a decided advantage over both the bolt
12 and the lever.

13 And it was merely a rifle that you held in firing
14 position, and to repeat, you merely moved the pump up front,
15 or the trombone. But your hand remained on the grip and on the
16 trigger. You didn't have to take your hand off to move
17 anything. And in so doing, you could fire extremely fast.
18 You merely pumped your hand, every time you did, you pulled
19 the trigger.

20 So, then, last and finally, the ultimate development,
21 as far as rifles was concerned, was the automatic rifle. The
22 automatic rifle was the development where you cocked it for the
23 first shot, and when you were ready to shoot, you merely
24 pulled the trigger, and it would shoot as fast as you could
25 move your finger.

1 So the transition and development from 1838, from
2 the single shot rifle to the bolt, on up to the automatic rifle,
3 the emphasis was on speed.

4 And I must say that with all the development, an
5 improved automatic rifle doesn't do anything particularly that
6 the bolt action can't do either as well or better. Outside of
7 that one factor-- speed.

8 The bolt is inherently more accurate, and it's
9 inherently more reliable, because it has less parts, and it
10 doesn't depend upon the kinematics of many pieces in motion.

11 I think it's also interesting to note that--

12 Well, I guess that's another subject. I was going to
13 talk about the common revolver today without a safety.

14 Q We are interested here in bolt action rifles. There
15 has been a lot of discussion about M14's and 16's. I'm
16 concerned about telling the jury about bolt action rifles, and
17 I would like to move on to that now.

18 Are you familiar with the Model 700 Remington?

19 A. Yes, sir.

20 Q. How long have you been familiar with that rifle?

21 A. Quite a few years. Probably goes back to very shortly
22 after it was brought out. I tried to make myself familiar with
23 new products.

24 Q. Can you tell the jury what predecessors to the
25 Model 700 were in relationship to the bolt lock, the safety,

1 and the trigger assembly?

2 A. Well, are you talking about commercial firearms? Or
3 military, or both?

4 Q. I'm talking about commercial firearms that Remington
5 produced.

6 A. Well, prior to that, generally the type of firearm
7 that is the 700, just prior to that, Remington made a Model 30,
8 which was a development of the ¹⁹¹⁷1971 United States rifle, which
9 was the United States Enfield, which was produced in fantastic
10 quantities in World War I. It was a sporterized (phonetic)
11 version. It had a much more streamlined stock, better sights,
12 and it was a commercial version.

13 Q. Does Remington's, if you will, the history of
14 Remington's 700, then go back to early 1900's with the old
15 Enfield two-position bolt lock firearm?

16 A. Well, the United States Model 1971 Enfield, which
17 Remington produced, was really the granddaddy-- actually, if
18 you want to look at all or most all commercial bolt action
19 rifles, they all have their inheritance back from the military
20 bolt action rifle in one way or the other.

21 The famous Mauser, and etcetera, were all released
22 and improved upon and put into commercial form.

23 Q. Okay. You are a gun designer as the qualifications
24 that you have laid out to us. I'd like you to tell us, and
25 I assume you have seen Mr. Martin's automatic safety here that

1 he's designed, have you not?

2 A. Yes, sir.

3 Q. And you have heard him testify as to how he set
4 about and where he was when he thought about designing it and
5 what he did.

6 I'd like you to tell the jury in your expert opinion
7 how do you set about to design a new firearm; is it something
8 that takes a great deal of time?

9 A. It certainly does, and to design a new firearm, first
10 of all, you have to look at the requirements. I call it
11 project objectives.

12 We try, first of all, we try to see whether there is
13 a void in the line. If it won't sell, there is no particular
14 point in building it. We look for voids.

15 And if we can see a particular type of development
16 that would fill a need, that would have salability, we set up
17 project objectives to fill that void.

18 We then make a market survey, and we find out what
19 does the customer want, and we also set up a price area where
20 that firearm has to fit. If it's the World's greatest firearm
21 but if the price is out of sight, it still won't sell, so we
22 are restricted as far as development goes by many, many
23 factors.

24 And we set about to study the competition, and we
25 look for pluses and minuses, and we try to put all of the

1 pluses together and come up with an overall design.

2 After it's on paper, we are then in a position to
3 run a cost survey and determine whether we can meet the
4 market, the projected market, for that particular firearm that
5 the sales department has set up as a requirement.

6 And if that meets our specifications, we then build
7 prototypes, and we test the gun. And if we're good designers,
8 it works somewhat like we had hoped it would, but it very
9 seldom does.

10 Subsequently, when you are speaking of time, that's
11 why I mention it, we usually find things that we can improve
12 upon, and we go through a development program.

13 In other words, we don't design it, build it, and
14 then-- boom, sell it.

15 And then when everything gets worked out and we feel
16 it's ready for production, it has to be tooled. Generally this
17 takes a minimum of a year.

18 And finally, I would say, after about a minimum of
19 three to possibly five years, this development is ready for the
20 market.

21 Q Okay. Do you have an opinion design-wise as to the
22 quality of design, overall design, as a general proposition,
23 first, of the Remington Model 700 that is involved in this
24 lawsuit today?

25 MR. CHAMBERLAIN: I'll object to the form of the question--

1 today; I think that we ought to stick with the particular
2 defect, not the general overall quality of the rifle.

3 THE COURT: It's overruled.

4 Q. (By Mr. Huegli) Please answer the question.

5 A. I will, if you repeat it, please.

6 Q. Do you have an opinion, design-wise, as to the
7 overall design, first, and then we will go down to the specific
8 parts of the Remington Model 700 that is in this room today,
9 one produced in 1976 and sold to Mr. Boudreau.

10 A. It's an excellent design. I feel that it is very
11 well executed.

12 Q. Would you agree with Mr. Martin's testimony from a
13 prior case that design-wise the Remington Model 100 (sic)
14 has been the state of the art for a long, long time?

15 A. It certainly has.

16 Q. How important is safety in relationship to the
17 design of a firearm?

18 A. Safety is the single most important design considera-
19 tion when you design a new firearm, and I don't care whether
20 it's a-- whether we are talking about an expensive, low cost,
21 or whether we are talking about the Rolls Royce of the
22 industry, safety is the most important consideration, and price
23 has nothing to do with it.

