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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	Docket No. CR06-305 TSZ
)	
Plaintiff,)	Seattle, Washington
)	June 18, 2007
vs.)	Volume 1
)	
ALBERT KWOK-LEUNG KWAN,)	
)	
Defendant.)	
)	
_____)	

TRIAL
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:
William Redkey

For the Defendant:
Joseph R. Conte
Eric R. Stahlfeld

Court Reporter: Nichole Rhynard, CCR, CRR, RMR
Federal Court Reporter
206.370.8504

Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

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THE COURT: Good morning, Ladies and gentlemen.
Please be seated.

Before we bring in the jury, I think that we probably should say something to them about the fact that -- several of the jurors apparently were in the jury lounge and had to be escorted down to another floor, and the like. I think what we should say is that there was a briefcase that was left in the outer area. And it was all quite innocent, but for security reasons we needed to investigate it, and just apologize for any inconvenience.

Does anybody have any problem with that?

MR. REDKEY: No.

I have a couple questions. We have the firearms here. Does the Court have any preference for --

THE COURT: Have they got safety locks?

MR. REDKEY: Yes.

THE COURT: Ask your question.

MR. REDKEY: Does the Court have a preference where we keep them until we show them? We're actually going to

1 show them to the first witness. Or how they are presented to
2 him? Does the clerk wish to do that, or can I do that from
3 here?

4 THE COURT: You can do that from there. But they do
5 have a safety guard through each of them?

6 MR. REDKEY: Flex tape.

7 THE COURT: Are you going to refer to them in your
8 opening?

9 MR. REDKEY: Yes.

10 THE COURT: We should be sure to alert the jury.
11 They do have those safety locks on them.

12 MR. CONTE: For the record, I'm making an objection
13 to the admission of the M-14, which was seized from my
14 client's house. All I can say is that my best information
15 from two different sources was that that weapon had a scope
16 on it when it was seized. The government now says there was
17 no scope on it.

18 I believe otherwise. I believe that the gun has now been
19 altered by the government. I would move to exclude that
20 rifle on those reasons. I have no additional proof to offer
21 that the scope was on there, other than the two witnesses
22 who, I believe, both of them will testify at trial.

23 THE COURT: Well, the government -- I'll permit their
24 use and showing them to the jury in opening statement. When
25 we get to offering them into evidence, we'll have to see what

1 the person says who was on the search, who is going to
2 identify them. And you can make your objections at the
3 appropriate time.

4 MR. CONTE: I will.

5 THE COURT: All right. Are we ready for the jury?

6 (Thereupon, the jury returned to the courtroom.)

7 THE COURT: Good morning. Please be seated.

8 Ladies and gentlemen, before I read some preliminary
9 instructions to you, I want to apologize for any
10 inconvenience in our getting started a little late this
11 afternoon. And I know some of you were in the jury room and
12 were taken to a different floor because there was a briefcase
13 that had been left out in the common area, and they wanted to
14 just investigate, be sure it was an innocent leaving of the
15 briefcase and nothing more. And that's what we have now
16 discovered. So we apologize for any inconvenience or any
17 concerns that might have been raised by these events.

18 Ladies and gentlemen, now that you've been sworn as jurors
19 I want to give you some preliminary instructions to guide you
20 during the course of the trial. At the end of the trial I
21 will give you some instructions again and at that time you'll
22 actually have a copy of the written instructions and I'll
23 read them to you.

24 First, I want to tell you that you should not take
25 anything that I may say or do during the trial or at any time

1 as indicating what your verdict should be at the end of the
2 trial. That's entirely up to you to decide, based on the
3 evidence.

4 As I've indicated, this is a criminal case. I've told you
5 what the charges are. To the charges the defendant has
6 entered a plea of not guilty. That means he's presumed
7 innocent until he's proven guilty beyond a reasonable doubt.
8 The defendant has a right to remain silent. He never has to
9 do anything, prove anything, or present any evidence. So
10 that is a basic constitutional right we all have and this
11 defendant has it as well.

12 The evidence you are to consider in deciding what the
13 facts are will consist of the sworn testimony of the
14 witnesses when they get on the stand and testify in your
15 presence, exhibits which are received into evidence, and any
16 facts which the lawyers might stipulate to. When they stand
17 up and say they've stipulated to a certain fact, then you can
18 take that as a proven fact.

19 Certain things are not evidence. I want to alert you to
20 what they might be, so if they occur during the course of the
21 trial, no doubt they will, you'll know it's not evidence.

22 First, statements or arguments by the lawyers are not
23 evidence. Lawyers are not witnesses.

24 Second, questions and objections by the lawyers are not
25 evidence. Testimony that I might tell you to disregard is

1 not evidence. And anything you may see or hear outside the
2 courtroom, even if it's said or done or something occurs as a
3 result of what a witness does or a party, it's not evidence
4 until it occurs during open court here during the trial.

5 Some evidence may be admitted for a limited purpose. If I
6 instruct you that this piece of evidence or fact is only
7 being admitted for a limited purpose, then you should follow
8 my limiting instruction. So if something comes along that
9 needs a limiting instruction, I'll give it to you. Please
10 follow it.

11 Evidence might be direct and circumstantial. Direct
12 evidence is the obvious. Some witness will get on the stand
13 and say that he or she did something or saw something or that
14 someone said something to them. That's direct evidence by
15 the witness, what they saw and heard and did.

16 Circumstantial evidence is indirect evidence. That is,
17 proof of one or more facts from which you can find another
18 fact exists. You are to consider both direct and
19 circumstantial evidence. The law permits you to give equal
20 weight to both, but it's for you to decide how much weight to
21 give to any evidence.

22 Now, there are Rules of Evidence that apply in a case like
23 this. When a lawyer asks a question or offers some exhibit,
24 the lawyer on the other side might think it's not permitted
25 under the Rules of Evidence and will make an objection. If I

1 overrule the objection, the question will be answered or the
2 exhibit received. If I sustain the objection, the question
3 cannot be answered and the lawyer will ask a different
4 question.

5 If I sustain the objection and the question is not
6 answered, please don't speculate as to what the answer might
7 have been had the witness been entitled to answer it.

8 If I order evidence to be stricken from the record,
9 occasionally a witness will say something or there will be an
10 objection before I have had a chance to rule. If I rule
11 against the party offering the evidence, I'll strike the
12 evidence and I'll tell to you disregard it. If that happens,
13 please follow my instructions in that regard.

14 Now, the credibility of the witnesses will be entirely up
15 to you. You are the sole judge of the credibility of the
16 witnesses. You can accept or reject whatever part of the
17 witness's testimony you find to be credible. You may believe
18 everything a witness says, or part it, or none of it.

19 In considering the testimony of witnesses, there are
20 certain factors we look at to determine credibility. And I
21 want to list them for you here, so you can be thinking about
22 them as you hear the evidence. The opportunity and ability
23 of the witness to see or hear or know the things testified
24 to; the witness's manner while he's testifying; the witness's
25 memory while he's testifying; the witness's interest in the

1 outcome of the case, in other words, any bias or prejudice
2 which would make that witness want to tell the story a little
3 differently than perhaps it occurred; whether other evidence
4 contradicts what the witness says; the reasonableness of the
5 witness's testimony in light of all the evidence; and any
6 other factors you think bear on believability. The weight of
7 the evidence as to a fact does not necessarily depend on the
8 number of witnesses who testified. But once again, you are
9 the sole judges of the credibility of the witnesses.

10 You've been given note pads. You may take notes during
11 the course of the trial. You're not require to do so. If
12 you take notes, please keep them to yourself, and leave them
13 in the jury room in the evenings. Don't share them with your
14 fellow jurors. Don't let note-taking distract you from
15 watching the witness and listening to the testimony and
16 relying on your memory of what is being said.

17 Whether or not you take notes, you should rely on that
18 memory of what is being said. Notes are only to assist that
19 memory. You should not be overly influenced by your notes or
20 some other juror's notes when you begin your deliberations.
21 At the end of the trial and after you have reached a verdict,
22 if you've done so, those notes will be collected by the clerk
23 and destroyed without anyone looking at them. But don't take
24 your notes home at night. Leave them in the jury room. And
25 on the breaks, it's good if you take them with you so that

1 they're not left here in the courtroom during the breaks. We
2 don't want anyone looking at them.

3 Let me tell you briefly the outline of the trial, how it's
4 going to proceed. When I finish in just a few minutes with
5 my opening statements, instructions to you, each of the
6 lawyers will have an opportunity to give what we call an
7 opening statement. It's an outline of what they intend to
8 prove in connection with the case. The lawyers have
9 estimated -- this is just an estimate -- probably each side
10 will take about 15 or 20 minutes on their opening statements.
11 Again, opening statements are statements by the lawyers, not
12 evidence. Here is what I'll try and prove. Perhaps they'll
13 tell you a little bit about the order in which the proof is
14 going to come in, or highlight some issues that they think
15 are important and which you should know in advance.

16 After we've heard the opening statements, the government
17 will call their witnesses one by one. They'll ask questions
18 on direct. The defense will cross-examine the witnesses
19 normally. The government will -- can ask further what we
20 call redirect questions. They can ask further
21 cross-examination questions. Once we have been through that
22 process two times, the witness is done and will be excused,
23 and the government will call the next witness. And the same
24 process will occur -- direct questions, cross-examination,
25 and the like.

1 When the witnesses for the government have been completed,
2 the government counsel will stand up and say that the
3 government rests. That means that they believe they have put
4 on a case and that their evidence is in and complete. Then,
5 the defense will have an opportunity to call witnesses if
6 they wish to do so. Remember, the defendant doesn't have to
7 do anything, but to the extent they wish to call witnesses,
8 that is the time of the trial when they do so. They call the
9 witnesses, they ask the direct questions. Government cross
10 examines the witness. They can ask redirect and cross and
11 recross and then that witness steps down and the next witness
12 is called until they finish. When they finish, they'll get
13 up and tell us the defense rests.

14 Now because the government has the burden of proof at all
15 times in a trial, the government can call what we call
16 rebuttal witnesses. So it's possible that the government
17 would then call witnesses to rebut what the defendant has
18 presented in their case.

