



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

MAR 24 1998

REFER TO:L:D:PJC
98-471-3

Eric M. Larson
P.O. Box 5497
Takoma Park, MD 20913

Dear Mr. Larson:

This is in response to your Freedom of Information Act (FOIA) request for access to information maintained by the Bureau of Alcohol, Tobacco and Firearms. Specifically, you have requested any information this agency maintains on the case *United States vs. Eighteen Various Firearms*.

Your request is granted in part. We are releasing the segregable portions of the documents that contain exempt information and withholding portions of the documents for the reasons indicated on the attached "Document Cover Sheet." As you have provided a waiver of privacy from Mr. George E. Fassnacht, the only redactions made to this file were the withholding of names of ATF employees and "computer codes" on document # 75, and similar documents.

Please be aware that document # 25 was misplaced in this file. However, it is included for your information to show that this is what caused a discrepancy in the report numbering.

Insofar as your request has been partially denied, and deletions have been made, you may request an administrative appeal by following the instructions outlined on Part III of the enclosed form.

The fees for copying have not been waived. Please submit your check in the amount stated on the enclosed invoice.

If you have any questions, you may contact me at (202) 927-7948.

Sincerely,

Peter J. Chisholm
Disclosure Specialist

Enclosure

Office of Chief Counsel
United States Custom House, Room 603
2nd and Chestnut Streets
Philadelphia, Pennsylvania 19106

CC:DC:NA-18,566
JKW/MSS

JAN 15 1993

MEMORANDUM TO: The File

FROM: Assistant Chief Counsel, Philadelphia

SUBJECT: Eighteen Firearms Seized from George Fassnacht
Case Number 63452-89-2533M

The purpose of this memorandum is to document background information relative to a very complex forfeiture matter, and to provide the reasons that the Bureau of Alcohol, Tobacco and Firearms (ATF) elected to settle this matter by registering the eighteen National Firearms Act (NFA) firearms and returning said firearms to George Fassnacht.

Background

During the period November 2, 1968 through December 1, 1968, the Alcohol and Tobacco Tax Division of the Internal Revenue Service (now ATF) conducted an amnesty program whereby any adult citizen, who was not otherwise prohibited from possessing firearms, could register firearms now classified as National Firearms Act (NFA) weapons. There was no fee attached to this registration.

According to a statement made by Thurman Darr at a time when he was Chief, Technical Services Division, Office of the Assistant Director (Technical and Scientific Services), between fifteen and twenty individuals, who were outside the United States during the amnesty program were permitted by ATF to register their firearms. Mr. Darr also stated that it was the practice of ATF to register firearms when: (1) the applicant could produce documentation that he was out of the country during the entire amnesty period; (2) the applicant could establish that the firearm to be registered was in the United States during the amnesty period; and (3) the applicant contacted ATF within a reasonable time after first returning to the United States.

George Fassnacht was working for the United States Central Intelligence Agency (CIA) in Vietnam during the amnesty period. Mr. Fassnacht became aware of the amnesty period when he read an article about it in an issue of "Stars and Stripes". He returned to the United States on December 15, 1968.

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On or about December 23, 1968, George Fassnacht went to the ATF office in Philadelphia in attempt to register NFA weapons. That office did not have the registration forms. On December 29, 1968, George Fassnacht wrote a letter to ATF in Washington regarding his request to register NFA firearms. On February 17, 1969, George Fassnacht returned to Vietnam for duty with the CIA. On February 28, 1969, Fassnacht wrote another letter to ATF requesting the registration of NFA firearms.

On March 11, 1969, ATF Area Supervisor _____ responded to Fassnacht's letter of December 29, 1968. Mr. _____ informed Mr. Fassnacht that ATF had determined that Fassnacht was outside of the United States during the amnesty period and that Fassnacht was eligible to register his NFA firearms when he returned to the United States. Mr. _____ provided Fassnacht with Forms 4467 to register his NFA firearms. Mr. _____ responded to Fassnacht's letter of February 28, 1969 on November 17, 1969, and told Fassnacht that he should contact the ATF area office when he returned to the United States in order to register his NFA firearms.