24 Q. Okay. Are there some circumstances where price would
25 enter into the design and production, actually selling of a

1 firearm, if the price was prohibitive in the form of the
2 general public purchasing the gun, for example, you produced a
3 gun, a .22, that costs \$15,000 each?

4 A. Well, I think it's pretty obvious, yes, sir.

5 Q. So, there are some outside circumstances that price
6 does have to be taken into consideration?

7 A. Absolutely.

8 Q. Okay. Now, I'd like to ask you about safeties in
9 firearms that are automatic types. Okay.

10 A. Yes, sir.

11 Q. In certain gun design, would you agree that the test
12 that safety and automatic safeties do have a desirable function?

13 A. Very definitely. In the case of a double barreled
14 shotgun, or a single barrel, I believe that an automatic
15 safety is very, very desirable.

16 Q. Okay. Now, Mr. Martin, up on the witness stand, you
17 had an opportunity to hear him, did you not?

18 A. Yes, sir.

19 Q. And he was qualified as an expert, and you heard that?

20 A. Yes, sir.

21 Q. He told this jury about some patents that I want you
22 to explain for us, if you would. The patents were in 1945, by
23 H & R; 1949 by Winchester; 1951 by Winchester; 1958 by a
24 fellow by the name of Joe Fisher (phonetic); 1976, one by
25 Marlin; 1964 by Savage; and 1968 by Olin (phonetic); and he

1 told the jury that all of those patents were automatic safety
2 bolt lock patents; did you hear that testimony?

3 A. Yes, I did.

4 Q. And I asked him whether he knew whether or not any
5 of those firearms had been placed into production under those
6 patents for the general public; did you hear that testimony?

7 A. I heard.

8 Q. And you heard him say that he didn't know?

9 A. Yes, sir.

10 Q. Do you know?

11 A. I have never seen any used. I'm not familiar with
12 any automatic safety on a magazine type high powered rifle.
13 There isn't such a thing.

14 Q. Have you ever seen a high powered bolt action rifle
15 in the whole world, outside L.S. Martin's gun that he produced
16 after the last trial;

17 A. No, sir.

18 Q. Would you agree that manual safety should not be
19 relied upon at any time?

20 A. I don't think a safety should ever be relied upon.

21 Basically, a safety is an aid towards safe gun
22 handling practice, but it is never, ever, a substitute. A
23 safety should not be trusted.

24 First of all, it may be off when you think it's on.

25 Secondly, it may be on when you may put it on, but inadvertently

1 may not be off, and you do not know it.

2 Q Mr. Hillberg, do--

3 In your experience,--

4 Your experience is that there are those rules that
5 you have just laid down for us, common rules in the firearms
6 industry?

7 A Absolutely.

8 Q Now, we have talked about speed, firearm speed, and
9 you have told us a little bit of the history about that.

10 Are there some circumstances, however, where a slight
11 loss of speed would be acceptable in a firearm when we are
12 talking about safety?

13 A Very definitely. In a firearm where your life isn't
14 at stake, or where it isn't a defensive weapon, so to speak,
15 speed of firing does not mean anything.

16 Q Like a double barreled shotgun?

17 A Something like a double barrel or single barrel shot-
18 gun, or a single action pistol, for example.

19 Q None of those are repeating rifles, are they?

20 A No, they are not.

21 Q Are there any circumstances where speed, where an
22 automatic safety would completely defeat the purpose of the
23 firearm, such as in a bolt action rifle?

24 A Very definitely.

25 Q Have you--

1 Have you, and are you now a professional consultant
2 for Ruger Firearms?

3 A. Yes, I have been a professional consultant for the
4 Ruger Company for, well, quite a few years.

5 Q. Are you on a retainer?

6 A. Yes, I'm on an annual retainer.

7 Q. Which is your annual retainer for Ruger, and how many
8 hours do you provide to them for the year?

9 A. Are you referring to the fee? I get \$15,000 a year
10 in exchange for which I do 300 hours of work for Ruger per
11 year.

12 Q. And do they consult you on all phases of the
13 manufacturing of firearms, and I'm not talking about lawsuits;
14 I'm talking about them coming to you, asking for your
15 expertise?

16 A. Yes. It isn't defined in any specific area, such as
17 product liability, litigation, or anything else.

18 My work for Ruger could encompass any technical thing
19 that they want to use me for, and it has in the past.

20 Q. Okay. Do you do a substantial amount of consulting
21 for Ruger through their law firm, who is--

22 Well, let's talk about this. Is there a law firm
23 that you also consult for who is Ruger's counsel, much as
24 Remington would have general counsel back East?

25 A. Yes, technically, I have never worked or done anything

1 for Ruger directly. If they required my services, they would
2 do it through a law firm in Bridgeport, Connecticut, by the
3 name of Marsh, Day, and Calhoun, and they direct my activities.

4 Q And as an expert in the firearm areas over the years,
5 is it a common practice for you, as a designer, and as an
6 independent designer since 1956, to design something and then
7 go try to sell it to Winchester, or Ruger, or Savage, or
8 others?

9 A That's one way of doing it.

10 There is two ways as a designer that I get involved.
11 One, a gun company may come to me and give me their project
12 objectives and ask that I submit proposals.

13 The other way is that I may see a void in their line
14 and feel that it's a worthwhile gamble on my part to put my own
15 money and time and develop something that I think, I hope,
16 they need.

17 Good case in point is the Browning Company. I felt
18 they didn't have a pump gun in their line, and I designed the
19 Browning BPS, Browning Pump Shotgun, which is now in full
20 production. It was never requested by Browning; it was
21 something that I developed and took to them, so you can go into
22 either direction.

23 Q Mr. Hillberg, so the jury will understand, there was
24 a question of Mr. Davis--

25 I think that you have been sitting in the back of the

1 room here, during the week, you have been sitting here at my
2 request, have you not?

3 A. That's correct.

4 Q. So has Mr. Davis, hasn't he?

5 A. That's correct.

6 Q. It's because I don't know anything about the design
7 of guns, isn't it?

8 A. That's correct.

9 Q. All right. I shouldn't have asked that question.

10 MR. HUEGLI: Your Honor, I would like to break the
11 testimony at this time for our noon recess.

12 THE COURT: Members of the jury, we will recess now until
13 1:30 this afternoon.

14 (At 11:54 a.m. these proceedings were adjourned for
15 the noon recess.)
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1 PORTLAND, OREGON, FRIDAY, MARCH 4, 1983, 1:32 P.M.

