

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

EVELYN LEWY and JACK LEWY,)	
)	
Plaintiffs)	
)	
v.)	Civil Action
)	No. 83-3172-CV-S-2
REMINGTON ARMS COMPANY, INC.,)	
and K MART CORPORATION,)	
)	
Defendants)	

Continued videotape deposition of ROBERT B. SPERLING taken pursuant to agreement on behalf of Plaintiffs at the offices of E. I. du Pont de Nemours & Company, Brandywine Building, (Conference Room B-11376), Wilmington, Delaware, beginning at 12:50 p.m., on Thursday, November 7, 1985, before Kurt A. Fetzner, Registered Professional Reporter and Notary Public.

APPEARANCES:

Richard C. Miller, Esq.
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COPY

1 ROBERT B. SPERLING,
2 having been previously sworn as a witness,
3 was resumed on examination and testified
4 further as follows:

5 EXAMINATION

6 BY MR. MILLER:

7 Q. We're back on the record, Mr. Sperling.
8 Just for purposes of form, I'll remind you you're
9 under oath from the other day.

10 A. Right.

11 Q. I'm going to hand you what's been marked as
12 Plaintiff's Exhibit W, pages 72 through 86, which
13 I'll represent to you is minute No. 1 for 1980,
14 dated January 22nd of that year. I refer you in
15 particular to page 74 of that document.

16 (Discussion off the record.)

17 BY MR. MILLER:

18 Q. First, is that what I represented it to be,
19 a product safety subcommittee minute?

20 A. Yes.

21 MR. HEADLEY: Mr. Miller, I can't hear
22 you.

23 Q. Is that what I represent it to be, a product
24 safety subcommittee minute?

1 A. That's correct.

2 Q. Does that minute discuss instances prior to
3 the date of the minute, 1979 and before, in which
4 the Model 700 would fire upon release of the safety?

5 A. It discusses an audit that, yes, at least as
6 part of the audit that we were starting June 13,
7 1979 to January 15, 1980.

8 Q. That's the time period for the audit?

9 A. It's the time period in which this number of
10 guns of 700s were returned to Ilion which were being
11 discussed in this minute.

12 Q. How many guns were those?

13 A. 3,376.

14 Q. Of those examined -- were all those
15 examined, first?

16 A. They were all tested for the trick
17 condition.

18 Q. How many had failed the trick test?

19 A. 35 guns failed the trick test.

20 Q. Now, is that what it says, failed the trick
21 test?

22 A. "Of this sample, 35 guns failed the trick
23 test." Then it goes on and qualifies that.

24 Q. Why don't you tell me what the

1 qualifications are?

2 A. "But of these 35 guns 22 guns were trickable
3 because they had been altered or damaged out in the
4 field. This means that the audit to date indicates
5 that only about .4 percent of the audited Model 700s
6 were susceptible to tricking due to causes not
7 attributable to customer misuse. It is also known
8 that only .4 percent of the guns manufactured before
9 1975 are so susceptible."

10 Q. Does it say how that's known, the ones
11 before 1975 the figure is about .4 percent?

12 A. What was happening here was this was an
13 ongoing audit which started I guess a year earlier,
14 1979, at the beginning of 1979, and what they were
15 doing was taking guns that were being returned to
16 the factory for repair of some sort or with some
17 complaint involved and every gun that came in they
18 would test for the trick condition, keep a running
19 tab.

20 So when it says it was known that 4
21 percent manufactured were so susceptible, it's just
22 taking this somewhat ad hoc audit and saying if you
23 apply that to the total number of guns out in the
24 field that's the percentage that you would come up

1 with.

2 Q. Now, this audit, did it predate, did it go
3 on before 1979, or whatever the -- what was the
4 beginning date again?

5 A. In this minute?

6 Q. Yes.

7 A. This minute says from June 13, 1978. I
8 would say that was probably the beginning date.

9 Q. Of this audit?

10 A. Yes.

11 Q. Was there another audit that might have been
12 conducted prior to June 1978?

13 A. There may have been.

14 Q. You said this was an ongoing thing. That's
15 why I was caused to ask that question.

16 A. Yes. It was ongoing. What I meant is it
17 was ongoing before this minute. I mean, for the
18 date of this meeting.

19 Q. And they say .4 percent of the guns
20 manufactured prior to 1975 have this problem.

21 A. Well, it's susceptible. They're guessing.
22 If you factor out the percentages of the audit to
23 encompass everything, that's what they would guess,
24 where .4 percent of the guns would be susceptible to

1 being tricked.

2 Q. That's 4 percent of all guns?

3 A. No, .4 percent.

4 Q. I'm sorry. .4 percent of all guns and also
5 .4 percent of guns manufactured before 1975?

6 A. .4 percent of the Model 700s.

7 Q. Right.

8 A. Bolt-action. Yes.

9 Q. What I'm trying to get at is, is there a
10 change in the percentage between guns manufactured
11 before 1975 and guns manufactured after?

12 A. I don't think so. What it's saying -- I'm
13 not a mathematician so don't hold me to this -- what
14 it's saying apparently is if you take the total
15 number of guns returned, regardless of the date they
16 were manufactured, that figure would come out to .4
17 percent. If you factor those guns only manufactured
18 before 1975, that also would come out to .4 percent.

19 Q. Then would you be able to tell me whether
20 that would then make it 4 percent of the guns
21 manufactured after 1975?

