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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 19, 2007
vs.)	Volume II
)	
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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produced by Reporter on computer.

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PROCEEDINGS
June 19, 2007 - 9:04 a.m.

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THE COURT: Ladies and gentlemen, please be seated. I understand there's some matters that need to be talked about before we bring in the jury. What's the issue?

MR. REDKEY: There are two, from our perspective. First is, we expect to call up retired Special Agent Bernard Tuerler to the stand this morning. And from the pleadings, the Court may recall that Mr. Tuerler talked with the defendant in May of 1997 up at the Blaine Port of Entry with Canada, and had a conversation with him. And that there was the meeting in August, later.

We are now focusing mainly on the May 1997 interview. And the facts are, very briefly, that the defendant was stopped at the primary inspection, was referred to secondary inspection. They searched his van. And Customs finished their search and were through with that.

And then Special Agent Tuerler from ATF went and talked to the defendant. And Special Agent Tuerler tells me that the search was over, and Mr. Kwan was free to go. And I questioned him closely on that. And then they had a conversation during which Special Agent Tuerler told the defendant that two of the guns that he brought in earlier

1 were DWTs in Canada, and that they were not legal in the
2 United States because the frame and receiver of a machinegun
3 is a machinegun and can't be legal unless the frame and
4 receiver is destroyed.

5 Of course, he then had later conversations with Mr.
6 Stahlfeld and Mr. Kwan about that in August. But that's not
7 the subject of what we're going to be hearing testimony
8 about, what the proffered testimony is about.

9 Having said that, I was not satisfied from my
10 conversations with Special Agent Tuerler that the defendant
11 might not have thought he was still in custody up there at
12 Blaine after the Customs people spoke to him, and then
13 Special Agent Tuerler spoke to him.

14 I asked the Special Agent, Did you tell him that he was
15 free to go? Because he's sitting there in secondary -- or at
16 least in the lobby of the Customs office. Customs had
17 basically seized his car to look at it. And he was free to
18 leave in his car.

19 I said, Was he told he was free to go?

20 And he said, No.

21 So my understanding of the law is that it would have been
22 a reasonable conclusion or inference on the part of the
23 defendant that he was not free to go, that he was still in
24 custody. And that Special Agent Tuerler, under the
25 circumstances, should have given him his Miranda rights, have

1 him waive them, and then have the conversation.

2 So anything that the defendant told to Special Agent
3 Tuerler I think would be subject to Miranda, and although
4 counsel did not make a motion to suppress, I don't need a
5 motion to suppress if I think the evidence should not have
6 come in.

7 So what we are left then with is a very abbreviated
8 testimony from Special Agent Tuerler from the constellation
9 of things he was going to talk about initially, down to what
10 he said to the defendant, not what the defendant said to him.
11 So that Miranda does not implicate it. Then the testimony
12 would be, as I said, simply that they had a conversation with
13 Mr. Kwan and told Mr. Kwan that even though guns may be DWTs
14 as that term is defined in Canada, they're still machinегuns
15 in the United States unless and until the frame and receiver
16 of the firearm was destroyed.

17 Again, that evidence is important because the government
18 has the burden of proving that the defendant knew of the
19 characteristics of the M-14 which made it a machinегun. He
20 was put on notice in so many words by Special Agent Tuerler
21 that that was the fact. So that shows knowledge of the
22 feature of the M-14; that is, frame and receiver that made it
23 a machinегun.

24 So that's where we are and I just thought we should
25 probably settle all that before I call Special Agent Tuerler,

1 and let counsel respond.

2 MR. CONTE: First of all, the M-14 is not a DWT. So
3 I thought I'd question the evidence right at the threshold
4 and what it's tending to prove. This weapon was obtained in
5 the United States. It didn't come down from Canada, it had
6 nothing to do with -- it wasn't a DWT in Canada and what is
7 legal in the United States.

8 The fact that they seized some guns and they cut them up
9 doesn't prove that Mr. Kwan knew that the M-14 was readily
10 restorable.

11 In addition to that, we get into the stop at the border
12 and the inferences of other crimes evidence that he's trying
13 to smuggle guns in from Canada. That certainly makes it more
14 prejudicial than probative.

15 THE COURT: I'll permit the inquiry. I will limit it
16 as Mr. Redkey has indicated.

17 MR. CONTE: Very well. What about the letter that
18 Mr. Stahlfeld wrote?

19 THE COURT: The government is not going to bring that
20 out in their case in chief. What are you suggesting?

21 MR. CONTE: I'm suggesting that the government said
22 that that incident was -- the door was closed, they weren't
23 going to use it again against him. In a letter that Mr.
24 Stahlfeld wrote, that they never responded to.

25 THE COURT: Do I have a copy of that letter?

1 MR. CONTE: I don't believe so, Your Honor.

2 May I approach.

3 THE COURT: Please.

4 Are you referring to the second to the last
5 paragraph?

6 MR. CONTE: Yes, sir.

7 THE COURT: Well, this refers to information that
8 Mr. Kwan provides. It won't be used against him. What the
9 agent may have said to him is different than what Mr. Kwan
10 may have provided in the way of either written information by
11 letter or what he said.

12 MR. REDKEY: I would add --

13 THE COURT: I don't see how this letter implicates
14 the limited scope that the government is proposing with this
15 testimony. Can you help me?

16 MR. CONTE: Your Honor, that was Mr. Stahlfeld's
17 understanding that anything having to do with that order to
18 stop and search would never come up again. I believe that
19 was his intent when he wrote the letter.

20 THE COURT: That's not what the letter says. I'm
21 going to permit the testimony in the limited way the
22 government has outlined.

23 MR. CONTE: I'm in a difficult position because I
24 would have to call Mr. Stahlfeld to the stand to testify
25 about what he believed the intent of the parties was at that

1 time.

2 THE COURT: I wouldn't permit you to do that because
3 he wasn't present -- he could have no understanding as to
4 what transpired when the agent talked the first time. He
5 wasn't present. Mr. Kwan hadn't talked to him. I don't
6 think -- I don't think it's relevant.

7 MR. CONTE: Very well.

8 MR. REDKEY: Your Honor, there is a second issue. It
9 involves the estoppel by entrapment issue. And the only
10 reason I bring it up now is that I'm not certain whether it's
11 going to come up in cross-examination of my expert witness
12 today. But I think it's something that we can raise now.

13 And as I looked at my pleading this morning, I realized
14 for the first time that it looks as though page 3 of Curtis
15 Bartlett's letter was omitted from the attachment B. If
16 that's the case with the Court's copy, I would ask permission
17 to approach to provide page --

18 THE COURT: Just a moment. It does look like
19 Mr. Bartlett's page 3 is missing.

20 MR. REDKEY: If I may approach. It is also
21 government's Exhibit No. 12, Your Honor.

22 THE COURT: Is there an issue that you want to
23 discuss now?

24 MR. REDKEY: Yes, Your Honor. And that is that --
25 and I don't know whether counsel intends to inquire of any of

1 the government witnesses about that letter. If he does not,
2 perhaps we can take this up at a later time. But if he does,
3 I would like to ask the Court at this time to ask for a
4 proffer from the defense.

5 As the Court is aware, entrapment by estoppel is an
6 affirmative defense. The defendant bears the burden of
7 proving it. There are several threshold steps that must be
8 accomplished before that evidence can be offered or before an
9 instruction can go to the jury on this estoppel by
10 entrapment. The rule and the law contemplates that the
11 defendant make a proffer showing that he can meet each of
12 those requirements which are preconditions of hearing the
13 testimony or getting the instruction.

14 I realize that might take some time this morning. But I
15 would at least ask The Court to ask of counsel for a proffer
16 on how he can meet the requirements of estoppel by entrapment
17 before we get into the testimony. My concern is he will go
18 into it on cross-examination of the government witness, and
19 then we'll have to interrupt the testimony and excuse the
20 jury and do it all then. It may be hard to unring the bell
21 if he starts talking about the Curtis Bartlett letter in 2001
22 and leave it hanging out there. So perhaps now would be as
23 good a time as any to ask for that proffer --

24 THE COURT: It would be, if there is an intent on the
25 part of the defendant to go into this letter in connection

1 with witnesses the government is going to call.

2 Can you assist me in that regard?

3 MR. CONTE: I intend to go into the letter, but it
4 has nothing to do with an entrapment instruction.

5 THE COURT: All right. I don't think Mr. Conte has
6 to tell us now questions he might ask on cross-examination.
7 If it seems to go to the entrapment issue, we'll have to sort
8 it out at the time. So unless you've got anything further to
9 say, we'll bring in the jury.

10 MR. REDKEY: The only other question is our expert
11 witness is going to testify this morning, and the Court has
12 given us permission to use a table which I have obtained. I
13 want to be sure we can place it where the Court finds it to
14 be satisfactory.