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3

DIRECT EXAMINATION (continued)

4

5 BY MR. HUEGLI:

6 Q Mr. Hillberg, at the break we were-- we had finished
7 up with your qualifications and started in on some questions
8 on design in relationship to safety mechanisms on firearms,
9 and we were starting in on automatic safety mechanisms.

10 I would like to call your attention to some of the
11 history that you gave us regarding rifles, firearms, guns that
12 are repeaters, if you will, and that the progression would go
13 from the Musket loaders, I suppose, up to repeaters, and ask
14 you to tell the jury what safety mechanism, for example, exists
15 on a-- well, let's say, a revolver, a .45 revolver, or some
16 type of revolver gun with a hammer that you cock back and shoot
17 it.

18 A The double action revolver, which you see virtually
19 every police department carrying, and the FBI, they have no
20 safeties. They depend primarily upon safe gun handling
21 practice, and there are no manual safeties. There is nothing
22 you push or turn to the gun.

23 You can pick it up and fire it instantly. And the
24 main reason for that is because the revolver is a protective
25 weapon; when you need it, you need it instantly, because your

1 very life may be at stake.

2 So, in the military, you have plenty of time to
3 anticipate you are going to need a handgun. You are ready to
4 use it, and you have time to put the safety off.

5 A policeman doesn't always have that luxury. The
6 bad guys can fire first; so you need your weapon, and you need
7 it immediately; so you pull it out and pull the trigger, and it
8 goes bang; therefore, safety is very undesirable, and it all
9 relates to speed of fire.

10 Q. Okay. There are some firearms where a safety is,
11 and some where it isn't; it depends upon the design purpose of
12 the firearm; is that correct?

13 A. Absolutely.

14 Q. All right now, I'd like to ask you some questions
15 about Mr. Martin's testimony. He's talked about automatic
16 safeties on bolt action firearms.

17 First of all, there are certain guns that have auto-
18 matic safeties, are there not?

19 A. Yes, sir.

20 Q. Okay. What is your understanding, Mr. Hillberg, of
21 what an automatic safety is?

22 A. Well, an automatic safety is a safety that goes into
23 the safe mode without doing anything, and that is, it's auto-
24 matic. You don't manually push it on safe, and the act of
25 cocking the gun, or opening it and closing it, whatever, the

1 safety automatically goes on safe. You have no alternative.

2 And each shot that you take, in the case of Mr.
3 Martin's automatic safety, you have to push it off, then fire,
4 then cock it, then push it off, then fire. You have an extra
5 operation each time you shoot.

6 Q Well, that extra operation, Mr. Hillberg, may only
7 take a second or a half second?

8 A That's very true, and when you demonstrate Mr.
9 Martin's safety, you will find that operates reasonably fast.

10 The point being, it's an extra operation, and the
11 more extra operations you have before you fire, the longer it's
12 going to take, and it could be that half second, or whatever,
13 that spells the difference between living or dying, or a hit on
14 target or missed deer, or whatever.

15 Q Okay. Now, we've got three types of firearms here.
16 We have two-position safety, three-position safety, and auto-
17 matic safety; is that correct?

18 A Correct.

19 Q Now, the only gun in the courtroom up until today
20 that had a two-position bolt lock safety was our gun, was it
21 not?

22 A That's correct, up to now.

23 Q I'm going to hand you what has been marked Exhibit
24 No. 228, and tell me, if you would identify this exhibit for
25 me.

1 A. This is an Enter Arms High Powered Rifle, caliber
2 270, Mark X.

3 Q. Okay, would you tell the jury, stand down here, and
4 come down, and show them what kind of safety it has.

5 By the way, is that a brand new gun?

6 A. This is a brand new gun, and it's a modification of
7 the famous German Mauser design.

8 Q. Show the jury, number one, the type of safety, does
9 it or does it not have a bolt lock, and does it or does it not
10 have a trigger block?

11 A. This is the safety lock here. The trigger, obviously.
12 And with the bolt closed, with the safety to the rear, the
13 firearm is on safe. It does not have a trigger block. You can
14 see the trigger move.

15 Q. Does it have a sear block?

16 A. No, sir. It does not have a sear block.

17 Q. How is it blocked?

18 A. By--

19 I beg your pardon. This does have a sear block, and
20 it's a two-position safety.

21 Q. Okay.

22 A. This is the safety. Forward it is on safe. To the
23 rear it is--

24 To the rear, it's on safe; forward, it's on fire,
25 and you will notice that the rear position, the bolt is locked.

1 In other words, as far as the operation cycle is
2 concerned, it's identical to the Remington Model 700.

3 Q All right. Now, on the Remington Model 700, to
4 unload the gun, you move it to the safety position, open the
5 bolt, pull the safety back to make sure the trigger is safe
6 again, then you open the bullet?

7 A On the Remington 700, you move the safety to the fire
8 position.

9 Q Okay.

10 A Which you have to here, because you can't open the
11 bolt, so you move it to the fire position. Now you can open
12 the bolt, you merely lift it.

13 Q Can you move the safety back?

14 A Yes, you can.

15 Q On this gun, you can as well?

16 A Yes, up to now, the operation of rifles is identical
17 to the Model 700.

18 Q And to get the bullet out, you pull the bolt back?

19 A (Witness pulls the bolt back, demonstrating.)

20 MR. HUEGLI: Very well. We would offer 228.

21 MR. CHAMBERLAIN: Could I see that, Counsel, I haven't
22 seen it before.

23 Q (By Mr. Huegli) I'll show you Exhibit 229 and ask
24 if you would identify this firearm.

25 MR. CHAMBERLAIN: No objection.

1 THE COURT: That's 22--

2 MR. HUEGLI: 228.

3 THE WITNESS: This is a Ruger Model 77, bolt action high
4 powered rifle.

5 THE COURT: 227 is offered and received.

6 MR. HUEGLI: 228.

7 THE COURT: 228 is received.

8 Q (By Mr. Huegli) Is that a brand new gun? Would
9 you, once again, tell the jury how that firearm operates in
10 relationship to the safety.

