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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 20, 2007
vs.	)	Volume III
	)	
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

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## PROCEEDINGS

June 20, 2007 - 9:04 a.m.

1  
2  
3  
4 THE COURT: Good morning. Please be seated. Defense  
5 may call your next witness.

6 MR. CONTE: We call Albert Kwan.

7 ALBERT KWAN,

8 Thereupon, after being duly sworn testified as follows:

9 DIRECT EXAMINATION

10 THE CLERK: For the record, would you state your full  
11 name and spell your last name please.

12 A Albert K. Kwan, K-W-A-N.

13 BY MR. CONTE:

14 Q How old are you, Mr. Kwan?

15 A I'm about 52 and a half years old.

16 Q Where were you born?

17 A I was born in Hong Kong.

18 Q And how long did you live in Hong Kong?

19 A I lived in Hong Kong until I was a teenager, 18, 19.

20 Q Where you did you move then?

21 A I went to school in Canada.

22 Q What kind of school is that?

23 A Was high school.

24 Q Did you have any further education?

25 A I went to university in Canada also.

1 Q Graduated?

2 A I graduated with bachelor of arts degree.

3 Q And eventually you moved to the United States?

4 A Yes, I was.

5 Q When was that?

6 A I came to United States about 1981.

7 Q And when did you become a citizen of the United States?

8 A I naturalize citizen in 1987.

9 Q Did you ever serve in the armed forces of the United  
10 States?

11 A I served combined active duty and reserve for 21 years.

12 Q How many years were you on active duty?

13 A Three years and some months.

14 Q He when did you join the Army?

15 A 1986, September.

16 Q You're still in the reserves; is that correct?

17 A Yes.

18 Q Eligible for retirement?

19 A I'm eligible for retirement a year ago.

20 Q What is your main interest other than working?

21 A Traveling, reading, and studying languages and collecting  
22 military memorabilia.

23 Q When did you start collecting military memorabilia?

24 A Nine, ten years old.

25 Q What got you interested?

1 A My father was in World War II and all his friends was. So  
2 I interested in what he was.

3 Q And your father was in the Army?

4 A My father went back to China in '30s and he joined  
5 nationalist military for China fighting Japanese.

6 Q You said we went back. When were you at when he went  
7 back?

8 A He was born here and my grandfather was here. My uncle  
9 was here.

10 Q Father was born here?

11 A My father was born here.

12 Q What did you start collecting at nine years old?

13 A Most of the time uniforms, equipments, knives, and badges.

14 Q We've heard a lot about your gun collection; is that the  
15 major part of your collection?

16 A No. My major collection actually is my uniforms.

17 Q And you've been collecting that for 40 some years?

18 A That's correct.

19 Q Approximately, how many guns do you own?

20 A I'm not sure, but I would say a few hundred.

21 Q How many uniforms do you own?

22 A I'm not sure. A lot of them.

23 Q Can you tell the ladies and gentlemen of the jury what  
24 armies they belong to?

25 A I don't understand the question.

1 Q What armies -- are they all United States Army uniforms  
2 or --

3 A Oh. Most of the uniform I have in World War II up to  
4 present times and will be in British, American, Russians,  
5 German, and some Japanese. And there are some smaller  
6 portion of other countries.

7 Q What do you want to do with this collection?

8 A My objective was -- still is -- have my little museum when  
9 I retire.

10 Q Have you made any plans or talked to anybody about having  
11 a museum?

12 A Yes. I have talked to Fort Lewis military museum and I've  
13 talked to Boise Historic Museum in Idaho, in Boise.

14 Q I take it that collection is worth quite a bit of money?

15 A Yes.

16 Q How many machin guns do you have?

17 A I'm not sure of the correct figures. I would say over  
18 100.

19 Q Where are they stored?

20 A Majority of them -- I would say over half of them in Las  
21 Vegas, Nevada.

22 Q Why are they in Las Vegas, Nevada?

23 A Because in 1994 my license was -- no, 2004, my license was  
24 refused to renew by ATF. For safekeeping I them in shops in  
25 Las Vegas area.

1 Q And you had BATF approval to remove them?

2 A Yes, I have.

3 Q And when was the last time that your NFA weapons were  
4 inspected by the BATF?

5 A I don't remember the date, but it would be sometime in  
6 2004. Middle of 2004.

7 Q All right. When you lived in Canada did you have a gun  
8 dealers license?

9 A No.

10 Q When was the first time you got a license?

11 A I got a so-called Canadian firearm acquisition certificate  
12 since I was -- since 1979 when they first established it.

13 Q And when did you get your first federal firearms license?

14 A 1983.

15 Q What licenses did you have all together?

16 A Excuse me?

17 Q What types of licenses did you have all together?

18 A You want me to tell different licenses?

19 Q Yes.

20 A I say over the year I have over seven licenses.

21 Q And what type of licenses were they?

22 A They were consist of dealer license, collector's license,  
23 and the ammunition manufacturers license, importer's license  
24 and later was a manufacturer's license. And in two states.

25 Q Did you ever manufacture any machi neguns?

1 A I never personally manufacture any machi neguns.

2 Q Did you ever manufacture machi neguns?

3 A I have subcontractor.

4 Q Who does your subcontracting?

5 A One of them is Ohio Ordinance Corporation in Ohio.

6 Q Approximately, how many guns have you manufactured?

7 A I wasn't sure, but I would say around 20.

8 Q What years were you manufacturing machi neguns?

9 A One particular or --

10 Q Just in general.

11 A What year you said?

12 Q Do you recall what years you were manufacturing

13 machi neguns?

14 A They take a long time to be approved and manufactured. So

15 I can't tell what year.

16 Q Okay.

17 A It's several -years period.

18 Q Let me ask you, when did you buy the M14, government

19 Exhibit No. 1?

20 A I bought my M14 in 1991.

21 Q Let me show you what's been marked as defendant's Exhibit

22 No. 18. Can you tell the ladies and gentlemen of the jury

23 what that is?

24 A This is my personal note on my personal firearms.

25 Q You keep a record?



1 A Yes, I have.

2 MR. CONTE: I would move admission of defendant's  
3 Exhibit No. A-18.

4 MR. REDKEY: No objection.

5 THE COURT: It will be admitted.

6 (Exhibit No. A-18 admitted.)

7 MR. CONTE: I'm going to put it on that Elmo.

8 BY MR. CONTE:

9 Q So this is the Winchester model M14; is that correct?

10 A That's correct.

11 Q And does it give the date you bought it?

12 A 23rd of May, '91.

13 Q And how is it identified?

14 A What do you mean?

15 Q What does this here indicate?

16 A It's a type of action. Gas operation semi automatic.

17 Q And this indicates with --

18 A The grip and the stock was semi pistol grip, full walnut.

19 Q Full walnut --

20 A Full walnut stock.

21 Q You purchased it from?

22 A From Tom Bongalis, 1264 West 21st Street.

23 Q Had you purchased other weapons from Mr. Bongalis?

24 A Yes, I have.

25 Q Approximately how many?

1 A I'm not sure of the number. Over ten.

2 Q Were those weapons in your home on January 13, 2005 when  
3 it was inspected or searched?

4 THE COURT: Let me interrupt for a moment.

5 Apparently the jury was unable to see the last exhibit. Do  
6 you want to publish it again?

7 MR. CONTE: If I can go over the salient points.

8 THE COURT: Let's see if they have it. All right,  
9 perhaps you would like to go over points that you made.

10 BY MR. CONTE:

11 Q So this is the Winchester M14, correct?

12 A That's correct.

13 Q And it's the same one that is in court here by the serial  
14 number right there?

15 A That's correct.

16 Q So number 1194208?

17 A That's correct.

18 Q And type of action, type of action is a gas,  
19 semi automatic? Down here it's a semi pistol, grip full  
20 walnut stock; is that correct?

21 A That's correct.

22 Q It was purchased 23, may, 1991?

23 A That's correct.

24 Q And you purchased it from -- I'm sorry, from Mr. Bongalis?

25 A That's correct.

1 Q I would asking if you purchased other guns from  
2 Mr. Bongalis?

3 A Yes, I have.

4 Q Approximately how many roughly?

5 A Over ten.

6 Q All those guns were they present in your house on January  
7 13, 2005 when they searched?

8 A Yes.

9 Q When you bought it from Mr. Bongalis it was a  
10 semi automatic?

11 A Yes.

12 Q What was the condition of the selector switch on the gun  
13 when you bought it?

14 A I don't see a selector switch.

15 Q I'm sorry?

16 A I'm sorry.

17 Q What condition was the selector switch in?

18 A If I remember correctly -- I haven't seen the gun for  
19 three years.

20 Q Was there anything in the selector switch --

21 A No, it wasn't.

22 Q I'm sorry, let me ask you this: What does this indicate  
23 right here on defendant's Exhibit No. A-18?

24 A Bracket with scope and mount.

25 Q Why did you buy that gun?

1 A The reason I bought that gun was because I very much  
2 interested in that scope.

3 Q What type of scope was it?

4 A It was a loophole long-range scope. And -- and it was  
5 used by the military at the time.

6 Q Which military was using it?

7 A United States military.

8 Q So you were interested in that for your collection?

9 A Yes.

10 Q Let me ask you, have you ever sold any of the guns from  
11 your collection?

12 A I separated guns in inventory and the guns I collect. So  
13 I have this in my collection.

14 Q You had a retailer's license when you did buy and sell  
15 firearms?

16 A That's correct.

17 Q Where did you buy the M14?

18 A I bought it in a gun show in Bellingham area.

19 Q And have you bought guns from Mr. Bongalis before?

20 A Yes, I have.

21 Q When you examined it, you had no reason to believe it was  
22 fully automatic; is that right?

23 MR. REDKEY: Objection, leading.

24 THE COURT: Sustained.

25 BY MR. CONTE:

1 Q How did you believe that gun operated when you purchased  
2 it?

3 A Mr. Bongalis is a very active and reputable dealer in West  
4 Coast. I have no reason not to believe what he said, and gun  
5 with a scope. And he said it's his personal collection. He  
6 use it for hunting for long time. So I have no reason to  
7 believe this is -- any question about the guns. Because of  
8 his reputation and I knew him over ten years. So...

9 Q All right. Let's talk about your VP70's.

10 Which did you buy first, the VP70M or the VP70Z?

11 A I bought the VP70M first.

12 Q What is the distinction between the M and the Z?

13 A VP70M is a machine pistol. Considered a machinегun.

14 Q And let me show you --

15 MR. CONTE: Madam clerk, is A-11 admitted?

16 THE CLERK: One moment, please.

17 A-11 is not admitted.

18 BY MR. CONTE:

19 Q I will show you what's been marked as defendant's Exhibit

20 No. A-11. Do you recognize that document?

21 A This is a BATF Form 3 for transfer between two dealers.

22 Q Does it give a date?

23 A It was approved dated January 11, 1995.

24 THE COURT: Don't publish it until we get it into  
25 evidence.

1 MR. CONTE: Move admission of defendant's Exhibit No.  
2 A-11.

3 MR. REDKEY: No objection.

4 THE COURT: It will be admitted.

5 (Exhibit No. A-11 admitted.)

6 BY MR. CONTE:

7 Q What is an ATF Form 3?

8 A My understanding ATF Form 3 is a transfer document between  
9 two dealer with SOT, Special Occupational Taxpayer.

10 Q Special Occupational Taxpayer?

11 A Uh-huh (affirmative).

12 Q It was approved on January 11, 1995?

13 A That's correct.

14 Q Did that have a stock with it?

15 A It come with a stock and all the accessory.

16 Q When did you buy the VP --

17 MR. CONTE: Your Honor, at this time I'm going to  
18 move the admission of defendant's Exhibit No. A-12, which I  
19 believe is the second VP70. VP70 -- M the first one. VP70M.

20 THE COURT: And it's A-12, is it?

21 MR. CONTE: Yes, sir.

22 THE COURT: Any objection?

23 MR. REDKEY: No objection.

24 THE COURT: It will be admitted.

25 (Exhibit No. A-12 admitted.)

1 BY MR. CONTE:

2 Q Let me go back to the M14 for a second.

3 THE COURT: Let me clarify, the VP70M which you've  
4 now admitted as A-12, does it have a stock?

5 MR. CONTE: Yes.

6 THE COURT: So both the gun and the stock are  
7 admitted.

8 MR. CONTE: Yes.

9 BY MR. CONTE:

10 Q I have one question about M14s.

11 Do you have another M14?

12 A I have another M14 machin gun, yes.

13 Q And that's registered?

14 A Yes.

15 Q And where is that located?

16 A It was supposed to be in Las Vegas.

17 Q Now, my next question was: When did you buy the VP70Z?

18 A I would say in mid '90s.

19 Q Did that come with a stock?

20 A It did not.

21 Q When did you buy the second stock?

22 A I bought the second stock between '95, '96.

23 Q And who did you buy it from?

24 A I bought it from a person -- a gentleman from Florida  
25 called Chou's. Allen, A-L-L-E-N.

1 Q Who was Mr. Allen?

2 A Excuse me?

3 He is a dealer -- FFL from Tampa, Florida.

4 Q Where did you buy the gun?

5 A I met him at Knob Creek.

6 Q Did you --

7 THE COURT: Do you want to clarify where did you buy  
8 the stock or the gun?

9 MR. CONTE: Stock.

10 BY MR. CONTE:

11 Q Where did you buy the stock?

12 A I bought the stock from Mr. Allen in the Knob Creek gun  
13 shop.

14 Q Some of the ladies and gentlemen of the jury may not know  
15 what -- Knob Creek gun show?

16 A Knob Creek gun show -- Knob Creek is in Kentucky, outside  
17 of Louisville, and they have machine gun shoot and dealer  
18 display for long, long weekend every -- twice a year.

19 Q Had you known Mr. Charles Allen before then?

20 A I know Mr. Allen before.

21 Q Have you bought other guns from Mr. Allen?

22 A Yes, I have.

23 Q He when you bought that the stock from Mr. Allen did you  
24 have any discussion about whether --

25 A We have discussed the -- do I own VP70M and he asked me



1 and I told him I have an M.

2 Q And why did you have that conversation?

3 A Because the shoulder stock is very difficult to buy a  
4 spare, and they easily break. So I was so excited when I saw  
5 it. And he asked me do you have a VP70M and I said I do.  
6 And just in case it breaks there is no way you can find a  
7 replacement. So that was our conversation.

8 Q Did he say anything about registering it?

9 A No, he did not.

10 Q And did you have a discussion about that?

11 A Just based on the stock alone what I understand is not a  
12 firearms. And I bought as accessory.

13 Q And did he make any statements to you about whether he  
14 could or could not sell it to you, if you didn't have a  
15 VP70M?

16 A He did ask me but he didn't make that statement -- no, he  
17 did not. He did ask me do I have one. And I told him I did.

18 Q Would he have sold to you if you didn't?

19 MR. REDKEY: Objection, I think that calls for  
20 speculation.

21 THE COURT: Sustained. I think it calls for  
22 speculation.

23 BY MR. CONTE:

24 Q Let me ask you this: You're a manufacturer and an SOT; is  
25 that correct?

1 A That's correct.

2 Q When you bought the stock, if it needed to be registered  
3 what would you have to do?

4 A I'm sorry, I don't understand the questions.

5 Q If the stock that you bought -- the VP70 stock that you  
6 bought from Mr. Allen -- needed to be registered, what action  
7 would you have had to take?

8 A If I need to register any NFA weapons I will file a Form 2  
9 and sent it in to NFA branch in DC to be registered.

10 Q And how much would that cost you?

11 A It won't cost me anything.

12 Q To buy something that is an NFA item like that stock, all  
13 you had to do was fill out the Form 2 and send it in?

14 A Yes.

15 Q And as a manufacturer do you have to wait to take custody  
16 of that stock?

17 A What do you mean wait?

18 Q Do you have to file the paperwork before you can get the  
19 stock?

20 A I'm not sure about a stock. But it is on weapons and if I  
21 manufacturer as weapons I have my 24 hours after the weapon  
22 is completed and tested for paperwork be filed.

23 Q Had you known you had to file any paperwork on the stock  
24 you would have 24 hours to fill out the Form 2?

25 A I will do that.

1 Q What about the M14? If you ever decided to make that  
2 convert or remanufacture the M14 would that be the same  
3 thing?

4 A It would be the same thing.

5 Q You just have to have somebody do it for you and then  
6 all -- you would have 24 hours to fill out the Form 2; is  
7 that correct?