15 THE COURT: Where do you want to put it, in the
16 middle of the well?

17 MR. REDKEY: In the middle of the well, close enough
18 so the jury can see the parts.

19 THE COURT: And the rifles ought not to be pointing
20 towards anybody.

21 MR. REDKEY: They're not pointing at someone, we
22 will --

23 THE COURT: Let's bring in the jury.

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

25 THE COURT: Good morning, ladies and gentlemen of the

1 jury. Let me first apologize to you for the delay in getting
2 started with you. In a trial of this nature, there are
3 always matters that I need to discuss with the lawyers and
4 we've been doing that since 9:00. We try to do it on our
5 time and not yours. But they needed to have some discussion
6 outside of your presence and before we start. Thank you for
7 your patience.

8 You may call your next witness.

9 MR. REDKEY: We call Bernard Tuerler.

10 BERNARD TUERLER

11 Thereupon, after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. REDKEY:

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

16 A Bernard H. Tuerler T-U-E-R-L-E-R.

17 BY MR. REDKEY:

18 Q Good morning, Mr. Tuerler.

19 A Good morning.

20 Q I want to ask you some questions today about something
21 that happened while you were an active duty ATF agent. How
22 long were you an ATF agent?

23 A For 18 years.

24 Q And before that, were you also involved in federal law
25 enforcement?

1 A Yes, I was. I was, prior to ATF in 1985, I spent two
2 years with the United States Customs Service in Marine
3 Interdiction Unit in Key Largo, Florida. Prior to that I was
4 with the National Park Service as a park ranger for seven
5 years, six and a half as a law enforcement officer in various
6 parks and park service areas throughout the United States.

7 Q You are now retired, I believe?

8 A Yes, I am.

9 Q When did you retire?

10 A October 1 of 2005.

11 Q You were an ATF agent when you retired; is that correct?

12 A Yes, I was.

13 Q Can you briefly describe your training that you went
14 through as an ATF agent?

15 A Okay. As an ATF agent I went to Basic Criminal
16 Investigators School at the Federal Law Enforcement Training
17 Center in Georgia. Then I had an additional training
18 specific to ATF dealing with firearms laws and regulations
19 and -- all the laws and regulations that ATF investigates.
20 And the types of -- well, the investigations we do and the
21 procedures we're to operate under.

22 Then I had additional training specifically to the
23 identification and origin of where firearms are made, to
24 establish the interstate nexus issue which is an element in a
25 lot of federal firearms crimes. Then I had additional

1 training in firearms trafficking and including -- well,
2 various seminars, and then I also had training, attended
3 seminars in -- with foreign authorities in Philadelphia and
4 also in Toronto, Canada.

5 Q Did part of that training include obtaining knowledge
6 about machineguns?

7 A Yes. Initial basic training for ATF included the
8 identification. We actually -- so we could identify various
9 firearms, determine what the characteristics were, and what
10 differentiated a machinegun from a bolt-action rifle or
11 semi-automatic rifle, and things of that nature.

12 Q Were you employed as an ATF agent in 1997?

13 A Yes, I was.

14 Q What office were you assigned to?

15 A I was assigned to an office in Seattle, but I was -- I had
16 a desk at the DEA office in Blaine, Washington on the
17 Canadian border. It wasn't a formal satellite office, but it
18 was sort of an off-site office in Blaine.

19 Q I want to direct your attention to May 8 of 1997. Did you
20 have a conversation on that day with the defendant in this
21 case, Albert Kwan?

22 A Yes, I did.

23 Q I'm going narrowly tailor my questions and ask you to
24 narrowly answer them.

25 What did you tell him that day?

1 A Well, that day I specifically told him, in regards to the
2 definition of what a firearm was in the United States -- or
3 rather a machin-gun as opposed to what a deactivated war
4 trophy is in Canada.

5 Q What did you tell him?

6 A In Canada they have a definition if --

7 MR. CONTE: I would object. This is expert
8 testimony.

9 THE COURT: Overruled, you may answer. Tell him what
10 you said to him. Limit your answer to what you told him.

11 A Okay. I told him that a machin-gun that is with a plug
12 barrel and an inoperable firing pin in Canada, though that
13 may be a -- just a piece of metal, that may no longer be
14 considered a machin-gun in Canada.

15 In the United States that device would still be considered
16 a machin-gun. Because for the purposes of -- in the United
17 States law, the federal law that we operate under, a
18 machin-gun includes the operating machin-gun or the frame or
19 receiver for that -- for a machin-gun. So the frame or
20 receiver by itself, even if parts are attached to it that are
21 inoperable, that is still under federal law a machin-gun.

22 BY MR. REDKEY:

23 Q Did you have any discussion with him on how to destroy
24 frames and receivers of machin-guns at that time?

25 A Yes. To clarify the discrepancy between the two, I told

1 him that a -- for a machinegun to no longer be a machinegun
2 under federal law, the frame or receiver had to be destroyed.
3 And it's destroyed by cutting the receiver or frame in two
4 places completely through with a metal displacing cutting
5 device -- not really a device but technique, such as a blow
6 torch. If you cut a frame or receiver with a hacksaw, that's
7 not considered destroyed for the purposes of ATF.

8 Q Just so the record is clear, would you be able to identify
9 the person you spoke to that day if you saw him again?

10 A I see him at the table. He looks familiar, but it's been
11 ten years, and I think we both added some pounds.

12 Q Thank you. Who are you referring to?

13 A The gentleman seated to the right of the three people at
14 the defense table.

15 Q That would be Mr. Kwan, the record should reflect.

16 Thank you. No further questions.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. CONTE:

20 Q Good morning.

21 A Good morning.

22 Q Do you recall meeting with Mr. Stahlfeld, the other
23 gentleman sitting at that table, several months later?

24 A Yes.

25 Q Do you remember having that conversation with him?

1 A I remember -- I met with him in August.

2 Q Do you recall having a conversation about frames and
3 receivers with Mr. Stahlfeld?

4 A Yes.

5 Q Tell us, where were you at when you made the statement to
6 Mr. Kwan back in May?

7 A We were at the Blaine Port of Entry in the Customs
8 facility. At the Blaine Peace Arch Port of Entry.

9 Q Were you in an office, in a room? Tell us where you were
10 at?

11 A I believe we were in the lobby area.

12 Q You believe?

13 A I believe, yes.

14 Q You're not sure. How long did this conversation last?

15 A The conversation with Mr. Kwan? I don't recall.

16 Q What else did you talk about?

17 A We recall -- we discussed prior information that I had
18 received regarding Mr. Kwan.

19 Q Did you at any time have a list of all the weapons that
20 Mr. Kwan had registered in Canada?

21 A I had a list of guns that he had registered that was
22 provided it to me by the Vancouver Police Department or
23 Vancouver firearms unit, yes.

24 MR. CONTE: May I have this marked?

25 THE COURT: Sure.

1 It will be marked A-4. The clerk can mark it for you.

2 MR. CONTE: Very well, thank you. May I approach?

3 BY MR. CONTE:

4 Q Is that a list of the -- that you obtained from the

5 Vancouver Police of all guns registered in Canada to

6 Mr. Albert Kwan?

7 A Yes, it is.

8 Q Is there a Winchester M-14 on that list?

9 A Could you direct me to a number? Do you want me to --

10 Q It's not on there.

11 A Okay. No.

12 Q All right. Now, you say you told him that you had to cut

13 the gun in two pieces?

14 A No, not two pieces, two places.

15 Q Cut it in two places. Is that the only way to destroy a

16 frame or receiver?

17 A No.

18 Q What other ways are there?

19 A Well, it could be melted in entirety.

20 Q What about pressing it together in a big press? Would

21 that destroy a frame or receiver?

22 A I would have to check. I would have to check with FTB to

23 see if that would meet their definition.

24 Q So they have a published definition?

25 A It's available if you want -- if you want it. It's -- my

1 experience with ATF was if people found a gun in their attic
2 and it turns out to be a machin gun or something, and it's --
3 what do you do with it? And we're talk -- you cut it in two
4 places, and FTB will actually provide me with a diagram which
5 I can provide to the person that will say this is where the
6 cuts have to be made. They have to be made in specific
7 places on different receivers.

8 Q My question is: Is that exclusively the way to destroy a
9 receiver or frame?

10 A To cut it?

11 Q Yes.

12 A No, it's not.

13 Q There is many ways, correct?

14 A Well, I've agreed to one. With the crushing, I believe
15 crushing, it would also be destroyed.

16 Q What about -- you say they have to be cut. Is that
17 diagonally or horizontally?

18 A It depends on the receiver, sir.

19 Q Well, can you not -- can you cut one diagonally and not
20 cut one horizontally and it still be a receiver?

21 A I don't recall ever seeing a horizontal-cut receiver or a
22 diagram for one. But -- so I can't answer that.

23 Q Well, cutting a receiver horizontally in two places with a
24 quarter-inch displacement would pretty much ruin that
25 receiver, wouldn't it?

