

Declaration of Eric Martin Larson

I, Eric Martin Larson, make the following declaration pursuant to 28 U.S.C. § 1746.

1. I am currently a Senior Analyst at and have been employed by the U.S. Government Accountability Office ("GAO") in Washington, D.C., since 1987. My professional duties at GAO are primarily the statistical analysis and evaluation of computerized data, including the validity and reliability of administrative data records. Many of these data (such as pertain to various classes of legal immigration, and the reporting of diseases) are complex and must be interpreted according to various decision rules regarding their definition(s), time-sensitive eligibility periods, data entry procedures, editing and quality control checks for errors, and so forth. During three of the 20 years I have been employed at GAO, during the time period when such awards were made, I have received the top outstanding achievement award in my division or group based upon my abilities to analyze and interpret complex data. It should be emphasized, however, that all statements by me in this Declaration and my analyses of data gathered and reported by the

Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") under the National Firearms Act of 1934, as amended, 26 U.S.C. § 5801, *et seq.* ("NFA") is the result of work by me as a private individual and does not represent the policy or position of the U.S. Government Accountability Office.

2. In addition to the above professional experience, I have earned the following degrees from the University of Texas at Austin: Bachelor of Journalism with Honors, 1974; Master of Arts (journalism), 1976; Master of Science in Community and Regional Planning, 1979; Master of Arts (sociology), 1984; and Doctor of Philosophy (demography), 1987.

3. Since 1986, as a firearms collector and in furtherance of my personal collecting and research interests, I have been studying certain firearms originally manufactured in the United States in or before 1934 (but not replicas thereof) which are currently defined as "Any Other Weapon" ("AOW") under the NFA. These AOWs are primarily specialized firearms designed for trappers, and odd firearms such as knife-pistols, which are regulated under the NFA mainly for technical reasons, rather than any

significant history of use as weapons by criminals. Today, virtually all of these firearms are valuable collector's items because they (1) were manufactured at a time when there were virtually no laws regulating firearm design; (2) are very specialized firearms that had a limited commercial market even at the time they were being manufactured; (3) unlike any other NFA firearm, the Congress repeatedly lessened controls on pre-1934 AOWs in 1938, 1945 and 1960, although the NFA nevertheless still virtually destroyed the retail market for these types of firearms; (4) represent a unique niche in U.S. firearms evolution, design and genealogy, because there is nothing else like them; and (5) are extremely rare – based on my own research and in consultation with other firearms experts who are knowledgeable about and commercially deal in pre-1934 AOWs, I estimate that fewer than 17,000 exist from an original group of about 170,000 that were manufactured in the United States in or before 1934.

4. After I began publishing my research in 1993, privately as well as in major firearms magazines and reference books, collectors and others contacted me with disturbing information regarding some of the pre-1934 AOWs I had been studying. Specifically, in at least six instances, persons told me that they had inherited a registered AOW

that was in their family for many years, yet ATF claimed the firearm was not registered. Upon attempting to transfer lawful ownership to the lawful heir, ATF stated that the firearm was not registered as required in the National Firearms Registration and Transfer Record ("NFRTR"); was, therefore, contraband subject to seizure and forfeiture, if the owner did not choose to "voluntarily abandon" the firearm to ATF. When the heirs located original registration or transfer paperwork for the firearms, however, ATF stated that a mistake had been made and then processed the application for transfer of ownership to the heir. In other instances, lawful heirs told me they specifically recalled the firearm was registered (e.g., agents of the Internal Revenue Service ("IRS") came to the house to drop off registration documents, which the heirs filled out and returned per instructions), but could not locate their copy of the registration form (often some 30 or more years later), and were forced to abandon their firearm to ATF because ATF claimed the firearm was not registered.

5. Based on statements made by then-NFA Branch Chief Tom Busey in October 1995, in which Mr. Busey stated in an internal training seminar at ATF Headquarters in Washington, D.C., that he hoped improved training would

"eliminate the possibility that anything goes out erroneous because we know you're basing your warrants on it, you're basing your entries on it, and you certainly don't want a Form 4 waved in your face when you go in there to show that the guy does have a legally-registered Title 2 weapon. I've heard that's happened," I wondered if there was statistical evidence from ATF records that could be analyzed to evaluate Mr. Busey's statement. I was particularly concerned about Mr. Busey's statement that "It was fine to begin putting everything in accurate a year ago or at least be guaranteed a year ago it was accurate, but what are you going to do with the entries that go back to the early '80s and the '70s and the '60s?"