8 A No. I will file the form first and wait for the approval  
9 and send the gun to -- subcontractor to do the work.

10 Q And how much would that cost you? How much would the  
11 filing the Form 2 cost?

12 A It won't cost me anything.

13 MR. CONTE: Court's indulgence.

14 BY MR. CONTE:

15 Q Did you have any firearms manufacturing equipment in your  
16 home on January 13, 2005?

17 A No, sir.

18 Q Do you have any Dremel tools?

19 A No, sir.

20 Q Did you ever work on firearms yourself?

21 A No, I don't.

22 Q All right.

23 MR. CONTE: Court's indulgence.

24 BY MR. CONTE:

25 Q Did you ever take that M14 apart and look inside?

1 A No, I have not.

2 MR. CONTE: I have nothing further, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. REDKEY:

5 Q Good morning, Mr. Kwan.

6 A Good morning.

7 Q I want to talk to you first briefly about the M14 rifle  
8 which is Exhibit No. 1. I believe you said you hadn't seen  
9 that firearm in a couple of years; is that correct?

10 A That's correct.

11 Q Now, that particular firearm looks very much like your M14  
12 that is a full automatic machinegun and unmodified; is that  
13 correct?

14 A I didn't catch the question.

15 Q Well --

16 A Last part.

17 Q I'm sorry, maybe I didn't make myself clear.

18 You also own another M14 machinegun; is that correct?

19 A That's correct.

20 Q And that in its original condition can fire full auto  
21 etcetera? Not that one, the other one. The one that you  
22 have registered?

23 A Yes.

24 Q And is it fair to say you probably haven't seen this one  
25 in a while as well?

1 A That's correct.

2 MR. REDKEY: If I may approach, Your Honor.

3 BY MR. REDKEY:

4 Q Does this appear to be your firearm? I'm handing you  
5 Exhibit No. 2 for identification.

6 A I assume it is.

7 Q Thank you.

8 And does this firearm have a selector switch just above  
9 the stock here?

10 A Yes.

11 Q With respect to Exhibit No. 1 I think your testimony was  
12 there was no selector switch on that firearm; is that  
13 correct?

14 A No.

15 THE COURT: Just a moment. The way he answered it  
16 the Court is not clear whether he's agreeing or disagreeing  
17 with you when he said no.

18 Would you ask it again so we can be sure.

19 BY MR. REDKEY:

20 Q When you acquired and had this firearm, which is Exhibit  
21 No. 1, did it have a selector switch in it?

22 A You mean in the 1990s?

23 Q Any time. After you acquired it?

24 A I don't recall correctly, but it wasn't.

25 Q When it was seized there has been testimony that there was

1 a selector stop in this place here. Does that sound correct  
2 based on your memory of your firearm?

3 A Can you explain what a stop is --

4 Q A plug that goes anywhere the selector would normally go?

5 A I'm not sure.

6 Q Is it fair to say otherwise these two guns upon external  
7 examination are substantially the same -- almost identical  
8 otherwise?

9 A Right now or in the 1990s.

10 Q Let's say both. 1990s?

11 A Missing the scope.

12 Q And now?

13 A It looks similar.

14 Q And you've indicated that you bought Exhibit No. 1, which  
15 was the gun seized from your house in January of -- 2005 that  
16 you bought that gun from a Mr. Bongalis, B-O-N-G-A-L-I-S, at  
17 the gun show?

18 A Yes.

19 Q And have you ever registered that firearm in your name?

20 A No.

21 Q Are you aware that it's not registered to anybody? Never  
22 has been?

23 MR. CONTE: May we approach on that?

24 THE COURT: Yes.

25 MR. CONTE: I guess I don't understand the question

1 because if it's not an NFA item he doesn't have to register  
2 it. I think the question here has to be clear, if he's  
3 inferring it's not registered on the NTR or whether it's not  
4 registered --

5 THE COURT: You know, this is the kind of objection I  
6 think you can make from your --

7 Unless there is some subject that we agreed not to  
8 talk about, you can make these kinds of objections. I think  
9 you need to clear it up. So you can do it or he can do it.  
10 Or you can object to the question and because it's misleading  
11 and I'll rule on it. I mean, I don't know. Did he answer  
12 the question?

13 MR. REDKEY: I don't think he had a chance to.

14 THE COURT: If you want to object to the question  
15 because --

16 MR. CONTE: It's misleading.

17 THE COURT: Do you want to rephrase it?

18 MR. REDKEY: Yes.

19 THE COURT: For the benefit of the jury I've asked  
20 counsel to rephrase the question and he will do so.

21 MR. REDKEY: Could I have the question read back so I  
22 can make sure I do rephrase it.

23 (Question read back as requested.)

24 BY MR. REDKEY:

25 Q You've indicated, sir, that that firearm was not

1 registered to you; is that correct?

2 A No, sir.

3 Q When you say no, sir, you mean that is correct; that it is  
4 not --

5 A That's correct.

6 Q And is this the term -- what we call a pre-1986 firearm?

7 MR. CONTE: Same objection, Judge. That doesn't have  
8 to be registered if it's semi -- if he believes it's  
9 semi automatic. And I think that is misleading.

10 MR. REDKEY: That is the question at issue in this  
11 trial, Your Honor.

12 THE COURT: I'll sustain the objection. Ask another  
13 question.

14 BY MR. REDKEY:

15 Q Do you know when that firearm was manufactured, sir?

16 A I don't.

17 Q Do you know whether it was before 1986 or after 1986?

18 MR. CONTE: I object on relevance grounds. I don't  
19 know -- withdrawal the objection.

20 THE COURT: You may answer the question, sir.

21 A What was the question?

22 BY MR. REDKEY:

23 Q Whether it was manufactured before or after 1986.

24 A I'm not sure.

25 Q And let's talk for a moment about the VP70Z. You bought



1 that you said in the mid 1990s?

2 A Z or --

3 Q Z, the firearm that was seized from your house on  
4 January --

5 A Something like that, yes.

6 Q 1990s?

7 A Yes.

8 Q It's a semi automatic pistol; is that correct?

9 A That's correct.

10 Q And you didn't buy the holster/shoulder stock at the same  
11 time?

12 A I didn't.

13 Q You bought them on separate occasions?

14 A Yes.

15 Q And then after you bought the shoulder stock which was  
16 later, I think you said maybe in 1995 or 1996; is that  
17 correct?

18 A Actually, I bought the stock -- extra stock first.

19 Q You bought the stock first. Then you bought the pistol?

20 A I'm not sure of the date.

21 Q Well, I just want to establish that you bought them  
22 separately?

23 A Yes, they were.

24 Q When they were seized at your home you had them together,  
25 didn't you?

1 A Used as a holster.

2 Q Your answer is yes?

3 A Yes.

4 Q You were aware of the feature --

5 MR. REDKEY: If I may approach the witness.

6 MR. CONTE: Which exhibit.

7 MR. REDKEY: This is 10.

8 BY MR. REDKEY:

9 Q I'm going to hand you Exhibit No. 10, sir. And does that  
10 appear to be your VP70Z?

11 A It looks like it, yes.

12 Q Handing you the holster/shoulder stock does that appear to  
13 be the one we've just been discussing?

14 A It look like it.

15 Q And when you had it in your collection the pistol was in  
16 the holster?

17 A Yes.

18 Q And are you aware of the feature on the stock of this gun  
19 that will accept this shoulder stock as such a shoulder  
20 stock?

21 A No.

22 Q You're unaware of that?

23 A I'm unaware of that.

24 Q Can you see the hole in the grip?

25 A Yes, I can see it now.

1 Q Can you see how it accepts this shoulder stock? Can you  
2 see that?

3 A Yes, I can see it now.

4 Q You had another VP model as well, did you not? VPM?

5 A Yes. VP70M.

6 Q And that is a machinegun; is that correct?

7 A Yes, a machine pistol, yes.

8 Q And that also has a shoulder stock that looks similar, if  
9 not exactly, like the shoulder stock that I just showed you,  
10 doesn't it?

11 A Yes.

12 Q And, in fact, the handgun looks almost exactly like the  
13 handgun I just showed you, your VPM looks very much like your  
14 VP70, doesn't it?

15 A I haven't seen the gun for a while. But in memory they  
16 were similar.

17 Q The reason that the manufacturer or anybody who would want  
18 a shoulder stock on your VPM as a machinegun is to attach it  
19 and hold it steady while firing in full automatic mode, isn't  
20 it?

21 A I'm not sure of your questions.

22 Q I'll try and rephrase it.

23 The VP70M is a machine pistol you said?

24 A Yes.

25 Q And it fires full auto?

1 A No. Three rounds, something like that.

2 Q Three rounds. But automatic -- it's not a semiautomatic,  
3 VP70M?

4 A Okay. I'm not sure what you say is not semiautomatic. It  
5 is a semiautomatic. And three rounds.

6 Q Three rounds with one pull of the trigger?

7 A Uh-uh, yes.

8 Q And when you do that the gun goes like this (indicating)  
9 I'm shaking my hand; is that correct?

10 A I'm not sure. I never fired it.

11 Q But it is within your knowledge as a collector and someone  
12 who knows a lot about guns, particularly machineguns that a  
13 shoulder stock will steady that firearm when it's being  
14 fired, isn't it?

15 A I guess so, yes.

16 Q Let's talk a little bit about your collection for a few  
17 moments. Would you agree that you have an exceptional  
18 collection of firearms?

19 A I don't know about your term "exceptional".

20 Q A very good collection of firearms? In fact, almost  
21 museum quality?

22 A Some of them, yes.

23 Q And you're proud of your gun collection?

24 A I'm somewhat, yes.

25 Q And you're contemplating maybe putting them in a museum at

1 some point?

2 A Yes.

3 Q And I think you mentioned that you've been collecting  
4 since you were maybe nine or ten years old?

5 A Collecting uniforms and something.

6 Q When did you start collecting guns?

7 A When I was old enough.

8 Q And you built your collection over many, many years,  
9 correct?

10 A Yes.

11 Q And is it fair to say that you really only want to collect  
12 quality firearms?

13 A I try to collect original.

14 Q And many of these guns have historical significance as  
15 well?

16 A Yes.

17 Q And so in order for you to collect weapons wisely, and  
18 well, I take it you have to do some research and studying and  
19 undertake to learn more about these firearms and their  
20 history, don't you?

21 A In some cases yes.

22 Q Would you say you're fairly selective in your choice of  
23 firearms that you acquire?

24 A What do you mean by "selective"?

25 Q Well, that you wouldn't take just any gun at the gun show

1 that you would want a gun that was a quality piece, for  
2 example?

3 A Not every case, no.

4 Q Then you would select it carefully for another reason?

5 A Yes.

6 Q Do you sell guns from your collection at all?

7 A I hardly sell my collections.

8 Q Do you buy guns that you put into your collection?

9 A I buy gun put move in my collection sometimes, yes.

10 Q Do you also trade guns from your collection to someone  
11 else's collection and back and forth?

12 A I'm not sure you mean trade guns.

13 Q Well, instead of buying a gun would you ever trade one of  
14 your guns for someone's gun from their collection swap?

15 A With no money?

16 Q Yes.

17 A No.

18 Q There has been testimony that you've got quite a  
19 collection of periodicals or trade magazines and the like in  
20 your house; is that an accurate statement?

21 A Can you explain that a little bit further.

22 Q There has been testimony that in your house, as well as  
23 having all your guns there, there were bookshelves full of  
24 manuals and so forth; is that true?

25 A That's not entirely true.

1 Q Explain.

2 A Most of my books related to military history and that's my  
3 primary interest.

4 Q But there are some manuals there on some of the guns that  
5 you have because sometimes it's important to in a collection  
6 to have the manual along with the piece, isn't it?

7 A There are a few manual, but not a lot.

8 Q Did you, in connection with your collection of these  
9 firearms, take photographs of them?

10 A Take photograph of the guns?

11 Q Yes.

12 A Not very often.

13 Q So you wouldn't, for example, when you acquired an M14  
14 take a photo of it and keep it in a collection?

15 A Not this M14, no.

16 Q All right.

17 Any of your guns? Do you take photographs of any of your  
18 guns and keep them in an album of some sort?

19 A Sometime I take it and give to other collectors in the  
20 mail.

21 Q But in connection with the M14 which is Exhibit No. 1 you  
22 don't have a photo of that?

23 A I don't really look at that, no, at this time.

24 Q You didn't look at it for purposes of trial?

25 A No.

1 Q Or look for --

2 A I didn't look for it until you mentioned it, no.

3 Q Do you have any photos of the Exhibit No. Which is the H&K  
4 VP70Z pistol and holster?

5 A I didn't look for it either until you mentioned it.

6 Q You mentioned that you personally had manufactured several  
7 firearms; is that correct?

8 A I manufactured for my name and paper.

9 Q I'm sorry, I don't understand that.

10 A I filed the paperwork.

11 Q Filed the paperwork to manufacture the gun?

12 A Yes.

13 Q And you mentioned that you have served in the United  
14 States Army?

15 A Yes, I have.

16 Q Presently in the reserves?

17 A Yes, I have.

18 Q And is your duty station, if you will, Fort Lewis,  
19 Washington?

20 A No, it's not.

21 Q Where do you go when you serve reserve duty?

22 A I'm presently assigned to 360 first psychological  
23 operation company in Bothell, Washington.

24 Q When was the last time you went to reserve duty there?

25 A Just last month.



1 Q And have you ever been in a unit where you reported to  
2 Lieutenant Lane Pughe?

3 A Yes.

4 Q I want to go back for a few moments to the M14.

5 You are aware, are you not, that the M14 was manufactured  
6 as a fully automatic machinegun?

7 A No, I'm not.

8 Q You're not aware of that fact?

9 A No. You mean at the time I purchase or right now?

10 Q Well, I guess that -- let me rephrase the question.

11 You are aware, are you not, that the machinegun was  
12 manufactured by Winchester and fired in a full automatic  
13 position?

14 A After I was educated by your technical expert and  
15 Mr. Salvage yesterday I do have that understanding. But in  
16 early '90s, no.

17 Q But you registered that gun as a machinegun?

18 A No, I did not.

19 MR. CONTE: Objection. He has to make clear which  
20 one --

21 MR. REDKEY: You're right.

22 BY MR. REDKEY:

23 Q There are two M14 we're talking about. You registered one  
24 M14 as a machinegun with ATF, did you not?

25 A At the dealer that sold it to me he registered it for me.

1 Fully automatic M14, yes.

2 Q You know that it was manufactured as a fully automatic  
3 machi negun?

4 A No. I understand they were making two different forms  
5 based on what they told me.

6 Q It's your testimony that with respect to what is marked as  
7 government's Exhibit No. 2 that you did not know that that  
8 was a fully automatic machi negun?

9 A No, I didn't at the time I purchased it.

10 Q All right.

11 MR. CONTE: Excuse me, which one is two and which one  
12 is one?

13 THE WITNESS: Yeah, I'm kind of confused.

14 BY MR. REDKEY:

15 Q Number 1 is the firearm that was seized from your house in  
16 January --

17 A That's number one okay.

18 Q Number two was taken by the agents in Las Vegas pursuant  
19 to subpoena that -- a gun you kept in Las Vegas.

20 A That's correct.

21 Q It's registered in your name?

22 A That's correct.

23 Q Registered as a machi negun?

24 A Yes, that's correct.

25 Q So my question to you is: Do you know that Winchester

1 M14s were manufactured as machi neguns?

2 A That particular one you're holding, number two, is.

3 Q That would mean that the receiver of that firearm is  
4 designed to accept parts and to allow the gun to fire from  
5 the fully automatic position?

6 A I assume so. I never fired the gun.

7 MR. REDKEY: If I had may have a moment, Your Honor.  
8 I think that's all my questions for now.

9 THE COURT: Redirect, Counsel?

10 REDIRECT EXAMINATION

11 BY MR. CONTE:

12 Q Mr. Kwan, do you sometimes have trouble with the English  
13 language?

14 A Well, I know several languages. But sometimes I do.

15 Q Sometimes people don't understand you?

16 A Yes.

17 Q Sometimes you don't understand them?

18 A Yes.

19 Q And English is actually your second language?

20 A Yes.

21 Q Mr. Redkey was asking you about getting weapons that are  
22 in good condition, correct? Do you remember those questions?

23 A What was his questions?

24 Q About what kind of shape the guns were in. You always try  
25 to buy nice guns?

1 A Yes.

2 Q Guns in good shape?

3 A In a gun show you mean? Yes.

4 Q That's what you try to do for your collection; isn't that  
5 correct?

6 A Yes.

7 Q But you have guns with dummy receivers and BB guns, that  
8 type of thing in your collection; do you not?

9 A That's correct.

10 Q What is the purpose of those?

11 A The reason I buy the dummy or replica or BB gun or plastic  
12 gun was because sometime you couldn't find original anywhere  
13 in any shape or forms. So I buy them as a feeler to have a  
14 look at it.