1 A It would depend where the cuts were made.

2 Q So does the ATF have diagrams for every machi negun?

3 A I don't know.

4 MR. CONTE: I have nothing further. Thank you.

5 THE COURT: Any redirect?

6 MR. REDKEY: No.

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

9 THE WITNESS: Thank you. I'm excused?

10 THE COURT: Yes.

11 MR. REDKEY: Your Honor, may I move into the well for
12 a moment to place the table?

13 THE COURT: Yes.

14 MR. REDKEY: Is that location satisfactory to The
15 Court?

16 THE COURT: Back it up just a little bit.

17 Mr. Conte, Counsel, if you want to move around so you can
18 see better the witness's testimony, you're free to do that at
19 any time during the course of his testimony.

20 Witness may step forward, please.

21 ADAM CORNELL GALBRAITH

22 Thereupon, after being duly sworn testified as follows:

23 DIRECT EXAMINATION

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

1 A My name is Adam Cornell Galbraith. Galbraith is spelled
2 G-A-L-B-R-A-I-T-H.

3 BY MR. REDKEY:

4 Q Good morning, Mr. Galbraith.

5 A Good morning.

6 Q What is your occupation, sir?

7 A I'm a firearms enforcement officer for the Bureau of
8 Alcohol, Tobacco, Firearms and Explosives.

9 Q Is that a division of the Department of Justice?

10 A Yes, it is.

11 Q How long have you been a firearms enforcement officer?

12 A Since August of 2004.

13 Q Can you describe briefly for the jury, please, the nature
14 of your duties as a firearms enforcement officer?

15 A The Firearms Technology Branch is responsible for
16 primarily the testing, examination and classification of
17 evidence in criminal cases. We're also responsible for
18 answering technical questions and providing technical
19 assistance with regards to firearms and with regards to
20 federal firearms laws, to ATF personnel in the field, to
21 members of the firearms industry, and also to the general
22 public, as well as law enforcement agencies across the
23 country, and in some cases outside of the country.

24 Q Very well.

25 Do you have to have a federal firearms license to do that?

1 A No. None of the firearms enforcement officers that work
2 for ATF have federal firearms licenses. That would be -- it
3 would be a conflict of interest since we work for the
4 organization that monitors and controls federal firearms
5 licensees.

6 Q Do you have any kind of security clearances required for
7 that work?

8 A I currently hold a top-secret security clearance, yes.

9 Q Are you a member of the NRA?

10 A Yes, I am.

11 Q For how long?

12 A More than ten years.

13 Q Are you an active member now?

14 A Yes, I am.

15 Q Can you describe briefly the nature of -- or the
16 background of your -- let me start that over again.

17 Have you had experience with firearms?

18 A Certainly, yes.

19 Q Starting back in 1993, I'm going to start there, were you
20 in the Armed Services?

21 A Yes, I was. I spent four years in the United States
22 Marine Corps.

23 Q Did you have small arms training in the Marine Corps?

24 A Yes, we did.

25 Q Did you have any other training in the Marine Corps, more

1 advanced?

2 A The weapons training that I underwent in the Marine Corps
3 can be separated into two basic sections. During basic
4 training we received training in the M16A2 service rifle as
5 well as the M249 squad automatic weapon. After boot camp all
6 Marines who are not destined for a combat or an
7 infantry-related MOS attend what is called marine combat
8 training, during which I received additional instruction in
9 the M16A2 service rifle. Again, additional instruction on
10 the M249 squad automatic weapon, the M60E2 machin gun, the
11 M250 caliber machin gun, and the Mark 19 .40-millimeter
12 machin gun.

13 Q After you left the Marine Corps, what did you do?

14 A Two years after I left the Marine Corps I attended
15 Colorado School of Trades Gunsmithing Program in Lakewood,
16 Colorado.

17 Q Can you describe the training you obtained there?

18 A The gunsmithing program at the Colorado School of Trades
19 is a 14-month, full-time program that includes all areas of
20 the gunsmithing trade, everything from basic use of hand
21 tools through machine equipment such as mills, milling
22 machines and lathes, drill presses. There is a welding
23 section. Stockmaking is covered, both synthetic stocks and
24 wooden stocks. There is a design and function section,
25 during which principles of firearms design and function are

1 covered. There is a very informative section in the program
2 called cycle of operations, in which four different weapon
3 systems are chosen and each movement of each component in
4 those four firearms is detailed throughout an entire cycle of
5 operation of each of those firearms. It's a very
6 comprehensive program.

7 Q Did you successfully complete that program?

8 A I did. In March of 1999 I was awarded an associate of
9 occupational science degree in gunsmithing.

10 Q Did you then go out into the industry itself to work?

11 A Yes, I did. My first position after graduation from the
12 Colorado School of Trades was with a company that at the time
13 was owned by the parent company, called Raytheon. Raytheon
14 was and still is a government contractor that maintained a
15 contract for what is called the joint operational stocks
16 program, which is a program that maintains a pool of
17 government-owned equipment for loan to certain special forces
18 units around the world.

19 The equipment is borrowed for a temporary period and used
20 by these units for training and for other missions. When
21 they're finished with the equipment, it's returned to the
22 joint operations group of which I was a part, and repaired or
23 maintained as need be, before it was reissued to the next
24 unit that requests the loan.

25 The portion of the program that I was responsible for was

1 the weapons maintenance area. We had a large stock of more
2 than 1,000 weapons, including MP5 submachine guns,
3 Remington .700, .300 Winchester magnum-based sniper rifles,
4 knife manufacturing, SR25 .308 caliber sniper rifles, and
5 Barrett M82A1 .50 caliber sniper rifles.

6 Q Did you work with all those guns?

7 A Yes.

8 Q What kind of work did you do on them?

9 A Primarily my responsibility was maintenance and repair of
10 those weapons. Although I did have additional
11 responsibilities while I was there, to include maintenance
12 and repair of other small arms that were not standard to the
13 arms room, such as M14, M2, M249, as well as other not just
14 domestic weapons but foreign weapons as well. AK pattern
15 weapons and others.

16 Q How long did you work there at that particular job?

17 A I was with the joint operations group, which initially was
18 owned by Raytheon, and several years into my employment the
19 company was bought by another contractor called L-3
20 Communications. But the total time I was with the joint
21 operations group was five years.

22 Q And would that have been in 2004?

23 A That's correct.

24 Q Is that when you went to ATF?

25 A Yes.

1 Q During the time that you were working at -- I'll call it
2 Raytheon or L-3 Communications, did you have a federal
3 firearms license or more than one?

4 A I did. During that time I worked full time, as I
5 explained, with military weapons. That was my full time
6 position. During that time, however, I also maintained for
7 the entire time, the five-year period that I worked there, I
8 maintained a type 01 federal firearms license as a gunsmith.

9 And I had a home-based business during which I maintained
10 and customized a large number of commercially available
11 firearms for the general public. For a portion of that time,
12 approximately two and a half years, I also had a type 07
13 manufacturer's federal firearms license, as well as a special
14 occupational tax stamp which allowed the manufacture and sale
15 of National Firearms Act firearms, such as silencers and
16 machineguns.

17 Q When you got to ATF did you undergo more training?

18 A Absolutely. The training program at the Firearms
19 Technology Branch is ongoing. But initially upon reporting
20 to the Firearms Technology Branch, every new firearms
21 enforcement officer is put through on-the-job training, a
22 very comprehensive on-the-job training program.

23 We are assigned a senior firearms enforcement officer who
24 acts as a trainer. We use the vast amount of reference
25 material that is available in the Firearms Technology Branch,

1 as well as the national firearms collection which consists of
2 over 9,000 examples of many, many different firearms.

3 Q Did you receive any training in the federal laws
4 pertaining to the governance of NFA weapons, such as
5 machineguns and so forth?

6 A Absolutely. A large portion of our job -- in fact our
7 primary mission, as I mentioned earlier, is the examination,
8 testing, and classification of evidence in criminal cases
9 with respect to federal firearms laws.

10 Q Did you receive training in the origin and identification
11 of firearms?

12 A Yes. That is another primary responsibility. Often, as
13 part of a classification, the manufacturer and origin
14 information of a given firearm is part of the report. So
15 it's necessary for members of Firearms Technology Branch to
16 understand firearms manufacturing, the manufacturing process,
17 firearms design, features and characteristics of firearms and
18 of machineguns, and methods of manufacturing and locations of
19 various firearms manufacturers, not only in the United
20 States, but around the world as well.

21 Q Would that enable you to determine roughly when and where
22 a firearm was manufactured? And by whom?

23 A In the vast majority of cases, yes.

24 Q Have you taken any specialized courses in connection with
25 your employment as a firearms enforcement officer?

1 A In addition to the in-house on-the-job training, we also
2 attend at very opportunity various armorer's classes around
3 the country.

4 Q Before you go on, what is an armorer?

5 A The term "armorer" is a term used to denote someone who
6 has specialized knowledge for one particular firearm or one
7 particular group of firearms. A little more in-depth
8 knowledge than an average gunsmith or average firearms
9 enthusiast might have, enabling a person to perform detailed
10 disassembly and maintenance and repair on a certain specific
11 firearm.