On May 15, 1970, George Fassnacht resigned from the CIA and did not return to the United States for processing. Between May 15, 1970 and June 24, 1971, George Fassnacht traveled between Singapore, Thailand, and Japan. He did not return to the United States until June 24, 1971. On June 29, 1971, Fassnacht wrote to ATF Area Supervisor _____, and advised him that he had just returned to the United States and wanted to register his NFA firearms.

On June 20, 1971, a few days before Mr. Fassnacht returned to the United States, the Philadelphia Police seized a large quantity of firearms belonging to him including the firearms which are the subject of the instant case. The police attempted to use the firearms against Mr. Fassnacht in a criminal case, but the trial court suppressed the evidence on Fourth Amendment grounds. Mr. Fassnacht was found not guilty of the charges against him. He sought the return of the firearms from the State of Pennsylvania and also continued to seek the registration of his NFA firearms by ATF. ATF refused to register Mr. Fassnacht's NFA firearms. Fassnacht filed a civil complaint in the United States District Court for the Eastern District of Pennsylvania in 1974. This case remained on the court's suspense calendar until 1984 when the court discovered the matter on its calendar and directed the parties to act. At that time, the Government filed a motion to dismiss the complaint for lack of prosecution. The court granted the motion. Mr. Fassnacht filed a motion to reconsider. The Government filed an opposition to the motion. The court's disposition of these motions is unknown.

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In late April 1989, an officer of the Philadelphia Police Department contacted ATF and stated that it appeared likely that the Court of Common Pleas would order the return of all of the firearms belonging to Mr. Fassnacht which were seized on June 20, 1971. The police officer indicated that the firearms in question included NFA firearms. Accordingly, ATF obtained a search warrant on May 5, 1989. On May 8, 1989, ATF special agents executed the warrant and seized nineteen NFA firearms, eighteen of which are the subject of the instant case, from the Philadelphia Police Department.

On May 24, 1989, the Seized Property Section forwarded a notice of seizure to George Fassnacht. Unfortunately, since the property inventory reflected the address of the Philadelphia Police Department, the Seized Property Examiner sent the notice to Mr. Fassnacht at that address. When the police contacted the case agent about the notice, the case agent contacted the Seized Property Examiner and gave her the correct address for Mr. Fassnacht. A notice of seizure was sent to Mr. Fassnacht at the correct address on June 20, 1989.

On July 19, 1989, George Fassnacht appeared at the ATF offices in Washington, D.C. and delivered a claim and cost bond. On ATF Form 175, Mr. Fassnacht specifically disclaimed ownership of a Colt machinegun, serial number 023911.

On December 18, 1989, the court of Common Pleas ordered the police to return to Mr. Fassnacht the firearms seized by the police on June 20, 1971, with the exception of the NFA firearms. According to the Assistant District Attorney who handled this case, the court indicated that the NFA firearms were in ATF's custody and thus, were outside the court's jurisdiction.

On February 27, 1990, ATF Counsel's Office in Philadelphia forwarded this matter to the Office of the United States Attorney for the filing of a forfeiture complaint. The delay in forwarding the matter to the United States Attorney was due to the fact that this office was searching files to obtain as much historical information as possible to provide to the United States Attorney. Additionally, this office sent a draft letter and draft complaint to Associate Chief Counsel (Litigation) for her comments with respect to the statute of limitations issue, and because her office had prepared litigation reports with respect to the suit Mr. Fassnacht filed in an effort to force ATF to register the NFA firearms.