19 Normally there is little or no rebuttal evidence in the
20 cases. So it would be very unlikely that we would have much
21 in the way of rebuttal testimony.

22 After all of the testimony is in, I will read you the
23 Court's legal instructions. The lawyers will then make final
24 argument. And that will perhaps be more extensive than the
25 opening statements. But they'll be -- I'll alert you as to

1 how much time they anticipate taking. As soon as you've
2 heard the final arguments, then you will deliberate and reach
3 a verdict if you can. And return it to the Court.

4 So that's the outline of what is going to happen. I've
5 told you our normal trial schedule. And we'll try and abide
6 by that. I think we're ready for an opening statement from
7 the government.

8 MR. REDKEY: May it please the Court, counsel, ladies
9 and gentlemen of the jury. Good afternoon.

10 You know by now the defendant in this case is Albert Kwan,
11 the defendant sitting here. You will hear during the course
12 of the trial that Mr. Kwan was an avid gun collector. He had
13 2 or 300 guns in his collection. He kept them in his home in
14 Bellevue. Many of the firearms were special, restricted
15 weapons, which we'll talk a little bit more about here.

16 But as such, he was very knowledgeable about firearms, how
17 they work, their history, and so forth. In fact he took very
18 good care of his guns. You will hear that the guns were, if
19 not in pristine condition, at least were very well cared for,
20 very well looked after, well organized in his home and
21 garage. That he was very, very fond of his gun collection
22 and proud of it.

23 The defendant had even obtained several federal firearms
24 licenses. You'll be hearing something about federal firearms
25 licenses during the course of this trial. The abbreviation

1 that you'll probably hear after first couple references is
2 FFLs. So I wanted to acquaint you with that fact early on,
3 that a Federal Firearms License will be referred to as an
4 FFL. An FFL is issued by the Bureau of Alcohol, Tobacco and
5 Firearms to persons who apply for it and who clear the
6 background check, which allows them to do, depending on the
7 type of license they have, different kinds of business.

8 For example, one license might permit you to deal in
9 firearms. Another license might allow you to import
10 firearms. Another might allow you to manufacture firearms or
11 ammunition. In this particular case the evidence will show
12 that Mr. Kwan, over time, had one or all of those licenses,
13 so that he could not only collect but do business as a
14 firearms dealer, again, showing his knowledgeability and
15 expertise in the areas.

16 Now, some of those licenses were allowed to expire. And
17 all of them expired, I think in 2002, and were not renewed by
18 the ATF in 2003.

19 There is another term that you'll be hearing about, and
20 that is a Special Occupation Tax. With some or all of these
21 FFLs, a person such as Mr. Kwan can pay a Special Occupation
22 Tax or an SOT. That is a very special tax that he paid, that
23 allows him to deal in and import, manufacture restricted
24 firearms. Now when we use that term "restricted firearms,"
25 it's firearms that are restricted by the National Firearms

1 Act.

2 Another abbreviation that you'll be hearing these weapons
3 referred to as NFA weapons, National Firearm Act weapons.
4 These are specially designated weapons treated specially in
5 the law. They include machine guns, sawed-off shot guns,
6 short-barrelled rifles, silencers, and the like. Mr. Kwan
7 did pay his SOT in a timely fashion and was allowed to
8 possess, collect, deal, manufacture these NFA specially
9 restricted weapons, at least until 2003. So you will hear a
10 lot of talk about NFA weapons.

11 Now, we'll move on to the case before you today. In
12 January of 2005, the Bureau of Alcohol, Tobacco, Firearms and
13 Explosives -- I'll refer to them as the ATF. Some people
14 call it BATF, but ATF or BATF means Bureau of Alcohol,
15 Tobacco, and Firearms. Special agents of the ATF, whose duty
16 it is to enforce federal firearms laws, executed a federal
17 search warrant at the defendant's residence in Bellevue on
18 January 13 of 2005.

19 They seized several firearms on that day, and took them
20 back for closer inspection to determine whether the defendant
21 had in fact possessed those firearms legally, inasmuch as his
22 license had expired or was not renewed. Upon closer
23 examination it was determined that two of those firearms were
24 in fact not registered to the defendant and therefore, in the
25 eyes of the ATF, they were illegal for him to possess.

1 Those are the two firearms which are the subject of this
2 case. You heard Judge Zilly at the outset summarize the
3 indictments for you. Count 1, he referred to as a
4 machinegun, and Count 2, he referred to as a short-barrelled
5 rifle. And we'll show both of those to you here in a few
6 moments.

7 The machinegun will be described to you as a Winchester
8 M-14 machinegun. It was manufactured years and years ago by
9 the U.S. Army for use by the military. There are a few of
10 those guns out there still. And it was manufactured as a
11 fully automatic machinegun. A machinegun, of course everyone
12 is familiar with that -- you pull the trigger once and it
13 shoots a burst of rounds. That is a simplistic definition of
14 machinegun. And experts will be giving you a little more
15 information on that as we go along with the trial.

16 But the machinegun itself was manufactured as a
17 machinegun. It had a switch on the side so that it could be
18 fired in semi automatic mode. But it was manufactured to fire
19 fully automatic. That is, it was and is a machinegun. The
20 machinegun in this particular case had been modified. It had
21 been modified so that it would not shoot fully automatic
22 anymore. In other words, pull the trigger once, it shoots
23 one bullet and stops. You have to pull the trigger again to
24 shoot another bullet. It had been modified internally.

25 And I'll be talking about that in a moment, but that is

1 why Special Agent Byrd wanted to send it back for detail and
2 professional technical examination by the ATF's special
3 branch. You'll hear another abbreviation, Firearms
4 Technology Branch -- send it back to them to be fully
5 examined by specially trained experts to determine whether it
6 was in fact still a machinegun that met that legal
7 definition. And, in fact, Adam Galbraith is the firearms
8 enforcement officer who will be testifying today or tomorrow
9 about the examination that he conducted.

10 This is the gun charged in Count 1. This is a Winchester
11 M-14 automatic machinegun that had been modified.

12 Mr. Galbraith will tell you that he took this gun and first
13 did an external examination. Perhaps I should assure you for
14 the record that this gun has been disarmed, rendered harmless
15 here in court. But we may have to take this off and have the
16 expert explain what did he with it. But it has been rendered
17 safe. It's not capable of shooting.

18 He examined the outside of it to make sure it was the
19 firearm that was sent to him and what was referred to in the
20 report. He did an external examination and then he took the
21 firearm apart and did an internal examination. He did the
22 internal examination to determine whether this firearm meets
23 the definition in the law of what a machinegun is.

24 So he looked to determine, first, does it fire more than
25 one shot with a single pull of the trigger? It did not. As

1 I mentioned, it had been modified internally so it would only
2 shoot one shot at a time. It would not fire fully
3 automatically. That's not the only definition of a
4 machin gun.

5 So what Mr. Galbraith then did was try to determine the
6 second definition of the machin gun. Was it designed to fire
7 fully automatically? The way he determined that, ladies and
8 gentlemen, was he took a look at the receiver. He will point
9 out, or you will learn, the barrel, the receiver, the stock,
10 the trigger group, all these sorts of things -- these are
11 terms that he will talk about and Special Agent Byrd will
12 talk about.

13 He took the gun apart and examined the frame and receiver
14 of the gun. The receiver is the actual -- I think he's
15 described it as the heart of the gun. It's around which
16 everything else is built. The stock attaches to it. Barrel
17 attaches to it. Trigger grouping attaches to it. And that's
18 the heart of the gun, the frame or receiver.

19 Now, the frame and receiver had been unmodified. It had
20 not been altered at all, in order to convert this from a full
21 auto to a semi-auto. That is, the frame and receiver itself
22 was just as it was when it was manufactured by Winchester for
23 the Army. That was important to Mr. Galbraith because under
24 the law, the frame or receiver of a machin gun is a
25 machin gun. The only way it cannot be a machin gun is if it

1 is destroyed. Once a machi negun, always a machi negun, if the
2 frame and receiver has been unmodified, as it was in this
3 case.

4 Finally, Mr. Galbraith wanted to find out whether it met
5 the third definition of a machi negun. And so what he did
6 was, he took it apart. He'll tell you he's a trained
7 gunsmith and he took it apart and he basically made a couple
8 changes inside, changed out a couple parts that are readily
9 available on the open market, you can buy them in the
10 catalogs or off the Internet, put them in instead, and then
11 went out to the range and fired it fully automatically. In
12 other words, he readily converted it to fire from its
13 modified semi automatic mode to full automatic. Thus it met
14 the third definition of a machi negun. If a converted weapon
15 can be readily restored to fire fully automatically, it's a
16 machi negun. That is what Adam Galbraith will testify about.

17 You'll also hear testimony that the defendant understood
18 that a frame and receiver of a machi negun is itself a
19 machi negun, because he had a conversation back in 1997 with
20 then-Special Agent Bernard Tuerler, who talked to him about
21 that subject. So that in 2005, there could be no question
22 that the defendant knew that the frame and receiver of that
23 M-14 machi negun was itself a machi negun he could not legally
24 possess.

25 Mr. Galbraith will walk you through a demonstration, I

1 hope -- we'll try to set up a table out here and have him
2 show you how he conducted his examination and walk you
3 through it so that you can -- to help you understand what he
4 did and how he did it. He said it took him a couple hours to
5 do it by the time he examined it externally, made the
6 modifications, took it out to the range and shot it. But he
7 would also say that if he had had the parts available, if he
8 had known at the outset what he needed to replace in there,
9 he could have done it within a half hour with no special high
10 level of skill.

11 So that's Count 1.

12 Count 2 is the second gun that the judge mentioned in his
13 reading of the indictment. This is a short-barrelled rifle.
14 And it is a Heckler & Koch, H&K, semi automatic pistol. It is
15 a pistol. And I will show you the firearm that the ATF has.
16 This is the firearm. It's a semi automatic pistol, perfectly
17 legal to possess.

18 When they found it, it was inside this holster. It isn't
19 a leather holster. It's a hard plastic holster. I'm not
20 going to be able to put this gun back in because our exhibit
21 wires won't permit me to do it. But rest assured, it was
22 lodged in there and the cap shut when they found it.