15 Q So these dummies, these BB guns, plastic guns, are they  
16 similar or the same as original firearms?

17 A If it's dummy it would be just like.

18 Q And BB guns they look --

19 A They look like the real thing, yes.

20 Q In fact, people have misidentified your BB guns as real  
21 machine guns, haven't they?

22 A Yes.

23 Q So let me ask you this. He was asking if you would buy a  
24 gun in bad shape. Why buy a gun that's in bad shape if you  
25 need it for your collection?

1 A Sometime I do.

2 Q And he also asked whether you take photographs of guns.

3 Is that a normal thing you would do when you buy a firearm, a  
4 weapon?

5 A No, not normal thing. Sometime I do.

6 Q Purpose of taking a photograph?

7 A Purpose is discussed with the -- with other collector or  
8 dealers.

9 Q Let me ask you this. The government had put in several  
10 exhibit photographs of your firearms collection; do you  
11 recall those?

12 A Yes.

13 Q Who took those?

14 A I did.

15 Q Why did you take those?

16 A I took them after they search the house.

17 Q Did you do that at anybody's request?

18 A Not anybody's request.

19 Q Did you ultimately give those photographs to me?

20 A Yes, I did.

21 Q Just at the end -- you made a good point I think needs  
22 clarified.

23 When you buy an NFA weapon --

24 A Yes.

25 Q -- who fills out the form?

1 A If the weapon is in my inventory or my possession I fill  
2 out the forms. If it's in the other dealer he fill out the  
3 forms.

4 Q When you buy an NFA weapon who fills out the form?

5 A The person who hold the weapons fill out the forms.

6 Q So when you bought the M14 and the VP70 -- the stock for  
7 the VP70 it was up to the dealer to fill out the form for the  
8 firearm?

9 A Yes.

10 Q When you bought the VP70 stock from Mr. Allen he didn't  
11 fill out the form?

12 A It was not necessary.

13 Q Did he tell you that?

14 A Yes, he did.

15 Q Why did he tell you it wasn't necessary?

16 A I know it's not necessary.

17 Q Why did he tell you it was not necessary?

18 A Because --

19 MR. REDKEY: Objection, calling for speculation.

20 THE COURT: I think we've gone into it. I'll permit  
21 the witness to answer. You may answer the question.

22 A Because this is only accessory without the guns. There is  
23 no serial number on the stock and anybody can purchase it.

24 BY MR. CONTE:

25 Q My final question.

1 Mr. Redkey asked you if you knew Lane Pughe?

2 A Lieutenant Pughe, yes.

3 Q How do you know him?

4 A I met him several times during the drill. He's acting  
5 commander of bravo company 370 MI battalion at the time.

6 Q Have you been summoned or posted to that reserve?

7 A I was attached to that unit in Tumwater.

8 Q Where is it at?

9 A Tumwater, Washington.

10 Q When was that?

11 A I was assigned to that unit 370 TMI in July a -- sometime  
12 in July 2005. But the unit was not exist in later that  
13 years. I went to the informations ceremony. I met them  
14 about -- I would say the fall of 2005.

15 Q All right. Are you in a current disagreement with  
16 Lieutenant Pughe about anything?

17 A I would say we have a disagreement, yes.

18 Q What is that about?

19 A At the time I have a foot problem. And I was ready for  
20 admission oversea and I do all my weekend drills in the  
21 different manner. I was trying to do them in two or three  
22 months instead of over the 12-month period. And he said five  
23 of them was not -- he didn't know about it.

24 So he question about it. He haven't paid me yet. Been  
25 pending for over a year. I went to the congressional office,

1 congressman David Reichert's office was taking the case.  
2 Right now I have a congressional inquiry about those pain  
3 problem.

4 Q Did you do the work?

5 A I did.

6 Q Where do the work?

7 A I did the work in -- the nearest military basis which is  
8 Bothell reserve center.

9 MR. CONTE: Nothing further.

10 THE COURT: Any recross?

11 MR. REDKEY: No, Your Honor.

12 MR. CONTE: May I be excused for a second?

13 THE COURT: Yes.

14 THE CLERK: Step forward please.

15 MARK VANSCOY

16 Thereupon, after being duly sworn testified as follows:

17 THE CLERK: Please take the stand. For the record,  
18 will you state your full name and spell your last name.

19 A Mark Vanscoy, V-A-N-S-C-O-Y.

20 DIRECT EXAMINATION

21 BY MR. CONTE:

22 Q Are you employed, sir?

23 A I am a military technician. I work full time for the Army  
24 reserves.

25 Q Civilian employee?



1 A Yes.

2 Q Do you know this gentleman sitting to my left?

3 A Yes.

4 Q Who is he?

5 A Albert Kwan.

6 Q How long have you known him?

7 A I have known Albert since 1991.

8 Q Are you friends?

9 A Yes, we are.

10 Q Do you share any interests?

11 A Yes. We're both gun collectors.

12 Q Have you purchased guns from Mr. Kwan?

13 A Yes. I've purchased several.

14 Q Over all these years do you know approximately how many  
15 guns you've purchased?

16 A Probably at least six.

17 Q And were they from his collection or --

18 A No. They were guns that I had purchased from other  
19 dealers and he transferred them for me.

20 Q And does he work for you?

21 A He's in the same Army reserve unit that I work for.

22 Q How long has he been in the same --

23 A He was in the unit for six years and he transferred to  
24 another unit. Then he came back last fall. I think December  
25 19 was his transfer date.

1 Q And are you aware of the problems he's had with his  
2 other --

3 A I'm aware of some of the problems, yes. Particularly the  
4 deal where they didn't want to pay him for five days' work  
5 while he was sitting in my office doing the work.

6 Q The complaint about him not doing the work you were the  
7 person --

8 A I was the person that signed the paperwork that said he  
9 did the work. I was there when he did the work.

10 Q You've known him a long time.

11 Do you know what his reputation in the community is for  
12 truthfulness and honesty?

13 A Albert has a reputation for reliability honesty, and I  
14 have never had a problem or reason to question his integrity.

15 MR. CONTE: Nothing further.

16 MR. REDKEY: No cross.

17 THE COURT: Thank you. You may step down. Have a  
18 nice day.

19 THE CLERK: Step forward, please.

20 WILFRED LAM

21 Thereupon, after being duly sworn testified as follows:

22 THE CLERK: For the record, will you state your full  
23 name, please and spell your last name.

24 A Wilfred K. Lam. Spelled L-A-M.

25 DIRECT EXAMINATION

1 BY MR. CONTE:

2 Q How old are you, Mr. Lam?

3 A Pardon?

4 Q How old are you?

5 A 52.

6 Q And where do you live?

7 A Redmond.

8 Q And are you employed?

9 A Yes.

10 Q Where do you work?

11 A I work for Farmer's insurance.

12 Q How long have you worked there?

13 A Since early this year.

14 Q Where did you work before that?

15 A Seattle King County Health Department.

16 Q How long did you work there?

17 A 28 years.

18 Q You retired from there?

19 A Yes.

20 Q Do you know this gentleman sitting here?

21 A Yes, I do.

22 Q Would you tell the ladies and gentlemen of the jury your  
23 relationship with him?

24 A We've been close friends for the last 11 years.

25 Q Do you share any interest in common?

- 1 A I'm sorry?
- 2 Q Do you share any interest in common?
- 3 A Yes. Gun collecting.
- 4 Q Have you seen some of the weapons in his collection?
- 5 A Yes, I do.
- 6 Q And does he collect anything else besides guns?
- 7 A Binoculars.
- 8 Q Anything else?
- 9 A Books.
- 10 Q Have you seen all of them?
- 11 A I don't think so. Probably most of them.
- 12 Q Have you ever seen an M14?
- 13 A Yes, I did.
- 14 Q Let me show you what's been marked as government's Exhibit
- 15 No. 1. Have you ever seen anything like that?
- 16 A I believe I seen this before.
- 17 Q Where did you see it?
- 18 A In his basement.
- 19 Q What did you believe it to be?
- 20 A At the time it was an M14 with a scope on it.
- 21 Q Do you know whether it was a semi or full automatic?
- 22 A I didn't really that pay attention to it.
- 23 Q Did he ever tell you whether it was semi or full
- 24 automatic?
- 25 A No.

1 Q What type of scope did he have on it?

2 A My interest in that gun at the time is mainly because of  
3 the scope. Not the gun. The scope was a loophole M-1 with a  
4 huge adjustment on the top and the side. Very few people own  
5 it. First of all, it's a very expensive. They were built  
6 for the United States government contract back in the late  
7 '80s for the M 24 project. My sole interest right from the  
8 beginning because I noticed that scope. It's very unique  
9 looking. That's why I picked it up and mainly discuss with  
10 Albert about the scope.

11 Q All right. You say you were close friends with Albert?

12 A Yes.

13 Q Do you know what his reputation in the community is for  
14 truthfulness and honesty?

15 A Very truthful. Very honest. Man of integrity, a patriot.

16 THE COURT: Cross of the witness?

17 CROSS-EXAMINATION

18 BY MR. REDKEY:

19 Q When did you see this gun that you were shown? Do you  
20 recall when you were shown that at Mr. Kwan's residence?

21 A Sometime late '90s. Very late '90s.

22 MR. REDKEY: Thank you.

23 THE COURT: Further questions?

24 MR. REDKEY: No.

25 THE COURT: Anything further?

1 MR. CONTE: No.

2 THE COURT: Thank you, sir. You may step down. Have  
3 a nice day.

4 MR. CONTE: I think I am about ready to rest.

5 THE COURT: This would be a time to go through them  
6 then.

7 Do you have any exhibits you have questions about?

8 MR. CONTE: Your Honor, my records indicate that  
9 Exhibit No. 19 was not admitted. And I would move for its  
10 admission.

11 THE COURT: Are you saying government 19 or your  
12 A-19?

13 MR. CONTE: A-19, I'm sorry.

14 MR. REDKEY: I have no objection.

15 THE COURT: All right. A-19 will be admitted. For  
16 the benefit of myself and the jury, refresh our memory on  
17 what A-19 is.

18 (Exhibit No. A-19 admitted.)

19 MR. CONTE: That's the NFTR -- I can't remember the  
20 abbreviation. The record from the ATF that the second -- the  
21 VP70M is a firearm that was registered to Mr. Kwan.

22 I'm sorry, 11 -- 17 is the NFTR request.

23 THE COURT: You're saying 19 -- are you saying 11 or  
24 19?

25 MR. CONTE: 17.

1 THE COURT: Did you want A-19 in?

2 MR. CONTE: Yes.

3 THE COURT: What is A-19?

4 MR. CONTE: Wait a minute.

5 THE COURT: Ladies and gentlemen, let's take a break  
6 and let him figure out the exhibit so that we get them  
7 properly identified and in evidence if it's appropriate. I'm  
8 going to let you take a little early recess this morning.  
9 We'll be in recess for approximately 15 minutes.

10

11 (Court in recess.)

12 THE COURT: Have you sorted out your exhibits?

13 I understand we've admitted an exhibit into evidence.  
14 We should withdraw that.

15 MR. CONTE: Withdrawal that.

16 We would move admission of defendant's Exhibit No. A-10.

17 THE COURT: Let's get the jury and we'll do it in  
18 front of them.

19 MR. REDKEY: I'll be offering government's Exhibit  
20 No. 2 as well.

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

22 THE COURT: Ladies and gentlemen of the jury before  
23 you left we admitted Exhibit No. A-19. Now we have  
24 discovered there is no such exhibit. So that has been  
25 withdrawn and we now have sort through what exhibit we need

1 to address and we'll do that now. Go ahead, Counsel.

2 MR. CONTE: Your Honor, at this time we would move  
3 defendant's Exhibit No. A-10, the letter from Sterling Nixon  
4 & Blakeley identified by Mr. Galbraith, known as the shoe  
5 string letter into evidence.

6 THE COURT: Any objection?

7 MR. REDKEY: No.

8 MR. CONTE: We would rest.

9 THE COURT: Does the government have a rebuttal  
10 witnesses to call?

11 MR. REDKEY: We do.

12 THE COURT: You may proceed.

13 MR. REDKEY: At this time I would like to offer  
14 government's Exhibit No. 2, which is the other M14  
15 machi negun.

16 MR. CONTE: No objection.

17 THE COURT: It will be admitted.

18 MR. REDKEY: We call Richard Vasquez.

19 RICHARD VASQUEZ

20 Thereupon, after being duly sworn testified as follows:

21 THE CLERK: Step forward, please.

22 For the record state your full name and spell your last  
23 name.

24 A Richard Vasquez. Last name is V-A-S-Q-U-E-Z.

25 THE COURT: You may inquire.



## DIRECT EXAMINATION

1

2 BY MR. REDKEY:

3 Q Good morning, sir.

4 How are you employed?

5 A I'm employed by the Bureau of Alcohol Firearms and  
6 Explosives as a firearms enforcement officer.

7 Q Do you have a particular title there?

8 A Currently I'm the acting chief of the firearms technology  
9 branch. But my official title is assistant chief.

10 Q Is that located in West Virginia?

11 A Yes, sir. Martinsburg, West Virginia.

12 Q I take it you work with Adam Galbraith?

13 A Yes, sir. I supervise him.

14 Q Can you tell the jury briefly your training and background  
15 or your occupation.16 A I have a 30-year Marine Corps career. Excuse me, 21-year  
17 Marine Corps career. Basic military specialty was small  
18 arms. And while I was in the Marine Corps I held a variety  
19 of positions. I rose to the rank of master sergeant where I  
20 was the chief instructor of the position weapons shop.  
21 Served on embassy duty. Served at the American embassy in  
22 Moscow, Russia; Kingsbro, Jamaica. Served Marine Corps in  
23 security forces in Naples, Italy. I'm distinguished high  
24 power shooter. I've had my own federal firearms license.  
25 Had my own custom gun repair business.

1           After leaving the Marine Corps, I worked for Diplomatic  
2 Security Service as a firearms instructor and weapons  
3 instructor. I trained special agents of diplomatic security  
4 service in every aspect of firearms training to include  
5 rescuing, secretary of state under live fire training. While  
6 I've been with ATF I received numerous hours of training in  
7 federal regulation in firearms law Title 18, Title 26.

8           I've trained probation weapons enforcement in Canada.  
9 I've trained the AG's office in Mexico City in firearms  
10 identification. And I currently assist along with my job as  
11 the assistant branch chief, I assist the special agents in  
12 developing firearms training to train their special agents.

13 Q   Are you, as the acting supervisor of the custodian of  
14 records, there at the FTB?

15 A   Yes, I am.

16 Q   Have you testified as an expert witness before in  
17 connection with your work?

18 A   Yes, sir, I have.

19 Q   Can you explain, please?

20 A   I've testified in federal court and state court on  
21 firearms identification and classification under the Title 18  
22 and Title 26.

23 Q   How many times?

24 A   24 times.

25 Q   Have you ever testified as an expert in cases involving

1 M14 ri fl es?

2 A Yes, si r, I have.

3 Q How many occasi ons?

4 A One occasi on.

5 Q Have you consul ted on any others?

6 A Yes, si r, I have.

7 Q How many?

8 A Without knowing off the top of my head, I would say less  
9 than ten.

10 Q Have any of those fi rearms involved in those cases were  
11 they functi on as fully automatic ri fl es?

12 A Yes, si r.

13 Q And in this parti cular case, did you oversee Adam  
14 Galbraith' s work wi th respect to the M14 in this case?

15 A Yes, si r, I did.

16 Q Did you parti cipate in any way?

17 A I didn' t parti cipate in the actual work. But I assigned a  
18 case to him and I checked on it for lack of a better word as  
19 he was progressi ng wi th it.

20 Q As he was actual ly doi ng it?

21 A Yes, si r.

22 Q Did you review hi s report afterwards?

23 A Yes, si r, I did.

24 Q Did you concur wi th hi s techni que procedure --

25 MR. CONTE: I am going to object. I don' t know what

1 we're rebutting.

2 THE COURT: Sustained. I don't think that's proper.

3 You called your expert. He's testified on that  
4 subject.

5 BY MR. REDKEY:

6 Q Were you present in court during the testimony of Len  
7 Savage?

8 A Yes, sir, I was.

9 Q Are you familiar with him and with his work?

10 A Yes, sir, I am.

11 Q How so?

12 A Mr. Savage writes in to us for information and he sends  
13 items in for us to evaluate and classify.

14 Q Is he a gun manufacturer?

15 A Yes, he is.

16 Q He mentioned that this in his testimony that with respect  
17 to the M14 -- I think he said thousands of those were sold  
18 through the DCM.