11 A The safety on this firearm is located right in back
12 of the bolt and barrel on the rear line of the gun. We call
13 it a tank safety. This being the tank of the gun. It is a
14 two-position safety.

15 You push it to the rear, it's on safe; and you push
16 it forward, and it's on fire.

17 When it's to the rear, you cannot operate the bolt;
18 the bolt is locked.

19 Q How can you--

20 Can that gun or the prior exhibit be unloaded without
21 moving the safety to the fire position?

22 A No, sir. In order to unload this firearm, you have
23 to push it in this position here. You can then open it up.

24 Q Okay.

25 A Like all two-position safety firearms, or any two-

1 or three-position firearm, which cocks on the opening motion
2 of the bolt, the instant this bolt is moved the very slightest
3 bit, the gun is safe. It cannot fire.

4 Also, if it did, for example, if it were in that
5 condition there, and the 700 is exactly like it, if for some
6 reason or other you should pull the trigger, that would appear
7 as though it fires, but that is what we call a follow-down,
8 also.

9 Q The bullet won't go off?

10 A The bullet won't fire or wouldn't go off.

11 MR. HUEGLI: Thank you. We would offer 229.

12 MR. CHAMBERLAIN: No objections.

13 THE COURT: It's received.

14 Q (By Mr. Huegli) And lastly, I'd like to show you
15 what has been marked as Exhibit 230. This gun has a hang tag,
16 does it not? Is that what we call a hang tag?

17 A Yes, sir.

18 MR. HUEGLI: Your Honor, I'm going to take the hang tag
19 off, unless Mr. Chamberlain wants it in. I wanted the Court
20 to know the tag was on this gun when we purchased it.

21 MR. CHAMBERLAIN: I have never seen it; I can't very well
22 take a position.

23 Q (By Mr. Huegli) Would you examine this rifle and
24 tell us what it is.

25 A This is a Weatherby Mark V. You might say that this

1 is the Cadillac, or rather, the Rolls Royce of bolt action
2 rifles. This gun costs over a thousand dollars. And no amount
3 of money has been spared to make this the very best.

4 Q. Would you once again--

5 Is that a brand new gun?

6 A. This is a brand new gun.

7 Q. Would you show the jury the type of safety that the
8 top of the line, the Weatherby, has on it, and these are all
9 high powered near fire rifles, are they not?

10 A. Yes, sir, they are. It operates-- excuse me,
11 substantially the same as all of the other rifles that you have
12 seen.

13 The safety lock is here, and when this safety is
14 in the back position, the firearm is safe.

15 Q. Does that have a trigger block?

16 A. It does not have a trigger block. You can see the
17 trigger moving. It has a sear block, like the 700.

18 Q. Okay.

19 A. The two-position safety, when it's in the rear, in
20 the safety position, you cannot open the bolt.

21 It has a bolt lock, and the only way that you can
22 open the gun is to release the safety into the forward position.
23 You may then lift up the bolt handle.

24 I might point out in this operation, as in the 700
25 and all of the other rifles that you have seen, when you lift

1 the bolt handle, your hand is going away from the trigger, not
2 into the trigger.

3 MR. HUEGLI: Okay. We would offer 230.

4 MR. CHAMBERLAIN: No objection.

5 THE COURT: 230 is received.

6 Q (By Mr. Huegli) All right, now, Mr. Martin, you
7 heard Mr.-- excuse me, Mr. Hillberg, you heard Mr. Martin
8 testify here in court?

9 A Yes, sir, I did.

10 Q And you had an opportunity, did you not, to examine
11 his rifle in the office of Mr. Chamberlain, with me and Mr.
12 Linde, and you examined this for the first time, when? I guess
13 that is the best question.

14 A The evidence rifle?

15 Q Yes, the L.S. Martin.

16 A The automatic safety. I viewed that firearm Tuesday
17 evening after court.

18 Q All right. Now, this has an automatic safety that
19 Mr. Martin described, and in order to function it, to function
20 it, it's on safe; you have to push the safety off; pull the
21 trigger; cock the gun, and close it up; push the safety; and
22 pull the trigger; is that correct?

23 A That is correct.

24 Q Okay. Do you have an opinion as to--

25 And you heard Mr. Martin tell us that he was

1 satisfied with the design and execution of this gun as compared
2 to the 700 itself, did you not?

3 A. Yes, sir.

4 Q. Would you give us an opinion, or do you have an
5 opinion as to whether or not the design of the automatic safety
6 as designed, implemented by Mr. Martin, is a satisfactory
7 design?

8 A. Is what?

9 Q. Is satisfactory or a safe design.

10 A. No, sir, it's anything but. It's unprofessional in
11 many respects. I can find many things wrong with it.

12 Q. What about the spring, for example?

13 A. Well, it has a spring that is exposed. There is
14 areas that are open on the side that are susceptible to twigs,
15 or just about anything, that could hold it out of operation.

16 It's, also, very obtrusive; it sticks out in the
17 air; it's very easy to turn it off when you inadvertently--
18 you think it's on, but it really isn't, because it can be
19 backed up against things; it can be set down on things; and
20 knocked off very easily.

21 Q. Is it subject to being damaged in the woods?

22 A. Oh, yes.

23 Q. I would like to establish now--

24 Stand in front of the jury. Wait. Stand behind me.
25 I'm going to ask you to assume I'm a hunter in the woods, or--

1 Let's, first of all, take a target hunter, and I
2 have been using this rifle of Mr. Martin's, and I have decided
3 to put this firearm down on the bench-- on the table, if you
4 will.

5 All right. So I take the firearm, and I set it down
6 on the table, in something-- in this fashion.

7 All right. Very well. Now I've set the firearm down,
8 have I not?

9 A. Yes, sir.

10 Q. Have I done it any differently than an ordinary
11 shooter might do it?

12 A. No, it's very susceptible to being laid down in any
13 fashion.

14 Q. Now, Mr. Chamberlain has asked you some questions
15 about, could somebody--

16 MR. CHAMBERLAIN: I don't believe I've asked him any
17 question.

18 Q. (By Mr. Huegli) Mr. Davis was asked some questions,
19 could a shooter accidentally pull the trigger. Mr. Davis says
20 yes.