23 Now, the interesting thing about this is that it is, in
24 fact, a rifle. What is a rifle? A rifle is simply a gun
25 that you can fire from your shoulder. Now clearly, this gun

1 cannot be fired from your shoulder. It's a handgun, it's a
2 pistol. But if you look at the holster, you can see it's
3 specially fitted. It looks more like a shoulder stock than
4 it does -- other way. I don't know how to do it.

5 But it attaches and it becomes a rifle. It can be fired
6 from the shoulder. And because the barrel is shorter than 16
7 inches, it's a short-barrelled rifle and it must be
8 registered under the law. It was not registered to Mr. Kwan.

9 And Adam Galbraith will tell you about how he examined
10 that firearm, measured the barrel to be about four and a half
11 inches long, and determined in his opinion as a matter of
12 expert opinion that that gun is, in fact, a short-barrelled
13 rifle that must be registered.

14 So in conclusion, I think I've taken my 15 minutes, but in
15 conclusion, the government's evidence will show, one, that
16 the defendant possessed a machinegun as that term is defined
17 in the law, illegally. And the evidence will show the
18 defendant illegally possessed a firearm that could be fired
19 from the shoulder and therefore was a rifle with a short
20 barrel which must have been but was not registered to the
21 defendant. And at the conclusion of the evidence, we will
22 ask you to return a verdict of guilty, which is entirely
23 consistent with the evidence that you will hear in this
24 trial. Thank you for your attention.

25 MR. CONTE: May it please the Court, Mr. Stahlfeld,

1 Mr. Redkey, ladies and gentlemen of the jury, good afternoon.
2 Again, my name is Joseph Conte. I'm here with Mr. Eric
3 Stahlfeld, and we represent Mr. Albert Kwan.

4 Now, Mr. Redkey talked a lot about this, and I want to
5 fill you in on what the law is. In 1934 Congress passed the
6 National Firearms Act. That was an act to ban -- to regulate
7 machine guns, short-barrelled rifles, sawed-off shotguns, and
8 destructive devices. They perceived the need of it because
9 of people like Al Capone, Pretty Boy Floyd, that type of
10 people. That is what spurred the National Firearms Act. And
11 that was passed in 1934.

12 But they didn't ban any of those weapons back then. None
13 of them were banned. They were taxed. And if you look at
14 the indictment which you will see, you will see that in
15 Count 2 they charged a tax violation, failure to register the
16 gun on the national firearms registry. Machine guns weren't
17 prohibited until Congress passed the Gun Owner's Protective
18 Act in 1986. Machine guns have been banned since 1986,
19 except those which were grandfathered. Anybody who legally
20 owned a machinegun on the effective date of the legislation
21 in 1986 could keep that gun.

22 So we are dealing with two different laws here. We have
23 the National Firearms Act of 1934, and we have the 1986 act
24 which banned all machine guns that weren't legally owned upon
25 that date.

1 I think Mr. Redkey alluded to it, but I will mention it
2 myself. The word "firearm" in the law has a special meaning.
3 It's not what you think. A firearm, when we're here in
4 court, is a regulated gun, a machinegun, a short-barrelled
5 rifle, a sawed-off shotgun. So when you hear people talking
6 about firearms, that has a particular meaning in the law. A
7 firearm is a regulated weapon.

8 So that's a little bit of the background of the law, and
9 that is why the indictment reads differently for Count 1,
10 which is Title 18 code, United States Code, Section 9220, and
11 Count 2, which charges the violation of the tax code which is
12 Title 26, Section 5845.

13 To put this case in perspective then, now that you
14 understand, hopefully, a little bit about the law, you need
15 to understand a little bit about Mr. Albert Kwan. Mr. Albert
16 Kwan, he's in his 50s, he was born in Hong Kong. And he
17 immigrated to the United States and got his citizenship here
18 in 1987. When he was about 14 years old, he got this
19 fascination with World War II. He began collecting. He
20 began -- at that age you can't collect guns, so he was
21 collecting insignias, badges, uniforms, that type of thing.
22 Later he started collecting guns. I don't know why he has
23 this fascination for guns, but it started when he was 14.
24 Maybe it was because his father was in World War II and
25 fought with Chiang Kai-shek for about 7 years. But anyway,

1 that is Mr. Albert Kwan. He became, once he became 18 years
2 old, he became a collector.

3 Right now, ladies and gentlemen, he has what is considered
4 a historically significant collection of military firearms
5 dating back all the way to probably around the Boer War at
6 end of the last century, all the way up to the current time.
7 And that's his gun collection, that's his fascination, that's
8 his hobby. Some people play golf, some people collect
9 stamps, some people collect coins, Mr. Kwan collects guns.

10 He has over 100 machine guns, regulated guns. He has
11 suppressers, silencers, registered. He has short-barrelled
12 rifles, all these things registered. I think you'll hear
13 evidence that his books for his NFA weapons, for his
14 firearms, were well kept. He kept well-documented records of
15 every one of his guns. He also collected books.

16 There is something else you should know about Mr. Kwan.
17 Not only did he collect guns, real guns, but he collected
18 fake guns, dummy guns, BB guns, anything that had historical
19 significance. If there was a machinegun that he couldn't
20 buy, and he could buy a dummy, he would buy it. If he could
21 buy what is called a DWT, a deactivated war trophy, something
22 that has been rendered unusable, he would buy it if he needed
23 it to complete his collection. BB Guns -- he had three BB
24 guns, which were exact models of a British SA80 rifle, which
25 he bought each one a little bit different so he could fit in

1 his collection.

2 Ladies and gentlemen, you'll hear testimony that it's a
3 historically significant collection of firearms. Two- to
4 three hundred firearms in his house -- rifles, pistols, all
5 types of things. The government comes in on a search warrant
6 because somebody saw what they thought was an illegal gun. I
7 think you'll hear testimony that the search was predicated on
8 what people saw that were actually either legally owned
9 machine guns, deactivated war trophies, or BB guns. They
10 came in, and out of all of these guns, they found two, the
11 M-14 and the VP70.

12 Here is where we start to disagree with Mr. Redkey. The
13 M-14 had been welded shut -- the sear, which is what makes it
14 function as a fully automatic weapon, was welded on to the
15 receiver. The receiver had been physically changed by
16 deep-penetrated welding so that it would not fire in fully
17 automatic mode. After they drilled out this piece, they
18 added additional pieces from this gun from the firearms
19 collection at the Firearms Technology Branch. They jimmied
20 around with it, they spent some time with it, and they made
21 it a machinегun. Now, ladies and gentlemen we think you're
22 going to hear testimony that you can manufacture a machinегun
23 out of almost any semi automatic rifle, if you take the time
24 and attention.

25 That is what you've got to listen to. That is what you've

1 got to pay attention to. Then you have to ask yourself, did
2 Mr. Kwan have the knowledge that this was a machinегun? That
3 this could function as a machinегun, even after the
4 government spends two hours manufacturing? Likewise with the
5 VP70 pistol. He not only had one VP70 pistol, he had two.
6 We think you'll hear evidence that the stock would have fit
7 on his other legally owned registered VP70 pistol. When the
8 pistol was found, the gun wasn't attached to the stock. It
9 was stuck in the butt of the gun, as Mr. Redkey said.

10 So I've given you a piece of the law. I hope you
11 understand it. I hope you will ferret it out a little more
12 as the trial progresses. I think you now know some of the
13 more important facts, because they're not cut and dry here.
14 There is an element here, knowledge that the judge will tell
15 you about at the end of the trial.

16 I think that's about all I have to say. I want you to pay
17 attention to the evidence. Listen to all the evidence. The
18 M-14, for example, he's owned since 1991. Never been fired
19 on fully automatic. The government came in, changed it,
20 they're going to say that it's readily restored. Well, we're
21 going to have to make a decision about what's readily
22 restored. Those are the facts that we hope you'll pay
23 attention to when we hear the evidence in this case. Thank
24 you.

25 THE COURT: Government may call its first witness.

1 MR. REDKEY: We call Richard Byrd.

2 RICHARD BYRD,

3 Thereupon, after being duly sworn testified as follows:

4 THE CLERK: For the record, will you state your full
5 name and spell your last name.

6 A Richard D. Byrd, B-Y-R-D.

7 DIRECT EXAMINATION

8 BY MR. REDKEY:

9 Q Good afternoon, Mr. Byrd.

10 A Good afternoon.

11 Q How are you employed, sir?

12 A I'm a special agent with the Bureau of Alcohol, Tobacco,
13 and Firearms.

14 Q Sometimes referred to as ATF?

15 A That's correct.

16 Q Or BATF?

17 A That's correct.

18 Q How long have you been employed by ATF?

19 A Last six years.

20 Q What capacity?

21 A Special agent.

22 Q Can you tell the jury very briefly what a special agent
23 is?

24 A My job is a criminal investigator. I violate, excuse me,
25 I investigate alleged violations of federal firearms laws.

1 Q And are you in a particular group there at ATF?

2 A I'm assigned to Tacoma satellite office. It's a small
3 three-man office in Tacoma, and that's part of our Seattle
4 group one.

5 Q Which means what?

6 A Our firearms group.

7 Q As opposed to explosives, arson, that sort of thing?

8 A We have two other -- three other groups. We have
9 arson-explosives group, intel group, and gang group.

10 Q Can you tell the jury a little bit about your training?
11 For example, is there a basic training course for ATF agents?

12 A Yes. With ATF you complete the criminal investigators
13 basic training program at the Federal Law Enforcement
14 Training Center.

15 Q Where is that?

16 A Glynco, Georgia.

17 Q Are ATF agents the only ones who go there?

18 A No. FLETC. A lot of the department of justice agencies
19 use it. I think two of the most well-known agencies that
20 don't are DEA and FBI.

21 Q Do you go to that school?

22 A Yes.

23 Q When did you go?

24 A Probably, March 2001.

25 Q Did you successfully complete the program there?

1 A Yes.

2 Q And can you give the jury an idea of, just quickly, the
3 kinds of courses that you took, the kind of training that you
4 got there? For example, did you obtain training in the
5 federal firearms laws that you were going to be enforcing as
6 a special agent?