19 What is the DCM? What does it do?

20 A The DCM, the title is Director of Civilian Marksmanship.  
21 And that was a program developed by the Army to enhance  
22 firearms training and firearms marksmanship in the United  
23 States. And it's an older program. It no longer exists.

24 And there were certain firearms that were released to the  
25 public and to members of the NRA through the DCM.

1 Q Did that include M14?

2 A No, it didn't.

3 Q To your knowledge were any M14s sold through the DCM?

4 A To my knowledge they were never sold.

5 Q Did any of them get to the public through the DCM?

6 A There were some that temporary loan to the public. When  
7 the M1 Garand, which was predecessor to the M14, that was a  
8 semi automatic rifle, and it was used for these competition  
9 programs. When it became obsolete and the M14 became the  
10 weapon of issue to the military forces the DCM decided to  
11 attempt to start loaning the M14 rifles just as they did loan  
12 the M1 Garands.

13 However, the M14 was a machinegun. So they loaned it to  
14 National Guard units, reserve units, and state-affiliated  
15 teams. So if a team, a shooting team, was affiliated through  
16 the state association and the NRA they were actually being  
17 loaned M14s. When that came to light the Army was told they  
18 had to recall these M14s, and they recalled back to the Army.

19 Q Why were they recalled?

20 A Because they were machineguns.

21 Q Have they been modified before they were sent through the  
22 DCM?

23 A Yes, sir, they were.

24 Q How did they develop?

25 A They call it a five-point weld. There was five points of

1 weld that were added to the selector -- excuse me the  
2 connector assembly. The selector shaft, selector plug and  
3 the selector sear were all welded to the receiver.

4 Q That's called a five-point weld?

5 A Correct.

6 Q You're familiar with the Exhibit No. 1 in this case?

7 A Yes, sir, I am.

8 Q How many welds on that?

9 A As I recall there was one weld.

10 MR. CONTE: I'll object. This is not rebuttal.

11 THE COURT: I'm sorry?

12 MR. CONTE: This is not rebuttal. I don't know what  
13 we're rebutting.

14 THE COURT: You want to clarify what the rebuttal --

15 MR. REDKEY: Mr. Savage said this was not a readily  
16 restorable firearm. Thousands of them were released to  
17 public. It's simply not true.

18 THE COURT: He's made that point. According to his  
19 testimony, they were loaned out and recalled apparently. But  
20 now we're getting into whether or not this was a five-point  
21 weld or some other kind of weld was on the rifle that the  
22 defendant had. Why don't you --

23 MR. REDKEY: Maybe --

24 THE COURT: I'll sustain the objection to the last  
25 question.

1 BY MR. REDKEY:

2 Q Why were those firearms recalled?

3 A Because the Army classified them as machineguns and ATF  
4 classified them as machineguns.

5 Q Why?

6 A They had the frame or receiver of a machinegun, and they  
7 were readily restorable to firearm automatically.

8 Q Mr. Savage also mentioned that ATF reclassifies firearms,  
9 in perhaps confusing way for the public or people like  
10 Mr. Savage.

11 Can you address that point?

12 A Yes, sir, I can.

13 Q Go ahead.

14 A What we do as we classify firearms under either the Gun  
15 Control Act, which is typical firearms, pistols, rifles,  
16 shotguns or the national firearms, machinegun silencers and  
17 firearms that are regulated. We have kind of an unwritten  
18 policy for manufacturers.

19 Manufacturers want to manufacture variance of machineguns.  
20 And I will use the M14 as an example because there is a  
21 semi automatic variant of an M14. If a manufacturer wanted to  
22 send that to us for evaluation and he was not sure that he  
23 had made it correctly, if he was not sure that he had put  
24 sufficient design features in that firearm or would only be  
25 semi automatic or it may be machinegun, he has the opportunity

1 to mail it in to us and we will render a classification.

2 If we are not uncomfortable with the level of work that he  
3 has done on his firearm, we will allow him to what we call a  
4 Form 2. We say, okay, we're not sure you're exactly where  
5 you need to be. This thing may be a machinegun. You haven't  
6 got to the point where it's a semiautomatic. We allow him to  
7 put it on a Form 2, and we mail the firearm back to him with  
8 the advice on what he should do to remove more features that  
9 would be considered a machinegun.

10 Once he does that, he sends it back to us, sometimes two  
11 or three occasions. He will send it back to us and we're  
12 assisting them with their design. Once it reaches the point  
13 where we consider it a semiautomatic firearm only, we allow  
14 them to remove it from the provisions of the NFA. We say  
15 it's no longer a machinegun. That is only a courtesy we do  
16 for manufacturers.

17 That is not a classifying a firearm today as a machinegun  
18 and classifying that firearm tomorrow as not being a  
19 machinegun. We do not do this for the general public. No  
20 one else out in the public could try to do this. We only do  
21 it for manufacturers as a courtesy. It is an unwritten  
22 regulation. It is an unwritten policy.

23 There have been times without a doubt that ATF has  
24 classified things as not being a machinegun, and then  
25 realized that they actually were a machinegun. And then



1 we've reclassified them.

2 Q Finally, I think Mr. Savage described -- characterized his  
3 relationship with the FTB as professional. Would you agree?

4 A No, sir, I would not.

5 Q How would you describe it?

6 A From our aspect it is very professional. We consider  
7 ourselves public servants. We are government officials.  
8 Anybody calls into our office yes, sir/no, sir to light.  
9 From Mr. Savage's perspective his relationship with us is  
10 antagonistic.

11 MR. REDKEY: Thank you. Nothing further.

12 THE COURT: Cross of the witness?

13 CROSS-EXAMINATION

14 BY MR. CONTE:

15 Q Mr. Savage has a business, does he not?

16 A Yes, sir, he does.

17 Q And he depends on ATF to provide him advice, correct?

18 A Yes, sir, he does.

19 Q Some of -- sometimes that takes a long time?

20 A Yes, sir, it does.

21 Q And if it's a long time he's losing business; isn't that  
22 correct?

23 A Sir, I guess that would be correct.

24 Q Did Mr. Savage ever testify that this particular M14 was a  
25 DCM rifle?

1 A I did not hear that in the testimony.

2 Q And there are M14s out and available. He's already  
3 testified in another case about another --

4 A Could you repeat that?

5 Q There are other M14s out in commerce in this country; is  
6 that correct?

7 A There are a very limited amount of transferable M14s.

8 Q Well, you say "transferable".

9 Are there other M14s out there that are not on the NFR --

10 A Are you asking me if there are not any other M14s out  
11 there that are not registered?

12 Q Yes.

13 A Yes, sir. And they would be contraband machi neguns.

14 Q But there are some out there?

15 A Yes, sir.

16 Q And somebody may walk into a gun store, buy one and not  
17 know it's fully the automatic?

18 MR. REDKEY: Calls for speculation.

19 THE COURT: Overruled. You may answer.

20 A Say that again.

21 BY MR. CONTE:

22 Q Let's say some gun dealer has one of these M14s and  
23 somebody like one of these jurors walks in off the street and  
24 says I like that gun, sell to me, and the dealer sells them  
25 the gun. They don't know it's fully automatic. Can that

1 happen?

2 A I guess you could speculate that someone could go into a  
3 firearm store and not know what he was buying and would just  
4 say I want to buy that firearm, don't tell me what it is. I  
5 don't know want to know what it is. I just think it looks  
6 good on your shelf. I want to buy it. You can speculate  
7 about that I guess.

8 Q Do you have any idea how many M14s may be out there?

9 A How many contraband M14s?

10 No, sir, absolutely not.

11 Q Has your office been involved in other M14 cases other  
12 than the one you testified?

13 A Yes, sir, we have.

14 Q Approximately how many?

15 A I know for myself it's somewhere less than 10.

16 Q You talked about an unwritten policy for manufacturers,  
17 correct?

18 A Yes.

19 Q Why is it unwritten?

20 A It is unwritten -- it is a policy I don't agree with, but  
21 my future supervisor -- my past supervisor implemented this  
22 to assist the manufacturers. It is a policy that he wanted  
23 to help the industry because we regulate the industry. That  
24 is part of our job -- is to attempt to regulate the industry.  
25 So to, I guess, start a good relationship with the public,

1 with the manufacturers, my previous boss implemented this  
2 policy.

3 Q Do you have any other unwritten policies?

4 A Not that I'm aware.

5 Q You testified that you have -- FTB has classified  
6 machineguns and then reclassified them; is that correct?

7 A We have classified firearms that were not machineguns and  
8 then reclassified them as machineguns.

9 Q So I mean the FTB is human, they make mistakes, right?

10 A Yes, sir, we do.

11 MR. CONTE: Nothing further.

12 THE COURT: Anything further of the witness?

13 MR. REDKEY: No, Your Honor.

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

15 THE CLERK: Step forward, please.

16 DELANEY PUGHE

17 Thereupon, after being duly sworn testified as follows:

18 THE CLERK: For the record, state your full name,  
19 please and spell your last name.

20 A My name is Delaney Pughe, P-U-G-H-E.

21 THE CLERK: Can you spell your first name as well?

22 A D-E-L-A-N-E-Y.

23 DIRECT EXAMINATION

24 BY MR. REDKEY:

25 Q Good morning, sir.

1 A Good morning.

2 Q How are you employed?

3 A I'm employed in the Army reserves as lieutenant  
4 intelligence office company, commander of the 373rd military  
5 intelligence battalion in Tumwater, Washington.

6 Q What do when you're not a reservist?

7 A In my civilian job I'm a police officer with the City of  
8 Springfield, Oregon Police Department.

9 Q How long have you been so?

10 A As a police officer? Seven years.

11 Q And can you describe what unit you're in within the  
12 reserves?

13 A I'm in the 373rd military intelligence battalion.

14 Q And you are a first lieutenant, are you?

15 A I'm a first lieutenant, correct.

16 Q Can you describe your duties with the battalion?

17 A In a battalion I served as a company commander of company  
18 B, bravo company.

19 Q How long have you been the commander there?

20 A For just under two years. In August it will be two years.

21 Q Do you know Albert Kwan through your work in the reserves?

22 A Yes. I know Mr. Kwan.

23 Q Has he been in your unit?

24 A He has been in the my unit, yes.

25 Q During what period time; do you know?

1 A Approximately the past 18 months. He was recently  
2 transferred out to another unit about -- I don't have the  
3 transfer orders in front of me. Approximately two to three  
4 months ago.

5 Q What was his role been in your unit?

6 A His role in my company structure was the -- he was listed  
7 as a platoon sergeant.

8 Q Did he report to you?

9 A Yes, I was his commander.

10 Q Based on your association with him in the reserve unit, do  
11 you have an opinion regarding his truthfulness?

12 A Yes, I do.

13 Q What is that opinion?

14 A That he is not a truthful person.

15 Q Are you aware of his reputation in your unit and in the  
16 Army for truthfulness?

17 A Yes.

18 Q What is that reputation?

19 A That reputation would be the same as well. He's not a  
20 truthful person.

21 MR. REDKEY: Thank you. Nothing further.

22 THE COURT: Cross of the witness?

23 CROSS-EXAMINATION

24 BY MR. CONTE:

25 Q You know Mr. Kwan filed a congressional complaint about

1 some pay he didn't receive?

2 A Yes, sir, he did.

3 Q And you were the person that stopped him from being paid;  
4 is that correct?

5 A That's correct.

6 Q And has the congressman's office followed up with your  
7 organization for that?

8 A As far as I know I haven't heard anything.

9 Q Have you ever contacted Sergeant Vanscoy, the person who  
10 certified Mr. Kwan worked those hours?

11 A I'm not familiar with that name.

12 Q He said he worked those hours somewhere other than the  
13 373rd military intelligence battalion; is that correct?

14 A Can you repeat that question?

15 Q The work that he hasn't been paid for was performed  
16 somewhere other than the 373rd military intelligence  
17 battalion; is that correct?

18 A That's what Mr. Kwan has told me, yes.

19 Q And you still haven't bothered to check with the other  
20 installation to find out whether that work has been done?

21 A Sir, it is -- we have attempted to contact. I personally,  
22 as well as my battalion staff and my boss, have attempted to  
23 contact Mr. Kwan on numerous occasion to have him verify his  
24 pay. And that has not occurred.

25 Q You haven't heard anything from Sergeant Vanscoy?

1 A I'm not familiar with that name.

2 MR. CONTE: And I have nothing further.

3 THE COURT: Anything further?

4 REDIRECT EXAMINATION

5 BY MR. REDKEY:

6 Q What, if any, role did that pay dispute have in your  
7 opinion or your testimony about Mr. Kwan's reputation?

8 A That does not change my opinion of his reputation.

9 MR. REDKEY: Thank you.

10 THE COURT: Anything further?

11 MR. CONTE: No, Your Honor.

12 THE COURT: You may step down. Have a nice day.

13 THE WITNESS: Thank you, Your Honor.

14 MR. REDKEY: Nothing further. No further witnesses.

15 THE COURT: Government then rests.

16 Ladies and gentlemen of the jury, there are some  
17 matters I need to discuss with the lawyers before we provide  
18 you with your instructions and closing arguments. That  
19 probably is going to take 10 or 15 minutes.

20 So what I propose we do is send them to the jury room.  
21 We'll do our business. The clerk will keep you advised. But  
22 I think realistically in 15 to 20 or 30 minutes we'll be in a  
23 position where we can bring you back out. I'll instruct you  
24 observe the law and then we'll take our noon recess. Might  
25 not be exactly at noon. It might be a little earlier. In



1 any event, we will take a break for lunch so we don't  
2 interrupt anybody's closing arguments. Then we'll come back  
3 after lunch. We'll hear the closing arguments and you can  
4 begin your deliberations in the case.

5 So I would ask you to return to the jury room and await  
6 for further instructions from the clerk.

7 (Jury exits the courtroom.)

8 THE COURT: Please be seated. We need to have formal  
9 exceptions taken to the Court's proposed instructions. I  
10 know that I think both sides filed some papers last night.  
11 I've reviewed those papers. It would be present intent not  
12 to make changes to the proposed instructions that were handed  
13 down this morning when you came to court.

14 I would like to hear from the government. Formal  
15 exceptions to the Court's proposed instructions.

16 MR. REDKEY: We have none and accept them as  
17 proposed, Your Honor.

18 THE COURT: Let me say there is one change we have  
19 made. That is that one of the instructions -- I think it may  
20 be Instruction No. 4 had two alternatives. Obviously, the  
21 defendant has testified and so we have -- we have -- it was  
22 Instruction No. 9 right? There were two alternatives. We're  
23 going to make the alternative instruction the instruction on  
24 that issue, which reads in its entirety: The defendant has  
25 testified. You should treat this testimony just as you would

1 treat the testimony of any other witness.

2 And the original Instruction No. 9, which talks about the  
3 Constitutional right not to testify is being removed from the  
4 packet.

5 All right, I'll hear from the defense.

6 MR. CONTE: First order of business, Your Honor, is  
7 the entrapment by estoppel instruction which I requested in  
8 my original package. I didn't ask for -- well, I filed it  
9 but it wasn't -- I think -- until Mr. Kwan testified  
10 obviously we weren't entitled to it.

11 THE COURT: Let me see if I can find that.

12 I'm sorry, Counsel. But I don't seem to have it.

13 MR. CONTE: I can provide my copy.

14 THE COURT: Just a minute. You can work without your  
15 copy?

16 MR. CONTE: I can certainly try. I did review it  
17 this morning.

18 THE COURT: All right go ahead.

19 MR. CONTE: The instruction clause when somebody is  
20 told that their conduct would be legal, and they rely on that  
21 information to their detriment. Mr. Kwan testified that he  
22 purchased the stock off Mr. Allen, who is an FFL.

23 And the United States versus Tallmadge, T-A-L-L-M-A-D-G-E,  
24 case, which specifically on point says if you have received  
25 information from a federal firearms licensee that the

1 purchase or what you're doing with the firearm is legal, then  
2 you are entitled to the entrapment by estoppel instruction.  
3 He bought it from an FFL. FFL told him it would be legal  
4 since he had the VP70M and he purchased it to his detriment.

5 THE COURT: I haven't read the case and will do so  
6 before I rule on the issue.

7 What is the government's position?

8 MR. REDKEY: That the instruction is not appropriate  
9 under the circumstances, Your Honor. The witness's testimony  
10 was he bought the shoulder stock before he bought the  
11 firearm. And it would be absolutely true that he did not  
12 need to register that shoulder stock at the time he bought  
13 it, when he combined that firearm itself then it became a  
14 registered weapon. It's irrelevant to whether -- when that  
15 gun was seized it was a firearm.