The Office of the United States Attorney filed a forfeiture complaint on October 18, 1991. The forfeiture complaint covered only eighteen of the nineteen NFA firearms seized by ATF because

Mr. Fassnacht disclaimed one of the firearms, i.e., the Colt machinegun serial number 023911. In Mr. Fassnacht's answer to the complaint, he restated the fact that the Colt machinegun, serial number 023911 was not his property. In doing so, he erroneously subtracted it from the firearms listed in the Government's complaint, overlooking the fact that it already had been removed by the Government. As a result, Mr. Fassnacht's answer to the complaint of forfeiture asks for the return and registration of seventeen firearms rather than eighteen firearms. However, it is clear from his claim and cost bond that he is seeking the return of all of the firearms which are named in the complaint. As mentioned previously, he is not seeking return of the Colt machinegun, serial number 023911.

Reasons for Settling this Forfeiture Matter

Our office and AUSA James Swain concluded that the forfeiture action should not be pursued and that the registration of the NFA firearms and the return of said firearms to Mr. Fassnacht was the proper action. We reached this conclusion only after months of researching every possible lead and finding only evidence that Mr. Fassnacht had satisfied the requirements for persons seeking to register NFA firearms after the November 1968 amnesty period. These requirements were as follows: (1) the applicant could produce documentation that he was out of the country during the entire amnesty period; (2) the applicant could establish that the firearm to be registered was in the United States during the amnesty period; and (3) the applicant contacted ATF within a reasonable time after first returning to the United States. See the undated statement of Thurman Darr, Chief, Technical Services Division, Office of the Assistant Director (Technical and Scientific Services).

When our office began to research this matter, there were doubts as to whether George Fassnacht met any of these requirements. It is important to note in this regard that the applicant bears the burden of establishing that he met the post amnesty requirements. Additionally, there were indications that Mr. Fassnacht may not have been honest in his dealings with ATF relative to the attempted registration of the subject firearms. However, all doubts resolved in Mr. Fassnacht's favor. Each of these matters is discussed below.

We were concerned that Mr. Fassnacht failed to contact ATF within a reasonable time after first returning to the United States from Southeast Asia. A letter, dated January 17, 1974, from Special Agent in Charge, Philadelphia, to Acting Regional Director, was a chief source of this concern. This letter stated in applicable part:

"Sometime in late August or early September of 1971, a meeting was held with Regional Counsel concerning this matter, and he ruled that Mr. Fassnacht could not register any Title II firearms legally because he had been in this country from December 1968 to February 1969, and apparently again in November 1969 or the summer of 1970, and did not attempt to register anything at that time."

We found, however, that the evidence contradicts each of those allegations.

The correspondence between ATF Area Supervisor . and George Fassnacht indicates that Fassnacht attempted to register his NFA firearms while he was in the United States between December 1968 and February 1969. Mr. acknowledges that Fassnacht wrote to him regarding the registration of Title II firearms on December 29, 1968.

There is no indication that Mr. Fassnacht was in the United States in November 1969; in fact, there are indications to the contrary. In the course of investigating this issue, our office contacted a former ATF Inspector from Internal Affairs, now residing in Seattle, Washington, He had personal diaries concerning his ATF cases at home. He provided us with an investigation number for an ATF Internal Affairs case which we later obtained from Law Enforcement. The case contained a letter from the CIA to ATF's Assistant Director (Inspection). The letter indicated that Mr. Fassnacht arrived at an overseas post of duty on August 1, 1968, was in the United States between December 15, 1968 and February 17, 1969, left for overseas thereafter, and resigned overseas by letter effective May 15, 1970.

Our office also contacted the CIA's legal counsel regarding Fassnacht's whereabouts during the subject dates. They found no information to indicate that Mr. Fassnacht returned to the United States prior to May 15, 1970. They have indicated that they had no information about Mr. Fassnacht after that date.

There is no indication that Mr. Fassnacht was in the United States in the summer of 1970. Mr. Fassnacht's civilian passport bears only one stamp from U.S. Immigration. This stamp bears the date June 24, 1971. There are numerous stamps on Mr. Fassnacht's civilian passport from Immigration Departments in Singapore, Vietnam, Thailand, and Japan, beginning July 18, 1970. This evidence supports the testimony of Mr. Fassnacht at the deposition that he remained outside the United States between February 17, 1969 and June 24, 1971.