7 A Actually, it was a second school I attended after that.
8 ATF has training set up in two branches. You take your first
9 part, which is the criminal investigators basic school. Then
10 once you complete that, you go to the -- at the time they
11 called it New Professional Training, which was related
12 primarily to just the ATF areas involved with firearms, arson
13 and explosives, alcohol, and tobacco division.

14 Q It was at that second phase where you learned about the
15 federal firearms laws?

16 A That's correct.

17 Q Did you receive pretty intensive training on that?

18 A Yes.

19 Q And did you also get training in the identification and
20 recognition of firearms?

21 A Yes. I attended the ATF Firearms Interstate Nexus School,
22 and that was conducted at the ATF Firearms Technology Branch
23 in Martinsburg, West Virginia.

24 Q Can you explain the term "Interstate Nexus," very briefly?

25 A In order to charge someone federally, we have to prove

1 that a firearm travelled within --

2 MR. CONTE: Objection, Your Honor --

3 THE COURT: Keep your voice up.

4 MR. CONTE: I'm objecting. He's testifying about
5 what the law is. That's the Court's job.

6 THE COURT: Well, I agree that is what the Court is
7 to do. I'm not sure it's relevant to anything.

8 MR. REDKEY: I didn't want the term to go
9 unexplained, if he used the term. But we can move on.

10 THE COURT: Let's move on.

11 BY MR. REDKEY:

12 Q Do you also have a personal interest in firearms?

13 A Yes.

14 Q Can you explain to the jury about that, please?

15 A I've been firearms enthusiast and collector since I was a
16 child. Both my grandparents owned firearms. They took me
17 hunting and shooting at a young age. I've collected firearms
18 for most of my life.

19 Q How many firearms do you have now?

20 A I would say around 40 right now.

21 Q And do you keep up with the literature on firearms and
22 follow the magazines and so forth that deal with that sort of
23 thing?

24 A Yes, sir, I do.

25 Q So are you a gun collector, then, or are you just an

1 enthusiast?

2 A A little bit of both.

3 Q Are you a member of the NRA?

4 A Yes, sir, I am.

5 Q How long have you been a member?

6 A I'm a life member.

7 Q I would like to have you discuss a couple of terms here.

8 Are you familiar with the National Firearms Act?

9 A Yes, I am.

10 Q Is that sometimes referred to as the NFA?

11 A Yes, sir.

12 Q What kind of firearms does the National Firearms Act

13 regulate?

14 MR. CONTE: Objection. Same objection.

15 THE COURT: I'll overrule the objection. You may

16 testify.

17 A The NFA deals with machine guns, short-barrelled rifles,

18 short-barrelled shot guns, destructive devices.

19 BY MR. REDKEY:

20 Q Are those particular firearms listed in Title 26 of the

21 United States Code?

22 A Yes.

23 Q And are they also subject to special restrictions and

24 registration?

25 A Yes, they are.

1 Q Are you familiar with the term "federal firearms license"?

2 A Yes, sir.

3 Q Is that sometimes referred to as FFL?

4 A Yes.

5 Q What exactly is a federal firearm license?

6 A There's several different types of licenses. But
7 basically, a license issued by ATF that allows -- depending
8 on the type of license -- allows a person to engage in the
9 sale or collection or the manufacture or importing of
10 firearms.

11 Q Are they designated by certain numbers?

12 A Yes.

13 Q For example, what would be an 01 FFL?

14 A 01, that is type of FFL that your local gun store would
15 have, something along the lines of a GI Joe or a local gun
16 shop.

17 Q How about something like an 07?

18 A That would be like a manufacturer's license.

19 Q And can a person have more than one?

20 A Yes.

21 Q And how does a person go about applying for an FFL?

22 A They have to be 21 years of age, and fill out an
23 application. They can't be prohibited from possessing
24 firearms. And then they must pay the application fee and
25 submit that to ATF for approval.

1 Q Assuming ATF approves that, they get the license?

2 A Correct.

3 Q How long is a license typically valid for?

4 A Typically three years.

5 Q Can one renew a license from time to time as necessary?

6 A Yes.

7 Q Does that require another application, or more fees to be
8 paid?

9 A There's a renewal and a reduced fee usually.

10 Q And are you aware in this case whether Mr. Kwan has ever
11 had an FFL?

12 A Yes, I am.

13 Q What kind of FFL has he had?

14 A He had what we refer to as an 01 FFL, which is a license
15 that allows him to deal -- firearms that you normally
16 encounter at sporting good stores. At one time he possessed
17 an 03 FFL, which was a license that didn't allow you to
18 engage in business, but it allows you to acquire through the
19 mail firearms classified as curios or others. And that is
20 mainly for collectors who wanted to buy and sell firearms
21 interstate for themselves.

22 He also had a manufacturer's license. He had an
23 importer's license and licensed to manufacture ammunition.
24 And he also paid a special occupational tax, which allowed
25 him to deal in the NFA weapons.

1 Q And do you know when the last of those licenses expired
2 for Mr. Kwan?

3 A 2002.

4 Q And did he apply to have any of those licenses renewed
5 after that date?

6 A It's my understanding --

7 MR. CONTE: May we approach the bench?

8 THE COURT: I'm not sure this is relevant, Mr.
9 Redkey.

10 BY MR. REDKEY:

11 Q Well, we'll press on the for the moment.

12 But in January of 2005, you with other agents of the ATF
13 executed a certain warrant at his residence, did you not?

14 A That's correct.

15 Q At that time, did he have any valid, in effect, FFLs?

16 A At that time all his licenses had expired.

17 Q Now, was it January 13 of 2005 when you went to his
18 residence in Bellevue?

19 A That's correct.

20 Q And can you briefly describe for the jury, please, the
21 type of residence that it was, where it was?

22 A It was a single-family home, two-car garage, two stories.
23 Nice neighborhood in Bellevue on a cul-de-sac.

24 Q And were you with other ATF agents?

25 A Yes.

1 Q Approximately how many agents?

2 A I would say approximately eight.

3 Q And when you arrived at the house, was the defendant
4 there?

5 A No.

6 Q When you left the house, had the defendant been there?

7 A No.

8 Q So he was not there any time while you were all there?

9 A That's correct.

10 Q Where in the house did you conduct your searches?

11 A I searched a bedroom located upstairs. And then I
12 searched an office/gun room located downstairs off the
13 garage.

14 Q How many rooms were there in the house where there were
15 firearms?

16 A You know, I would say -- I remember -- they found some in
17 the master bedroom, the bedroom upstairs that I was
18 searching, and the room downstairs. So at least three.

19 Q And approximately how many firearms would you estimate
20 were in the house?

21 A Several hundred. Upstairs he had set up -- in the
22 upstairs room, he set up racks -- as you walked in the door
23 there would be rows of racks to your left. He probably had
24 three or four racks with 10, 15 guns on each rack, top and
25 bottom. Probably 100 guns upstairs easily.

1 Downstairs there was probably another 200.

2 Q Let's talk about upstairs for a moment here. I'm going to
3 show you what has been marked for identification as
4 government's Exhibits No. 4.1 through 4.7. And ask with
5 respect to each of those whether they recognize the guns in
6 the photo and whether they accurately depict the way you saw
7 the upstairs in the house that day.

8 A Yeah. This is a photo of the upstairs bedroom.

9 Q That's 4.1. ?

10 A That's correct.

11 Q I'll show you what's been marked for identification as
12 government's Exhibit No. 4.2. Do you recognize that?

13 A Yes. This appears to be the upstairs bedroom again.

14 Q Does it accurately depict what you saw that day?

15 A Yes.

16 A JUROR: Should these be on?

17 MR. REDKEY: Your Honor, the question from the jury
18 is --

19 THE COURT: Why don't you deal with them one at a
20 time so you can admit them and they can see them in the
21 context that --

22 MR. REDKEY: I just thought it would be quicker this
23 way, but if you want to go through them one by one --

24 THE COURT: I think... do not publish yet until you
25 offer, and we'll see if there is any objection.

1 MR. CONTE: I think that's easiest way, Judge, do
2 them as we go.

3 THE COURT: Very well.

4 BY MR. REDKEY:

5 Q With respect to Exhibit No. 4.1, I think you testified
6 that that accurately depicted what you saw that day?

7 A Yes.

8 MR. REDKEY: I offer --

9 A JUROR: Are we supposed to be seeing these?

10 THE COURT: If admitted, it may be published.

11 A JUROR: Our monitor is not working.

12 THE COURT: Can you look on to that monitor and --
13 can you see, sir?

14 A JUROR: Yes.

15 THE COURT: We do have another monitor at the end in
16 the first row if you prefer to move down there.

17 A JUROR: I'm fine.

18 THE COURT: We'll see if we can get it fixed at the
19 end of the day and before tomorrow.

20 BY MR. REDKEY:

21 Q I'm now going to show you what's been marked for
22 identification as government's Exhibit No. 2, Special Agent
23 Byrd, and ask if you recognize that.

24 A Yes.

25 Q What is that?

1 A This appears to be another photo of the upstairs bedroom.

2 Q Does it accurately depict what you saw that day?

3 A Yes.

4 MR. REDKEY: Offer it, Your Honor.

5 MR. CONTE: Court's indulgence.

6 THE COURT: I didn't hear what you said, Mr. Conte.

7 MR. CONTE: May I just have a minute?

8 BY MR. REDKEY:

9 Q Do you know where in the house this particular photograph
10 was taken?

11 A Not for sure. It could have been -- may have been the gun
12 room in the basement. I was not present when these
13 photographs were taken.

14 MR. CONTE: Your Honor, we would stipulate it was
15 taken in the closet of Mr. Kwan's room.

16 MR. REDKEY: I accept the stipulation.

17 THE COURT: Are you prepared to accept that?

18 MR. REDKEY: I am.

19 THE COURT: All right. With that stipulation, do you
20 have any further objection?

21 MR. CONTE: No objection other than that.

22 THE COURT: It will be admitted, then, with the
23 stipulation that it was a picture taken in the closet.

24 (Exhibit No. 2 admitted.)