6. Based upon a careful analysis of statistical data regarding NFA registration activity released publicly each year by ATF since approximately 1990, and written and oral statements to me by ATF personnel, it appears that ATF has been adding firearms to the NFRTR after being confronted with lawful registration documents by owners (or heirs) of NFA firearms. I testified about obvious errors in the NFRTR, and the serious legal problems created by missing or destroyed NFA firearm registration documents, before the House Subcommittee on

Treasury, Postal Service, and General Government Appropriations in 1996, 1997, 1998, 1999, 2000 and 2001 (references hereafter will be to my "1996 testimony," "2000 statement," and so forth, indicating page numbers in the published Congressional hearing records. While my primary research focus and interest is upon pre-1934 AOWs, I recognize that the problems identified with the NFRTR data may potentially affect many firearms that are subject to regulation under the NFA.

7. The NFRTR data I analyzed indicate potentially serious problems with original NFA firearm registrations. Specifically, in analyzing data publicly released by ATF, I found that during 1992 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records. In theory, numbers of original registrations should not change over time; however, these registrations – now from 36 to 73 years old – have increased. Inspection of these data for the years from 1992 to 1996 discloses that the number of NFA firearms registered on Form 4467 has increased by 36 (1997 testimony, Table 1, page 63); further interpretation of apparent errors and additions of firearms is on pages 57 to 62, and pages 84

to 88). There are other discrepancies and impossibilities reflected by these data. For one, in 1996, there were 164 Form 4467 registrations before 1968; this is impossible, because Form 4467 didn't exist until 1968. For another, the Form 4467 data show 146 registrations for years after 1971; however, the U.S. Supreme Court prohibited such registrations on April 5, 1971. In a telephone interview in early April 1996, ATF employee Gary N. Shaible told me that he could not explain post-1971 registrations, and in response to my question (repeated three times to make sure of its accuracy and that he understood) whether ATF had ever added firearms to the NFRTR because ATF lost the original registration and a lawful owner produced his or her copy of the registration, he stated: "Yes. I assume that's happened." (1996 testimony, pages 88 to 96). In 1997, then-NFA Branch Chief Nereida W. Levine stated in a letter to me that if a registered NFA firearm was not recorded in the NFRTR, "it would be added to the National Firearms Registration and Transfer Record if the information was not already in the record." (1997 testimony, page 97). Regarding Form 1 registrations, from 1992 to 1996, ATF has apparently added 83 firearms that it reports were originally registered from 1934 to

1971 and during unknown years (1997 testimony, Table 2, page 65; further interpretation on pages 64, 66 and 67).

8. The most recent statement by the Government regarding NFA firearms which cannot be located in the NFRTR, which ATF has added to the NFRTR in response to owners producing documentation, appears in a June 2007 report by the Department of Justice Inspector Office of Inspector General ("DOJ-OIG"). The DOJ-OIG determined: "If the NFA weapons owner [sic] can produce the registration paperwork, ATF assumes the error is in the NFRTR and fixes it in the database" (DOJ-OIG Report Number I-2007-006, page 31). This condition - adding firearms to the NFRTR after the owner produces valid NFA documents - apparently fulfills a Department of Justice standard for requiring a new amnesty period. Specifically, Department of Justice officials stated if ATF determines that "a particular individual or weapon is registered" and ATF finds that its "files are missing," then "the only solution would be to declare another amnesty period" (see "Response to Senator [James A.] McClure," by Philip B. Heymann, Assistant Attorney General, and Lawrence Lippe, Chief, General Litigation & Legal Advice Section, Criminal Division, U.S. Department of Justice, November 29, 1979, LL:JJD:ajw, page 4).

9. The NFRTR data also exhibit potentially serious problems with NFA firearm transfers. Specifically, during 1992 to 1996, ATF added 283 Form 4 (tax paid) transfers to existing data (1997 testimony, Table 4, page 71). Note that 192 of these additions of Forms 4 occurred in 1996, for years prior to 1968 – that is, nearly 40 years ago. This could mean that during the course of an attempted transfer of the firearm, ATF discovered there was no record of the firearm in the NFRTR, and was forced to add the data to the NFRTR when confronted with valid Form 4 transfer documents retained by the owners of the firearms.