21 I'm a shooter, and I pick this rifle up, by gosh, I
22 do accidentally pull the trigger on Mr. Martin's gun, did I not?

23 A. Yes, sir.

24 Q. It appears to be in safety position, does it not?

25 A. Sure does.

1 Q Please show the jury what happens when you are now
2 ready to shoot that gun.

3 A It's an accident waiting to happen, because all you
4 have to do is to touch the automatic safety, and you will notice
5 my finger is nowhere near the safety; it fired off safe; I
6 didn't touch the trigger.

7 Q Is that something that just happens once in a while?

8 A No, sir. With this gun, it happens 100 percent of
9 the time.

10 Q Would you do that again for the jury.

11 A If you don't push it down all the way, if you push
12 it like that--

13 Q Then pull the trigger?

14 A Pull the trigger, I pushed it--

15 MR. CHAMBERLAIN: Well, Your Honor, if this is going to be
16 an experiment or demonstration, I'm going to object. I don't
17 know what they are doing, and I can't see what Mr. Hillberg is
18 doing with the gun. I'm not sure the jury can see either.

19 THE COURT: It's overruled.

20 Q (By Mr. Huegli) Pull the trigger, now what happens?
21 Now what happens if you push the safety?

22 A When you push the safety, which is here, I go to push
23 it off, I just touch it, and the gun fires. I'm nowhere near
24 the trigger.

25 Q I didn't pull the trigger. You have to pull the

1 trigger. In other words, now the sequence, you pull the
2 trigger, now what happens?

3 A. Bang.

4 Q. Thank you.

5 Would you take that gun hunting with you?

6 A. No, sir, I sure wouldn't.

7 MR. HUEGLI: Thank you.

8 THE COURT: Are you ready for cross?

9 MR. HUEGLI: I do have one more question. Excuse me, I
10 do have one more question.

11 Q. (By Mr. Huegli) I asked Mr. Martin if he had ever
12 seen this book called Bolt Action, by Stuart Otteson.

13 A. Yes, sir.

14 Q. And I can't remember what he said, but he didn't
15 recognize it as authoritative on bolt action rifles; do you?

16 A. It's very authoritative, known throughout the
17 industry.

18 Q. Is that a book that you would rely upon?

19 A. Absolutely.

20 Q. In forming your opinions here today?

21 A. Mr. Otteson is an engineer who, I believe, works for
22 the Patent Office.

23 MR. HUEGLI: Your Honor, on the basis of his testimony, I
24 would like to read a page from Otteson, page 134, in relation-
25 ship to the Model 700 firearm, an issue in this case today,

1 with the two-position safety on the bolt lock.

2 MR. CHAMBERLAIN: Is he trying to impeach his own witness,
3 or trying to read out of a book?

4 THE COURT: Well, do you have any objection?

5 MR. CHAMBERLAIN: My objection is hearsay.

6 THE COURT: The objection is sustained.

7 MR. HUEGLI: Your Honor, I don't believe it's hearsay if
8 this witness states that he relies upon it and it's authori-
9 tative. The testimony from this book could come in.

10 THE COURT: All right, on cross-examination, but not
11 direct.

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

13 CROSS-EXAMINATION

14
15 BY MR. CHAMBERLAIN:

16 Q Mr. Hillberg, you testified before the lunch break
17 that you did work for a great number of different gun
18 manufacturers, and you listed them all for us, and then you
19 mentioned that you also do some work through a law firm that
20 defends Ruger.

21 A That's correct. March, Day and Calhoun.

22 Q You do not work directly for Ruger, but through that
23 law firm; you are on Ruger's side, so to speak, consulting for
24 them?

25 A That's correct.

1 Q And as part of your work for Ruger, you occasionally
2 do write to either Ruger or Ruger's attorneys about various
3 matters; that has occurred, hasn't it?

4 A Oh, yes.

5 Q And each time you give them advice about how to
6 either enhance their position in a lawsuit or how to improve
7 their product?

8 A From time to time, I have.

9 Q Okay. And you have offered yourself as an expert
10 witness for Ruger?

11 A Several times, yes. I have also testified against
12 them.

13 Q All right. We'll get to that in a minute.

14 And as part of your advice to Ruger's attorneys,
15 isn't it a fact, Mr. Hillberg, that you told Ruger's attorneys
16 that as an expert for Ruger, you felt that you should state the
17 positive facts and that the minus should be buried?

18 A Only--

19 Q Yes or no, is that a fact, did you make that state-
20 ment?

21 A Yes, in combination with--

22 Q Just yes or no. Thank you.

23 A Yes, sir.

24 Q And isn't it also true that you wrote to Ruger, and
25 then in this case, I'm talking about Ruger's attorneys, again,

1 in 1978 and told them that it's about time that the gun
2 industry started doing something about accidents with a hard
3 hitting safety program; that was your advice to Ruger in 1978,
4 was not it?

5 A. Well, '78 is a long time ago, but I probably did. I
6 don't recall the specific letter, but I'm sure I could have
7 said that.

8 Q. And you also told them that such a program would
9 prevent many injuries, didn't you?

10 A. As I said, I don't recall the letter. If you let me
11 read it, I can verify it.

12 MR. CHAMBERLAIN: Could the witness be handed Exhibit 103,
13 please (to the bailiff who provides the exhibit to the witness).

14 Q. (By Mr. Chamberlain) You let me know when you have
15 had a chance to review that, and I'll ask you a question about
16 it.

17 A. I'm sorry. It's a long one.

18 Q. Go ahead. Take your time.

19 Have you had a chance to read that?

20 A. I beg your pardon?

21 Q. Have you had a chance to read the letter?

22 A. No, sir, I haven't.

23 Q. Okay. I'm sorry.

24 A. I have skipped through it, sir.

25 Q. Now, you testified earlier, in gun design, safety is

1 the primary consideration?

2 A. It certainly is.

3 Q. And that's true of any gun, I take it, or any rifle?

4 A. I beg your pardon?

5 Q. True of any gun or rifle design?

6 A. Any firearm.

7 Q. All right. A gun should be safe to carry, right?

8 A. It should.

9 Q. Safe to handle?

10 A. It should.

11 Q. In fact, should be safe under all conditions?

12 A. Certainly.

13 Q. It's always been that way, as far as you are
14 concerned, it always should be?

15 A. Of course.

16 Q. And to that extent, your advice to Ruger was
17 consistent, because you told them to engage in a safety program,
18 didn't you?