25 BY MR. REDKEY:

1 Q Now Special Agent Byrd, I'm going to show you what's been
2 marked for identification as government's Exhibit No. 4.3.

3 Do you recognize that?

4 A It hasn't come up on the screen. I'll refer to the book.

5 THE COURT: It's not on the screen, Mr. Redkey.

6 BY MR. REDKEY:

7 Q We're experiencing technical difficulties. It's not
8 advancing for some reason, at least on the screen.

9 But you have photographs there, do you, sir?

10 A Yes, sir, I do.

11 Q With respect to 4.3, do you recognize that?

12 A It appears to be another photo of the upstairs room.

13 Q Does it accurately depict what you saw that day?

14 A Yes. It shows the shelving, plywood shelving, with the
15 guns on it.

16 Q I would ask the same with respect to 4.4.

17 A This appears to be a corner of the same room.

18 Q Does that also accurately depict what you saw that day?

19 A Yes.

20 Q Moving on to 4.5, do you recognize that?

21 A Another photo of the room upstairs.

22 Q Does that also accurately depict what you saw that day?

23 A Yes.

24 Q 4.6?

25 A Again, another photo of the upstairs room.

1 Q 4.7?

2 A Again, another photo of the upstairs room.

3 Q Do they, the last few, also accurately depict what you saw
4 that day?

5 A Yes, sir.

6 MR. REDKEY: I offer 4.1 through 4.7, Your Honor --
7 4.3 through 4.7.

8 MR. CONTE: No objection.

9 THE COURT: 4.3 through 4.7 will be admitted.

10 (Exhibit Nos. 4.3-4.7 admitted.)

11 BY MR. REDKEY:

12 Q Did you take those photographs there?

13 A No, sir, I did not.

14 Q Did anybody at ATF take them?

15 A No, sir.

16 Q Were they taken on the day in question?

17 A No, sir.

18 Q But nevertheless, you're satisfied that they accurately
19 reflect more or less what it looked like that day?

20 A Yes.

21 Q What was the duration of the search?

22 A We were there a couple hours. I would say probably two to
23 three hours.

24 Q How many firearms did you seize?

25 A I think we seized roughly 20 items that night, firearms.

1 Q When you say "firearms," you mean --

2 A Guns, long guns, rifles --

3 Q No special designation, referring to --

4 A There was a couple we thought might be NFA weapons,
5 machine guns or short-barrelled rifles.

6 Q What did you do with those guns?

7 A They were taken back to Seattle, placed into evidence.
8 The case agent at the time asked my opinion on what guns she
9 should send back to FTB for examination. I suggested that
10 they send back the Winchester rifle -- the M-14 rifle, and
11 the H&K VP70 pistol with the shoulder stock, for evaluation.

12 Q Were the other firearms ultimately determined that they
13 were able to be returned to the defendant?

14 A Yes, they were.

15 Q But not those two firearms?

16 A No, not those two.

17 Q They went to the FTB?

18 A That's correct.

19 Q Let's talk first about the rifle, the M-14 rifle, you
20 described and sent back to the FTB. Do you recall where in
21 the house that was seized?

22 A The M-14 was found in the downstairs gun room. If you go
23 into the garage, there is an addition off the left side of
24 the garage, there is an office, and then off of that office
25 there was another gun room, almost like a giant gun vault,

1 that had guns stacked -- I would say two shelves high around
2 all four walls, and in the center it had shelving with
3 various guns, gun parts, accessories stacked on it.

4 Q Did you see any firearms manuals there?

5 A As you came into the office as you entered the door, in
6 front of you there was a wall that was covered with books,
7 and also the wall to your right was covered with books, a
8 variety of firearms, military history, you know, militia
9 reading type stuff. Military collectibles. That is what I
10 mean about militia reading stuff.

11 Q Did you closely examine those books or references?

12 A No. I looked at them, recognized some titles, books that
13 I myself possessed, or books I wouldn't mind having myself.

14 Q How would you describe the condition of the firearms in
15 the garage area there?

16 A Everything was well-kept. Everything was in very good
17 shape.

18 Q How was it organized?

19 A Well-organized. He had it set out almost by like -- I can
20 remember going in there and he had, like, a row would be like
21 end field rifles, next row would be, like, Mowzers and, like,
22 American military stuff, foreign military stuff, organized.

23 Q And this M-14 was in there?

24 A Yes, sir.

25 Q Were there any other M-14s there?

1 A No, sir.

2 Q Based on your training and experience and on your personal
3 interest in firearms, do you know anything about M-14 rifles?

4 A Yes.

5 Q Did you know that before this case or --

6 A Yes, sir.

7 Q Let me ask the question.

8 A Before, sir.

9 Q Who manufactured this particular M-14?

10 MR. CONTE: I'm going to object. There has been no
11 Rule 16 filing on this gentleman as an expert.

12 THE COURT: Mr. Redkey?

13 MR. REDKEY: Side-bar, or I can explain. Whatever
14 the Court would prefer.

15 THE COURT: Well, we'll have a side-bar.

16 (Following proceedings held at sidebar:)

17 MR. REDKEY: He'll testify about his training and the
18 origin of firearms and recognize and identification of
19 firearms and through his personal hobby and through his
20 profession he's very knowledgeable.

21 THE COURT: So what is the first -- what is the
22 relevance of who manufactures it? Why do we care?

23 MR. REDKEY: That's the Winchester. We want to
24 establish it is a Winchester M-14 and just a little bit about
25 its history.

1 MR. CONTE: I wasn't provided any notice, which I'm
2 required under rule 16.

3 MR. REDKEY: No notice required under --

4 THE COURT: If you want to treat him as an expert,
5 don't you have to give notice under rule 16?

6 MR. REDKEY: No. We have to say what his
7 qualifications are, which we have done. And it's routine
8 that these agents talk about the origin of firearms in these
9 cases. For example, the interstate nexus portion.

10 MR. CONTE: Your Honor, the rule says you give his
11 opinion, the basis of his opinion and his qualifications. I
12 have the code here.

13 THE COURT: I do, too. I think that's what it says,
14 Mr. Redkey. I'll sustain the objection.

15 (Proceedings continue)

16 BY MR. REDKEY:

17 Q I want to show you what's been marked for identification
18 as government's Exhibit No. 1, Special Agent Byrd.

19 MR. CONTE: This is point where I had that previous
20 objection.

21 THE COURT: You want to tell me what the previous
22 objection was? Is this something you wanted to talk about at
23 side-bar as well?

24 MR. CONTE: Unfortunately.

25 (Following proceedings held at sidebar:)

1 THE COURT: I don't like side bars because of the
2 nature of the case and when you're handling the weapon --
3 let's not point it at anybody.

4 MR. REDKEY: I tried to point it up.

5 MR. CONTE: Your Honor, this was just the -- formal
6 objection I wanted to make because we believe there was a
7 scope attached to this rifle.

8 THE COURT: Oh, yes.

9 MR. CONTE: I think this --

10 THE COURT: I think what you need to do is to
11 identify the weapon, see if he's the one that secured the
12 weapon at the time of the search and ask him about whether
13 it's in the condition or not the condition that it was
14 seized, and we can get into it. I'll let you voir dire the
15 witness on what was or was not part of the weapon and then
16 I'll page a ruling.

17 MR. CONTE: Very well.

18 MR. REDKEY: May I approach.

19 (Proceedings continue)

20 BY MR. REDKEY:

21 Q I'll ask if you could tell us whether you recognize that,
22 sir, and keep it pointed away from people, if you would.

23 Do you recognize that firearm?

24 A Yes, sir, I do.

25 Q What is it?

1 A The M-14 rifle that we seized from Mr. Kwan's house that
2 night.

3 Q Is that a Winchester M-14?

4 A That's correct.

5 Q And how is it that you recognize it to be the rifle that
6 you seized that night?

7 A It has our evidence tags on it, the location date it was
8 seized, and also my signature there.

9 Q Is it in substantially the same condition as when you
10 seized it?

11 A It's been modified from when I seized it.

12 Q Explain.

13 A When I seized it, there was a connected lock in place and
14 a connector assembly in place on the outside of the weapon.

15 Q Do you know who altered that and why?

16 A Yes, sir.

17 Q Who was that?

18 A Adam Galbraith altered the weapon for testing --

19 MR. CONTE: Objection, basis, hearsay.

20 THE COURT: Just a moment.

21 I'll overrule the objection. The answer will stand.

22 BY MR. REDKEY:

23 Q Other than that, sir, is that firearm in substantially the
24 same condition?

25 A Yes, sir.

1 Q There was a scope on it?

2 A No, sir.

3 MR. REDKEY: If I may approach again, Your Honor,
4 I'll retrieve the firearm.

5 THE COURT: Go ahead.

6 BY MR. REDKEY:

7 Q Did you also obtain another M-14, Winchester M-14 firearm,
8 sir?

9 A Yes.

10 Q What were the circumstances of your obtaining that?

11 A Records provided by NFA branch indicated Mr. Kwan had a
12 Winchester M-14 machinegun registered to him. It had been
13 shipped to a company called Long Mountain Outfitters in Las
14 Vegas.

15 Q Pursuant to a trial subpoena, did you obtain that firearm?

16 A Yes, I did.

17 Q Handing you what's been marked for identification as
18 government's Exhibit No. 2, do you recognize that, sir?

19 A Yes, sir.

20 Q How do you recognize it?

21 A This is the M-14 that was sent to me by the agent in Las
22 Vegas who picked it up.

23 Q Was that sent to the firearms technology branch as well,
24 or not?

25 A No.

1 MR. REDKEY: May I retrieve the firearm, Your Honor?

2 THE COURT: You may.

3 BY MR. REDKEY:

4 Q Did you notice any difference between these two M-14
5 rifles when you obtained the one from Las Vegas?

6 A The one from Las Vegas had a functioning selector switch
7 on it. The one we seized from Mr. Kwan's house had what is
8 called a "selector lock" in place on it.