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Our office also was concerned that Mr. Fassnacht might not have accurately reported the number and/or class of NFA weapons he desired to register with ATF. The concern in the instant case arose in the context of Mr. Fassnacht's letter to ATF on December 29, 1968, in which he purportedly expressed his desire to register "several destructive devices." (We note that we do not have a copy of the actual letter, nor have we ever seen this letter. The letter was referred to in ATF documents. However, despite our search of ATF offices with files relating to this matter, we could not find the letter or a copy of the letter). The concern also stemmed from the fact that the ATF Area Supervisor stated in his March 11, 1969 reply to Mr. Fassnacht, that he was enclosing several Forms 4467.

The concerns arising from the use of the term "several destructive devices" were allayed in the course of our inquiries. With regard to Mr. Fassnacht's use of the term "destructive device," we learned that the Commissioner of the Internal Revenue Service, Sheldon F. Cohen, was indirectly quoted in a 1968 "Stars and Stripes" article as applying this term to all NFA firearms. Mr. Fassnacht claims to have read this article in Vietnam prior to returning home in December 1968. He provided our office with a copy of the article at a meeting.

With regard to Mr. Fassnacht's use of the term "several" to describe the number of NFA firearms which he wanted to register, attorney Kevin White of this office personally examined seventeen Forms 4467 at the office of Mr. Fassnacht's lawyer. The forms were yellowed with age, individually stamped 1968, and appeared to be original documents in every respect. This evidence strongly suggests that Mr. Fassnacht communicated to ATF that he had more than "several" firearms to register.

Our office found a reference to an additional eighty unregistered NFA firearms owned by George Fassnacht on an audio tape and transcript thereof, which was contained in an Internal Affairs report written by Inspector J. The tape is of a telephone conversation between Hopkins and Fassnacht on March 7, 1977. It appears to have been made without Fassnacht's knowledge. During the conversation, Fassnacht stated that he owned approximately 80 other NFA firearms on the date of the seizure by the Philadelphia Police which were not seized by the police. During his deposition by the Government, Fassnacht invoked his Fifth Amendment right against self-incrimination when asked about NFA firearms owned at the time he first sought registration.

Although the implication of these statements is that Mr. Fassnacht may have had other NFA firearms, there is no other evidence to substantiate this conclusion. Fassnacht's invocation of his Fifth Amendment right clearly is not admissible in court.

To our knowledge, ATF never pursued Fassnacht's revelation to Inspector [redacted]. In light of the fact that the possession of such a large quantity of NFA weapons would have represented a serious criminal violation, the failure of ATF to investigate the claim implies that the claim was not taken seriously. In light of these considerations, this possibility does not support a forfeiture action.

We also inquired as to whether Mr. Fassnacht acquired the subject weapons after the amnesty period. ATF Law Enforcement established that the weapons involved were all manufactured prior to the amnesty period. Additionally, Mr. Fassnacht stated in his answers to the Government's interrogatories that the defendant property was acquired over a period of many years prior to the November 1968 amnesty period.

There is no indication that Mr. Fassnacht is a prohibited person. During the week of January 4, 1993, the ATF Firearms Enforcement Branch obtained a TECS/NCIC records check on Mr. Fassnacht. No disabling convictions appeared on the records check. Additionally, Mr. Fassnacht holds a Federal firearms license and has a title II weapon registered to him.

For the foregoing reasons, we concluded that there remained no basis for the forfeiture of the firearms nor any basis on which to deny Mr. Fassnacht possession of the defendant firearms. Given this fact, we recommended the registration and return of these firearms. Both the Philadelphia Field Division and the Firearms Enforcement Branch agree with our recommendation.

cc: SAC, Philadelphia Field Division

JKW?MSS:emk 1-15-93

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