22 A. .4 percent. In my mind it would. Maybe I'm
23 missing something.

24 Q. The next paragraph mentions what they call,

1 well, what we have called a screwdriver test,
2 inserting a screwdriver into the trigger assembly
3 and attempting to trap the connector so that it
4 cannot move freely back underneath the sear. They
5 call this condition firing off safe of course
6 according to the memo.

7 Is this the first time that test was
8 instituted at Remington?

9 A. I have no independent recollection or
10 knowledge of that. I can just go by what it says in
11 the minutes and it says, "Since January of 1979
12 Ilion has added a new test on the Model 700 audit."
13 So I assume that that was new as of that date.

14 Q. Do you know why they added that new test?

15 A. No.

16 Q. Now, that test since its institution but
17 prior to the date of this minute was able to come up
18 with a certain number of guns which would fail what
19 we've referred to as the screwdriver test, correct?

20 A. That's right.

21 Q. How many of those would fail? How many of
22 those did fail?

23 A. Let's see. It says since the inception of
24 the new test 38 returned Model 700s were found to,

1 quote, fire off safe, but of this number only nine
2 would do so because of causes not attributable to
3 alteration or damage in the field; four of which
4 were guns manufactured before 1975.

5 Q. Now, those are returned guns there, not guns
6 off the production line. Is that right?

7 A. That's right. The 38 is part of the sample
8 that is coming in from customers for repair with
9 complaints.

10 Q. So we've got 35 that will fail the trick
11 test and 38 that will fail the screwdriver test for
12 various reasons.

13 A. But I'm not sure if they're accumulative or
14 consecutive. I'm not sure if part of that trickable
15 has also failed the screwdriver test.

16 Q. The report doesn't say --

17 A. It doesn't say. I assume that that 38 is
18 not in addition to 35. It seems to me it's 38 out
19 of whatever number of guns that started to come in
20 in January of 1979.

21 Q. But the report doesn't say one way or the
22 other?

23 A. No.

24 Q. Well, now, it says up here by subtracting

1 the 22 that they claim were caused by changes in the
2 rifle you've got 13 that would still fail the trick
3 test and it's not due to a change in the rifle since
4 manufacturing, right?

5 A. Well, yes, if you subtract 22 from 35.

6 Q. You get 13, of course?

7 A. Right.

8 Q. Then down here it flat-out states that there
9 are nine that are not due to change, subsequent
10 changes in the rifle since manufacture.

11 A. That's nine that would fail this screwdriver
12 test, not attributable to damage or alteration.

13 Q. But it still doesn't say whether those 9 or
14 those 13 match up?

15 A. No.

16 Q. I believe in the next paragraph they add
17 those two figures together for some reason or
18 another and come up with --

19 A. Yes. They say it combines the number of
20 trickable guns with the number of guns that will
21 fire off safe, which is the failure of the
22 screwdriver. They say if you combine that the
23 figures indicate that approximately .6 percent of
24 the model currently in the field will be susceptible

1 to tricking or, quote, firing off safe.

2 Q. How many rifles were tested here? 3,376?

3 A. Yes.

4 Q. Six percent of 3,376 would be --

5 A. It's .6 percent.

6 Q. I'm sorry. To make that clear, what would
7 that be decimal-wise?

8 THE WITNESS: What is it?

9 MR. MILLER: That is decimal-wise.

10 MR. HEADLEY: .006.

11 THE WITNESS: 006.

12 MR. MILLER: Oh, okay. Yeah. .006.

13 BY MR. MILLER:

14 Q. When I take the .6 percent figure and take
15 that times the 3,376, I get between 20 and 21 guns
16 that will either fire off safe or are trickable.
17 Now, if we add up the 13 from the top figure, the
18 ones that will FSR due not to any modification, and
19 the 9 down here that will fire on safe, as it's
20 termed, or fail the screwdriver test, and that's not
21 due to any modification or change, we get 21, right?

22 A. That's right.

23 Q. 22. Excuse me.

24 A. 22.

1 Q. So would it be fair to assume that that .6
2 percent refers to the 13 and the 9 that they found
3 in this study and that that 13 and 9 are cumulative
4 in this situation?

5 A. The figures seem to jive out that way.

6 Q. I understand that you don't know exactly.
7 But would that be a fair way?

8 A. It seems that your reasoning is fair.

9 Q. Then the report continues to state "The
10 status of the Model 600 recall and the Model 700
11 audit confirms the wisdom of Remington's previous
12 determination made in January of 1979 (see product
13 safety subcommittee minutes dated January 2, 1979)
14 that the company's effort to reduce accidents
15 involving bolt-action rifles would best be served by
16 publicizing the proper gun handling and maintenance
17 information rather than to continue running recall
18 notices producing ever diminishing returns."

19 Now, I can't remember. I've talked
20 about it with several people.

21 Did we get to that January 2, 1980
22 minute with you?

23 A. I don't think you have gone over any minutes
24 with me.

1 Q. Let me see if I can find it quickly. We
2 didn't talk about W-7, W-8 with you, or I didn't?

3 A. No, you didn't.

4 MR. MILLER: Let's go off the record
5 for a minute.

6 (Discussion off the record.)

7 BY MR. MILLER:

8 Q. It's my understanding that you generally
9 attended product safety subcommittee meetings when
10 Mr. Partnoy was unavailable. Is that correct?