9 Q Is the M-14 that was -- which is Exhibit No. 2, was that
10 capable of firing on full auto?

11 A Yes.

12 MR. CONTE: Objection.

13 THE COURT: Wait on your answers, please, until I've
14 had a chance to rule.

15 MR. CONTE: I think there needs to be foundation.

16 THE COURT: I agree. I haven't heard it.

17 BY MR. REDKEY:

18 Q Based on your knowledge and experience, is it manufactured
19 as a fully automatic machi negun?

20 MR. CONTE: Objection, that requires opinion as an
21 expert --

22 THE COURT: You haven't tendered him as an expert
23 witness. I'm not going to permit you to ask him the
24 question.

25 BY MR. REDKEY:

1 Q We'll go at it another way, Your Honor. Thank you.

2 Did you compare the two guns yourself, though?

3 A I did a visual comparison of the two.

4 Q Did you take a photograph of the two guns together?

5 A Yes.

6 Q I want to show you what's been marked for identification
7 as government's Exhibit No. 5.1 and ask if you can identify
8 that?

9 A This is a picture I had taken of the two rifles.

10 Q Did you take this photograph yourself?

11 A Todd Reeves took them in my presence.

12 Q And is it visible there what the differences were, at
13 least the obvious differences between two firearms?

14 A Yes.

15 Q In particular, towards the receiver part of that gun, did
16 you --

17 A This picture is not coming through.

18 Q Were you able to see differences there, where the receiver
19 is?

20 A Yes, sir.

21 Q What was the main difference?

22 A You see in the upper firearm, it has, like -- for lack of
23 a better term, a wing-nut type selected lever. The lower one
24 has a selected lock with no wings or any way to turn it.

25 MR. REDKEY: Your Honor, I offer Exhibit No. 5.1.

1 MR. CONTE: No objection.

2 THE COURT: 5.1 is admitted, no objection.

3 (Exhibit No. 5.1 admitted.)

4 BY MR. REDKEY:

5 Q Can you point, please sir, to the selector switch, the
6 wing-nut part that you referred to a moment ago?

7 A Right here, at the top photo (indicating).

8 Q Can you touch the screen?

9 A Right there.

10 Q Try it one more time.

11 A It's turning red on my screen.

12 Q What is a selector switch?

13 A That is a switch on the firearm that allows you to change
14 between semi automatic and fully automatic fire.

15 Q That selector switch you pointed to was on the top weapon
16 which was the M-14 from Las Vegas?

17 A Correct.

18 Q Exhibit No. 1, the lower gun, how did that differ with
19 respect to that particular feature?

20 A The lower gun selector lock you can't turn. It's fixed in
21 place.

22 Q With a plug or something in there?

23 A Yeah. It goes over -- what we call the sheer shaft. It's
24 pinned in place and you can't turn it.

25 Q Did you make an inquiry to determine whether that firearm

1 was registered to Mr. Kwan?

2 A Yes, I did.

3 Q How did you go about doing that?

4 A I submitted a trace -- an NFA records search to National
5 Firearms Active Branch and they replied with a certified
6 letter stating that that firearm was not registered to a
7 Mr. Kwan.

8 BY MR. REDKEY:

9 Q Would the clerk hand to the witness what has been marked
10 as government's Exhibit No. 7.

11 When you made your inquiry, did you receive a response?

12 A Yes, sir, I did.

13 Q What was it? In what form did your response come?

14 A It came as a certified letter from ATF's National Firearm
15 Branch.

16 Q Looking at Exhibit No. 7, do you recognize that?

17 A Yes.

18 Q What is that?

19 A This is the response from the NFA branch.

20 MR. REDKEY: Your Honor, I offer Exhibit No. 7.

21 MR. CONTE: No objection.

22 THE COURT: It will be admitted.

23 (Exhibit No. 7 admitted.)

24 BY MR. REDKEY:

25 Q Moving on to the second firearm that you've described as a

1 Heckler & Koch VP70; is that correct?

2 A Correct.

3 Q Also a VP70Z?

4 A That's correct.

5 Q Can you generally describe that firearm, please?

6 A It's a semi automatic pistol, four-and-a-half inch barrel,
7 17-round detachable magazine.

8 Q Where was that particular gun found at the defendant's
9 residence?

10 A We found that downstairs in the gun room off the office.
11 It was on the shelf that occupied the center of the gun room,
12 towards the back wall about halfway down. And it was sitting
13 inside the holster/shoulder stock.

14 Q Was it firmly planted in there?

15 A Closed in place.

16 Q Handing you what's been marked for identification as
17 government's Exhibit No. 6, ask you if you can identify that?

18 A Yes. This is the H&K pistol and shoulder stock found in
19 Mr. Kwan's residence.

20 Q Just so the record is clear, the gun and the holster were
21 together at the time they were seized; is that correct?

22 A That's correct.

23 Q Why is it you can't get it in there now?

24 A The evidence tags and wires that bound it, you can't fit
25 it in there.

1 Q Do you have any familiarity with that particular type of
2 firearm?

3 A Yes, sir.

4 Q Do you know what the Z designation is for after the VP70?

5 MR. CONTE: Objection. Same objection about the
6 expert.

7 THE COURT: Same ruling.

8 BY MR. REDKEY:

9 Q What did you do with that firearm?

10 A We ended up seizing that firearm and sending it off to
11 FTB.

12 Q Before you did that, did you notice anything unusual about
13 the firearm?

14 A Well, the fact that it was together with the shoulder
15 stock, and the pistol had the fittings for the shoulder
16 stock, and since a military model of this pistol shoulder
17 stock in conjunction with the pistol causes it to fire fully
18 automatic --

19 MR. CONTE: Same objection.

20 THE COURT: I'm going to strike that answer and let's
21 ask another question to see if we can get what you need
22 without getting into the expert testimony that --

23 MR. REDKEY: Thank you.

24 BY MR. REDKEY:

25 Q Quickly, did you put the shoulder stock, attach the

1 shoulder stock to the rifle yourself?

2 A Yes, sir.

3 Q Did it appear to fit?

4 A Yes, sir.

5 Q Can you do that now?

6 A Yes, sir, I can.

7 Q Does that fit -- rest on your shoulder for shoulder fire?

8 A Yes, sir.

9 Q Thank you.

10 Did you also cause a search to be made or to determine
11 whether Mr. Kwan had this particular firearm registered to
12 him?

13 A Yes, sir, I did.

14 Q How did you go about doing that?

15 A Again, I submitted an NFA query to the ATF's National
16 Firearm Branch, requested to see if this firearm was
17 registered.

18 Q Did you get a response from them?

19 A Yes, sir, I did.

20 Q In what form did it come?

21 A Certified letter from the NFA branch.

22 Q Are you looking at what's been marked for identification
23 as government's Exhibit No. 8?

24 A Yes, sir.

25 Q Do you recognize that?

1 A Yes. It's the response I received from the NFA branch.

2 MR. REDKEY: I offer Exhibit No. 8.

3 MR. CONTE: No objection.

4 THE COURT: It will be admitted.

5 (Exhibit No. 8 admitted.)

6 MR. REDKEY: No further questions.

7 THE COURT: Cross of the witness.

8 CROSS-EXAMINATION

9 BY MR. CONTE:

10 Q Thank you. Good afternoon.

11 A Good afternoon, sir.

12 Q Do you know who took those photographs, the government's
13 exhibits?

14 A No, sir, I don't know.

15 Q Do you know where they came from?

16 A No, sir.

17 THE COURT: Which exhibits are you referring to?

18 MR. CONTE: Government's Exhibits 4.1 through 4.7.

19 BY MR. CONTE:

20 Q Did you see anybody take any photographs the night that
21 you were there on January 13?

22 A Yes, sir, I did.

23 Q And have you seen those photographs since?

24 A No, sir, I have not.

25 Q Were they ever developed?

1 A No, sir. I tried to locate them once the case was
2 reassigned to me. The case agent did not know what happened
3 to the photos or the film.

4 Q Were photos of the firearms taken that night?

5 A Photos of the items we seized were taken that night.

6 MR. CONTE: Your Honor, may we approach?

7 THE COURT: Yes.

8 (Following proceedings held at sidebar:)

9 MR. CONTE: I'm not trying to come up here. The
10 photos that were introduced were taken by Mr. Kwan. The
11 photos that are missing I think would go to my argument or my
12 motion that the M-14 had a scope on it. This is the first
13 I've heard that there is missing evidence in this case.

14 THE COURT: Well, you didn't object to the photos
15 that are --

16 MR. CONTE: No. My client took them. I think
17 they're admissible. Now there is missing photographs. That
18 is what I'm worried about.

19 MR. REDKEY: The point is that you're claiming there
20 was a scope on it. What is that relevant to the machin-gun?

21 MR. CONTE: It's relevant to what happened to the
22 gun. A scope on a gun would be indication that the possessor
23 thought it was semi-automatic. We don't use a --

24 THE COURT: Mr. Redkey, we got photos taken on the
25 night of the search. Where are they?

1 MR. REDKEY: The agent was transferred, time passed,
2 and we haven't been able to find the photos.

3 THE COURT: There are no photographs.

4 MR. CONTE: I'm renewing my motion to exclude the
5 M-14.

6 THE COURT: Motion is denied.

7 (Proceedings continue)

8 BY MR. CONTE:

9 Q Who was the agent who had these photographs that were
10 taken on the night of January 13?

11 A Special agent Yvonne Rios.

12 Q Could you spell that, please?

13 A Yvonne, Y-V-O-N-N-E, Rios, R-I-O-S.

14 Q Is that her married name?

15 A Yes. At the time, her last name was Gallegos.

16 Q And they were turned over to her that night?

17 A Yes.

18 Q Who took the photographs?

19 A Special Agent Brett Williams.

20 Q And when was it discovered that the photographs were
21 missing?

22 A After the case was reassigned to me, shortly before
23 indictment. Assigned the case, sorted through the case file,
24 looking at evidence, discovered at that time there were no
25 photos either in our evidence or in the case file.

1 Q Where did you look for them?

2 A I looked within the case file, I looked within our vault.
3 I looked within the office, thought maybe they were left in a
4 desk. I checked our evidence kit that we used that night.