12 Q Approximately how many of those armorers courses have you
13 attended?

14 A More than ten.

15 Q Any specific manufacturers?

16 A There has been several. Sig Arms. There's been FN
17 Armorer's class, Colt, Beretta, Smith & Wesson, Ruger, Glock,
18 Barrett Manufacturing, Knight's Manufacturing, Heckler &
19 Koch, Wiegand Combat Handguns, Caspian Manufacturing, and
20 various armorers' classes at the joint operations group which
21 mainly consisted of military weapons, M2 machin gun, M203,
22 M24 or 40X sniper weapon system, M240B machin gun, the M249
23 squad automatic weapon, M3 grease gun, M4, M9, Mark 19
24 machin gun, model 870 shotgun, HKMP5 submachine gun, SR25
25 sniper weapon system and others.

1 Q Just a couple more questions about your qualifications.
2 How many times would you estimate you have conducted a
3 technical examination of a firearm submitted in connection
4 with a criminal case to make whatever evaluation you were
5 called upon to make?

6 A Hundreds.

7 Q Have you ever testified as an expert witness in court?

8 A Yes, I have. I've testified six times in federal court
9 and once in state court.

10 MR. REDKEY: Your Honor, I offer the witness as an
11 expert. Offer Counsel an opportunity to voir dire if he so
12 chooses.

13 THE COURT: Do you wish voir dire?

14 MR. CONTE: No. We'll stipulate to his expertise.
15 Thank you.

16 THE COURT: You may proceed.

17 BY MR. CONTE:

18 Q Are you familiar with the Winchester M-14 firearm?

19 A Yes, I am.

20 Q How so?

21 A Well, through a combination of research and examination,
22 I'm familiar with the weapon system. It's a military rifle.
23 It's a machinегun that was developed by the United States
24 Ordnance Department, Department of the Army for the
25 military. And it was manufactured as a military machinегun.

1 Q When you say "machinegun," what do you mean?

2 A Well, a machinegun is a weapon that is capable of firing
3 more than one shot automatically without manual reloading by
4 a single function of the trigger. It also includes the frame
5 or receiver of such a weapon.

6 Q Was this particular firearm, the M-14, also capable of
7 firing the semi automatic?

8 A Yes. It's what's termed a selective fire weapon, meaning
9 that the user can select between two firing modes, both
10 semi automatic, where one shot per function of the trigger is
11 fired, and also the automatic mode, where multiple shots per
12 trigger function are fired.

13 Q How does one select between one mode and the other?

14 A There is a selector switch that is installed traditionally
15 that the user can select by turning the switch either
16 semi automatic mode or the automatic mode.

17 Q Can you please describe for the jury the basic parts of an
18 M-14?

19 A Well, the main component parts consist of the receiver
20 itself, which you could call the heart of the system. It's
21 the most important component. It's the component that will
22 have, in most cases, features and characteristics -- design
23 features and characteristics that would differentiate that as
24 a machinegun receiver or as a semi automatic receiver.

25 You've got the barrel, which is attached to the receiver.

1 You have the stock, which of course is used to hold the rifle
2 and to shoulder the rifle. Then the other major component is
3 the trigger group assembly.

4 Q We'll be talking more about those.

5 Are there any moving or interchangeable parts as a part of
6 the receiver?

7 A The receiver itself is a solid piece of metal. There are
8 many parts that are attached to the receiver. But the
9 receiver itself, with all the other components various
10 components taken away, it is a solid -- it's a single piece
11 of material.

12 Q Were you called upon to examine a Winchester M14 rifle in
13 this case?

14 A Yes, I was.

15 Q Do you recall when you received that for the purposes of
16 examination?

17 A Well, the examination was split into two parts. I
18 conducted the first part of the examination here in Seattle
19 at the ATF office on May 11 of 2005.

20 Q Was that a thorough examination?

21 A It was an initial examination, mainly done with the
22 purpose of selecting those items that needed to be evaluated
23 further at our office in Martinsburg, West Virginia.

24 Q Did you later receive the firearm in your offices at
25 Martinsburg?

1 A We did. It was received on December 8 of 2005. It was
2 examined on May 11 -- I'm sorry, on January 10 of 2006. The
3 initial examination was May 11, 2005. The part conducted at
4 our office in Martinsburg, West Virginia was January 10 of
5 2006.

6 Q Did you personally conduct that examination?

7 A Yes.

8 Q How long did it take?

9 A The entire time -- the entire examination of the evidence,
10 Exhibit No. 1, took approximately two hours.

11 Q And I'm going to ask you to go through your steps that you
12 took to perform this examination.

13 MR. REDKEY: With the Court's permission, I would ask
14 that the witness may step down now and handle the rifle.

15 THE COURT: You may.

16 BY MR. REDKEY:

17 Q I'm going to hand you what's been marked for
18 identification as government's Exhibit No. 1.

19 THE COURT: I'm going to ask the witness to keep
20 his voice up during the testimony.

21 BY MR. REDKEY:

22 Q Do you recognize that firearm, sir?

23 A Yes, I do.

24 Q How is it that you recognize it?

25 A I recognize the serial number. It's marked on the

1 receiver. As well as a stamped signature and handwritten
2 date on the evidence tag.

3 Q Then I would ask, what was the first step you took,
4 Mr. Galbraith, in your examination?

5 A Well, as I just it did a second ago, as per our standard
6 operating procedures, the initial examination of a given
7 firearm includes a check to ensure that the firearm is
8 unloaded and that it's clear of any ammunition.

9 After ensuring that the weapon is clear of ammunition,
10 traditionally -- not traditionally -- in every case any
11 pertinent markings, such as serial number of the firearm and
12 the manufacturer's information, that information is checked
13 against the evidence transmittal form that we receive with
14 evidence to be examined, to make sure that the serial number
15 on the firearm is the same as the serial number that is on
16 the evidence transmittal.

17 Q Did you do that in this case?

18 A I did.

19 Q With what result?

20 A They were identical. The serial number was a match.

21 After ensuring --

22 Q Go ahead.

23 A After ensuring that the markings are correct and noting
24 any manufacturing information that might be on the firearm,
25 the report is prepared electronically. The report is begun

1 electronically. As I would complete a step in the
2 examination process, I would add information to my report
3 electronically during the examination, as well as taking
4 photographs of each firearm that I'm examining. And in some
5 cases preparing diagrams showing individual components or
6 showing evidence that may have come in, in one condition, and
7 may have been restored during the course of the examination.

8 Q So when you performed your external examination, what did
9 you notice about this particular firearm?

10 A Well, after making sure all the information matches and
11 noting the serial number and the manufacturer's information,
12 the next step after that is to ensure that there is no damage
13 to the submitted evidence that may have resulted from
14 shipping. So that if such damage has been noted it can
15 be -- it can be determined that that happened during shipping
16 as opposed to before the evidence was submitted to our
17 branch.

18 Q Did you notice any such damage that had not been reported
19 that you see here?

20 A No, I did.

21 Not.

22 Q With respect to that particular firearm, you've talked
23 about the various parts. Could you point out the various
24 parts of that gun to the jury, please, starting with the
25 barrel?

1 A You can see the barrel in the front here. The barrel
2 extends all the way back to the actual receiver, which is
3 this component here. As you can see, there is several
4 components that are installed on the receiver. But this
5 component here is the actual receiver. You've got the
6 trigger group, which is here. And then, of course, the stock
7 assembly here.

8 Q You also mentioned, I think in your testimony, that M14s,
9 the original M14s, could fire with a selector switch. Is
10 there a selector switch on this particular firearm?

11 A As this firearm was received -- these are the components
12 that were installed on this exhibit when it was received for
13 examination. This is what is called a connector assembly
14 which fits in this area here.

15 Q Was that assembly in the gun when you received it?

16 A It was installed on the gun, yes. Back in this area --

17 MR. REDKEY: Your Honor, if I may for purposes of
18 this demonstration, may I remove the flex cuff?

19 THE COURT: You may.

20 A At the rear of the connector assembly in this area here,
21 there would be one of two of devices installed on an M-14.
22 First of which is an actual selector, which can be rotated
23 from one position to another, moving the weapon from a
24 semi automatic mode to the automatic mode.

25 The other device that may be installed in that location is

1 called a "selector lock," which locks the selector in the
2 semi automatic position.

3 As this firearm was received for examination by our
4 branch, it had the connector installed and the selector lock
5 installed.

6 Q You were able to determine that just upon an external
7 examination, were you?

8 A Yes. Those components are visible from the outside
9 without any disassembly.

10 Q Did you then, after your external examination, begin to
11 perform an internal examination?

12 A Not at that point. The next step after the external
13 examination, which is done to see if there are any external
14 indications that the firearm that you're looking at might be
15 a machin-gun, and in this case there are several. The
16 nomenclature of M14 is used to denote a military machin-gun,
17 as well as the machin-gun components, primarily the connector
18 assembly and the selector lock. Those are all indications of
19 a machin-gun, external indications.

20 After the external examination is performed, the next step
21 traditionally is a manual function test to determine if the
22 firearm actually functions in an automatic manner. That was
23 the next step in my examination, was a manual function test.