11 A. Yes. I also attended them when he was
12 there.

13 Q. You were his fill-in though when he wasn't
14 there?

15 A. That's correct.

16 Q. Let me hand you Plaintiff's Deposition
17 Exhibit W, pages 1 and 2 and 3. Apparently you also
18 acted as secretary sometimes?

19 A. That's right.

20 MR. SHAW: What's the date on that?

21 MR. MILLER: This is minute No. 2 dated
22 April 2, 1975.

23 BY MR. MILLER:

24 Q. Is that the first instance that you know of

1 that the product safety subcommittee discussed
2 problems with the 600 fire control system due to the
3 trick condition?

4 A. Yes. This is the first meeting of the
5 product safety subcommittee on this concern, yes.

6 Q. Do you have any independent recollection of
7 that meeting other than what's contained in this
8 minute?

9 A. No, I really don't.

10 Q. It says, "Four guns were found to fire under
11 the following sequence of events: The trigger is
12 pulled with the safety on and then the safety is
13 taken off, hereinafter referred to as the full safe
14 condition. These four guns have been returned to
15 Ilion for further examination. The Ilion recheck
16 produced consistent repetition of the problem in
17 only one of the four guns."

18 Do you remember that?

19 A. I don't remember the discussion on it, but
20 it's there so I'm sure it was discussed.

21 Q. I'm going to hand you what's been marked as
22 Plaintiff's W, pages 4 through 6, product safety
23 subcommittee minute dated April 23, 1975, in which
24 you would also be acting secretary.

1 Do you recognize that?

2 A. Yes, I do.

3 Q. Do you have any --

4 A. I'm sorry.

5 Q. Go ahead and take your time. I'm sorry.

6 A. I was acting secretary. I notice that Tom
7 Sharp actually did issue the minutes. I believe
8 what I did was I took notes there and Tom compiled
9 them into the minutes and issued them.

10 Q. Do you have any independent recollection of
11 what occurred at that meeting other than what's
12 contained in the minute?

13 A. No, I don't. Basically it was a meeting of
14 reports of people telling what they've done and so
15 forth. I can only remember by looking at this, and
16 I don't have any independent beyond the words here.

17 Q. Do you happen to remember who might have
18 prepared the reports and presented them at the
19 meeting?

20 A. I believe, as I remember it, it would be
21 Clark Workman and John Linde who had done most of
22 the talking at the meeting.

23 Q. Do you remember anybody from marketing
24 presenting any report?

1 A. No, I don't.

2 Q. How about anybody from production?

3 A. I would guess that probably Bob Hall, who
4 was manager of the Ilion firearms plant, probably
5 gave that report.

6 Q. Do you know if he gave a written report as
7 well or whether it was just oral?

8 A. I don't know. I don't remember seeing
9 anything in writing.

10 Q. Do you remember any discussion about the
11 three-positioned safety that they mention down
12 here? It says that research has concluded that the
13 present design for a three-positioned safety is
14 inadequate and plans to begin a study during the
15 second half of 1975 to develop a new safety
16 mechanism.

17 A. No. I don't remember any discussion along
18 those lines in connection with the 600 problem.

19 Q. I hand you what's been marked as Plaintiff's
20 Exhibit W, pages 7 and 8. I represent to you that
21 is a product safety subcommittee meeting minute
22 No. 4 dated June 20, 1975 in which you are also
23 noted that you are acting secretary. Is that what
24 that is?

1 A. That's correct, yes.

2 Q. Now, you mentioned several things in there.
3 You first mentioned that some tests were instituted
4 to pick up the trick condition in the plant. Was
5 that the trick test?

6 A. We're talking about the first paragraph
7 here?

8 Q. Yes.

9 A. Newly instituted check procedures have
10 eliminated the trick safety condition in all
11 bolt-action rifles now leaving the plant. I know
12 what the trick test is. I don't know what other
13 checks, if any, were instituted.

14 Q. How do you know that they eliminated the
15 condition in rifles leaving the plant?

16 A. Well, that was the report.

17 Q. Who made that report? Do you know?

18 A. I don't know. Again, I think in all of
19 these meetings I associate these discussions with
20 Clark Workman and John Linde.

21 Q. Were they present at that meeting?

22 A. It says that they were, yes.

23 Q. Now, if the trick condition was intermittent
24 and not present in the rifle a hundred percent of

1 the time, do you know if your quality control
2 procedures, your check procedures that you refer to
3 there would necessarily eliminate the condition?

4 A. Well, since I'm not familiar with what the
5 check conditions are, I don't know. I can only
6 assume that they would.

7 Q. It says that other bolt-action rifles were
8 also tricked. Do you remember which ones those
9 were?

10 A. No. I don't remember any specific
11 discussion on any one competitor model.

12 Q. Do you ever remember seeing a report showing
13 which ones they were, even though it may not have
14 been discussed at the meeting?

15 A. No.

16 Q. Finally, the third paragraph down it says
17 John Linde is to make some corrective
18 recommendations. I don't think I used the exact
19 words. You might want to read it.

20 A. Do you want me to read it?

21 Q. Yes?

22 A. "After discussion, it was decided that John
23 Linde take charge of revising the section of the
24 gunsmith manual covering bolt-action fire controls,

1 so as to include (one) appropriate checks for the
2 trick safety condition, and (two) recommendations
3 for corrective action."

4 Q. Were the recommendations for corrective
5 action things that he was to put in the manual for
6 gunsmiths, or were those things he was suppose to
7 make recommendations on to the committee?