16 MR. CONTE: I'm a little confused. He bought the  
17 second stock after he owned the first VP70M. I think --

18 THE COURT: So he owned the first VP70M and the  
19 stock, and then he bought a second stock. Then he bought the  
20 stock pistol --

21 MR. CONTE: I'm sorry --

22 THE COURT: I think he bought the second stock  
23 separate from the second pistol.

24 MR. CONTE: Correct.

25 THE COURT: My recollection is he couldn't

1 remember -- perhaps my notes are wrong -- whether he bought  
2 the second stock first or whether he bought the VP --

3 MR. CONTE: I think he corrected himself and said he  
4 bought the second stock before he bought the VP70Z pistol.

5 MR. REDKEY: That's my understanding as well.

6 THE COURT: If that's the case, the second stock,  
7 when he buys it he's got the VP70M and stock. When he buys  
8 the second stock there is nothing that needs to be registered  
9 on the second stock, is there?

10 MR. CONTE: Correct.

11 THE COURT: So what is the testimony with respect to  
12 when he buys the second pistol, the VP70Z? Did he testify  
13 about that? It seems if he's relying on somebody or some  
14 authority and he was told something, it would be at the time  
15 of that sale; would it not?

16 MR. CONTE: No. It would be even more an argument  
17 that he bought the second stock for the VP70M pistol. The  
18 dealer is telling him he can have two stocks.

19 THE COURT: I don't think there is any -- the  
20 government doesn't even contend the buying of the second  
21 stock when he didn't have the second pistol is inappropriate.

22 I'm not understanding why it is that I would give this --  
23 is there any testimony or evidence in the record that relates  
24 to what was said to him when he bought the VP70Z after he was  
25 already in the possession of VP70M and the stock for it and

1 the second stock?

2 MR. CONTE: No. No testimony.

3 THE COURT: Well, I'm not sure that this -- is  
4 there -- I don't think there is any issue that the buying of  
5 the second stock all by itself was -- had to be registered or  
6 anything else?

7 Does the government intend to make sure an argument.

8 MR. REDKEY: No, Your Honor. The issue is whether  
9 when he combined two, put them together they became a  
10 registrable weapon. There was no testimony he relied on  
11 anybody's advice about that. It would be a confusing and  
12 irrelevant instruction.

13 THE COURT: Unless there is some evidence in the case  
14 that's been presented that relates to his purchase of the  
15 last pistol, after he's got two stocks and the first pistol I  
16 don't think this entrapment issue is in the case.

17 All right, that will be my ruling. I mean I haven't heard  
18 any response that would suggest otherwise. Do you have other  
19 objections to the Court's instruction, either the  
20 instructions that I've proposed or any that I failed to give?  
21 Let's start with my instructions first. Make your formal  
22 exceptions.

23 MR. CONTE: I still have the objection on the record  
24 from yesterday; is that correct?

25 THE COURT: You do. But I think it wasn't intended

1 that they be the formal exceptions. That colloquy is there  
2 and you have a record of it. But this is an opportunity to  
3 revisit. Sometimes I make changes. So tell me what your  
4 objections are.

5 MR. CONTE: All right. Number 14, the first sentence  
6 "is designed to shoot" we think is a redundant situation  
7 given the facts of case. It's a weapon which can be readily  
8 restored. It's not a weapon which is designed to shoot. And  
9 that goes right along with the last sentence of the  
10 instruction which terms also includes the receiver of any  
11 machi negun.

12 The issue here is whether he has a gun that is readily  
13 restorable and not whether he has a frame or receiver. All  
14 the frame and receiver cases are just that -- cases involving  
15 solely the receiver of a firearm. And that's my reading on  
16 all the cases that I can recall reading when it's a receiver  
17 only. They're talking only about a receiver, no barrel,  
18 nothing attached. Only thing that makes it a machi negun is  
19 that receiver. You can go out and purchase any part to fit  
20 that receiver and make a machi negun.

21 That's not what we have here. We have an item that is --  
22 that the government alleges that is readily restorable. And  
23 because of that we think it's improper to instruct this jury  
24 on weapons that are designed to shoot or weapons that are  
25 receivers only, because they're -- it assumes a fact that the

1 government isn't supposed to have to prove in this case.  
2 They have to prove that it's readily restorable. They don't  
3 have to -- it's not a receiver because it's been changed.

4 And the law says -- I think all those cases say when it's  
5 a frame or receiver it's only an item where you can add the  
6 pieces to it and make a machin-gun. That's not what we have  
7 here. We have a weapon that is readily restorable and  
8 readily restorable only.

9 THE COURT: The court will not make any changes to  
10 the instruction as we tendered it. Statutory definition  
11 contained in 26 USC Section 5845(b). And I'll leave the  
12 instruction as it is. Your exception is noted for the  
13 record.

14 MR. CONTE: Instruction No. 15, the term "readily  
15 restore to shoot" means that only a simple mechanical  
16 operation is required to restore the weapon through a  
17 capacity of fully automatic fire is the requested instruction  
18 that is -- the instruction I requested, that came from the  
19 congressional record -- comes from the congressional record  
20 and we believe that is the proper definition of "readily  
21 restorable."

22 THE COURT: Well, this instruction and the language  
23 comes from the Ninth Circuit case we talked about yesterday.  
24 And I'm satisfied that it's consistent with United States  
25 versus TRW Rifle, a 2006 case found at 447 F.3d 686. I'll

1 make no change to Instruction No. 15. Your exception is  
2 noted for the record.

3 MR. CONTE: Instruction No. 18. We request that a  
4 fourth sentence, "That the defendant assembled a VP70 into a  
5 short-barrelled rifle." We believe that United States versus  
6 Thompson Center Arms, plus the letter to Mr. Foutch from the  
7 FTB branch which says that they have to be assembled is --  
8 are both overwhelming evidence that the supreme court and the  
9 FTB believe these have to be assembled to be a  
10 short-barrelled rifle.

11 THE COURT: What is the letter exhibit number?

12 MR. REDKEY: The Foutch letter, 11.

13 THE COURT: Government 11 or A --

14 MR. REDKEY: Government 11.

15 THE COURT: That's in evidence?

16 MR. REDKEY: Yes.

17 THE COURT: Now, as I understand it, we discussed  
18 this yesterday, but he buys the first pistol and stock. He  
19 buys the second stock at a separate time, and he buys the  
20 final pistol which is the VP70Z.

21 And then at some point the one he's registered which is  
22 the VP70M and one of the stocks is removed by the government.  
23 And he's in possession as of the date of the search of only  
24 the one pistol and the one stock.

25 I do believe for purposes that the government, as I



1 understand it, has very much conceded they need to return  
2 that to him so that for purposes of determining whether that  
3 Thompson Center case is applicable or not I think it is as if  
4 he had both pistols and both stocks in his possession.

5 Giving him the benefit of the doubt, I think he's got one  
6 registered pistol and stock and one that is not registered.  
7 And I don't think the Thompson Center case requires a  
8 different result. If I were to add that I would really be  
9 directing a verdict. Because the testimony clearly is he is  
10 there wasn't -- it wasn't put together in the form of a  
11 short-barrelled rifle. It was the pistol was in the holster.

12 So that's a pure legal issue I think. I'm not going to  
13 give the fourth element that you've requested. Your  
14 exception is noted.

15 MR. CONTE: The defendant proposed --

16 THE COURT: I'm sorry?

17 MR. CONTE: The defendant has already proposed two  
18 theories of the case instructions.

19 THE COURT: You want to refer to them for the record  
20 to make the record?

21 MR. CONTE: Count 1, if you find that the defendant  
22 purchased the M14 and was incapable of firing a full  
23 automatic and he did not realize it could be readily restored  
24 to full automatic, he shall find --

25 THE COURT: Where am I going to find that? Is that

1 your recent filing or in the original filing?

2 MR. CONTE: That's the defendant's objections to the  
3 Court's proposed instruction which was filed yesterday.  
4 Document number 121.

5 THE COURT: All right. I think it was docket 129,  
6 page 5 of 7, your theory of case instruction dealing with  
7 Count 1.

8 MR. CONTE: Yes. And page 6 of 7 was Count 2.

9 THE COURT: All right. Let me read it now again.  
10 Well, let's hear from the government on that. The Smith  
11 cases have been cited by defense. It's their theory of the  
12 case. Smith one particularly, which was a Ninth Circuit  
13 case, suggests if I don't give it, it would be error.

14 What's the government's position?

15 MR. REDKEY: Your Honor, I'm sorry to say I don't  
16 think I have 129.

17 THE COURT: 121. It was a packet of about seven  
18 pages he filed in -- it's captioned Defendant's Objections to  
19 the Court's Proposed Instructions.

20 MR. REDKEY: Your Honor, I think the proposed -- the  
21 Court's proposed instruction on Count 1 allows the defendant  
22 to argue his case on that very well. We have to prove he  
23 knew of the feature of the firearm which made it a  
24 machin gun, which means that he had to know either that it  
25 was -- the receiver was a firearm, that is an NFA firearm, or

1 that the firearm was capable of being readily restored.

2 THE COURT: What I hear you saying is you don't  
3 disagree with the statement of the law that he has in his  
4 proposed instruction on the theory of the case?

5 MR. REDKEY: As far as it goes, I suppose that is  
6 correct, but it doesn't speak to the frame or receiver. But  
7 I guess when I'm saying is that the Court's instruction fully  
8 allows him to argue that to the jury and say the government  
9 has not proved that he knew it was -- of the features that  
10 made it readily restorable.

11 And this does not talk about features at all as the law  
12 does. It talks about his knowledge of -- incapable of being  
13 fired on full auto. I think it's confusing. The Ninth  
14 Circuit pattern instruction is clear, it's concise, and it  
15 allows him to argue the theory of his case.

16 THE COURT: Well, the Smith case involved possession  
17 of a machinegun. And at trial Smith testified about  
18 attending the gun show and buying the weapon and learning  
19 certain information, and that he didn't know until he fired  
20 it that apparently it was not a semi automatic weapon.

21 And the Court said that the trial court had to give the  
22 instruction. Got off on a harmless error on the first one  
23 but sent it back. And then on Smith two reversed because  
24 they said it was law of the case. I think I've got to give  
25 this theory of the case instruction.

1 Do we have any objection if we made it a part of  
2 Instruction No. 16, which is the "if an act is done  
3 knowingly" and just put a second paragraph there?

4 MR. CONTE: Court's indulgence.

5 THE COURT: I would make a couple of changes to your  
6 proposed instruction. I think incapable is spelled wrong.  
7 You need a T after NO on line six. So "he did not realize".  
8 Maybe it more appropriately goes under the restored 15  
9 because it deals with restorable. But I'm wishing if  
10 possible to hook it onto one of the instructions so we don't  
11 have to retype all the instructions just to renumber them.

12 MR. REDKEY: That would be fine.

13 THE COURT: 15. Added as a separate paragraph to 15?

14 MR. REDKEY: Yes.

15 THE COURT: I'll do that. I know you've got one  
16 other proposed instruction. The second count. Let me see if  
17 I can find it.

18 Is it in your objections?

19 MR. CONTE: Yes, next page.

20 THE COURT: I understand it was the next page. It's  
21 been ripped out. It seems to me I have -- now it's page 6 of  
22 7 of docket number 121. It seems to me that this -- this is  
23 an argument and repeats what already is in the instruction  
24 dealing with Count 2.

25 What does it add in terms of theory that is not already in

1 the Court's instructions?

2 MR. CONTE: Well, it consolidates all the  
3 instructions -- it's the defendant's theory of the case, and  
4 it's the defendant's theory and it's -- I think it summarizes  
5 what the Court already is instructing and therefore I think  
6 I'm entitled to it.

7 THE COURT: I've ruled against you on that. And it  
8 seems to me that maybe your theory of the case if he  
9 possessed a registered VP70M pistol, which is your item two,  
10 that somehow that would be enough to find him not guilty. I  
11 have rejected that as well.

12 So the only thing that is alive and kicking here is the  
13 first part, which is he did not know the features of the  
14 pistol that made it subject to registration. In that regard  
15 I think Instruction No. 18 covers that point. Both the first  
16 and second element, particularly the second element, deals  
17 directly with that. I think would be confusing to give it  
18 again or repeat it. So I'm not going to give that second  
19 instruction on Count 2, theory of the case.

20 And your exception is noted for the record.

21 Do you have any other exceptions to the Court's  
22 instructions?

23 MR. CONTE: No.

24 THE COURT: I didn't ask Mr. Redkey. Let me ask both  
25 of you, just confirm there is no exception to the proposed

1 verdict form?

2 MR. REDKEY: No objection.

3 MR. CONTE: No.

4 THE COURT: I think --

5 MR. REDKEY: If I could have a moment.

6 THE COURT: So no exceptions to the verdict form?

7 MR. CONTE: No.

8 THE COURT: Let's take five or ten minutes to make  
9 the change. Probably won't take that long. We have to copy  
10 it and put it together. So why don't we take ten minutes.  
11 We'll tell the jury we'll bring them out in approximately ten  
12 minutes. I'll read the instructions to them, and then we'll  
13 take our lunch break, which will probably around 12:00. We  
14 might even finish a little before. And then come back at  
15 1:00? 1:30? How much time?

16 MR. CONTE: Hour and a half would be sufficient.

17 THE COURT: Let me just say one thing. I have  
18 deferred a ruling on the motion to dismiss as to Count 1.  
19 And I'm still going to defer and probably not decide that  
20 case until I hear the jury verdict. I know the consequences  
21 are significant to that. But I will listen closely to the  
22 arguments on that, and I may well, if they convict on Count  
23 1, take it away afterwards. I don't want to say one way or  
24 another at this point about that. But I'm not deciding the  
25 issue until after the verdict has been rendered.

1 MR. CONTE: For the record, I'm renewing my motion  
2 for judgment of acquittal.

3 THE COURT: All right.

4 MR. REDKEY: Last thing I was going to mention is the  
5 jury has not actually seen these guns. I was wondering if we  
6 could publish them to the jury since they will not be going  
7 back presumably with them --

8 THE COURT: My normal practice is after we've heard  
9 oral argument, and they're just about to go into  
10 deliberations I indicate to them certain of the exhibits  
11 won't go back. They can look at them and examine them in  
12 court in our presence, and we would do that immediately  
13 before they start to go to deliberations.

14 MR. REDKEY: How would --

15 THE COURT: I think we'll set up the table and put  
16 the weapons on the table and let them on them. And if they  
17 want to pick one up and look at it they can do so.

18 MR. CONTE: Do you have counsel present?

19 THE COURT: Absolutely. We would do it in open court  
20 with you being present and the defendant being present. We  
21 never send weapons into the jury room. So this is the only  
22 place they can examine them.

23 MR. CONTE: Where I come from we always send them  
24 back. We never send the bullets.

25 THE COURT: Let's tell the jury ten minutes and we'll

1 take a 10-minute recess and see if we can't fix up this one  
2 instruction and proceed.

3 (Court in recess)

4 THE COURT: Mr. Redkey has raised an objection to  
5 Instruction No. 15, the change that I had understood was  
6 not -- they weren't really objecting to.

7 Mr. Redkey, you want to tell me what -- you wrote me a  
8 note. You want it back?

9 MR. REDKEY: Sure.

10 As the Court is aware, the government really has two  
11 theories on Count 1. The firearm is defined -- or a  
12 machinегun is defined as a gun that shoots -- is designed to  
13 shoot or can be readily restored to shoot full auto. We do  
14 not adopt theory that when the gun was seized it shot full  
15 auto. Clearly it did not. We do say it was designed to fire  
16 fully automatically and it could be restored to that original  
17 design to fire fully automatically. We have two theories of  
18 case.

19 Now, in the proposed instruction the Court basically  
20 directs the verdict of not guilty if the government fails to  
21 prove one of its theories but prevails on the other.

22 THE COURT: Well, all right. Then maybe what we need  
23 to do is add the second prong of the government's case.  
24 What's the other prong?

25 MR. REDKEY: That it was designed to fire in full



1 auto.

2 THE COURT: Maybe what we should do, because it's  
3 going to take us five minutes to do whatever we're going to  
4 do, I think what we ought to send the jury to lunch. Tell  
5 them to come back at 1:30. We'll just do the instructions at  
6 1:30 before we have the final argument.

7 Any objection?

8 MR. REDKEY: No.

9 THE COURT: You want to come back at 1:15?

10 MR. CONTE: No. I said 1:30 or 2:00.

11 THE COURT: Let's bring them out and we'll send them  
12 to lunch.

13 (Jury enters the courtroom.)