10. I complained about the preceding and other NFRTR errors to the Office of Inspector General, Department of the Treasury, which responded by referring my complaint to ATF. ATF conducted an internal investigation of my complaint and in a final report dated September 1997 dismissed all of my charges (1998 testimony, pages 67 to 119). I specifically refuted each ATF denial with valid and reliable evidence, and identified relevant evidence that ATF did not consider; this included documentation that ATF employee Gary N. Schaible made statements under oath in federal court in 1996 regarding the deliberate destruction of NFA registration documents by persons

working at or for ATF, and that Mr. Schaible made statements in the 1997 ATF investigation that directly contradicted his 1996 testimony in federal district court (1998 testimony, pages 120 to 129).

11. In response to my complaint, in October 1997, the Honorable Dan Burton, Chairman, House Committee on Government Reform and Oversight, requested the Treasury Department Inspector General (T-OIG) to (1) review the ATF internal report, and (2) independently investigate my complaints and audit ATF's firearms registration practices.

12. The Treasury Department Inspector General (T-OIG) rendered two reports, neither of which answered the question of whether ATF had added firearms to the NFRTR after being confronted with NFA paperwork by owners of the firearms (Report No. OIG-99-009, October 1998; and Report No. OIG-99-018, December 1998, hereafter called the "October 1998 Report," and "December 1998 Report," respectively).

13. The T-OIG determined that NFA documents "had been destroyed about 10 years ago by contract employees," and "could not obtain an accurate estimate as to the types and number of records destroyed" (October 1998 Report, page 1). The T-OIG also determined that "ATF did not

always control or process checks, forms, and other documents in accordance with procedures because employees did not always adhere to the procedures" (December 1998 Report, page ii).

14. The T-OIG stated: "Our [audit] scope did not include a review of ATF's certifications in criminal prosecutions that no record of registration of a particular weapon could be found in the registry. We also did not evaluate the procedures that ATF personnel use to search the registry to enable them to provide an assurance to the court that no such registration exists in specific cases. Accordingly, this report does not provide an opinion as to the accuracy of the registry searches conducted by ATF." (December 1998 Report, page 22). In a February 14, 2001, letter to the Chairman, House Subcommittee on Treasury, Postal Service, and General Government Appropriations, Stephen P. Halbrook, Esq., Ph.D., a nationally recognized expert on federal firearms law, stated that "serious inaccuracies exist in the registration records, with the potential that BATF may cause the prosecution of persons for alleged unregistered firearms when in fact the firearms were registered as required. The strong possibility that innocent citizens may have to defend themselves against unfounded charges

and even be convicted (e.g., if they have lost their original registration certificate) warrants . . . serious attention." (2001 statement, page 15).

15. In a letter dated March 3, 1999, to the Chairman, Subcommittee on Treasury, Postal Service and General Government, House of Representatives, Capt. Monty Mendenhall, a pilot for United Air Lines, described the "frightening experience" of being notified by ATF that an NFA firearm he owned, which he had applied to temporarily transfer to a gunsmith for repair, "was not listed in the National Firearms Registration and Transfer Record." Capt. Mendenhall included a copy of an ATF form that listed 41 reasons why an application such as that submitted was "being returned," and the reason checked was "Proof of ownership required. Firearm not shown registered to applicant;" another category "Other" contained the hand-written request to "please send copy of approved application to me," and signed by Barbara L. Franklin, a National Firearms Act Branch employee. While Capt. Mendenhall had his copy of the NFA document, and there were no consequences resulting from ATF's loss of this document, he pointed out: "The fact that this approved document, and a record of it, were missing from BATF's records indicates a very serious problem," adding

"I am frightened by the prospect of what might have happened if I had stored the original registration document in a less secure location and it had been lost or destroyed in a natural disaster or fire. . . . I would have no means of proving that I was the lawful owner. I could have been put in jail for up to 10 years and fined up to \$10,000. In addition to forfeiting the gun that was in question, a felony conviction would have cost me to lose the job I have held for thirty three years and to lose the rest of my valuable firearm collection as well." (1999 statement, pages 74-81).