8 A. Well, as I look at how I wrote this, it
9 looks as if that was all to be done in the gunsmith
10 manual. It lists one and two items here for the
11 gunsmith manual.

12 Q. Do you ever remember any discussion about
13 putting not just the trick test but also the FSR
14 test in the gunsmith manual and recommendations for
15 corrective action there?

16 A. The FSR test being the full safe pull
17 trigger?

18 Q. That's correct.

19 A. I don't remember any discussions like that.

20 Q. I'm going to hand you what's been marked as
21 Plaintiff's Exhibit HHHH, which is a test entitled
22 evaluation of the bolt-action rifle safety
23 mechanisms Models 580, 788, 600 and 700 dated May
24 7th, 1975. Have you seen that before?

1 A. Yes.

2 Q. When did you see that previously?

3 A. I believe in connection with preparation of
4 some litigation.

5 Q. Did you see that at the time it was
6 produced? Were you on the distribution list?

7 A. No, I wasn't.

8 Q. You wouldn't know anything more than what's
9 contained in the report then?

10 A. That's correct.

11 Q. Would the same answer be true with respect
12 to Exhibit XXX, which is dated May 20, 1975 and is
13 also a memo on bolt-action rifle safties? On that
14 one you might want to look at each particular page
15 because they're somewhat different.

16 A. (Pause) This is a loose one. Is it
17 supposed to be where it is?

18 Q. I think so. I couldn't say for certain.

19 A. My answer would be the same as the prior
20 document.

21 MR. HEADLEY: Which I understand your
22 answer is you don't recall having seen it before
23 other than in situations later where it might have
24 been secured by attorneys in litigation that you

1 happened to be connected with?

2 THE WITNESS: That's correct.

3 BY MR. MILLER:

4 Q. Do you recall any discussion of a call made
5 by Mr. G. W. Martin to the Ewell Cross Gun Shop and
6 a conversation he had with Malcolm Cross regarding
7 Model 700s which would fire on release of the
8 safety?

9 A. No, I don't know anything, recall that at
10 all.

11 Q. Do you recall a Model 700 safety function
12 test preliminary survey that was done?

13 A. In this 1975 time frame?

14 Q. Yes.

15 A. No. I think I heard that when they
16 investigated the 600 problem they also looked at all
17 the other bolt-action rifles. I assume the 700 was
18 included.

19 Q. Who wrote the press release on the Model 600
20 recall?

21 A. I have no actual knowledge. I'm going to
22 guess that it was E. S. McCawley, who was head of
23 our advertising-public relations department at the
24 time, with input from product people.

1 Q. I hand you what's been marked as Plaintiff's
2 Exhibit W-17, which I'll represent to you is a
3 product safety subcommittee minute dated October 30,
4 1978 showing you as in attendance and acting
5 secretary. I'm interested in what the first
6 paragraph of that memo means.

7 A. (Pause) I can only look at the words and
8 say I have no independent recollection of this. But
9 it seems to me what it means is that they talk about
10 replacement trigger assemblies, they're talking
11 about at this time we have been out, we've gone out
12 with a recall for about -- I don't know -- five or
13 six days. Guns would be coming back and they needed
14 to replace the trigger assemblies in these guns as
15 they came back without even checking them with a new
16 trigger assembly. It was the new trigger assemblies
17 that were being produced at Ilion.

18 I take it when they say to be gauged is
19 to be sure that the new trigger assemblies had the
20 proper dimensions, proper clearances.

21 Q. Sear lift?

22 A. Sear lift, clearance sear lift. And ten
23 percent quality check is being conducted. I guess
24 after all the checks are done on each individual one

1 I'm just assuming they took another check of ten
2 percent.

3 Q. You wanted to make sure that if the gun was
4 sent back with the old mechanism it didn't get sent
5 back out with the old mechanism still in it?

6 A. That's right. As a matter of fact, every
7 gun that was sent in as long as it was determined
8 that it was part of the recall, the trigger assembly
9 was removed and a new one put in, regardless. We
10 didn't try to ascertain whether it was trickable or
11 not. It just automatically was removed and a new
12 one put in.

13 MR. HEADLEY: Again, we're talking
14 about 600s?

15 THE WITNESS: 600s, yes. It had to be
16 a recalled gun.

17 BY MR. MILLER:

18 Q. I'm going to hand you Plaintiff's Exhibit
19 W, pages 31 through 37. I represent to you that
20 this is a product safety subcommittee minute dated
21 January 2nd, 1979 with you in attendance and acting
22 secretary. Is that correct?

23 A. That is right.

24 Q. Do you have any independent recollection of

1 that particular meeting?

2 A. Yes, I have some independent recollection of
3 that.

4 Q. That's what I would like to know. What do
5 you remember about the meeting?

6 A. Well, I remember the discussion was the 600,
7 the 700 and what the future action of the company
8 was to be. And the future action I believe it
9 resulted in a decision to go out with a very strong
10 safety program.

11 When I say I have an independent
12 recollection, I remember being at the meeting and it
13 was a rather long meeting. And then I'd have to go
14 back to the specific topics as they're in here.

15 Q. What was the alternative being considered to
16 this strong safety campaign?

17 A. Well, I don't believe there was a list of
18 alternatives that we were discussing. It was just
19 we went in with a discussion looking at the results
20 of the various, what we knew of the audits at the
21 time on the 700. We were specifically involved in
22 discussing the 700, bolt-action 700.