5 Q What is an evidence kit?

6 A Big plastic tote with wheels on it, plastic bags, gloves,
7 tape, that kind of stuff.

8 Q Was there a search made of the U.S. Attorney's office that
9 you're aware of?

10 A I did not conduct a search of the U.S. Attorney's office.

11 Q Was there any reference to these photographs made to the
12 grand jurors?

13 A I don't recall ever seeing the photos.

14 Q Do you know how many photographs were taken approximately?

15 A I believe it was 19 to 20.

16 Q And how many were taken of the M-14?

17 A I believe just one.

18 Q You seized the M-14 and the VP70 that evening. Was that
19 the only two items you seized?

20 A No.

21 Q What else did you seize?

22 A We seized what turned out to be some replica firearms.

23 Q I'm sorry. Other than the firearms, was there anything --
24 just firearms were taken; is that correct?

25 A No. There was some replicas that were taken. There was a

1 DWT, and I believe some air softs, and also what was found to
2 be just a regular rifle, not affected by the NFA.

3 Q Tell the ladies and gentlemen of the jury what a DWT is?

4 A A DWT is a deactivated firearm. Stands for deactivated
5 war trophy. So it's a firearm that is no longer -- they
6 usually make a dummy receiver out of salvaged material to
7 which they can attach some parts so it has the appearance of
8 a firearm.

9 Q Did you take account of how many DWTs there were in the
10 house that night?

11 A No, sir, I did not.

12 Q What is an air soft?

13 A A BB gun, fires plastic BBs, six millimeters.

14 Q Why was that seized?

15 A Actually, I don't think we seized the air soft.

16 Q Pardon me?

17 A My testimony is we did not seize the air softs that night.

18 Q All right. You didn't seize any air softs.

19 Now, you viewed a videotape of Mr. Kwan's collection
20 before the executed the search warrant; is that correct?

21 A That's correct.

22 Q And you had a conversation with Special Agent Gallegos, or
23 Rios, after the --

24 A Gallegos, yes.

25 Q During that conversation you told her that you recognized

1 three British SA80 machine guns in that photograph; did you
2 not?

3 A That's correct.

4 Q And did you inspect those three British SA80 machine guns
5 when you got to Mr. Kwan's house?

6 A That's correct.

7 Q What were they?

8 A Two were air softs, and one was an official title, one
9 firearm, not restricted by the NFA.

10 Q Two of them were actually BB guns?

11 A That's correct.

12 Q And that was part of the input that went into obtaining
13 that search warrant, wasn't it?

14 A That's correct.

15 Q When you asked for the search warrant, did you tell the
16 judge, Well, I saw these machine guns, but I really can't
17 tell the difference between a machinегun and a BB gun?

18 MR. REDKEY: Objection, relevance.

19 THE COURT: It's his credibility. Sustained.

20 A I didn't --

21 THE COURT: No answer is necessary.

22 BY MR. CONTE:

23 Q How many other guns did you misidentify in that videotape?

24 MR. REDKEY: Same objection, Your Honor. Doesn't
25 have anything to do with these two guns. It's irrelevant.

1 THE COURT: I'll permit the witness to answer that
2 question.

3 A Those are the only firearms I was asked to identify in
4 that video.

5 BY MR. CONTE:

6 Q You seized a total of 16 guns?

7 A Correct.

8 Q Two of them we have in court?

9 A That's correct.

10 Q The other 14 are simply legal -- either legal guns, dummy
11 receivers, DWTs, or not a real firearm, not a gun; is that
12 correct?

13 A That's correct.

14 Q You were talking -- you did mention FLETC --

15 A FLETC.

16 Q You said that the FBI and the DEA --

17 A No. The FBI and DEA are probably the two that don't use
18 it. The rest agencies usually use it.

19 Q The Treasury Department uses it?

20 A That's correct. Yes.

21 Q The IRS uses it?

22 A That's correct.

23 Q You seized the VP70, correct?

24 A That's correct, sir.

25 Q You seized that as a machi negun?

1 A No. I thought it would either be a machin gun or possibly
2 a short-barrelled rifle.

3 Q Do you recall testifying before a grand jury on February 7
4 of 2007?

5 A Yes, sir.

6 Q I'm going to mark this as defendant's Exhibit No. 3 for
7 identification.

8 THE COURT: All right. I think it should have an --
9 make it A-3.

10 MR. CONTE: A-3.

11 May I approach the witness?

12 THE COURT: You can approach the clerk. Give it to
13 her.

14 BY MR. CONTE:

15 Q Show what's been marked as defendant's Exhibit No.
16 A-3. The front page would indicate that is your testimony at
17 the grand jury on February 7, 2007?

18 A Yes.

19 Q Now, you told the grand jury that you seized it because it
20 was a machin gun; is that correct?

21 A Yes. We believed it was a machin gun at the time.

22 Q And is there any mention in the grand jury that you also
23 thought it might have been a short-barrelled rifle?

24 A No, sir.

25 Q So you just omitted that fact by accident before the grand

1 jury?

2 A No, sir. When it was submitted by Agent Gallegos, the
3 initial submission was that it was a firearm -- or excuse me,
4 was a machin gun. It was also possible it may be a
5 short-barrelled rifle.

6 Q Now, when did you get the report back from the FTB branch?

7 A August -- search date August 3, 2006.

8 Q When you sent that query to the NFA branch, they came back
9 and said it wasn't registered, correct?

10 A Yeah. It takes them a couple days. They send it back and
11 they sent you a certificate in the mail, usually two or three
12 days later.

13 Q Did you subsequently find out that Mr. Kwan owned another
14 VP70?

15 A We've had that one in our possession for a while. We had
16 another one.

17 Q And that's one that --

18 A Is registered to him. Yes, sir.

19 Q And it's legally registered to him?

20 A Correct.

21 Q With the stock on government's Exhibit No. 6, fully
22 automatic legal VP70 that Mr. Kwan owns?

23 A Yes, sir.

24 THE COURT: You referred to Exhibit No. 6. Is that
25 the right exhibit?

1 MR. CONTE: Court's indulgence.

2 Yes. Exhibit No. 6 I have as VP70Z.

3 THE COURT: I don't know that that was actually
4 admitted at this point. You haven't offered any of the
5 weapons into evidence.

6 BY MR. CONTE:

7 Q Now, you did say you had some experience with guns?

8 A Yes.

9 Q And you're a collector yourself?

10 A Yes, sir.

11 Q And could you tell the ladies and gentlemen of the jury
12 what your opinion was of Mr. Kwan's collection of guns?

13 A It was a great collection. Very extensive. I would say
14 it covered everything from probably turn of the century up
15 until some of the stuff present day. It was a great
16 collection. Too bad it wasn't on public display.

17 Q Do you recall telling the grand jury all the weapons were
18 of historical significance?

19 A Yes.

20 Q Did you tell the grand jury it was a marvelous collection?

21 A Yes.

22 Q Did you see some guns in there you had never seen before?

23 A Yes.

24 Q So you were impressed?

25 A Yes, sir, I was.

1 Q When you buy your guns, where do you buy them?

2 A Usually Mary's Pistols in Tacoma, Federal Way Discount
3 Guns, Rainier Arms in Tacoma.

4 Q You buy them new or used?

5 A Depends. Some of the collectible stuff you can't buy new,
6 so you buy it used.

7 Q So when you buy a used gun, do you know where it came
8 from?

9 A No. I know I bought from that shop --

10 Q You buy a Winchester from Bart's Gun Shop, a used
11 Winchester from Bart's Gun Shop here in Tacoma, it's a
12 30-year-old rifle, you don't know who owned --

13 A That's correct.

14 Q It could have passed through any number of persons' hands
15 before you came into possession; is that correct?

16 A Yes, sir.

17 Q Mr. Kwan was arrested on what day?

18 A Exact date escapes me right now, sir.

19 Q Around last September?

20 A Yes, sir.

21 Q Now, you said you went to this training down in FLETC; is
22 that correct?

23 A For the Firearms Interstate Nexus or ATF?

24 Q ATF.

25 A Yes, sir.

1 Q They teach you about dealing with defendants?

2 A Yes, sir.

3 Q And they teach you about Mirandizing defendants?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes.

7 Q Is there any training about approaching defendants or
8 people who are represented by counsel?

9 A Yes, sir.

10 Q And what is that training?

11 A If they're represented by counsel, you don't contact them.
12 You contact their counsel.

13 Q Two days before Mr. Kwan was arrested, you contacted him,
14 correct?

15 A Yes, sir.

16 Q What was the purpose of that visit?

17 A Mr. Redkey asked if I would go and talk to Mr. Kwan, and
18 if he advised -- he advised if he was represented by counsel,
19 to discontinue any type of conversation. I spoke --

20 Q Mr. Kwan's been represented by Mr. Stahlfeld and myself
21 for years, correct?

22 MR. REDKEY: I object. He's asking the witness to
23 draw a legal conclusion on whether he's represented in this
24 matter.

25 THE COURT: I didn't hear an illegal question. I

1 think it's a proper inquiry of the witness. I'll permit it.
2 You got the question in front of you?

3 A Well, no, but I think I can remember.

4 THE COURT: The question is whether or not -- it was
5 a statement. Mr. Kwan's been represented by Mr. Stahlfeld
6 and myself for years, correct?

7 A My understanding is he has been represented by
8 Mr. Stahlfeld for sometime in his dealings with the ATF
9 licensing.

10 MR. CONTE: I think we need to approach the bench.

11 (Sidebar held)

12 MR. CONTE: Unfortunately, I represented him at the
13 grand jury. Asked if Mr. Stahlfeld because the first search
14 the day before was predicated on their missing machinegun
15 barrels. He must have known that Mr. Stahlfeld and myself
16 are representing him on these gun issues, not just on the
17 FFL.

18 THE COURT: Well, can we deal with this outside the
19 presence of the jury after jury is excused for the day. Do
20 you need to go into cross-examination of the witness on the
21 subject?