19 A. I advised them that it would make good sense to do
20 this, yes.

21 Q. Hard hitting safety program?

22 A. Correct.

23 Q. All right now, I want to talk a little bit about
24 police handguns. You mentioned that they don't have any manual
25 safeties?

1 A. No, sir, they do not.

2 Q. The gun does have a safety, though, doesn't it?

3 A. Has nothing to do with manual operation. That would
4 slow up the fire.

5 Q. Tell me if you agree with that statement, that the
6 handgun you were talking about has a double action-- excuse me,
7 that the handgun you were talking about has an internal auto-
8 matic safety that always is on and prevents the hammer from
9 contacting the firing pin until the trigger is pulled?

10 A. That is just an internal component of the action. It
11 has nothing to do with safety. That is manual. There are
12 several different ways of looking at safety. Number one--

13 Q. I'd like you to answer my question first.

14 A. I thought I did.

15 Q. The gun has a safety, that is why you used the word
16 manual safety when you said it didn't have any manual safety?

17 A. It does not have a manual safety.

18 Q. But it does have a safety?

19 A. Internal safeties that have nothing to do with the
20 function of the gun as manual safety is concerned.

21 Q. They make it safer, don't they?

22 A. Possibly some of them do. Some of them don't.

23 Q. Other than the Model 700, Remington Model 700, what
24 bolt action rifle does Remington presently manufacture which
25 incorporate the bolt lock feature?

1 A. Well, I'm not all that conversant with the present
2 Remington line, but the only bolt action rifle that I'm
3 familiar with that Remington produces is-- well, I'll skip the
4 .22's, because we are talking about peaches and bananas, as far
5 as high powered is concerned, and the only one that I know of
6 that is bolt action is the 788.

7 Q. And the Model 700, you do keep up with current
8 designs and current products, I thought you told us at the
9 start of your testimony, that you keep up with all current
10 products?

11 A. I used to keep very close track. For the past year
12 or so, I've more or less drifted out of it.

13 Q. I see. You told us the safety on any product, on any
14 gun, should never be relied upon; those are your words?

15 A. I don't believe you should place all your trust in a
16 safety. No, sir. It's never a substantial substitute for
17 safe gun handling practice. At best, it's--

18 Q. Calling it a safety is a bit of a misnomer then,
19 isn't it?

20 A. I beg your pardon?

21 Q. Calling it a safety is a bit of a misnomer, if you
22 can't trust it?

23 A. No, sir, because you add a little bit to safe gun
24 handling by the use of a safety. It's an aid. It is never a
25 substitute.

1 Q You mentioned that you testified not only for Ruger
2 but against Ruger, right?

3 A That is correct.

4 Q And that occurred when you offered your services to
5 an attorney by the name of Bixler Whiting (phonetic)?

6 A Mr. Bixler Whiting, right.

7 Q Before that time, you had been working for Ruger,
8 right?

9 A Before then.

10 Q Before Mr. Whiting, you had worked on cases through--

11 A Not cases. I believe I only worked on one other
12 opportunity before then.

13 Q Okay. And that opportunity, you learned quite a bit
14 about Ruger's product, and the potential problems with their
15 products, right?

16 A No, sir, I didn't learn a thing.

17 Q You already knew it?

18 A All of the information I had, I knew very well before
19 I worked for them. I didn't go to the factory. I didn't see
20 any of the processes or anything.

21 Q Then you went to work for Whiting on a case and you
22 were against Ruger in that case, true?

23 A That's correct.

24 Q And then Ruger offered you this \$15,000 a year
25 retainer, and you went back to work for Ruger, right?

1 A. That was at a later date, yes. Right.

2 Q. And you get that \$15,000 before you do those 300
3 hours of work each year, don't you?

4 A. I did on the first occasion. After that, I was paid
5 in quarterly installments, and during the years that this
6 contract has been in effect, I put in more than 300 hours per
7 year.

8 Q. Okay. You told us earlier about different kinds of
9 guns-- bolt actions, lever actions, pump actions, and automatics?

10 A. Yes, sir.

11 Q. And traced history for us a little bit.

12 Let me see if I understand. If you want the most
13 rapid fire of the four types I have just described, you use the
14 automatic?

15 A. The automatic would be the fastest firing of the
16 group, right.

17 Q. Next most fastest would be what-- that is a bad
18 question. But what is the next fastest?

19 A. I would think that the pump gun would be if you are
20 very skilled at manipulating a pump gun, you can fire it
21 virtually as fast as an automatic.

22 Q. One notch further down, next fastest would be the
23 lever action?

24 A. I would think so. It's faster than a bolt.

25 Q. So, of the four we described, the slowest is the

1 bolt?

2 A. Of the magazine rifles, the repeating rifles, yes.

3 Q. So, if a hunter is really afraid of being attacked
4 by grizzly bears, he's going to have a better shot at that
5 grizzly bear and more shots quicker with something other than
6 a bolt action, at least as amongst the four we have just
7 described?

8 A. That's true, as far as speed of fire is concerned.

9 Q. Right. As far as the speed of the bolt action rifle,
10 the speed with which you could shoot three or four rapid
11 shots, or shots in rapid succession, that wouldn't be affected
12 at all by whether or not that gun has a bolt lock on it, would
13 it?

14 A. No. As a matter of fact, one of the big advantages
15 of the bolt action rifle is the fact that when you fire it
16 rapidly, you know the bolt's locked down, you know it's going to
17 fire every time. If it does not have a bolt lock, you don't
18 really know.

19 Q. You don't put the safety on between each of those
20 rapid fire shots, do you?

21 A. No, sir.

22 Q. On the Model 700, the bolt lock is on the safety,
23 right?

24 A. The bolt lock?

25 Q. Right.

1 A. That's correct. Once you throw the safety off, you
2 disconnect the bolt lock, and you are able to fire the gun as
3 rapidly as it's possible to fire. You have no other interrup-
4 tions once you are into the firing process.

5 Q. Now, let's see. You have already told us that most
6 of your testifying is for gun manufacturers rather than
7 against them, and you explained why, didn't you?