23 And we determined from that, from those
24 results that the way to go on this was definitely a

1 campaign to re-emphasize the safe gun-handling
2 habits of hunters and users of guns.

3 Q. Did you consider the possibility of advising
4 the users or the gun-handling public of the
5 possibility that a Model 700 would fire on release
6 of the safety?

7 A. Well, as you can tell, this was a meeting
8 that just set the parameters of what we were going
9 to do: "Let's go out and tell people, re-emphasize
10 these old adages that will prevent this kind of
11 accident." The accident that prompted this was of
12 course the trick condition, the 600. But then the
13 discussion also got into points of other problems,
14 adjustments of the guns, alteration of the guns,
15 poor and improper maintenance of the guns, that kind
16 of thing.

17 We could see that a general campaign
18 was the way to go to cover all of these because the
19 trick condition, at least in the 700, was just a
20 small percentage that were even susceptible. Even
21 at this point we had really no evidence that anybody
22 out there was actually sitting there playing with
23 their safety and tricking it. The only evidence,
24 the only one that ever claimed he ever did that was

1 that -- it was the first report we got from Texas in
2 1975 which instituted this whole examination of the
3 600, who actually said he was there playing with his
4 safety, told us exactly what he did and he shot his
5 truck. That's what precipitated the thing.

6 Now, of all of the others we had never
7 gotten anybody that said or even intimated that he
8 actually remembered playing with the safety, putting
9 it in the null position. So that was such a small
10 percentage, it was even an infinitesimal percentage
11 of the problem that was being claimed to be out
12 there; that is, accidental discharge.

13 The way to handle that is not to go out
14 and try to recall the guns, giving the indication
15 that there was a mechanical problem that when solved
16 everybody could go back and do everything that they
17 were always doing, altering their guns, pointing
18 their muzzles in directions that they didn't know
19 what the result would be.

20 The solution of the accidents was to
21 get people to realize that the application of
22 several basic hunting rules could prevent all of
23 these accidents regardless of what happened with the
24 gun. That was our decision, to do this across the

1 board.

2 Now, we went out with ads directed at
3 the half safe situation, but also we went out with
4 ads that told us about don't alter or change the
5 components of the gun. And in those adds we also
6 indicated never pull the trigger when the safety is
7 in the full position. It encompassed everything.
8 It wasn't -- we just didn't sit down and list a
9 whole series of accidents and say, "We're going to
10 direct that at that, that at that, that at that."

11 We wanted to get 10, 15 basic rules
12 that would cover the whole spectrum of what was
13 going on out in the field.

14 Q. One of the things you did do according to
15 Plaintiff's Exhibit SSSS which I'll hand you was
16 explain the trick condition to the public.

17 A. This is an ad half safe is unsafe, which I
18 remember. We did go out and talk about this. Now,
19 this is an ad that tries to alert people of the
20 problems they can get into by not properly handling
21 a bolt-action rifle. It doesn't specifically refer
22 to the 600 or to any Remington gun.

23 Q. But in the first paragraph doesn't it
24 describe the trick test?

1 A. The first paragraph? "The safeties and
2 triggers of all bolt-action rifles can in some cases
3 be manipulated in a way that causes the gun to fire
4 when the safety is released." That of course covers
5 any trick condition or any FSR condition.

6 Then it says, "For example" -- then it
7 narrows it down -- "an accidental discharge can
8 sometimes be caused by placing the safety somewhere
9 between the 'fire' and 'safe' positions, pulling the
10 trigger and then moving the safety to the fire
11 position."

12 MR. HEADLEY: What's that exhibit
13 number again?

14 THE WITNESS: The exhibit is SSSS.

15 BY MR. MILLER:

16 Q. That is basically the trick test then you
17 just described in the second sentence of the first
18 paragraph?

19 A. Yes. That's right.

20 Q. Did you give an example of the FSR test in
21 there as well?

22 A. Well, later on down the ad we say, "given
23 these certain safety rules" and it says, "Never pull
24 the trigger when the safety is on 'safe' or in

1 between safe and fire."

2 Q. Do you expect or was there any discussion of
3 how hunters carried their gun with their finger
4 sometimes in the pistol grip position while hunting
5 with the rifle on safe?

6 A. A discussion during what period of time?

7 Q. During this meeting of January 2, 1979 or at
8 any time after that meeting, leading up to the
9 preparation of this half safe is unsafe program.

10 A. Well, we did discuss all the -- I shouldn't
11 say "all." But we did discuss unsafe practices
12 hunters engage in. This of course is only one ad
13 that we came out with. The industry came out with a
14 series of 7 which was later expanded to 14 which was
15 pushed and in those ads we discuss very clearly
16 other problems. And one is always keep your finger
17 -- whenever you're in a mode of not shooting, don't
18 put your finger in the trigger guard or near the
19 trigger at any time.

20 It wasn't necessarily discussed in this
21 one ad, although it might be. I haven't looked at
22 all the warnings we say here. Never place your
23 finger near the trigger when the safety is being
24 moved to the fire position. That's one. But I

1 think later on you'll see in the manuals that we put
2 out and also the NSSF ads that they go into that
3 more clearly about the finger, where it should be
4 located and so forth.

5 Q. Still back to my basic point, did you ever
6 in that ad or any other ad tell users or consumers
7 that the Model 700 was susceptible to firing upon
8 release of the safety? In other words, failing the
9 FSR test, not the trick test and not a warning not
10 to touch the trigger while carrying the rifle in the
11 safe position, but explain to them specifically what
12 could happen if they did do that.