24 Q Before you did that did you record, as you've indicated,
25 what you had observed in your external examination?

1 A Yes.

2 Q What did you do then to perform the test function?

3 A The manual function test is performed by -- again, first
4 ensuring that the weapon is clear, pointing it in a safe
5 direction, the test is to determine if the firearm actually
6 functions correctly in the mode in which it is -- it has been
7 selected. In the case of this firearm, since the selector
8 lock was installed, there was only one mode available for
9 testing at this point, which was the semi automatic mode. The
10 test is conducted by pulling the trigger, which should result
11 in the hammer falling forward.

12 While keeping the trigger held to the rear, the gun is
13 manually cycled, which simulates the firing of a live
14 cartridge, and the operation of the action that would result
15 from firing a live cartridge. At this point the trigger is
16 released, at which point the hammer should slightly move
17 forward and reengage the sear as indicated by a light click,
18 which you can hear there.

19 At this point, the trigger is pulled again, and if the
20 firearm is operating correctly in the semi automatic mode, the
21 hammer should fall again indicating a subsequent shot would
22 be fired with a subsequent trigger pull. As you can see,
23 this firearm tests for correct operation in the semi automatic
24 mode.

25 Q After you completed that test, did you record that also?

1 A Not in the report.

2 Q What did you do next?

3 A After an external examination and a function test, the
4 next step is an internal examination to examine the
5 components that aren't available -- that aren't viewable from
6 the outside of the firearm.

7 Q Can you describe -- demonstrate what you did, I should
8 say?

9 A Certainly.

10 To view the internal components that aren't visible from
11 outside, it's necessary to disassemble the firearm, which is
12 done by removing the trigger group.

13 Q Does that take any specialized knowledge or training?

14 A Very little. Any owner of an M14 or of a similar rifle is
15 well aware of the disassembly procedure for a weapon such as
16 this. There is no tools required to remove this component as
17 you can see. And it comes out as an assembly.

18 Q That's called a what?

19 A The trigger group or trigger mechanism.

20 Q After you remove that, what did you do?

21 A After the trigger mechanism has been removed, the butt
22 stock can be separated from barrelled action, by pivoting it
23 upward and removing it. After butt stock has been removed, a
24 lot of the internal operating components of the firearm can
25 be viewed. There was a couple of indications, not easily

1 visible when the firearm is installed in the stock, that
2 further indicated what I was looking at was a machineregun
3 receiver.

4 Q Could you hold that up as you demonstrate what you did so
5 the jury can see that?

6 A Certainly.

7 As the firearm was received as I've described earlier, the
8 connector assembly was installed, as well as the selector
9 lock. And some of the important design features of the M14
10 are features that enable the installation of these machineregun
11 components -- the connector assembly and the selector or the
12 selector lock, the most important of which is the selector or
13 connector stud, right here, around which the sear release and
14 the selector shaft fit through from opposite sides. The two
15 components are assembled through that stud. There is also a
16 notch, if you can see that there, and there is a small groove
17 at the front here, the connector groove, that enables
18 installation of the connector assembly on to the receiver.

19 And all those parts were clearly visible after disassembly
20 of the stock and the trigger group.

21 Q Can you point out for the jury, please, what -- now that
22 we've got this disassembled, where is the receiver?

23 A The actual receiver is this component here (indicating).

24 Q Pointing to the nonbarrel end?

25 A Yes, correct.

1 Q You said earlier that has attachments to it? Were there
2 attachments to the receiver in this case?

3 A Well, yes. You can see the barrel is attached to the
4 receiver. The operating rod is attached to the receiver, and
5 the site assembly is attached, as well as in this case the
6 connector assembly was attached as well. All those
7 components were attached to the receiver.

8 Q Are they part of the receiver or just attached to it?

9 A They were attached. They were not -- they were not
10 permanently attached via welding. They were attached via
11 primarily either threaded areas, dovetail surfaces,
12 interlocking dovetail surfaces, or pins, or a combination.

13 Q When you take all those away, do you still have a
14 machin gun receiver?

15 A Absolutely. A firearm receiver as well as a machin gun
16 receiver, yes.

17 Q What did you do next?

18 A After I disassembled the firearm, I determined that there
19 had been modifications to the sear release and the selector
20 shaft. These components had been welded together, in that
21 manner. They're installed as I've described earlier -- the
22 two components are installed through the hole in that stud,
23 like that (indicating). And in this case, they were welded
24 together.

25 Q Were they welded fully to each other?

1 A They were. They were welded to each other. They were not
2 welded to the receiver.

3 Q And explain for the jury, if you would please, what the
4 sear is. You referred to that a couple of times.

5 A The sear is the component that holds the hammer in a
6 cocked position. Traditionally, the sear is moved by pulling
7 the trigger, which allows the hammer to fall forward under
8 spring tension. The sear release is the machin gun component
9 that is connected to the sear by the connector.

10 Q Does that connect the sear to the trigger group, then?

11 A It connects the sear to the operating rod. In the
12 automatic mode when the operating rod closes, it pulls the
13 connector forward slightly, which rotates the sear release,
14 rotating the sear, allowing the hammer to fall forward. So
15 when the gun is in the automatic mode, that cycle -- that
16 automatic cycle of operation will continue until the trigger
17 is released, the ammunition supply is exhausted, or the
18 weapon malfunctions.

19 Q You've indicated that those two pieces were welded
20 together?

21 A Yes, they were.

22 Q Did that complete your internal examination?

23 A Yes.

24 Q Did you then record that?

25 A I did. I noted that the components were welded together

1 and the condition of the components.

2 Q What was your next step? In your internal examination of
3 the firearm, did you note any modification alteration of the
4 receiver itself?

5 A I did not. The receiver appeared unmodified and original
6 in every respect.

7 Q Now, if I could ask you with respect to the -- what you
8 did afterwards. What did you do after you basically
9 disassembled the firearm when you conducted your examination?

10 A The next step after determining those components were
11 welded together was to go through a restoration process and
12 to determine the ease with which this item could be restored
13 to an automatic firing condition.

14 Q What did you do in that regard?

15 A I obtained a rotary cutting tool, a Dremel-type rotary
16 cutting tool.

17 Q Can you spell Dremel?

18 A D-R-E-M-E-L. It's a commonly available tool used for
19 polishing and grinding. I'm sure many of you are familiar
20 with that. I used a Dremel-type tool, a rotary tool, with a
21 cutting wheel to cut through the welded sear release and
22 selector shaft. You can see the shiny portion there. That
23 is where the cut was made, directly down and through. It's a
24 small cut. Once that welded area of these two components was
25 cut through, there is a pin -- I'm not sure if you can see

1 that pin. It's pretty small. That pin holds the selector
2 lock on to the selector shaft. So after making the cut that
3 separated the sear release and the selector shaft, driving
4 that pin out allowed removal of the selector lock, removal of
5 the remnants of the sear release, removal of the selector
6 shaft as well.

7 Q What did you do after that?

8 A At that point, since these two components had been welded
9 together and cut apart, they were no longer in a serviceable
10 condition. So I substituted parts from the national firearms
11 collection to determine the ease with which this exhibit
12 could be readily restored. Those components are, again, just
13 like the tools that were used, readily available replacement
14 parts that I verified by researching the actual --

15 MR. CONTE: May we approach on that issue?

16 THE COURT: I'm sorry?

17 MR. CONTE: May we approach on that issue?

18 THE COURT: I'm not sure it's necessary.

19 Do you have an objection to the testimony?

20 MR. CONTE: I do.

21 THE COURT: Well, state your objection.

22 MR. CONTE: Beyond the scope of the Rule 16.

23 THE COURT: Let's have a side-bar.

24 (Following proceedings held at sidebar:)

25 MR. CONTE: Your Honor, I don't believe this expert

1 is qualified to say what is readily available on the market.
2 I don't believe there is anything in the CV about being
3 familiar with what is for sale on --

4 MR. REDKEY: I don't think he needs to be an expert
5 to know what is available on the open market.

6 THE COURT: Let him finish.

7 MR. CONTE: I think he does.

8 THE COURT: You were finished?

9 MR. REDKEY: You don't have to be an expert to say
10 what is available on the open market.

11 THE COURT: Well, I think it falls within his
12 expertise. I'll permit that inquiry. That's the nature of
13 your objection?

14 MR. CONTE: Yes, Your Honor.

15 THE COURT: All right.

16 MR. REDKEY: Is whether he was allowed to answer that
17 question.

18 (Proceedings continue)

19 THE COURT: Why don't you ask the question again?

20 BY MR. REDKEY:

21 Q Is that the kind of parts that are readily available on
22 the open market?

23 A Yes, they are.

24 Q Can you elaborate?

25 A Firearm parts in general, even machin-gun parts, are not

1 restrictive or controlled in any way. They were available as
2 replacement components from a number of sources. As I
3 mentioned, they're not controlled in any way, so there is no
4 restrictions on their purchase. And they can be readily
5 obtained, as indicated by the research that I did to
6 determine that they were indeed available on demand.