14 THE COURT: Please be seated.

15 Ladies and gentlemen of the jury, we apologize but we're  
16 not quite ready to instruct you on the law. Lawyers are  
17 still making arguments to me about how it should be exactly  
18 phrased. Rather than have you sit in the jury room, what I'm  
19 going to do is let you leave now, take an early lunch. Come  
20 back at 1:30.

21 At that time I'm relatively certain that we'll be in a  
22 position where I can then read you the instructions and we'll  
23 have the final arguments of the lawyers. So apologize for  
24 any inconvenience. Jury is now excused until 1:30. Again,  
25 you're reminded not to discuss the case. And we'll see you

1 at 1:30.

2 (Jury exits the courtroom.)

3 THE COURT: Here's the language that I propose that  
4 might address the government's concern and that would be if  
5 you take a look at Instruction No. 15 as the revised  
6 instruction I'll be making my changes to that. And on line  
7 just below line 9 after the word "automatic" I would put a  
8 comma?

9 MR. CONTE: We gave our copy back.

10 THE COURT: Okay.

11 MR. REDKEY: I don't have it either, Your Honor.

12 THE COURT: Why don't counsel come up and look at  
13 mine? I know it's --

14 (Off the record.)

15 THE COURT: Let's go back on the record.

16 Mr. Redkey, sometimes it's more efficient to do things at  
17 the table without a court reporter. But we have been talking  
18 about modifying Instruction No. 15 and 13. 15 will be  
19 changed back to the way it originally was. Just with the two  
20 paragraphs. And 13 is going to add a new paragraph at the  
21 end. I'll read it into the record. All the lawyers have a  
22 copy of it now at least in handwritten form, "If you find  
23 that the defendant possessed the M14 when it was incapable of  
24 firing on full automatic, that he did not realize it could be  
25 readily restored to fire automatically and that he did not

1 realize that it was designed to shoot automatically, then you  
2 that must find the defendant not guilty" -- I think we  
3 probably should say on Count 1.

4 MR. STAHLFELD: This is Count 1.

5 THE COURT: Not guilty on this charge. Something  
6 that relates it to --

7 MR. CONTE: Court's indulgence.

8 MR. REDKEY: While they're doing that may I ask a  
9 question of the clerk?

10 MR. CONTE: Very well, Your Honor.

11 THE COURT: I'm sorry, I don't know what "very well"  
12 means. Let's go back on. I'm going to add at the end of  
13 that paragraph that I read to you "On Count 1."

14 MR. CONTE: Yes. I agree to that.

15 THE COURT: Do you have any exceptions to the  
16 language that I've read?

17 MR. CONTE: I agree to it.

18 THE COURT: No exceptions?

19 MR. CONTE: No exceptions.

20 THE COURT: Government have any exceptions?

21 MR. REDKEY: I take exception to the necessity of it,  
22 but I have no objection to the form if the Court has decided.

23 THE COURT: All right. If you want to wait a couple  
24 minutes we'll have a clean copy of Instruction No. 13, so  
25 you'll have all the instructions. See you at 1:30. We'll be

1 in recess.

2 (Court in recess.)

3 (Jury enters the courtroom.)

4 THE COURT: Good afternoon. Please be seated.

5 Ladies and gentlemen, this is the time in the trial when the  
6 judge reads the instructions to the jury. You each have a  
7 copy. It's my intent to read these instructions to you word  
8 for word. If I omit a word, say something different than  
9 what is on the printed page the printed page controls, unless  
10 I stop and say you need make a change and so forth.

11 But it's my intent to read the instructions word for word.  
12 And I would ask you to follow along with me. You can make  
13 notes on these copies because this is your copy of the  
14 instructions and the lawyers may be referring to the  
15 instructions during their final arguments. And so you'll  
16 have a copy available to you.

17 At the back of instructions, I'll go over it with you  
18 briefly, is a verdict form which ultimately you'll have to  
19 fill out. They'll be an original verdict form sent in to  
20 you. After you've deliberated if you've reached a verdict  
21 you should fill out that original verdict form and the  
22 presiding juror should sign it.

23 Members of the jury, now that you've heard the evidence  
24 it's my duty to instruct you on the law which applies to this  
25 case. A copy of these instructions will be available in the

1 jury room for you to consult if you find it necessary.

2 It is your duty to find the facts from all the evidence in  
3 the case. To those facts you will apply the law as I give it  
4 to you. You must follow the law as I give it to you, whether  
5 you agree with it or not. You must not be influenced by any  
6 personal likes or dislikes, opinions, prejudices, or  
7 sympathy. That means that you must decide the case solely on  
8 the evidence before you. You will recall that you took an  
9 oath promising to do so at the beginning of the case.

10 In following my instructions, you must follow all of them  
11 and not single out some and ignore others. They are all  
12 equally important. You must not read into these instructions  
13 or into anything the Court may have said or done any  
14 suggestion as to what verdict you should return. That is a  
15 matter entirely up to you.

16 The indictment is not evidence. The defendant has plead  
17 not guilty to the charges in the indictment. The defendant  
18 is presumed to be innocent and does not have to testify or  
19 present any evidence to prove innocence. The government has  
20 the burden of proving every element of each crime beyond a  
21 reasonable doubt.

22 You are here only to determine whether the defendant is  
23 guilty or not guilty of the charges in the indictment. Your  
24 determination must be made only from the evidence in the  
25 case. The defendant is not on trial for any conduct or

1 offense not charged in the indictment. You should consider  
2 evidence about the act, statements and intention of others or  
3 evidence about other acts of the defendant only as they  
4 relate to the charges against the defendant.

5 Proof beyond a reasonable doubt is proof that leaves you  
6 firmly convinced that a defendant is guilty. It is not  
7 required that the government prove guilt beyond all possible  
8 doubt. A reasonable doubt is a doubt based upon reason and  
9 commonsense and is not based purely on speculation. It may  
10 arise from a careful and impartial consideration of all of  
11 the evidence or from lack of evidence.

12 If after a careful and impartial consideration of all the  
13 evidence you are not convinced beyond a reasonable doubt that  
14 the defendant is guilty, it is your duty to find the  
15 defendant not guilty. On the other hand, if after a careful  
16 and impartial consideration of all the evidence you are  
17 convinced beyond a reasonable doubt that the defendant is  
18 guilty, it is your duty to find the defendant guilty.

19 The evidence from which you are to decide what the facts  
20 are consists of: One, the sworn testimony of any witness;  
21 two, the exhibits which have been received into evidence; and  
22 three, any facts to which the lawyers have stipulated.

23 In reaching your verdict, you may consider only the  
24 testimony and exhibits received into evidence. Certain  
25 things are not evidence, and you may not consider them in

1 deciding what the facts are. I will list them for you. One,  
2 arguments and statements by lawyers are not evidence. The  
3 lawyers are not witnesses. What they have said in their  
4 opening statements, will say in their closing arguments, and  
5 at other times is intended to help you interpret the evidence  
6 but it is not evidence.

7 If the facts as you remember differ from the way the  
8 lawyers state them your memory of them controls. Questions  
9 and objections by lawyers are not evidence. Attorneys have a  
10 duty to their clients to object when they believe the  
11 questioning is improper under the Rules of Evidence. You  
12 should not be influenced by the question, the objection, or  
13 the Court's ruling on it.

14 Testimony that has been excluded or stricken or that you  
15 have been instructed to disregard is not evidence and must  
16 not be considered. In addition, some testimony and the  
17 exhibits have been received only for a limited purpose.  
18 Where I've given a limiting instruction you must follow it.

19 I'm not sure I gave any such limiting instruction in this  
20 case.

21 Anything you may have seen or heard when the court was not  
22 session is not evidence. You are to decide the case solely  
23 on evidence received at trial.

24 Evidence may be direct or circumstantial. Direct evidence  
25 is direct proof of a fact, such as testimony of an

1 eyewitness. Circumstantial evidence is indirect evidence.  
2 That is, proof of a chain of facts from which you could find  
3 that another fact exists, even though it has not been proved  
4 directly. You are to consider both kinds of evidence. The  
5 law permits to you give equal weight to both, but it is for  
6 you to decide how much weight to give to any evidence.

7 In deciding the facts in this case, you may have to decide  
8 which testimony to believe and which testimony not to  
9 believe. You may believe everything a witness says or part  
10 it or none of it. In considering the testimony of any witness  
11 you may take into account the opportunity and ability of the  
12 witness to see or hear or know the things testified to, the  
13 witness's memory, the witness's manner while testifying, the  
14 witness's interest in the outcome of the case, and any bias  
15 or prejudice, whether other evidence contradicted the  
16 witness's testimony, the reasonableness of the witness's  
17 testimony in light of all the evidence, and any other factors  
18 that bear on believability. The weight of the evidence as to  
19 a does not necessarily depend on the number of witnesses who  
20 testified.

21 The defendant has testified. You should treat his  
22 testimony just as you would treat the testimony of any other  
23 witness.

24 A separate crime is charged against the defendant in each  
25 count. The charges have been joined for trial. You must



1 decide the case on each crime charged against the defendant  
2 separately. Your verdict on any count as to the defendant  
3 should not control your verdict on the other count as to the  
4 defendant. All of the instructions apply to these counts.

5 You have heard testimony from a person that who because of  
6 education or experience is permitted to state opinions and  
7 reasons for his opinions. Opinion testimony should be judged  
8 just like any other testimony. You may accept or reject it,  
9 and give it as much weight as you think it deserves,  
10 considering the witness's education and experience, the  
11 reasons given for the opinion, and all the other evidence in  
12 the case.

13 Instruction No. 12 has been withdrawn.

14 We'll move to Instruction No. 13.

15 The defendant is charged in Count 1 of the indictment with  
16 possession of a machin-gun violation of Section 9220 of Title  
17 18 of the United States Code.

18 In order for the defendant to be found guilty of that  
19 charge the government must prove each of the following  
20 elements beyond a reasonable doubt: First, the defendant  
21 knowingly possessed a firearm defined as a machin-gun; and  
22 second, the defendant knew of the feature or features of the  
23 firearm that make it a machin-gun.

24 If you find that the defendant possessed the M14 when it  
25 was incapable of firing on full automatic, that he did not

1 realize it could be readily restored to fire automatically,  
2 and that he did not realize that it was designed to shoot  
3 automatically, then you must find the defendant not guilty on  
4 Count 1.

5 The term "machinegun" means any weapon which shoots, is  
6 designed to shoot, or can be readily restored to shoot  
7 automatically more than one shot without manual reloading by  
8 a single function of the trigger. The term also includes the  
9 receiver of any machinegun.

10 The term "readily" means with fairly quick efficiency  
11 without needless loss of time, reasonably fast or with a fair  
12 degree of ease without much difficulty with facility.

13 The term "restored" means to bring back to or put back in  
14 a former or original state -- in this case to the essential  
15 definition of a machinegun; that is, a weapon capable of  
16 firing automatically more than one shot without manual  
17 reloading by a single function of the trigger.

18 An act is done knowingly if the defendant is aware of the  
19 act and does not act through ignorance, mistake, or accident.  
20 You may consider evidence of the defendant's words, acts, or  
21 omissions along with all the other evidence in deciding  
22 whether the defendant acted knowingly.

23 A person has possession of something if the person knows  
24 of its presence and has physical control of it or knows of  
25 its presence and has the power and intention to control it.

1           The defendant is charged in Count 2 of the indictment with  
2 Possession of an Unregistered Firearm in Violation of Section  
3 5861(d) of Title 26 of the United States Code.

4           In order for the defendant to be found guilty of that  
5 charge the government must prove each of the following  
6 elements beyond a reasonable doubt: First, the defendant  
7 knowingly possessed a rifle having a barrel or barrels of  
8 less than 16 inches in length; second, the defendant knew of  
9 the feature or features of the firearm that made it a  
10 short-barrelled rifle; third, the rifle was not registered to  
11 the defendant in the national firearms registration and  
12 transfer of record.

13           The term "rifle" means a weapon designed or redesigned  
14 made or remade and intended to be fired from the shoulder and  
15 to use the energy of an explosive in a fixed cartridge to  
16 fire only a single projectile through a rifle bore for each  
17 single pull of the trigger and includes any such weapon which  
18 may be readily restored to fire a fixed cartridge.

19           Exhibits 7 and 8 are certificates of the custodian of the  
20 national firearms register and transfer of record. A  
21 certificate is a written statement of facts signed by a  
22 public official. The certificate states the custodian made a  
23 diligent search of the record and found no record of any  
24 firearm being registered to the defendant. From these  
25 certificates you may but need not decide the firearms

1 described in the indictment were not registered to the  
2 defendant.

3 Let me ask the lawyers, that instruction says that they  
4 made a diligent search and found no record of any firearm  
5 being registered to the defendant. I take it the search was  
6 made of the two weapons which are the subject matter of this  
7 indictment; is that right?

8 MR. REDKEY: Yes. Each one refers to a particular  
9 firearm.

10 THE COURT: So this instruction should not suggest  
11 that there may not have been other weapons --

12 MR. REDKEY: Not at all.

13 THE COURT: -- registered to the defendant.

14 I want to make that clear. Because the instruction is  
15 worded in a way that you could perhaps make that inference.

16 Do you agree with that, Mr. Conte?

17 MR. CONTE: Yes, Your Honor.

18 THE COURT: All right.

19 The punishment provided by law for this crime is for the  
20 Court to decide. You may not consider punishment in deciding  
21 whether the government has proved guilt of the defendant  
22 beyond a reasonable doubt.

23 Some of you have taken notes during the trial. Whether or  
24 not you took notes, you should rely on your own memory of  
25 what was said. Notes are only to assist your memory. You

1 should not be overly influenced by the notes.

2 You've heard evidence of the defendant's character for  
3 truthfulness and honesty. In deciding this case you should  
4 consider that evidence together with and in the same manner  
5 as all the other evidence in the case.

6 When you begin your deliberations you should elect one  
7 member of the jury as your presiding juror. That person will  
8 preside over the deliberations and speak for you here in  
9 court.

10 You will then discuss the case with your fellow jurors to  
11 reach agreement if you can do so. Your verdict whether,  
12 guilty or not guilty must be unanimous. Each of you must  
13 decide the case for yourself. You should do so only after  
14 you have considered all the evidence, discussed it fully with  
15 the other jurors, and listened to the views of your fellow  
16 jurors.

17 Do not be afraid to change your opinion if the discussion  
18 persuades you that you should. But do not come to a decision  
19 simply because other jurors think it is right. It is  
20 important that you attempt to reach a unanimous verdict, but  
21 of course only if each of you can do so after having made  
22 your own conscientious decision. Do not change an honest  
23 belief about the weight and effect of the evidence simply to  
24 reach a verdict.

25 Your verdict must be based solely on the evidence, the law

1 as I've given it to you in these instructions. However,  
2 nothing that I have said or done is intended to suggest what  
3 your verdict should be. That is entirely for you to decide.

4 If it becomes necessary during your deliberations to  
5 communicate with me you may send a note through the clerk  
6 signed by your presiding juror or by one or more members of  
7 the jury. No member of the jury should ever attempt to  
8 communicate with me except by a signed writing. I will  
9 communicate with any member of the jury on anything  
10 concerning the case only in writing or here in open court.

11 If you send out a question I will consult with the parties  
12 before answering it which may take some time. You may  
13 continue your deliberations while awaiting for the answer to  
14 any question. Remember that you are not to tell anyone,  
15 including me, how the jury stands numerically or otherwise on  
16 the question of the guilt of the defendant until you've  
17 received a unanimous verdict or have been discharged.

18 A verdict form has been prepared for you. After you have  
19 reached unanimous agreement on a verdict the presiding juror  
20 will fill in the form that has been given to you, sign and  
21 date it, and advise the Court that you are ready to return to  
22 the courtroom.

23 Attached to the instructions, ladies and gentlemen, is the  
24 verdict form and it's very simple. There are two counts. As  
25 to each count we ask you to decide whether you find the

1 defendant guilty or not guilty. And after you've deliberated  
2 and made your decisions the presiding juror should fill out  
3 form, sign it, date it and advise the clerk that you're ready  
4 to return to the courtroom. That concludes the instructions  
5 and comments on the verdict form.

6 We're now going to proceed with the final arguments.  
7 We'll hear first from the government. Government will go  
8 first. After Mr. Redkey has argued, one of the counsel for  
9 the defendant is going to argue, and finally after they're  
10 finished because the government has the burden of proof they  
11 will be able to offer rebuttal argument as well.