13 A. Yes. I believe there is -- one of the ads
14 that went out through the industry does indicate
15 that the gun can fire if you pull the trigger with
16 the safe on or in the mid position and subsequently
17 release the safety after you pull the trigger.

18 Q. Now, do you remember this discussion which
19 is recorded on page 4 or W-34 of the January 2, 1979
20 minute in which it states "Based on Remington's
21 sample only 1 percent of the pre-1975 Model 700
22 family of guns out in the field, which number about
23 two million, can be tricked. This would mean the
24 recall would have to gather two million guns just to

1 find 20,000 that are susceptible to this condition"?

2 A. Yes, I remember that discussion.

3 Q. Apparently from the way I read that you were
4 discussing either a recall or some other solution.

5 A. Yes. It was saying, "What should we do?
6 Should we do the same thing that we did with the
7 600?" It's obvious from the unscientific sample
8 that we had -- and I say "unscientific" because it
9 was so skewed toward the bad side; it only looked at
10 guns coming back with that particular complaint --
11 that even just that, a small sample, would show that
12 there was no inherent design problem with the 700
13 like we did with the 600.

14 Q. But on the 700 down the line in that other
15 minute we talked about, this one being Exhibit
16 W, pages 74, 75, beginning actually on page 72, you
17 did finally determine that the figure was more like
18 .4 percent for an FSR problem and .6 percent for an
19 FSR and a fire on safe problem?

20 A. Yes. The audit went on. The figures even
21 became less.

22 Q. Did the audit go on after that point of that
23 memo?

24 A. I really have no knowledge of that. I

1 assume it did, but I just don't know.

2 Q. Oh, when you were saying as the audit went
3 on, you meant up to the point of this exhibit which
4 is W-72, not afterwards?

5 A. Yeah. What I was saying was this wasn't
6 just "Let's grab these guns and see what happens."
7 This was an ongoing thing over months of time as
8 they dribbled in. It wasn't just "Let's go to the
9 warehouse and get a group of guns."

10 Q. But that audit you're talking about, ongoing
11 audit, is reflected in this memo W-72?

12 A. That's right. It was ongoing up to that
13 point. Now, what happened after that point, I don't
14 know.

15 Q. What else do you remember about the
16 discussion of the possible recall and the estimate
17 of 1 percent to be subject to FSR?

18 A. Well, as I say, the only discussion was it
19 was obviously not a problem with the 700 from the
20 figures we saw. But even if you take the figures,
21 the real problem of the guns being returned, if in
22 fact there was an accidental discharge, since only
23 let's say 1 percent was a mechanical problem showed
24 that 99 percent were some other problem, either

1 alteration or people firing the gun without
2 realizing what they were doing by pulling the
3 trigger.

4 That was what we were trying to get at
5 because with a campaign of awareness you not only
6 hit that mechanical problem -- because if the gun
7 isn't pointed in any unsafe direction, it doesn't
8 matter when it's fired -- you also get to the other
9 99 percent of the problem.

10 Q. Do you find it odd that of the guns sent
11 back with customer complaints that they would fire
12 on release of the safety that Remington would only
13 find that situation in 1 percent of the rifles
14 rather than a greater percentage?

15 A. Did I find it odd?

16 Q. Yes.

17 A. From a mechanical standpoint I had no
18 opinion because I was relying on what they were
19 telling me. I didn't independently analyze it.

20 (Discussion off the record.)

21 MR. MILLER: Now, you might want to
22 read back his last comment or my last question so we
23 can pick up where we left off.

24 (The court reporter read back as

1 instructed.)

2 BY MR. MILLER:

3 Q. My question again in a different way is
4 you've got all these complaints coming in. I don't
5 know the number. Does it say in this?

6 A. Are you talking about after we recalled we
7 got 700 to return?

8 Q. Yeah. It gives a couple of examples in this
9 Exhibit W, 31 through 37. But perhaps the best one
10 since we have already talked about the numbers is in
11 Exhibit W-72 where the number returned -- well,
12 these weren't returned for the trick condition.
13 These were just returned for service.

14 A. For service.

15 Q. So that wouldn't be true. Let's go back to
16 this one here.

17 A. Okay.

18 Q. Here's a sample that I can use. The 19
19 Model 700s that have been returned to Ilion in
20 response to the Model 600 recall, which was for the
21 FSR or the trick condition?

22 A. Trick condition, right.

23 Q. And out of those only one of them could be
24 tricked.

1 MR. SHAW: Which minute are you looking
2 at?

3 MR. MILLER: This is Exhibit W-31
4 through the minute of January 2, 1979.

5 A. Only one could be tricked.

6 Q. Do you find it odd that of the 19 customers
7 complaining only one of them could be tricked?

8 A. Did I find it odd?

9 Q. Yes.

10 A. Well, I'm not sure if I'm coming from the
11 right place. Do you mean mechanically knowing what
12 I knew about mechanical fire control did I find it
13 odd that only one of 19 could be tricked?

14 Q. Yes.

15 A. Or are you asking me do I find it odd that
16 19 people that sent in a gun with a complaint saying
17 it can be tricked and 18 were wrong?

18 Q. The second part is what I'm asking.

19 A. No. I don't find that odd. I think when a
20 gun fires and it's in your hand it's quite a
21 traumatic experience and you might forget little
22 things like exactly where your hand was at the time
23 it fired, depending upon the results of the firing.