16. The most recent statement by the Government regarding the accuracy and completeness of the NFRTR, by the DOJ-OIG in 2007, is: "The lack of consistency in procedures and the backlog in reconciling discrepancies, combined with technical issues, results in errors in the records, reports, and queries produced from the NFRTR. These errors affect the NFRTR's reliability as a regulatory tool when it is used during compliance inspections of federal firearms licensees." (DOJ-OIG Report Number I-2007-006, page iii).
17. The DOJ-OIG's focus on the records of federal firearms licensees fails to contemplate situations arising from private transfers of NFA firearms. As firearms expert

Stephen P. Halbrook, Esq., Ph.D., points out:

"Theoretically, BATF can correct some errors in the NFRTR by gaining access to dealers' records and by checking out-of-business records in BATF's custody. Such access does not exist for BATF-approved transfers between unlicensed persons in the same state, in regard to which the transferor is not subject to BATF inspection and is not required to keep records. Establishing a legally valid transfer history of an NFA firearm, or the transferee's current lawful possession of that firearm, may not be possible if the transferee loses his or her copy of the transfer approval, and the transferor, in whose name the firearm is still registered, is unavailable to verify the transfer." (*Firearms Law Deskbook: Federal and State Criminal Practice*, 2007 Edition, pages 492-493).

18. In view of Congressional interest and other evidence cited in this Declaration, it is at variance with professional audit or investigatory practices for the DOJ-OIG to base its review of the NFRTR as it did, namely, mainly upon asking ATF Industry Operations Investigators' characterizations of "the effects of NFRTR errors on compliance inspections of federal firearms licensees and ATF field office work," interviews with

other ATF officials, and related documents – that is, parties at interest – for their opinions about its accuracy and usefulness, as a substitute for audit work that would have definitively identified the extent and type of errors in the NFRTR.

19. The 2007 report is also not sufficiently independent because it fails to examine relevant issues that affect law-abiding citizens, such as the extent to which NFA-governed items for which transfers from a decedent were sought by an heir or executor may have been voluntarily abandoned to ATF, or seized and forfeited, because ATF was unable to find what it deemed to be a valid NFRTR record. In May 2000, the Subcommittee on Treasury, Postal Service, and General Government Appropriations asked ATF: “For the years 1997-99, how many NFA-governed items for which transfers from decedent were sought by an heir did ATF confiscate because there was no NFRTR record of a valid license?” and ATF responded: “We have no knowledge of any instance where ATF confiscated a lawfully registered firearm from a legal heir.” (2001 statement, page 23), which fails to answer the Subcommittee’s question. Importantly, the fact that the DOJ-OIG “did not find evidence that individual weapons owners . . . had been sanctioned or criminally prosecuted

because of errors in the [NFRTR] database," (DOJ-OIG Report Number I-2007-006, page iii) does not fully address situations involving NFA firearms that are acquired by ATF from their owners by methods that do not involve bringing criminal charges against persons who once owned these firearms.

20. Issues of the legitimacy of NFA firearms registrations and ownership are at stake. For example, four pre-1934 AOW firearms that I purchased and were transferred to me, as evidenced by ATF-approved Forms 4 for each firearm, may have been improperly registered by ATF years before I acquired them and without my knowledge. When I requested a written statement from ATF officials whether ATF intended to seize and forfeit these firearms as contraband because ATF may have improperly registered them, ATF stated that the NFRTR showed me to be the lawful owner of these firearms. My repeated requests — which were also made in my Congressional testimonies — for a written statement as to whether ATF regards my firearms as contraband were ignored. The reason is not difficult to discern; if ATF states the firearms are contraband, then ATF is admitting at least some of what I have alleged: namely, that the accuracy and integrity of the NFRTR have been compromised by ATF itself. If ATF

states that the firearms are not contraband, that may be an equally difficult position, since information provided to me by ATF, as well as copies of NFA documents indicating that these firearms may have been illegally registered by ATF, would clearly refute such a position (1997 testimony, pages 88 to 92; and 1998 testimony, pages 130 to 136).

21. The failure of Government agencies responsible for oversight of ATF (the T-OIG and DOJ-OIG) to conduct an independent audit of the NFRTR to determine the extent and type of errors therein, despite continued valid and reliable evidence that the NFRTR is inaccurate, incomplete, and, therefore, unreliable, raises troubling questions about the integrity and, indeed, legal validity of federal law enforcement. The fact that the Government has not determined whether the NFRTR is sufficiently accurate to justify its use to support criminal prosecutions only perpetuates the potential for unjustly depriving citizens of their lawfully owned firearms, and subjecting them to the hazards of unjustified criminal prosecution.

22. It is my considered professional opinion that the NFRTR registration activity data publicly released by ATF during each of the years from 1992 to 1996, for the

reasons stated in this Declaration, demonstrate reasonable legal doubt as to the accuracy, completeness, and integrity of the NFRTR.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief. Executed on July 18, 2007.

ERIC MARTIN LARSON