8 A. Generally that is true.

9 Q. It is true?

10 A. Yes.

11 Q. I don't need the explanation again. I'm making sure
12 we have covered that.

13 Would you agree with me from a safety standpoint, the
14 manufacturers in the gun industry have a high degree of
15 responsibility with reference to the quality of the product
16 they send out to the marketplace?

17 A. Of course.

18 Q. And part of the reason that they have that high
19 degree of responsibility is because a firearm is an inherently
20 dangerous object?

21 A. All firearms are dangerous. They command the respect
22 of safe gun handling practice, because of this potential danger.
23 Yes, sir.

24 Q. And the high degree or responsibility that the gun
25 manufacturing industry has toward firearm safety is especially

1 important because of the fact that guns may not be handled
2 properly; isn't that true?

3 A. That is true.

4 Q. Would you agree with this statement, Mr. Hillberg,
5 quote: The best kind of safeties are those which under a
6 certain phase, such as loading, render a firearm completely
7 safe automatically; they think for you?

8 A. Yes, with regard to certain firearms, this would be
9 true.

10 Q. And in fact, that was your testimony in the very case
11 that we talked about yesterday, Van Allen versus Remington;
12 is that right?

13 A. I don't recall.

14 Q. You did testify in Van Allen versus Remington, did
15 you not?

16 A. I certainly did.

17 Q. And that was on behalf of Remington, right?

18 A. I'd like to review that.

19 Q. You do not remember if you were on Remington's side,
20 or the other side?

21 A. I remember if I was on Remington's side, yes, indeed.

22 Q. That's all I'm going to ask you about it.

23 A. But I did not make that statement with regard to the
24 Remington rifle in that trial.

25 Q. But did you make that statement?

1 A. About another product which was a handgun, had
2 nothing to do with the 700.

3 Q. I understand that.

4 Now, I want to talk about product warnings a little
5 bit. You know something about that subject, don't you? Yes or
6 no.

7 A. Very little. I'm not in that phase, really. My
8 involvement in the firearms industry is more from the technical
9 development of the product versus the advertising and the manual
10 and the writing.

11 Q. All right. I'll just ask you a couple of questions
12 about it, and we'll see if we can't stay within your area of
13 expertise on that subject.

14 MR. HUEGLI: Your Honor, while Mr. Chamberlain is asking
15 his question, may I take a look at the exhibit that was marked
16 and identified and everybody has read it so far?

17 THE COURT: Yes.

18 Q. (By Mr. Chamberlain) Would you agree that with
19 product warnings in the gun industry, that one of the biggest
20 problems is to get the message of safety across?

21 A. It sounds fairly reasonable, yes.

22 Q. And you are familiar in that regard with the product
23 packaging and the warnings provided by the Marlin Manufacturing
24 Company?

25 A. I'm familiar with it, yes.

1 Q And, in fact, Marlin has a unique system of product
2 warning that is, in your opinion, superior to any other
3 company; isn't that true?

4 A Yes, at the time I believe I read the document or
5 prepared the document that you are reading from, I felt that it
6 was a very fine system.

7 Q Okay. We are talking about a letter that was written
8 in 1974, two years before Exhibit 2 was manufactured?

9 A About 10 years ago, roughly.

10 Q But two years before Exhibit 2 was manufactured,
11 right?

12 A I beg your pardon?

13 Q It was two years before Exhibit 2, the accident rifle,
14 was manufactured?

15 A Yes. I didn't know what Exhibit 2 was.

16 Q I'm sorry. Okay. Okay. And you would agree that
17 as far as spreading the word of product safety or product use
18 to the owner that the instruction manual is the most important
19 document?

20 A It's a very important document, yes.

21 Q And the biggest problem with the owner's manual is
22 getting the reader-- excuse me, getting the purchaser to read
23 it?

24 A That is true. A great many people never even look at
25 it, open up the box, and throw it away.

1 Q And that's not only true of a great many people, but
2 it's been true with you on many products that you have purchased;
3 isn't that true?

4 A I'm afraid that you are correct.

5 Q Probably not on rifles, because you are interested in
6 that, but other products, right?

7 A I have a tendency to do that.

8 Q Okay. And you have lots of company in that regard,
9 don't you?

10 A I'm afraid so.

11 Q And then, something that I think was brought up
12 yesterday, the idea of hang tags, you pointed out to some of
13 your gun industry clients that is not necessarily an effective
14 means of communicating, because the dealers that display the
15 products tend to tear those tags off?

16 A When a gun dealer--

17 Q Much like this one was?

18 A When a gun dealer displays his products in the gun
19 racks, very frequently he does not like a lot of tags and a
20 lot of labels, and stuff, hanging all over them, and many times
21 he will remove these and just throw them in the box; so in
22 their display, they are not-- they are not hanging on the
23 product.

24 However, if he gets a rifle out of stock, and it's
25 wrapped up in its container, it would, of course, contain all

1 of the literature that goes along with it.

2 Q Now, another possibility that the gun manufacturer
3 can consider is printing warnings right on the gun itself, and
4 I understand that you feel that is not a very practical
5 solution?

6 A You mean embossed right in the metal?

7 Q Yeah, printing warnings on the gun itself, it's
8 highly impractical and undesirable?

9 A I'm-- I don't quite understand you. Are you referring
10 to the--

11 Q Well, we've talked about hang tags and the fact that
12 that is not a very practical solution, because the fellers
13 tear them off, and you have also observed, in advising your
14 gun industry clients, that printing a warning, not a sticker,
15 but printing a warning right on the gun itself is impractical,
16 and in your opinion undesirable?

17 A Right.

18 Not a sticker?

19 Q Right, not a sticker.

20 A Aesthetically, it's kind of nice, and people who have
21 a special feeling about their firearm, particularly the
22 collectors, they don't like to see it, but the Ruger Company
23 has pioneered in this approach, and the reason they have done
24 it, and I think it's a very, very good point, no matter what
25 you print, or no matter how you try to warn somebody, when they

1 buy the product, what happens, the next guy that inherits the
2 gun, or it's sold to, those warnings aren't along any more.

3 So what the Ruger Company has done, and they are the
4 leaders in doing this, they have written on the side of the
5 receiver or the barrel, they instruct you to read the owner's
6 pamphlet, and if you do not have one, you can send away to the
7 company and they will send you one free.