24 Also I believe, I believe there were

1 three other guns that did fire but for reasons
2 associated with alteration of the guns.

3 Q. Is it possible that Remington in their
4 audits, their study here, the audit that's mentioned
5 previously in this minute or the audit that's
6 mentioned in the 3,300-and-some-odd guns in the
7 minute, is it possible that Remington did not pick
8 up or discover some of those rifles that would have
9 FSR'd in the testing procedures?

10 A. Well, of course, anything's possible. But
11 they were looking pretty hard for that condition.
12 They did find some so they had a test that would
13 catch it if it's there.

14 Q. If it's intermittent there, would it
15 necessarily catch each and every gun that's
16 susceptible to that condition?

17 A. Well, I guess it's the definition of
18 "intermittent." If it occurs every four or five
19 times, certainly a test that is designed to test it
20 for 20 times would catch that condition. If it's an
21 intermittent condition that only occurs every 600
22 times, then of course it might not.

23 As it was explained to me, it's a
24 dimensional problem. It's either there or it isn't

1 and even through measurements you can tell what it's
2 going to do.

3 MR. HEADLEY: You aren't a design
4 engineer, are you, Mr. Sperling, and you're not
5 suggesting that these conditions exist?

6 THE WITNESS: No, I'm not.

7 BY MR. MILLER:

8 Q. The last thing I want to ask you about, if I
9 can find them somewhere over here, are the requests
10 for admissions that have been --

11 MR. HEADLEY: I don't know. Were you
12 asking a question on the record or not?

13 (Discussion off the record.)

14 BY MR. MILLER:

15 Q. Back on the record here. The last question
16 I wanted to ask you about, the last issue were
17 defendant Remington Arms, Inc.'s response to
18 plaintiff's revised requests for admissions. It's
19 my understanding from prior testimony that you and
20 Mr. Hutton prepared these. You advised him in the
21 legal area somewhat. He prepared most of the
22 answers. Is that right?

23 MR. HEADLEY: Well, now, I'm going to
24 place an objection because when you say that

1 Mr. Sperling advised him in the legal areas, he
2 certainly is acting as counsel but also we, Mr. Shaw
3 and I as counsel, were advising in the legal areas
4 and we were involved in that, so I don't want to
5 exclude us by the way that question was posed.

6 MR. MILLER: I wouldn't want to exclude
7 you either.

8 BY MR. MILLER:

9 Q. The reason I posed it that way, I don't want
10 to know anything about the legal areas. You know
11 the distinction.

12 A. Yes.

13 Q. I can discover some of the facts and some of
14 the information.

15 A. Right.

16 Q. I don't want to impose in certain areas and
17 I'm sure they will object if I do.

18 A. The few areas of the admissions that
19 concern --

20 MR. HEADLEY: Is this in answer to a
21 question?

22 Q. Well, the question would be, why don't you
23 tell me how you participated in this? I think
24 that's what you were going to say.

1 A. Yes. That's what I was going to say.

2 The few areas that concern nontechnical
3 things that might be the information that might have
4 come from other than the Ilion firearms plant I
5 would have either knew or helped compile. I didn't
6 attempt to give legal advice to Mr. Hutton or to our
7 attorneys. I just acquired some information that
8 would be needed to analyze these admissions, request
9 for admissions.

10 Q. Let me just give you an example here,
11 No. 10, the request for admission reads "On or about
12 November 14, 1982 Mike Lewy was unloading the
13 subject rifle in the basement of his home when it
14 discharged." That was denied.

15 Now, what facts do you base your denial
16 on of the request for admissions No. 10?

17 MR. HEADLEY: Was that answer prepared
18 by Mr. Shaw and me as attorneys?

19 THE WITNESS: My understanding is that
20 it was.

21 BY MR. MILLER:

22 Q. Do you know what facts Remington denied that
23 request for admission based upon, what facts they
24 based their denial upon?

1 A. I can guess.

2 MR. HEADLEY: If you guess, would you
3 then be involved in discussions that you may have
4 had with us as attorneys?

5 THE WITNESS: That's true.

6 MR. MILLER: I'm entitled I think to
7 the fact the reason why the denial is not true.
8 That's what I'm trying to get at, not into
9 discussions.

10 Is there a reason why that request is
11 not true?

12 MR. HEADLEY: Yes. Other than a legal
13 reason?

14 MR. MILLER: Other than a legal reason
15 of course.

16 MR. HEADLEY: Yes.

17 BY MR. MILLER:

18 Q. And, if so, do you know the fact that makes
19 that or facts that make request for admission No. 10
20 not true?

21 A. I don't know of any facts. It's a legal
22 reason that I was going to guess at.

23 Q. Then I don't want to know that. I may want
24 to know but I'm not going to ask you that.

1 Let me just pick out a few more and
2 we'll see how we're doing. On No. 15 it reads "The
3 subject rifle discharged when Mike Lewy pushed the
4 safety lever from the S to the F position" and
5 Remington denies that.

6 Would your response be the same?

7 A. Yes.

8 Q. Let me ask you with respect to 21: "At the
9 time of this accident, November 14, 1982, the
10 subject rifle was in substantially the same
11 condition as when it was manufactured and sold by
12 Remington to K Mart" and Remington denies that.

13 Is there a fact or are there facts upon
14 which you base that answer or is that a legal reason
15 and, if so, do you know what those facts are?