22 MR. CONTE: No.

23 THE COURT: You established he went out and talked to
24 him a day or two before the search and I suppose you could
25 ask a direct question, did you know that -- that he

1 represented --

2 MR. REDKEY: Which I think he's already asked.

3 THE COURT: I think you asked that.

4 MR. CONTE: He's trying to get around it by saying it
5 was FFL matters.

6 THE COURT: Why don't you --

7 MR. CONTE: I've got a couple more questions than I'm
8 done.

9 (Proceedings continue)

10 BY MR. CONTE:

11 Q You had training that you're not supposed to approach a
12 defendant that is represented by counsel, correct?

13 A You can approach and to speak with him if they have
14 counsel. If they invoke and don't want to speak for you in
15 front of counsel, you don't talk to them.

16 Q Were you aware that Mr. Kwan through his attorneys filed
17 motions to return the 16 seized weapons before the indictment
18 was returned?

19 A You know, I don't remember if we got the notice after the
20 indictment or before, for the 16 weapons.

21 Q So you just don't know -- as far as your testimony here
22 today, you believe that Mr. Kwan was only represented by
23 Mr. Stahlfeld and myself on the FFL and not on any other
24 matters that preceded?

25 A I believe he was represented by an attorney at that time.

1 I went out to talk to him to see if he was willing to talk
2 without his attorney present, and if so, I want to talk to
3 him. If not we terminate the --

4 Q And my original question, weren't you advised when you
5 went to training at FLETC that you're not supposed to
6 approach somebody represented by an attorney?

7 A I wouldn't say that is exactly correct.

8 Q What would you say exactly correct?

9 A I would say generally you would deal with their attorney
10 directly. But, you know, I asked him, I knew he was
11 represented. I asked him if he was willing to speak to me
12 without his counsel.

13 And he said, No, I want my lawyer present.

14 I said, Fine, thank you, have a nice day.

15 Q What type of sting were you trying to elicit?

16 MR. REDKEY: I object. We're beating a dead horse
17 here.

18 THE COURT: I'll sustain the objection to the last
19 question.

20 BY MR. CONTE:

21 Q As recently as three weeks ago, were you out interviewing
22 neighbors about Mr. Kwan and the M-14?

23 A Yes.

24 MR. CONTE: Nothing further.

25 THE COURT: Redirect of the witness, Mr. Redkey?

1 MR. REDKEY: I have just a couple questions, Your
2 Honor.

3 THE COURT: Do whatever you need to do, finish with
4 the witness, and then we'll take our recess for the evening.

5 REDIRECT EXAMINATION

6 BY MR. REDKEY:

7 Q You used the term DWT, and I think you described that as a
8 deactivated war trophy?

9 A That's correct.

10 Q Is that a term in the ATF lexicon and U.S. law
11 enforcement?

12 MR. CONTE: Objection, calls for opinion.

13 THE COURT: Overruled. You may answer.

14 A It was, at one time. It's currently not used that much.

15 BY MR. REDKEY:

16 Q Is it used elsewhere to your knowledge?

17 A It's frequently used in Canada.

18 MR. CONTE: I'll object to that, Your Honor.

19 MR. REDKEY: Your Honor, counsel opened the door on
20 this.

21 THE COURT: Objection is overruled.

22 BY MR. REDKEY:

23 Q You said it's used in Canada?

24 A Yes.

25 Q Are you aware of what it takes to deactivate a war trophy

1 in Canada?

2 MR. CONTE: Objection --

3 THE COURT: Sustain the objection.

4 MR. REDKEY: That's all the questions I have.

5 THE COURT: Recross of the witness?

6 MR. CONTE: No.

7 THE COURT: Thank you, sir. You may step down.

8 MR. BYRD: Mr. Conte, do you want this back?

9 THE COURT: Ladies and gentlemen of the jury, we're
10 going to take our evening recess at this time. You are
11 reminded not to discuss the case with anyone. You are
12 reminded not to do any independent research and you are
13 reminded that you can't read or listen to any media reports
14 about the trial, should there be any. So if you are
15 listening to the radio or the television or if reading the
16 newspaper and you see anything related to this case, you have
17 to not read it or listen to it.

18 Have a pleasant evening and please be back in the jury
19 room prior to 9:00 so we can start promptly at 9:00.
20 Schedule tomorrow will be 9:00 to 12:00 with a break at 10:30
21 and from 1:30 to somewhere between 4:00 and 4:30 with a break
22 in the middle of the afternoon.

23 Jury is excused at this time. All stand for the jury.

24 (Thereupon, the jury exited the courtroom.)

25 THE COURT: Do we have anything we need to discuss

1 before we adjourn?

2 MR. REDKEY: One of the exhibit tags fell off the
3 VP70, which is Exhibit No. 10. I would like to repair that.

4 THE COURT: Just for the record, you had a lot of
5 exhibits identified but there were only a few that were
6 admitted. 4.7, 4.2, 4.3 -- 4.7 --

7 MR. REDKEY: And 8.

8 THE COURT: And Exhibit No. 5.1 and Exhibit No. 7 and
9 Exhibit No. 8.

10 MR. REDKEY: Yes.

11 THE COURT: I think that's what's been admitted so
12 far.

13 MR. CONTE: For the record, had I been allowed to go
14 into the search warrant for the first search, it was full of
15 references to Mr. Kwan only dealing with law enforcement
16 through his attorneys. Since that search warrant involved
17 the homicide of Thomas Wales, I had to restrict my
18 cross-examination to the second search warrant --

19 THE COURT: I think the point that is important
20 you've already made, that this agent admitted that he knew
21 that your client was represented by an attorney and he
22 admitted that, at the request of the prosecutor, he went out
23 and talked to the witness to see if he would talk to him
24 without his attorney.

25 That's the salient facts, it seems to me, and the agent

1 has admitted those facts. I don't know what the consequences
2 of all that are. But I think the record is clear that they
3 went out and tried to talk to your client when they knew he
4 was being represented by an attorney.

5 Now, I don't know what else you could have hoped to elicit
6 from going in to the prior search warrant or the prior search
7 or -- anything else.

8 MR. CONTE: The prior search warrant in part was
9 predicated -- the applicant -- affiant on that search warrant
10 made numerous references to Mr. Kwan's right of the Sixth
11 Amendment right to counsel. That is the point I was trying
12 to make, and that is the point I could make.

13 THE COURT: I think the record -- you've made that
14 point. The record is clear in this case.

15 MR. CONTE: I would ask the Court to make the search
16 warrant, first search warrant, a part of the record of this
17 case under seal.

18 THE COURT: Your request is denied. Let me say this.
19 If you're talking about appeal rights, we can make it part of
20 the record. If you're talking about making it an exhibit in
21 the case, so why don't you clarify --

22 MR. CONTE: My appeal rights, my appellate rights. I
23 want it in there for the appeal if there is one.

24 THE COURT: Is it not already in the record?

25 MR. CONTE: That's been filed -- no. I don't believe

1 so.

2 THE COURT: Well, you work it out. If it's not in
3 the record for purposes of appeal of this case, I will allow
4 you to make it a part of the record. I thought you were
5 asking that it be an exhibit somehow, that the jury would see
6 it. I am not going to permit that.

7 MR. CONTE: My request is for appellate purposes
8 only. I couldn't have filed a search warrant because it was
9 under seal and I couldn't have filed it. I'll check the
10 docket.

11 MR. REDKEY: I was trying to check to see whether it
12 was part of the -- attached as an exhibit in the suppression
13 motion that the defendant filed and that I responded to. But
14 I couldn't find it in the wholeness we had here.

15 And so the record is clear, Your Honor, there was some
16 confusion. Mr. Kwan was facing his difficulties with the
17 Wales task force which was one matter. He was trying to get
18 his firearms back in a civil forfeiture-type proceeding in
19 another matter. No criminal charges had been brought against
20 him in connection with all of this.

21 And for the record, that is what Special Agent Byrd went
22 to find out, is whether he had representation in the criminal
23 matter. When he said he did, he discontinued the
24 conversation as he was instructed to do.

25 THE COURT: We'll be in recess. I sent out Friday,

1 proposed instructions so that you'd have them over the
2 weekend. I hope that you saw them. They were filed
3 electronically.

4 MR. REDKEY: We did.

5 THE COURT: I think it would be helpful -- I don't
6 know how long this case is going to take, but my sense it's
7 going to move fairly quickly -- that if you have objections
8 to my proposed instructions, perhaps you ought to file some
9 written objections by noon tomorrow. We can consider them.
10 You'll have a chance to verbalize those objections as well.
11 But it will at least get me thinking on what it is we need to
12 do.

13 Mr. Redkey, you're going to have three more witnesses. Is
14 that where we are?

15 MR. REDKEY: Yes.

16 THE COURT: How long do you think those will take?
17 Do you think you'll finish tomorrow?

18 MR. REDKEY: We'll be done tomorrow morning, by the
19 end of the morning.

20 THE COURT: All right.

21 MR. REDKEY: Are we starting at 9:00?

22 THE COURT: We're starting at 9:00.

23 MR. REDKEY: Depends on how much cross. Could be
24 pretty close.

25 THE COURT: Objections to instructions maybe ought to

1 be filed by midnight tonight so I can look at them in the
2 morning when I get in. From the defense standpoint, how long
3 do you anticipate your case is going to take?

4 MR. CONTE: No more than half a day.

5 THE COURT: In all likelihood we'll have instruction
6 and argument on Wednesday. Anything further tonight?

7 MR. REDKEY: I would like to mark this exhibit with
8 counsel present just to make sure there is no mix-up. Where
9 the tag came off.

10 THE COURT: Where do you think it came off?

11 MR. REDKEY: Off the pistol. There was a wire that
12 attaches, it broke off and tore the ring.

13 THE COURT: All right. The weapons should be removed
14 from the Court and secured for the night by the government,
15 and returned in the morning.

16 MR. CONTE: Can we leave some stuff here overnight?

17 THE COURT: You may. I wouldn't leave any computers
18 or anything of great value. But paper and the like, you can
19 leave whatever you wish.

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21 (Court adjourned).

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C E R T I F I C A T E

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I, Nichol e Rhynard, CCR, CRR, RMR, Court Reporter for the United States Di strict Court in the Western Di strict of Washi ngton at Tacoma, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographi cally.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated thi s 9th day of October, 2007.

/S/ Nichol e Rhynard

Ni chol e Rhynard, CCR, CRR, RMR
Offi ci al Court Reporter