12 So we'll hear first from Mr. Redkey.

13 MR. REDKEY: Did the Court wish to allow the jury to  
14 view the exhibits?

15 THE COURT: We'll do that the at the end. At the end  
16 of the arguments and just as you are about to leave and go  
17 into the jury room to deliberate we'll be sending the  
18 notebook full of all of these exhibits. But we will not be  
19 sending in any of the firearms. But you'll have an  
20 opportunity to examine the firearms before you begin your  
21 deliberations and if at any time during the course of your  
22 deliberations one or more members of the jury want to again  
23 look at the weapons, all you'll need to do is send us a note  
24 and we'll make arrangements so that you can again in open  
25 court with the parties present examine the weapons. All

1 right you may proceed.

2 MR. REDKEY: Thank you, Your Honor. May it please  
3 the Court, Counsel, Ladies and gentlemen of the jury. Good  
4 afternoon.

5 The evidence in this case shows that the defendant is a  
6 knowledgeable, selective, and careful collector of firearms.  
7 Not just a few firearms and not just any firearms but very  
8 specific firearms; firearms with historical significance and  
9 many, many firearms which are restricted to other people.

10 And I think there was evidence to the effect that his  
11 collection was so nice it could be in a museum. In fact, the  
12 defendant said that he might open up a museum one day for  
13 those pieces. A fine collection. Even made Special Agent  
14 Byrd envious. It's a wonderful collection. If it is a  
15 museum this defendant, Albert Kwan, is the curator of the  
16 museum. He knows those firearms. He understands those  
17 firearms. He knows what he has. He doesn't collect his  
18 firearms carelessly. He selects them very carefully. And he  
19 knows what he has. He knows what he wants. He organizes  
20 them in a special way in his home. This man knows his  
21 firearms.

22 And if he denies that you have to make a decision on  
23 whether that defies the other evidence in this case. There  
24 are two guns at issue in this case. One is, as been talked  
25 about a lot, the Winchester United States Army M14 automatic



1 weapon. It's a rifle.

2 If I may, Your Honor?

3 And this is the rifle as it was originally manufactured.

4 This is an M14 machinegun as manufactured.

5 And you will see here it has a selector switch so that you  
6 can shoot in full auto or semi automatic mode. It has a  
7 barrel, a stock, a receiver, and a trigger group. The gun  
8 that the defendant -- this is the M14 in question. It's the  
9 same. We've taken it apart. This is the stock, just the  
10 same, trigger group, similar, and this is the receiver and  
11 the barrel. This is the receiver of this gun, just the  
12 receiver of the M14 which is Exhibit No. 2.

13 The second gun in question is the pistol. We talked about  
14 that. That is the H&K VP70Z pistol. And this is the firearm  
15 that we have talked about. You'll note that there is a cord  
16 through here so that it cannot -- a flex cuff so it can't be  
17 fired. This gun was found at Mr. Kwan's residence with the  
18 gun down in the holster and put away.

19 The evidence shows in this case that the defendant  
20 knowingly possessed those firearms, and that he knew of the  
21 features of those firearms which made them restricted and  
22 subject to the NFA, that is the National Firearms Act laws.  
23 We'll talk about that one at a time if we may.

24 First of all, when I said the defendant had a museum, I  
25 think we had difficulty with the technology here during

1 trial. Here are some pictures that have been admitted. They  
2 don't show up very well here, but you can get the idea. And  
3 you will have these photographs back in the witness room with  
4 you.

5 The defendant had his firearms well organized. He had  
6 them well taken care of. And he had them everywhere.  
7 Machineguns, replicas, pistols, regular firearms, and these  
8 are just a few of the photographs to give you an idea since  
9 you couldn't see them during trial. That was the defendant's  
10 museum at his house.

11 I want to talk about Count 1 first. Count 1 is, of  
12 course, the Winchester M14 machinegun. The Court has  
13 instructed you in Instruction No. 13 that the government must  
14 prove that the defendant knowingly possessed a firearm  
15 defined as a machinegun, and second, he knew the feature or  
16 features of that firearm which made it a machinegun.

17 Let's talk about that gun. What is a machinegun first of  
18 all? The Court has already instructed you that there are  
19 three elements that could make a machinegun. One is if the  
20 machinegun -- or the gun shoots in full automatic mode. And  
21 we don't claim -- nobody claims in this case that when that  
22 gun was seized it shot in the full automatic mode. That is  
23 more than one shot with a single pull of the trigger. It  
24 didn't shoot like that when it was seized.

25 The second definition is it was described to shoot more

1 than one bullet with a single pull of the trigger. It was  
2 designed to shoot fully automatically, and the third way is  
3 it can be readily converted to fire automatically.

4 The evidence shows in this case that, one, the frame and  
5 receiver of the firearm was designed as a machinegun. That  
6 frame and receiver came off the assembly line as a machinegun  
7 and it is a machinegun to this day. This firearm was  
8 designed to be a machinegun. It was also readily restored,  
9 but I'll talk about that in a few minutes.

10 This gun was designed to shoot in full automatic mode.  
11 That testimony can come to you through the -- through Adam  
12 Galbraith, who I'm sure you recall was the witness  
13 enforcement officer from the firearms enforcement branch back  
14 in West Virginia. He spent quite a lot of time talking about  
15 the fact that the receiver of that firearm is the heart of  
16 the gun. That is the part of the gun which all other parts  
17 attach. That is what holds them together. That is what  
18 allows it to fire in a fully automatic mode. That is the  
19 heart of the firearm. And that is what he told you. Without  
20 the receiver it can't be a machinegun. With the receiver it  
21 is a machinegun. That was his testimony.

22 You may recall that he started out -- I started out by  
23 asking him about his qualifications. We wanted you to  
24 understand this man's expertise. You'll recall he was in the  
25 Marine Corps for several years where he had training with

1 regular guns and with automatic weapons. He then went to  
2 school. He went to Colorado School of Trades. Then studied  
3 for a year and a half I think he said, received a degree  
4 where he learned the art or the skill or craft of  
5 gunsmithing. So he came out of that program as a gunsmith.

6 Then for several years he went to work for Raytheon where  
7 his sole job was to repair, upkeep of government weapons,  
8 military weapons like Exhibit No. 1 which is the Winchester  
9 M14 United States Army firearm. He gained lots of experience  
10 there doing that. At the time you'll recall he had an FFL,  
11 federal firearms license, of his own. Got into the business  
12 himself. He got that 07 manufacturers license. Paid the SOT  
13 so that he could work on machineguns on the side which he  
14 did.

15 Then I think he said it was year 2004 or 3, he joined ATF.  
16 Went to the firearms technology branch where he has been an  
17 enforcement officer since then. He told you about his  
18 experience there about the hundreds of guns that he's  
19 examined in criminal cases. Of the types of guns that he has  
20 examined, the experience he has gained there just on the job  
21 doing what he -- his job descriptions call for him to do is  
22 conducting technical examinations of firearms and then  
23 classifying them according to the law. He'll tell you he's  
24 had advance training in the law, the law that governs  
25 firearms production firearms possession, firearms

1 importation, firearms dealing and so forth, and he told you  
2 that he was qualified to attest to the classification of  
3 firearms. He examined this firearm. And he told you it took  
4 him about two hours from start to finish to conduct his  
5 examination. But that only half of that was actually  
6 required to convert this firearm to be readily restorable.

7 "Readily restored", you may recall his testimony. He came  
8 down and he disassembled the firearm. He basically walked  
9 through what he did on his examination. He showed you that  
10 that firearm could be readily restored. He showed exactly  
11 what he did. He cut the small weld.

12 Importantly, he told you that that frame and receiver of  
13 that firearm was unmodified -- was unmodified. Nobody had  
14 modified that. The gun had been modified to be sure so  
15 that it could only fire in semi automatic mode because the  
16 selector switch was off. And some parts had been changed  
17 inside. But the receiver itself was unmodified.

18 He said it took him basically a half an hour from start to  
19 finish to change out the parts, take out the trigger group,  
20 and he replaced it. And you may recall all those parts are  
21 readily available on the market. If anybody chooses to do it  
22 and go to the trouble they could find it on the internet or  
23 catalogs, whatever those parts are, are available on the open  
24 market. They are not restricted. In other words, you could  
25 put them in there and make that a machinegun just as he did.

1           Now, granted it would take expertise to do that.  
2   Layperson could not do that. But Adam Galbraith could. Even  
3   though he said it didn't require all of his expertise to do  
4   that. He said he did it with simple tools. Didn't take him  
5   long. A lot of people could accomplish that feat, even  
6   without the advance training that he has.

7           You may recall I asked him degree of difficulty, one to  
8   five, how difficult was it? He said only one. He said it  
9   wasn't difficult. Only took him half hour. He readily  
10   restored that firearm to shoot full automatic mode. You may  
11   recall at the end he testified in fact it fired in fully  
12   automatic mode.

13          So that gun is a machinегun for two reasons: One, frame  
14   and receiver was manufactured as a machinегun and as a  
15   machinегun to this day; second, it has been readily restored  
16   to shoot more than one bullet with a single pull of the  
17   trigger. Again same type of receiver that -- that is in  
18   Exhibit No. 2 there, which is the firearm that does shoot --  
19   that the defendant possessed and did shoot more than one  
20   round of a single bullet and was registered to him.

21          But you recall also that defense called Len Savage to  
22   testify about what he had observed with respect to these guns  
23   and what his opinion was as to the classification of the gun.  
24   Now, you're going to have to resolve the dispute from the  
25   testimony such as it is between Mr. Savage and Mr. Galbraith.

1           But I've already walked you through what the  
2           qualifications are from Mr. Galbraith his training experience  
3           depth of his knowledge, his testifying as an expert witness  
4           in court. Subjecting himself to cross-examination on the one  
5           hand with Mr. Savage on the other. Who had no trade school,  
6           no military, no on-the-job training, such as Mr. Galbraith  
7           had, no training in federal laws, on how to classify weapons,  
8           I would suggest that his qualifications or his background  
9           pails in comparison to that of Mr. Galbraith, and that when  
10          you decide to the extent you feel you need to resolve the  
11          dispute between Mr. Savage and Mr. Galbraith that you bare in  
12          mind the difference in their credentials and qualifications.

13          Now, you may recall Mr. Savage said that he thought the  
14          receiver had been modified. Flatly contradicted by  
15          Mr. Galbraith. He said that the parts were attached and  
16          welded to the receiver. Flatly denied by Mr. Galbraith in  
17          his technical examination.

18          So was the receiver modified in any way before it got to  
19          FTB? No. Was the receiver modified by FTB? Adam  
20          Galbraith's testimony was receiver was not modified. Parts  
21          to the receiver were modified but the receiver was not  
22          modified. Again, that receiver by itself is a machinегun and  
23          that gun was readily restored to fire fully automatic without  
24          altering the receiver and readily and easily.

25          And the defendant was aware that this was a machinегun.

1 Ladies and gentlemen, you may recall that retired Special  
2 Agent Bernard Tuerler testified and he said back May of '97,  
3 he met with the defendant up at the Blaine port of entry at  
4 the Canadian border and told him that frame and receiver of  
5 the machinegun is a machinegun. And the only way you can  
6 make it not a machinegun is to cut it in three parts with a  
7 blowtorch.

8 And the defendant knew exactly what that meant. It meant  
9 frame and receiver of that firearm was a machinegun. In  
10 other words, when I say was a machinegun shows you that it  
11 was designed to fire in fully automatic mode. Defendant knew  
12 that fact. He was put on notice. And he cannot credibly  
13 deny it to you.

14 Equally important I think is the defendant is not naive  
15 when it comes to firearms in general and machineguns in  
16 particular. I believe his testimony was that he had over 100  
17 machineguns that were registered to him. You don't develop a  
18 collection of 100 machineguns without understanding what a  
19 machinegun is, how it works, why it's important, why you want  
20 it in your collection, how it might be different from other  
21 guns in your collection so that you can have a wide variety  
22 in your museum. He has knowledge about these firearms that  
23 far exceeds what the normal layperson would have.

24 In addition he had manuals in his garage. Special Agent  
25 Byrd testified about those. Manuals concerning his guns and



1 other firearms. He collected the manuals. And he admitted  
2 himself that he's been interested in guns since he was nine  
3 or ten years old; that he started collecting them when he was  
4 old enough to do so. I think he said he was in his 50s, so  
5 probably 30 years he's been interested in, among other  
6 historical memorabilia, firearms. He's collected those  
7 firearms carefully over the years. He understands guns.

8 So in addition I would add that he admitted he goes to  
9 shows sometimes to acquire guns and to meet and greet with  
10 other gun collectors. The character witnesses who testified  
11 on his behalf, two or three of them were gun collectors and  
12 avid gun -- at least gun enthusiasts.

13 So these are his friends/associates, people he talks to  
14 people he interacts with and they don't sit around and talk  
15 about the baseball game. They talk about things of interest  
16 that they share. That would be guns. They talk about  
17 machineguns as well as other kinds of guns.

18 But it's important, too, that the defendant had an M1  
19 rifle which is Exhibit No. 2, which was a full automatic  
20 rifle. He knew that. He knew what the gun looked like. And  
21 he was on notice that that was Exhibit No. 1 was just like  
22 it -- looks just like it from the outside except for the  
23 selector switch that it could -- that the receivers were the  
24 same and that they were both machineguns. So he understands  
25 what was involved here. It would be hard for him to deny

1 that he did not he know the receiver of that gun, Exhibit No.  
2 1, was not a machinегun.

3 I want to move on and talk about the H&K VP70. You may  
4 recall that it had a letter after the designation Z, which  
5 meant a civilian version. This is the gun in question. This  
6 is a semi automatic pistol. In other words, it does not shoot  
7 full auto. It does not shoot more than one round with a  
8 single pull of the trigger. But it is a pistol. This is --  
9 in this configuration it is a pistol.

10 When the holster or stock is put on this becomes a rifle.  
11 That is as the Court has defined it a rifle is a firearm that  
12 can be fired from the shoulder. In fact that is why this  
13 holster looks like this. This isn't a normal holster, ladies  
14 and gentlemen. That's not leather. It's not your normal  
15 holster. It's a piece of solid plastic that is designed to  
16 rest firmly against your shoulder and to take the impact of a  
17 gun firing like this (indicating) with each round that is  
18 fired.

19 You'll note that there is a selector switch on the side.  
20 The testimony was that that had no effect on this particular  
21 gun. It's not going to fire in a fully automatic mode. It's  
22 not a machinегun. The innards, the receiver and frame, are  
23 not designed to shoot full auto. It's a semi automatic  
24 firearm. It is a firearm and it is a rifle and it is -- the  
25 barrel -- the testimony from Adam Galbraith was that the

1 barrel of this firearm was four and a half inches. And the  
2 Court has instructed you that it is a short-barrelled rifle  
3 if the barrel is less than 16 inches.

4 This is well less than 16 inches. There is no way the  
5 defendant can deny that he thought this was 16 inches long.  
6 Simply not. Nor is there any way the defendant can credibly  
7 deny he knew this holster was specifically designed for the  
8 purpose of being fitted as a shoulder stock. That's why it's  
9 like that.

10 In fact, you may recall he has another VP70, only this is  
11 the full automatic one, meaning it could fire more than one  
12 shot with a single pull of the trigger. And this has a stock  
13 as well. This also, by the way, has the selector switch  
14 which does allow you to fire this pistol in a semi automatic  
15 mode but it's a rifle at that point when you attach it.

16 So the defendant knew he had a rifle in this gun, and he  
17 knew he had a rifle in that gun because this is the only  
18 thing that allows this gun to shoot full auto is the stock  
19 and switch on the stock. That is why he wanted this gun  
20 because it's a full auto and the only way it could shoot that  
21 way is with the shoulder stock attached.

22 So the defendant was aware of that characteristic. That  
23 is another element of the crime charged in Count 2. First  
24 count is -- first element is the defendant knowingly  
25 possessed a rifle having a barrel or barrels of less than 16

1 inches or less. It's clearly a barrel less than 16 inches  
2 long. There has been new features of a firearm that made it  
3 a short-barrelled rifle. I've covered that.

4 Third the rifle was not registered to the defendant in the  
5 National Firearms transfer record. Exhibit No. 8, which is a  
6 certified copy of an ATF record which you've not had a chance  
7 to see, shows that this firearm is not registered to any  
8 person. So it is not registered to the defendant as required  
9 by law. You'll have a chance to look at this exhibit at your  
10 own pace when you begin your deliberations.

11 So there is really no dispute that it wasn't registered to  
12 him. It cannot be a credible dispute that the barrel is  
13 under 16 inches. I submit it's difficult to credibly deny  
14 that the defendant knew of those features that made it  
15 subject to registration; that is, that it was less than 16  
16 inches long and that it had a stock that could be readily  
17 attached and used to fire as a rifle.