7 Q What did you do then to restore the firearm?

8 A After removing the components that were welded, I
9 reinstalled a selector shaft, a sear release, a selector
10 spring, and the selector itself. Reinstalled those on the
11 firearm. I used the original connector assembly that was
12 installed, and the selector pin that was originally on the
13 firearm to install the new components, at which time I did
14 another function test to determine if the firearm, as I had
15 restored it to that point, was functional as a machinegun.

16 Q Did you reassemble it then before you did that?

17 A Yes. I'm sorry, yes.

18 Q And how did you conduct the function test?

19 A The function test for automatic operation is very similar
20 to the function test that I performed earlier for
21 semiautomatic operation. The difference is when the trigger
22 is pulled initially, the hammer will fall forward. With the
23 trigger held to the rear, manual cycling of the operating
24 rod, and allowing the operating rod to go forward, since
25 moving the selector to the automatic position puts the

1 connector assembly in play. When the operating rod comes
2 forward, it pulls the connector slightly forward, which moves
3 the sear release, which moves the sear, allowing the hammer
4 to fall. So in the automatic mode, the release of the hammer
5 is not controlled by the trigger, but rather by the
6 reciprocating operating rod.

7 As I explained earlier, that automatic firing cycle will
8 continue until the trigger is released, the ammunition is
9 exhausted, or the weapon malfunctions.

10 Q When you conducted your test, what were the results?

11 A The initial finding, after I assembled the firearm
12 initially, was that it did not function in an automatic
13 manner. The test was still -- it was still testing as a
14 semi automatic firearm.

15 At that point I removed the trigger group again and
16 inspected it more closely and determined that the sear in the
17 submitted trigger group had been modified. There is a small
18 area engaged by the sear release which is situated closely to
19 the sear so that it can move that sear and release the
20 hammer. That surface had been removed.

21 So even though the connector assembly was functioning
22 properly, since the sear had been modified it had no
23 engagement surface to be moved by the sear release.
24 Rectifying that was a very simple matter. You all saw how
25 readily the trigger group can be removed.

1 So with the firearm assembled, I removed the trigger group
2 that was submitted and replaced it with a trigger group from
3 national firearms collection -- again, a readily available
4 component part available for purchase. Installed that into
5 the exhibit and performed another function test which tested
6 positive for automatic operation.

7 Q This last part that you -- the problem that caused you to
8 replace the trigger group, is that part of the receiver, or
9 part of the trigger group, or something else?

10 A All parts that I replaced, including the trigger group,
11 are not part of the receiver at all. They're attached to the
12 receiver, in some cases around an area of the receiver. But
13 none of these parts -- none of these parts are part of the
14 receiver.

15 Q Were any of them welded to the receiver?

16 A They were not, no.

17 Q Did you make any modifications to the receiver itself?

18 A None whatsoever.

19 Q So after you test-fired it and it performed a function
20 test, what did you do?

21 A At that point the last step is to actually test-fire the
22 firearm to confirm the results of the manual function test
23 that we performed in our work area. With the completely
24 assembled, restored firearm, I went into our firing range
25 which is located in our work area.

1 I first loaded a magazine with three rounds of
2 commercially available .308 caliber ammunition. I placed the
3 selector in the semi automatic position, and I fired three
4 rounds from the exhibit. Those rounds were fired
5 successfully and correctly in a semi automatic manner, one
6 shot for each pull of the trigger.

7 I then reloaded the magazine with three more rounds, I
8 moved selector to the automatic position, and fired those
9 three rounds in an automatic manner. All of those three
10 shots were fired with one pull of the trigger.

11 I repeated that portion of the test again. I reloaded the
12 magazine with three more rounds. I reloaded the firearm.
13 And, again, fired three rounds with one function of the
14 trigger.

15 Q Why three rounds, not more or less?

16 A Traditionally the number is kept relatively low for safety
17 purposes. The range facility that we have, combined with
18 some of the modified firearms that we have, can result in
19 inconsistent and sometimes unsafe firing conditions, where in
20 an automatic manner the firearm will rise up excessively.
21 Instead of the rounds or the bullets going down into our
22 backstop which is where they're designed to go, they can go
23 higher up and strike some of the baffle areas that we have on
24 the roof of our range.

25 In addition to that feature, before actually test-firing a

1 given firearm even after an examination of the various
2 components and after a manual function test to determine how
3 serviceable or unserviceable the firearm might be, there
4 could be other components that are worn or ready to break.

5 And if a significant number of cartridges were loaded into
6 a firearm that was being fired, especially in an automatic
7 manner, if there was a component that broke or a condition
8 whereby the gun couldn't be stopped and it continued to fire,
9 as I was saying before, unless that trigger is released, if
10 that component breaks, the gun may continue to fire
11 uncontrollably in a full automatic manner. If a large number
12 of cartridges are loaded, the gun will continue to fire until
13 those cartridges are exhausted which may be very unsafe.

14 So the number of cartridges that we fire traditionally is
15 kept relatively low for safety reasons.

16 Q A couple more questions. How long did the restoration
17 process take you? When I refer to the restoration process, I
18 refer from disassembling the firearm, taking out the parts
19 you've indicated you took out, doing the unwelding that you
20 indicated, and replacing the parts, and reassembling the
21 firearm. How long did that take?

22 A Less than 30 minutes.

23 Q And can you describe the degree of difficulty involved in
24 that procedure?

25 A Certainly. The procedure involved in restoring this

1 firearm to automatic firing condition, as such operations go,
2 is relatively uncomplicated. As I mentioned earlier, it
3 involves only a simple cut with a readily available tool on
4 the components that were welded. Driving out a single pin.
5 Removing those components and reinstalling the new ones.
6 That is literally all there is to it.

7 Q On a scale of one to five -- degree of difficulty?

8 A Maybe a one.

9 Q You mentioned that it took you about two hours to perform
10 the entire procedure. What happened to the other hour and a
11 half?

12 A The other time is spent retrieving the evidence from our
13 evidence lock-up area, taking it to the bench, performing the
14 tests that I mentioned earlier -- the external examination,
15 transcribing the markings that are on the receiver into the
16 report, taking photographs, preparing diagrams from the
17 photographs, retrieving the firearms reference collection
18 firearm for utilization of those parts, things of that
19 nature.

20 Q At the conclusion of your technical examination, were you
21 able to draw any conclusions about the classification of this
22 particular firearm?

23 A Yes, I was.

24 Q What was your conclusion?

25 A This item is a machinегun as defined in federal law.

1 Q Why?

2 A The biggest component of that determination is the
3 receiver. This receiver is the frame or receiver of a
4 machinегun. It has design features and characteristics of a
5 machinегun. In addition to that, I demonstrated through my
6 examination that it was readily restorable to fire in an
7 automatic manner. Thirdly, after being readily restored, the
8 gun actually fired in an automatic manner.

9 Q Thank you. I think that's all my questions at this time,
10 Your Honor. I would offer Exhibit No. 1?

11 THE COURT: All right. Any objection to Exhibit
12 No. 1 coming into evidence?

13 MR. CONTE: None, other than the objection I
14 previously noted.

15 THE COURT: It will be admitted and I think we'll
16 take our -- you're done with your --

17 MR. REDKEY: We are.

18 THE COURT: Why don't we take our morning recess now
19 before we start the cross-examination.

20 Ladies and gentlemen, we'll take approximately 15 minutes.

21 (Exhibit No. 1 admitted.)

22 (Court in recess)

23 THE COURT: Please be seated.

24 You've got a couple more questions to ask the witness?

25 BY MR. REDKEY:

1 Q Mr. Galbraith, were you also asked to conduct a technical
2 examination of a Heckler & Koch VP70Z firearm?

3 A Yes.

4 Q When did you receive that?

5 A The VP70Z was received -- well, it was initially examined,
6 again, with the other exhibit here in Seattle at the ATF
7 office on May 11 of 2005. It was received by our office on
8 August 3, of 2005, and the examination was conducted in West
9 Virginia at our office there on October 24, 2005.

10 Q Based on your training and experience, are you familiar
11 with this particular make and model of firearm?

12 A Yes, I am.

13 Q How so?

14 A Well, the VP70 was the first polymer framed pistol. They
15 are manufactured by H&K in Germany. And they have been
16 imported into the United States.

17 Q Okay. And when you performed your examination -- well,
18 let me ask you first. Is Exhibit No. 10 there by your side?

19 A It is.

20 Q Would you examine what's been marked for identification as
21 government's Exhibit No. 10 and tell us whether you recognize
22 that?

23 A I do. The serial number of this item matches the one
24 that's on my report. And my signature is here on the
25 evidence tag as well.

1 Q Is there another piece with that exhibit?

2 A There is.

3 Q What is that?

4 A This piece is a shoulder stock that can be attached to
5 this exhibit.

6 Q When you actually received the exhibit, what configuration
7 was it in?

8 A The stock was not attached. They were separate.

9 Q Did you take measurements of the firearm when the shoulder
10 stock was attached?

11 A I did.

12 Q With what result?

13 A With the shoulder stock attached, the overall length is
14 approximately 21-and-one-quarter inches. And the barrel
15 length of this exhibit is approximately 4-and-one-half
16 inches.