16 A. This is question No. 22?

17 Q. 21.

18 A. 21. I'm sorry. I believe that was a
19 factual question.

20 Q. What facts, if you know them, would support
21 your denial of that request for admission, or should
22 I ask Mr. Hutton that question?

23 A. Well, the facts I have are only what I've
24 been told.

1 Q. By Mr. Hutton?

2 A. No. By discussions with our attorneys and
3 with Mr. Hutton, the combination of facts here that
4 lead me to the conclusion of that, that that's not
5 true.

6 Q. So your information would only be second-
7 hand through your attorney or Mr. Hutton?

8 A. Right.

9 Q. It's those types of questions that I would
10 rather get them through Mr. Hutton rather than
11 through you. See what I'm trying to get at?

12 A. Yes.

13 Q. Given that, excluding the legal reasons and
14 excluding the secondhand information, either through
15 your attorneys about facts or through Mr. Hutton, do
16 you think there's going to be anything left that
17 you'll be able to talk about?

18 A. I went through these yesterday very briefly
19 and I saw some that Mr. Hutton's -- factual
20 questions that Mr. Hutton might not know, but it was
21 like two or three of them toward the end.

22 Q. Toward the end? Is that where they were?

23 A. Yeah. I can't even remember the context.
24 It was more like....

1 I don't know what it would be. Maybe
2 when we were incorporated or something to that
3 effect, if that's a question.

4 Q. Well, I think I'm going to take my chances
5 with Mr. Hutton and not prolong this. Given that,
6 that I can get most of my answers from him, I'll do
7 that since I will have I assume an opportunity to
8 depose him.

9 MR. MILLER: I believe that's all the
10 questions I have.

11 MR. HEADLEY: This is only for
12 clarification for the record.

13 BY MR. HEADLEY:

14 Q. I think these minutes, Mr. Sperling, you
15 keep referring to and Mr. Miller went through it
16 about pre-1975 model rifle 700s or sometimes 600s
17 being returned and if at any time it appeared in
18 Mr. Miller's questions and your answers in some way
19 post-'75 slipped in, I take it it was your intent so
20 far as these minutes were concerned to refer to it
21 as pre-1975?

22 A. I'm afraid I lost you somewhere along the
23 line there on that question. Could you repeat it?

24 Q. It probably wasn't a very clear question.

1 (Discussion off the record.)

2 BY MR. HEADLEY:

3 Q. I guess I'm saying where someone, Mr. Miller
4 or you, in particularly Mr. Miller, used post-'75
5 when the minutes were referring to pre-'75.

6 A. My remembrance is pre-'75 was mostly
7 referred to. I don't know. There may be a
8 reference to post-'75 in the minutes, but I would
9 have to go through them.

10 MR. HEADLEY: One minute.

11 (Discussion off the record.)

12 MR. MILLER: First, on all these
13 witnesses it's our agreement that they'll read and
14 sign the deposition but we can waive presentment.
15 Is that right?

16 MR. HEADLEY: Yes. They will read and
17 sign the depositions.

18 MR. MILLER: Now, with respect to some
19 of the other witnesses I didn't get to, for
20 instance, Mr. Hutton, do we have any plans? Do you
21 have any suggestions on those people?

22 MR. HEADLEY: Well, I think you'll
23 probably have to tell us now what you had in mind.
24 You called the Court. And maybe now that you've

1 been here in Wilmington and have taken more
2 depositions, maybe you've calmed down some. I don't
3 know.

4 Why don't you collect all your thoughts
5 on it and call us promptly, like Monday of next
6 week? And we will discuss it with you promptly. I
7 just don't -- unless you want to sit here and we
8 spend another half hour or 45 minutes going over
9 everything. Then I think we'll probably get into a
10 series of "if you dids" and "if you didn'ts."

11 MR. MILLER: No. I made my suggestions
12 last week. I didn't know if there had been any
13 changes and if you want to talk about it next
14 Monday, I'll call you next Monday.

15 MR. HEADLEY: In the meantime, let us
16 know what you have in mind when you say "other
17 witnesses."

18 MR. MILLER: Right now?

19 MR. HEADLEY: No. Next Monday.

20 MR. MILLER: Oh, next Monday? Fine.

21 MR. HEADLEY: Then have your list in
22 front of you as you talk to us on the telephone.

23 MR. MILLER: I think that will conclude
24 things then.

1 (Deposition concluded at 2:10 p.m.)
2 (There were no exhibits marked for
3 identification.)
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REPLACE THIS PAGE

WITH THE ERRATA SHEET

AFTER IT HAS BEEN

COMPLETED AND SIGNED

BY THE DEPONENT.

1 State of Delaware)
2 New Castle County)

3
4 CERTIFICATE OF REPORTER

5
6 I, Kurt A. Fetzer, Registered
7 Professional Reporter and Notary Public, do hereby
8 certify that there came before me on the 7th day of
9 November, 1985, the deponent herein, ROBERT B.
10 SPERLING, who was duly sworn by me and thereafter
11 examined by counsel for the respective parties; that
12 the questions asked of said deponent and the answers
13 given were taken down by me in Stenotype notes and
14 thereafter transcribed into typewriting under my
15 direction.

16 I further certify that the foregoing is
17 a true and correct transcript of the testimony given
18 at said examination of said witness.

19 I further certify that I am not
20 counsel, attorney, or relative of either party, or
21 otherwise interested in the event of this suit.

22
23
24

Kurt A. Fetzer

DATED: -----