8 Q. So that it's--

9 MR. HUEGLI: Your Honor, may I interrupt the testimony for
10 a minute, and maybe Mr. Chamberlain and I could approach the
11 bench for a minute.

12 MR. CHAMBERLAIN: Well, there is no question pending.

13 MR. HUEGLI: Well, there is a question coming.

14 (Bench conference outside the hearing of the court
15 reporter and the jury.)

16 Q. (By Mr. Chamberlain) Now we have talked about hang
17 tags and people tearing them off.

18 Marlin has attempted to improve that situation by
19 using a special type of tough plastic that can't be broken,
20 right?

21 A. That is correct.

22 Q. Just yes or no. Okay.

23 A. They, however, still tie them on. It's just a
24 stronger string, like fishing leader.

25 Q. And in addition to that--

1 A. But still people cut them off.

2 Q. In addition to that, back in 1974, you observed that
3 Marlin, and you, I think, observed this and approved of it,
4 that Marlin put a bright red sticker on each gun; isn't that
5 true?

6 A. That's true.

7 Q. And that sticker cautioned the purchaser to read the
8 owner's manual before using the firearm, right?

9 A. Yes.

10 Q. And that's done in an effort to get the owner to read
11 the firearm?

12 A. That's correct.

13 Q. And that's a gum label that is on there to warn the
14 new owner, and then he can remove that label, and it does not
15 impair the gun?

16 A. Yes, sir.

17 Q. And in your letter to your client Ruger, when you
18 are describing this, you told them that that sticker is double
19 insurance that the owner has been cautioned to read the
20 instructions or the owner's manual, double insurance; right?

21 A. Yes, that's, that he signs it to the effect that he
22 has read it before the guarantee is in effect.

23 Q. And it's hard to conceive that an owner would
24 actually remove that label without at least reading the label;
25 it's hard to conceive of that?

1 A. Well, I don't know about that. I can't speak for
2 other people. I don't think I would have paid any attention
3 to it.

4 Q. When you wrote your client Ruger in 1974, you did
5 tell them it would be hard to conceive that he would remove the
6 cautionary label without reading it?

7 A. I think it's a step in the right direction, yes.

8 Again, it does nothing for the person that buys the
9 gun or uses the gun after it's new.

10 Q. Okay. We are talking the purchaser of a used rifle?

11 A. That's correct.

12 Q. Okay. And you, a minute ago, got ahead of me a
13 little bit here and mentioned another gimmick that Marlin uses,
14 where they require the owner to sign the warranty card and
15 attest that they have read the manual when they send that card
16 back in?

17 A. Yes, I thought we had covered that.

18 MR. CHAMBERLAIN: May I have Exhibit 104, please (to the
19 clerk, who complies).

20 Q. (By Mr. Chamberlain) And in 1974, in describing all
21 of the safety features, or, rather describing all of the
22 warning features that we have just talked about that Marlin had
23 in '74, when you wrote to your client, the Ruger Company, you,
24 in a sense, recommended that they give serious consideration to
25 similar warnings in their product?

1 A. I made it as a suggestion.

2 Incidentally, this was voluntary on my part. Neither
3 Ruger nor Marsh, Day and Calhoun requested me to do this. I
4 was just doing it as I thought a favor to them in case they
5 were interested.

6 Q. In your experience in the gun industry, you have
7 experienced a number of cases where the gun owner didn't read
8 the manual, right, like you described earlier?

9 A. Yes, sir, that's correct.

10 Q. They throw it away?

11 A. Some do; some don't.

12 Q. There is no reason that in 1976, when Remington was
13 marketing their Model 700 rifle, there is no reason that they
14 couldn't have produced an owner's manual that had bold print
15 and different color of ink for the most important of the
16 instructions in that manual, is that--

17 MR. HUEGLI: Your Honor, we will stipulate when this gun
18 was produced, we could have produced red ink, any number of
19 different colors of inks, some signs in gold letters, yellow
20 highlighting, any one of a number of things.

21 THE COURT: All right.

22 Q. (By Mr. Chamberlain) But Remington did not do that,
23 did they, 1976?

24 A. I don't believe so, but, as I told you before, I'm
25 not really up on this end of the market.

1 Q Okay. Would you agree that in providing warnings to
2 gun owners that the most important thing is to properly word
3 any warning that may be feasible and clearly spell out the
4 procedure for safe handling in the owner's manual?

5 A I would think so.

6 MR. CHAMBERLAIN: Thank you, Mr. Hillberg. No further
7 questions.

8 REDIRECT EXAMINATION
9

10 BY MR. HUEGLI:

11 Q Mr. Hillberg, if the owner of a firearm does not
12 sign a warranty card and throws it away with the rest of the
13 material-- strike that.

14 In your experience, is there any way that the rifle
15 manufacturer can guarantee in any way that they are going to
16 force somebody to read a document that they don't want to read?

17 A No, sir. The only--

18 After the rifle was purchased, and the material is
19 either lost, thrown away, or whatever, from there on, anybody
20 that fires the rifle, whether they borrow it or whether it's
21 sold, the warnings are long lost.

22 MR. HUEGLI: Thank you, Mr. Hillberg. That's all we have.

23 MR. CHAMBERLAIN: No further questions.

24 THE COURT: All right, sir.

25 THE WITNESS: May I step down.

1 MR. HUEGLI: At this time the defendant would rest his
2 case.

3 THE COURT: Rebuttal?

4 MR. CHAMBERLAIN: Could I have about 10 minutes, Your Honor?

5 THE COURT: Yes.

6 Members of the jury, we will take a recess now.

7 (At 2:27 p.m. the testimony of Mr. Hillberg was
8 concluded.)

9 REPORTER'S CERTIFICATE

10 State of Oregon)
) ss.
11 County of Multnomah)

12 I, Viola Joyner, RPR, do hereby certify that the foregoing
13 pages 1 through 59 are a true and accurate transcription of
14 my stenotypy notes as reported at the time and place
15 heretofore indicated in re SEE v. REMINGTON, USDC No. 81-886.

16 Dated this 3rd day of *June*, 1983, at Portland, Oregon.

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Viola Joyner

VIOLA JOYNER, RPR
Court Reporter