17 Q Did you perform any kind of internal examination or
18 anything similar to what you did with the M14?

19 A Yes, I did.

20 Q What did you do?

21 A This shoulder stock -- you can see here has a selector
22 marked "one" and "three." This stock is designed to convert
23 earlier models of this pistol, the VP70 and the VP70M, to
24 machinestuns having a three-shot burst capability. This
25 version is the VP70Z, "Z" standing for civil version or

1 civilian version.

2 This version of the pistol incorporates a -- excuse me, a
3 redesigned sear mechanism, and the installation of this
4 shoulder stock will not allow this firearm to fire more than
5 one shot with a single function of the trigger.

6 Q So that I understand, is that firearm itself designed as
7 only a semi automatic firearm?

8 A Yes, it is.

9 Q What do you know about the other versions of that
10 particular firearm that you've mentioned?

11 A Well, the VP70 and the VP70M can be converted to fire
12 automatically by the installation of the shoulder stock
13 accessory.

14 Q Based upon your examination of that particular firearm in
15 its entirety including the shoulder stock, were you able to
16 draw any conclusions as to its classification?

17 A Yes, I was.

18 Q What was your conclusion?

19 A Well, this item, since it uses the energy of an explosive
20 to fire a projectile through a rifle bore and it's designed
21 to be held and fired from the shoulder, it is a
22 short-barrelled rifle, and therefore a National Firearms Act
23 firearm.

24 Q Did you test-fire that firearm?

25 A Yes, I did.

1 Q Can you briefly describe what you did?

2 A The test-firing procedure for this firearm was a -- it was
3 conducted to ensure that the installation of this shoulder
4 stock onto this firearm would not result in a weapon having
5 the capability of firing more than one shot with a single
6 function of the trigger -- a machin-gun. The test-firing
7 procedure was to load the magazine with six rounds of
8 commercially available nine-millimeter caliber ammunition.

9 The first two rounds were fired from the pistol without
10 the shoulder stock attached. And they were fired in a
11 semi-automatic manner, one shot with each pull of the trigger.

12 I then installed the shoulder stock. And placed the
13 selector lever in the "one," or what would be the
14 semi-automatic position. I fired two more shots. Those shots
15 also were fired in the semi-automatic manner, one shot with
16 each pull of the trigger. I then moved the selector switch
17 to the "three" position and fired the remaining two shots,
18 also in a semi-automatic manner, one shot with each pull of
19 the trigger.

20 Q Did the weapon then expel a projectile by the action of an
21 explosive when did you that?

22 A Yes, it did.

23 Q And the M1 as well?

24 A Yes.

25 MR. REDKEY: Your Honor, I offer Exhibit No. 10.

1 MR. CONTE: No objection.

2 THE COURT: 10 will be admitted.

3 (Exhibit No. 10 admitted.)

4 MR. REDKEY: No further questions.

5 CROSS-EXAMINATION

6 BY MR. CONTE:

7 Q Good morning.

8 A Good morning.

9 Q I see you're reading some notes. Can you tell us what
10 those notes are?

11 A I have copies of my report here.

12 Q That's the only thing?

13 A I have some other documents as well.

14 Q What would those be?

15 A I have a letter from the Army stating that certain M14
16 rifles --

17 MR. CONTE: Objection. May I see the letter?

18 THE COURT: The witness will hand the clerk the
19 letter.

20 A Would you like everything, sir?

21 Q Yes. If I may.

22 MR. CONTE: May I have a second with my expert?

23 BY MR. CONTE:

24 Q I guess the big question is -- if I go into a gun show or
25 a gun store and somebody sells me a rifle that is

1 semi automatic, how do I know it's not a machi negun?

2 MR. REDKEY: Your Honor, I object to the form of the
3 questi on.

4 THE COURT: Objection noted and overruled. You may
5 answer.

6 A There are certain features, external features, in some
7 cases that can be used, that are readily identi fi able to
8 someone who may be in the market for a particular fi rearm.
9 Or someone who is an enthusi ast who has knowl edge about a
10 certain type of fi rearm that might lead someone to believe
11 that they may or may not be looking at a machi negun.

12 BY MR. CONTE:

13 Q Well, I'm just talking about your average person with no
14 fi rearms training whatsoever and decides that for some reason
15 or another he wants to buy himsel f a semi automatic power
16 weapon?

17 A I would be specul ating.

18 Q Well, it would be true, wouldn't it? He wouldn't know if
19 somebody sold him something that was actual ly -- that the ATF
20 consi dered a machi negun, would he?

21 MR. REDKEY: Your Honor, object again to the form of
22 the questi on.

23 THE COURT: Overruled. You can answer.

24 A I'm not sure I understand the questi on, sir.

25 BY MR. CONTE:

1 Q The 13 people in this jury box -- I imagine one or two of
2 them don't know a thing about guns. Now, if they went into a
3 gun store and somebody told them this is a semi automatic
4 rifle you can use to protect your home or -- for whatever --
5 hunting, for whatever purpose, how would they know that they
6 weren't buying the frame or receiver of a machinегun, or a
7 gun that could be readily restored to a machinегun?

8 A A person like that may not know.

9 Q So a purchaser, an innocent purchaser, could end up with
10 an illegal weapon and never know it. Is that a fair
11 statement?

12 A That's possible.

13 Q Well, I want to talk about -- a little bit about these
14 changes you made to the gun. Could you come down and take
15 this apart?

16 A Certainly.

17 Q Now, where were the pieces that you were talking about,
18 the sear release?

19 A They were installed on this side of the receiver, here.

20 Q On the right-hand side?

21 A That's correct.

22 Q And they were here?

23 A Some of the components were installed around to that
24 portion of the receiver.

25 Q How were they installed?

1 A The selector shaft goes through that hole. And the sear
2 release attaches to the side, on the opposite side of the
3 sear release, and they're held in place by a pin, which
4 retains either the selector lock or the selector itself.

5 Q Let me -- you can resume the witness stand.

6 MR. CONTE: May I have these marked?

7 THE COURT: Certainly. You want them marked as
8 separate exhibits?

9 MR. CONTE: Yes. Defendant 1, 2, 3, 4 -- there is
10 five all together.

11 THE COURT: Counsel, you want them in the next
12 numbers in sequence; is that correct?

13 MR. CONTE: Correct.

14 THE COURT: They've been marked A-5 through A-9.

15 BY MR. CONTE:

16 Q Mr. Galbraith, do you recognize defendant's Exhibits A-5
17 through A-9?

18 A Yes, I do.

19 Q What are they?

20 A These are diagrams that I prepared in reference to this
21 exhibit.

22 Q Diagrams or photographs?

23 A Well, they're diagrams prepared using photographs.

24 Q Okay. What do they show?

25 A They show the condition of an M14 machin gun. They show

1 the national firearms collection components that were used in
2 the restoration of the firearm. They show the condition in
3 which Exhibit No. 1 was received. There is a diagram showing
4 some M14 machinегun parts -- the selector shaft, the sear
5 release, the connector assembly, the selector spring, the
6 selector pin, and the selector.

7 And there is another diagram showing a comparison between
8 an M14 machinегun with a selector installed, and there is --
9 it compares that to Exhibit No. 1, with the selector shaft
10 lock installed and the selector shaft welded to the sear
11 release.

12 Q Selector shaft welded -- okay.

13 May I approach the witness, Your Honor?

14 THE COURT: You may.

15 BY MR. CONTE:

16 Q So the record is clear. Exhibit No. A-5 shows a firearms
17 technology branch reference M14, and the M14 that is seared
18 is government's Exhibit No. 1; is that correct?

19 A That is correct.

20 Q And in that, on the right hand side on the defendant's
21 exhibit, there is part of this firearm -- excuse me?

22 THE COURT: Is there going to be any objection to
23 these exhibits coming in?

24 MR. REDKEY: Not at all.

25 THE COURT: If you wish to offer them, I'll admit

1 them, and we can use the screen and you can -- the jury can
2 see what you're talking about. To the extent you want to put
3 them on the screen. So Exhibits A-5 through A-9 will be
4 admitted.

5 (Exhibit Nos. A-5 through A-9 admitted.)

6 BY MR. CONTE:

7 Q All right.

8 Defendant's Exhibit No. A-5 on the left-hand side is the
9 M14 from your library, correct?

10 A That's correct.

11 Q And on the right is the M14 from Mr. Kwan's house?

12 A That's also correct.

13 Q And A-6 shows some M14 machinegun parts, selector shaft,
14 sear release, connector assembly --

15 MR. STAHLFELD: You've got an error on the screen
16 witness which press exit.

17 MR. GALBREATH: Where do you press exit?

18 MR. STAHLFELD: The left-most button on the bottom of
19 the screen --

20 BY MR. CONTE:

21 Q So selector shaft, sear release, connector assembly,
22 selector spring, selector pin, selector, correct?

23 A Yes.

24 Q And the selector wasn't on the gun, right?

25 A That is correct.

1 Q Which of these pieces were not on the M14 when you
2 received it?

3 A The parts designated "D" and "F," the selector spring and
4 the selector itself.

5 Q That was A-6. A-7 is the selector release, the selector
6 shaft weld, correct?

7 A Yes.

8 Q What does that show?

9 A That shows the sear release and the selector shaft are
10 welded together.

11 Q What are they welded to?

12 A Each other.

13 Q Aren't they welded to the gun right here?

14 A Absolutely not.

15 Q Well, how were they removed from the gun?

16 A They were cut with a rotary style cut-off wheel and
17 removed by driving out one roll pin from the selector lock.

18 Q I'm a little bit confused because they appear to me, and I
19 think what you're saying is that they're welded to that part
20 of the gun?