18 So I think I've taken up the time that I have here for  
19 now. But in conclusion, and I'll have a chance to talk to  
20 you again after Mr. Conte does his closing. But the evidence  
21 in this case is overwhelming that the defendant possessed  
22 these firearms, knew what he had, and didn't register the  
23 second one but knew of the features that made them restricted  
24 firearms that were the NFA, and he possessed them illegally.  
25 Thank you for your attention.

1           MR. CONTE: May it please the Court, Counsel, Ladies  
2 and gentlemen of the jury. On behalf of myself, Mr. Kwan and  
3 Mr. Stahlfeld I want to thank you for your time and attention  
4 this week. Jury duty is one of the few things that a citizen  
5 of the United States can do -- we can participate in the  
6 government, we can vote, serve in the military, and we can  
7 serve on jury duty. Jury duty is very important. It's very  
8 important to people like Mr. Redkey and myself and the judge  
9 and Mr. Stahlfeld, because we need jurors to come in and  
10 listen to these cases and decide these cases fairly. So I  
11 thank you for your attention and for being here this week.

12           Ladies and gentlemen, the standard here is beyond a  
13 reasonable doubt. That is a doubt some people would say  
14 would make you pause in more important decisions in life.  
15 That is the standard that you engage this evidence -- beyond  
16 a reasonable doubt.

17           Ladies and gentlemen, the evidence has been laid in the  
18 wall, it's been found wanting. Why is it found wanting?  
19 Because the evidence doesn't show beyond a reasonable doubt  
20 that Mr. Kwan knew each of these weapons and features that  
21 made it subject to the law.

22           Now, maybe the best piece of evidence we have is the  
23 discussion that we had with Adam Galbraith on the stand when  
24 we were talking about how well this M14 was reconstructed.  
25 He said it was an expert who did it. Remember we had a

1 little discussion about this sear release on this trigger  
2 guard right here? I said well, you can't tell it's even been  
3 changed. He couldn't. He had to go back, get another part  
4 from the stock and put it on the gun. And I was asking  
5 him -- remember I asked maybe too many questions about well,  
6 what about a common citizen who buys this gun who walks into  
7 a gun store and the guy said I'll tell you this, it's a good  
8 semi automatic gun. He didn't have the answer.

9 And then finally after we asked it once or twice more, you  
10 know, what he said? He said he would know now. Well, now  
11 isn't important. Yeah, we know now. Well, we don't know --  
12 we know now that Mr. Galbraith can change this gun in 30  
13 minutes to two hours. But that's not -- is that the standard  
14 for readily restorable? Mr. Redkey was just up here saying  
15 that Mr. Kwan could do it because he has all this knowledge;  
16 that he can convert it readily. That's not the standard.

17 The standard is not subjective. It's objective. Can you  
18 do it? Can you change that? Is it readily restorable to  
19 you, common citizen, members of the jury, members of the  
20 public? Does Mr. Kwan? Does anybody who walks into a  
21 firearm store and wants to buy a semi automatic rifle have to  
22 go down to ATF and get their opinion as to whether it's legal  
23 or not? I suggest to you that's not the way the world works  
24 and that's not what the law says you have to do it.

25 That's what the government wants to have you do. The

1 government wants you to think that Mr. Kwan has enough  
2 knowledge that he could go in and he knew that this was a  
3 machinегun, that he knew he could restore it.

4 That is not the law and that's not what he knew. He  
5 bought the gun. He's a collector. Two people testified  
6 Mr. Kwan and Mr. Byrd were talking about manufacturing FFLs  
7 and special occupational taxpayers. Mr. Kwan owned that M1  
8 since 1991. He testified that he bought the VP70 in the mid  
9 '90s when he had both an SOT and a manufacturing FFL. All he  
10 had to do was fill out a Form 2. It didn't even cost him any  
11 more money. He had an SOT. If he thought he had a  
12 short-barrelled rifle or he thought he had a machinегun, he  
13 fills out one sheet of paper, mails it in, and he's got a  
14 legal weapon.

15 Does that bring in reasonable doubt to you? What did he  
16 know? He's got 100 or more NFA weapons. Paid tax on every  
17 one. Legally owned every one. You think he would just say  
18 oh, I am not going to bother; I'm not going to send in a Form  
19 2? Why would he do that? His main hobby in life is  
20 collecting war memorabilia -- uniforms, firearms. He spares  
21 no expense. So do you think he knew? If he knew why  
22 wouldn't he send in the money? It's like the other guns he  
23 has, the dummi es, the BB guns. The things that look like the  
24 real thing. When he can't get the real thing he'll buy  
25 anything that looks like it to go into his collection. Does

1 that sound like somebody who would shirk on their duty to  
2 fill out a Form 2? Is that a reasonable doubt?

3 We had very little evidence in this case and very few  
4 witnesses. We had Mr. Galbraith. Mr. Galbraith came in, he  
5 testified, he's an expert. He's got ten years working for  
6 Marine Corps and for Raytheon and for the federal government,  
7 the ATF. He's gone to, what, I think it was eight armory  
8 schools. Ten years of experience. And he can restore a gun.  
9 Does it even fit readily restorable?

10 That's for you to decide. Is it readily restorable, what  
11 he did? Think about it, think about it in your own life. If  
12 you have to take two hours to do something is that readily?  
13 Think about that the standard. That's the instruction the  
14 judge has given you.

15 Knowledge is key. What did he know? He's got a whole  
16 library of books on the wars. Military, he's got some on  
17 firearms. He testified the majority of his book collection  
18 is the military and not the firearms. In fact the major part  
19 of his collection is uniforms not firearms. And the  
20 government wants you to come in here and impute to him that a  
21 firearm that he bought from somebody who bought many guns  
22 before was really a machin-gun.

23 Now, think about yourself. I don't know if any of you own  
24 guns. Some of the people have strong feelings about them.  
25 But if you do you got to put that aside and think about the



1 evidence. If you go into a store, you meet a man in the gun  
2 store that you know that you've bought ten firearms from,  
3 don't you think that he would think himself that he was  
4 buying a perfectly legal firearm? That's what makes sense.  
5 Think about it.

6 And compare it on that standard of beyond a reasonable  
7 doubt. The same goes for the VP70. Now, don't get  
8 sidetracked because Mr. Kwan's other real VP70 was at the  
9 ATF. They made a mistake. They took it by mistake back in  
10 '05, and they hadn't returned it for ten years. Those guns  
11 were in the same house. And that's how you have to think  
12 about it. Because they're the ones that took it. They took  
13 it illegally -- I'm not going to say illegally. They don't  
14 know whether it was pre-'86 sample or not. For safekeeping  
15 they took it down to ATF.

16 So these guns were both together for those ten years that  
17 he owned them until the government took them only as a  
18 precaution. Only as a precaution. Full intent to return  
19 them. That is the evidence we have. He's entitled to have  
20 that gun back. He bought the second one, the stock, from a  
21 federal firearms licensee, another person he had known. He  
22 met him at the gun show in Kentucky, a place where he's gone  
23 before. He even told you the guy has a pawn shop outside  
24 McGill Air Force base down in Tampa, Florida. He knows the  
25 guy, trusted the guy. He bought the stock. He owned -- and

1 the guy asked him, Do you own a VP70M? Yeah, I own it, I got  
2 it legally. The guy said, Well, I can sell it to you. He  
3 trusted him. The VP70 is a little bit different.

4 But think, ladies and gentlemen, he's an SOT with an 07  
5 license. All he has to do is send in the form. That's the  
6 evidence here. Mr. Kwan told you that. Special Agent Byrd  
7 told you that. Both guns, send in the form.

8 Government wants you to think that Mr. Tuerler who talked  
9 to Mr. Kwan up in Blaine, explained to him that you have to  
10 cut it twice with a quarter inch displacing -- imputes  
11 knowledge to him. It doesn't on the M14 because he bought it  
12 had been altered. He bought it from somebody he knew. So he  
13 assumed he was buying something legal.

14 As for the two diagonal cuts I think from the other  
15 evidence you heard that is sort of a moving target, to put it  
16 in the vernacular. The gun is destroyed by whatever ATF says  
17 at the time. We've heard evidence that they can change their  
18 mind. We heard evidence of that both from our expert and  
19 from theirs.

20 So what is a person to do? And if they do change what are  
21 you supposed to do if you own a gun? Let's say Mr. Kwan owns  
22 several hundred guns. Maybe every five years you can pack  
23 them up, take them to ATF and say are these still legal?  
24 That's what you call commonsense.

25 When they found the VP70 it was still in the stock. There

1 was no reason to believe that he didn't buy the VP70 with the  
2 second stock for his VP70M. He told you that they break  
3 easy. He even told you that the dealer he bought it from  
4 down in Knob Creek told him that they break easy.

5 The government argues that he should also know it's a  
6 short-barrelled rifle. Well, ladies and gentlemen, remember  
7 when Special Agent Byrd was on the stand and he talked about  
8 his grand jury appearance. They seized that gun because they  
9 thought it was a machinegun not because they thought it was a  
10 short-barrelled rifle. Special Agent Byrd didn't figure that  
11 out. What makes you think Mr. Kwan should. The knowledge.  
12 That's the knowledge you have to know. If the government  
13 doesn't know, what do they expect Mr. Kwan to know?

14 Reasonable doubt. Think of the evidence. Think of the  
15 standard when you go back to that jury room. I'm sorry, I  
16 have to refer to my notes. I have some important things to  
17 say and I tend to forget about them.

18 You're going to see evidence in there, the letter from the  
19 firearm technology branch from Mr. Forrester. In that letter  
20 it says -- the Glock isn't a short-barrelled rifle until  
21 they're combined, because they had three different pieces.  
22 If you combine two you have a legal one and if you didn't you  
23 put the 16-inch barrel on the pistol, it was still legal.  
24 With three choices it has to be combined.

25 Ladies and gentlemen, we believe the same should apply

1 here. They have to be combined. He had this weapon. He  
2 could put either stock on this weapon. That was legal,  
3 because he registered the pistol. He didn't need to register  
4 either one of the stocks. That's the evidence. Think about  
5 the evidence.

6 Think about all the facts that we have here. Think about  
7 Mr. Kwan himself, 52 years old, never been in trouble before,  
8 been collecting military memorabilia for 40 years. All he  
9 has to do with these two things if he even thinks they're  
10 illegal is fill out an ATF form. Why wouldn't he do that?  
11 Why wouldn't he do that?

12 Ladies and gentlemen, I'm just about done. I need to  
13 check my notes. I talked to the witnesses. I didn't talk --  
14 we had character witnesses in here, five character witnesses.  
15 The government only had one. One lieutenant comes in from an  
16 outfit up in Washington. Says he has a bad reputation for  
17 truthfulness and honesty. You heard that from the people who  
18 came in here. People who worked with him and known him for  
19 years, friends of his. Think about that. Would they come in  
20 here and lie? And these were good friends -- these are  
21 people who lived in this community, known Mr. Kwan for years  
22 and years. Benjamin Lee has known Albert Kwan since Hong  
23 Kong. He's known him 40 years. That's powerful evidence --  
24 a person's honesty and integrity. That is what they told you  
25 about Mr. Kwan.

1 Ladies and gentlemen, there is a lot of evidence here, but  
2 there is no evidence that Mr. Kwan knew that he possessed an  
3 M14 that was readily restorable or was a frame or receiver of  
4 the machinegun, or that he knew that he had a short-barrelled  
5 rifle. Overwhelming evidence argues against it. Because all  
6 he had to do in this day and age is fill out one simple form  
7 and mail it to the federal firearms technology branch.  
8 That's all he had to do. Think about that. Compare it to  
9 that standard of beyond a reasonable doubt. Ladies and  
10 gentlemen, if you do that you will find Albert Kwan not  
11 guilty.

12 Thank you.

13 MR. REDKEY: Counsel makes a passionate plea. I  
14 think he's trying to misdirect your attention in this case.  
15 The question is not why didn't Mr. Kwan register the  
16 firearms. The question is what did he know?

17 Let's talk about the M14 first. What did he know? The  
18 elements, again, of that offense are that he possessed a  
19 machinegun and that he was aware of the feature or features  
20 which make it a machinegun.

21 There is nothing in there about register the gun or if he  
22 didn't register it why he didn't register it. There are two  
23 simple questions for you to answer with respect to Count 1,  
24 that is the M14 machinegun rifle: That is, one, did he  
25 possess it; and two, did he know of the features that made it

1 a machi negun?

2 The testimony is that he obtained that machi negun I think  
3 he said in 1991 at a gun show. Six years later he had a  
4 conversati on wi th Speci al Agent Tuerler. Speci al Agent  
5 Tuerler told him the frame and receiver of a machi negun is a  
6 machi negun. It is a machi negun. Mr. Kwan knew that the M14  
7 was manufactured as a machi negun. It was manufactured as  
8 machi negun. Army wanted a machi negun.

9 That's what that firearm was. That is what the frame and  
10 receiver was. That gun was a machi negun. The light should  
11 have gone on and I think it did go on in 1997. He said I've  
12 got an M1 that is -- M14 which is Exhibit No. 1. That is a  
13 machi negun because it was manufactured as a machi negun.

14 Now, maybe it won't fire full auto here but I've just been  
15 told that the frame or receiver -- the receiver itself is  
16 itself a machi negun -- makes this designed to shoot as a  
17 machi negun, designed to shoot as a machi negun. Won't shoot  
18 fully auto, but it's designed to shoot as a machi negun.

19 And he was told at that time in essence the only way you  
20 can make this possession legal is to saw up or blowtorch up  
21 the receiver. He got it -- ruined, destroyed the receiver.  
22 Mr. Kwan did not do that. He didn't want to get rid of one  
23 of his favorite guns. He didn't want to destroy that gun.  
24 So he didn't. He kept it.

25 With respect to the VP70Z -- let me go back for just a

1 moment here to the question of restoring the M14.

2 Counsel would have you believe that the instructions said  
3 that if you couldn't personally restore that firearm or I  
4 couldn't or he couldn't, that it's not readily restorable.  
5 But if you examine definition that the Court provides you in  
6 Instruction No. 15 the term "readily" means fair, quick,  
7 efficiently without the needless loss of time and so forth.

8 The term "restored" means to bring back to or put back  
9 etcetera, etcetera. That doesn't say that the defendant had  
10 to be able to do that. Just that the firearm is capable of  
11 being readily restored. So if your car starts clunking and  
12 you would like to restore it to an operable condition you  
13 take it to a mechanic. Mechanic repairs your car. It has  
14 been restored. Does that mean it hasn't been restored  
15 because you don't have the technical knowledge yourself to  
16 restore that gun? Not at all.

17 This doesn't say anything about the defendant or you or  
18 the judge or me or anybody restoring that firearm. Simply  
19 that it be capable of being restored presumably by somebody  
20 with the relevant knowledge.

21 With respect to the VP70Z, if you look at the instruction  
22 for that -- again, we're going to ask you to put emotion and  
23 passion aside and look at law and the instructions and apply  
24 the law to the facts of this case.

25 First element of Count 2 is that the defendant knowingly

1 possessed a rifle. That is a rifle, it's capable of being  
2 fired from the shoulder, with barrels of less than 16 inches  
3 clearly less than 16 inches. Then defendant knew of the  
4 feature or features of the firearm that made it a  
5 short-barrelled rifle, not that made it subject to  
6 registration, but made it a short-barrelled rifle; that is,  
7 could he look at that and say that that barrel is less than  
8 16 inches.

9 I suggest to you that anybody could look at that barrel of  
10 that firearm and say it's less than 16 inches. Likewise,  
11 anybody could look at that holster shoulder stock and say  
12 this can be modified to use as a rifle to be fired from the  
13 shoulder, just as his other gun which was can do. It's  
14 designed to do that because it's a machinegun and it needed  
15 steadying when fired in that mode. That's why Mr. Kwan  
16 wanted it. So the question is was he aware of the features  
17 that made it subject to registration not that he knew that he  
18 had to register it? If you look at the third element firearm  
19 was not registered to him in the NAFRT -- in other words, the  
20 element did he possess it? Was he aware of the features of  
21 the firearm that made it subject to registration, not that he  
22 knew that it was subject to registration, but that was in  
23 fact subject to registration? He was aware of those  
24 features.

25 Government does not have to prove in this case, ladies and



1 gentlemen, that he knew he had to register that firearm. So  
2 the question is not why he didn't register it. The question  
3 is did he possess it? Was it a restricted weapon? And was  
4 it registered?

5 You don't have to look into why he didn't register it or  
6 why he did. Simply that he knew of those features and that  
7 made it a gun subject to registration. So based on that  
8 evidence we would ask you to return a verdict that is  
9 consistent with that evidence. In Count 2 and Count 1 of  
10 guilty on both counts. Thank you.

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13 (Proceedings concluded).

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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