21 A No, sir. That's not correct.

22 Q How were they connected to the gun?

23 A Well, they were installed on the -- on to the receiver,
24 but they were -- they were not welded to the receiver. They
25 were welded to each other.

1 Q How were they kept together on the receiver?

2 A Well, they were retained. The selector shaft goes through
3 the hole in the selector stud. And on the other side, the
4 sear release fits over that shaft and over the end of that --
5 of the selector shaft, either the selector, or in this case
6 the selector lock, are installed and retained by a roll pin.

7 Q So if you turn that gun upside down in the condition it
8 was in, that piece would fall off?

9 A No.

10 Q What was holding that piece to the gun?

11 A The roll pin and the selector lock.

12 Q Can you demonstrate on this gun how they were held on
13 there?

14 A Certainly.

15 MR. CONTE: If he may step down, Your Honor.

16 THE COURT: Certainly.

17 A Could I step a little closer to the jury?

18 MR. CONTE: Sure.

19 A I'm going to bring the selector shaft, the sear release,
20 and the selector lock, and the pin. I'm not going to bring
21 the connector itself. I'm going to show how these parts were
22 attached, if that's what you're asking me.

23 As you can see, the selector stud, here, (indicating) is
24 what enables these components to be attached. The selector
25 shaft, the shaft itself, goes through the hole in the

1 selector stud, like that. The sear release also has a hole
2 in it. You can see that hole. That fits over the selector
3 shaft. At this point the two components are installed and we
4 have one of two options: You can install either the selector
5 lock which requires no other components, it goes directly on
6 and it's retained why by the roll pin which passes through
7 the selector lock and through the selector shaft; or you can
8 install a regular selector which also requires the
9 installation of the selector spring, which would go on first,
10 then the selector, and then again, it's retained by that
11 same -- by that same pin.

12 BY MR. CONTE:

13 Q Okay. Now, when it's in there, how can you look in and
14 tell whether it's -- I guess my question is, when you look at
15 it, when it turns -- when you're looking at it, before you
16 took your Dremel to it, could you tell it was welded
17 together?

18 A Yes.

19 Q So to the naked eye, that would all look like one piece?

20 A The shaft and the sear release certainly would be one
21 piece. They were welded together, yes.

22 Q So you couldn't tell by the naked eye that it wouldn't
23 function as a full automatic?

24 A Well, you can tell the components are welded together.

25 Q Okay. So a visual inspection it would appear as though it

1 would not fire fully automatic?

2 A Well, yes. The selector lock was installed.

3 Q Okay. Thank you.

4 You can resume the witness stand. Thank you.

5 Defendant's Exhibits A-8 are the FTB parts used in the
6 reassembly, correct?

7 A Correct.

8 Q Sear release, selector shaft, selector spring, and the
9 shaft?

10 A The trigger group, as well.

11 Q Can you identify on this Exhibit No. A-8 where the
12 modification was to the trigger group in this M14 ?

13 A Yes. Can I approach the --

14 THE COURT: You may.

15 A Can I use your pen?

16 If you look at the FTB trigger group, here, this surface
17 has been reduced compared to this surface, here (indicating).

18 Actually, I have that backwards.

19 This is the actual exhibit, trigger group. And if I
20 can -- if I can hold that there. This surface right here
21 (indicating) has been reduced in size. The FTB trigger group
22 or the unmodified trigger group has a larger area that
23 extends out and is engaged by this surface, here, on the sear
24 release.

25 BY MR. CONTE:

1 Q Okay.

2 So back to the main question, how would any of these
3 jurors who went in to purchase a semi automatic gun know that
4 this piece had been modified?

5 A They might not.

6 Q All right. And how many people would know?

7 A I can't answer that. I don't know.

8 Q Would you have to be an expert?

9 A No.

10 Q How much training would you need to realize?

11 A You would need to know how to disassemble an M14 type
12 rifle. As you have seen, it's by no means difficult.

13 Q No, it's not. But I guess the question is, how can we
14 tell by looking at this -- quite frankly, I can't tell that
15 it's been altered. Is this the piece you're talking about
16 here?

17 A I can't see if that's the right piece.

18 MR. CONTE: May I approach?

19 BY MR. CONTE:

20 Q Is that the piece there that has been modified?

21 A Yes.

22 Q Does it appear modified to you?

23 A Well, it's been refinished.

24 Q So somebody spent a lot of the time refinishing this?

25 A Yes.

1 Q Would you say it was an expert job?

2 A Refinishing firearm parts is not necessarily an expert --
3 an expert operation.

4 Q But it does take some type of care?

5 A Certainly.

6 Q All right. So somebody spent some time on this weapon?

7 A Some amount, obviously.

8 Q All right.

9 And, again, I'm going into a gun store to buy a gun. I
10 don't know that it's been altered?

11 A I would think you would know now.

12 Q I would now. All right.

13 Finally, defendant's Exhibit No. A-9 is the reference gun
14 on the top. The reference gun total. So I have pictures of
15 the reference gun?

16 A Yes. Those are both pictures of the reference firearm.

17 Q And the little square thing, what is -- what piece is
18 that?

19 A That's the selector shaft.

20 Q That's this little piece here?

21 A The part with the -- yes. Yes.

22 Q Now, what stopped that from turning on the suspect weapon?

23 A Those two components were welded together, right at the
24 seam.

25 Q Which two components?

1 A The selector, the selector shaft, and the sear release.

2 If you look at the top photograph --

3 Q If you touch the screen, it will show us.

4 A The seam just above this area (indicating). This seam has
5 been welded on, or had been welded on, the submitted firearm,
6 the evidence firearm.

7 Q Welded to what?

8 A The selector shaft and the sear release had been welded
9 together.

10 Q Now, you said your entire test took approximately two
11 hours?

12 A That's correct.

13 Q All right. Did you time the test at all?

14 A That's a close estimate. I didn't -- I don't time it with
15 a stopwatch.

16 Q Do you have a set procedure? You're talking about
17 procedures. What procedures were that published?

18 A We have a standard operating procedure manual that covers
19 all the different tasks and responsibilities that Firearms
20 Technology Branch is responsible for.

21 Q Are those available to the general public?

22 A I don't believe they are.

23 Q And when you test something, there is no requirement that
24 you time how long it takes?

25 A No.

1 Q Wouldn't that be important to know as you're trying to
2 talk about a readily restorable machinегun?

3 A Well, the timeline is of significance. I don't believe we
4 have a requirement to use a stopwatch to determine an exact
5 time. The times that I'm giving are my best estimate.

6 Q All right. But you agree that the time is important,
7 crucial some cases?

8 A Certainly.

9 Q And nobody has bothered to ever institute any procedures
10 to say, Well, you need to time the time it takes?

11 A The times are often noted in the report. I didn't note
12 the time specifically in my reports. But they are often
13 noted in the reports.

14 Q All right. But it wasn't done in this case?

15 A No.

16 Q Was it videotaped?

17 A It was not.

18 Q And why not?

19 A That's not part of our standard operating procedures.

20 Q You are aware that there is legislation pending in
21 Congress to require the ATF to videotape these tests, are you
22 not?

23 A I have heard about that, yes. I'm not sure what the
24 status of that is, though.

25 Q But is it, to your knowledge, already formally prepared

1 and submitted to Judiciary Committee in Congress to
2 videotape; isn't that correct?

3 A I'm not sure what the status of it is, if it's been
4 submitted or not.

5 Q Is it possible to take a semi automatic rifle and convert
6 it into a full automatic rifle?

7 A Yes, it is.

8 Q Which types of semi automatic rifles can be converted to
9 fully automatic?

10 A Most of them can be converted. There is a wide, wide
11 range of methods and of times to convert various firearms. I
12 don't know if it I could make a generalization that broad.

13 Q Well, could you say that any semi automatic firearm could
14 be converted into a full automatic firearm?

15 A With enough time and effort, yes.

16 Q So we have a wide spectrum of things that could be
17 machin guns, semi automatic guns, correct?

18 A That could be, with enough time and effort.

19 Q A good gunsmith could make a gun out of a piece of metal,
20 correct?

21 A That's correct.

22 Q Do you have any standards as to how long it should take to
23 be before you can determine whether it's readily restorable?

24 A We have references in the Firearms Technology Branch
25 indicating that a restoration that requires less than eight

1 hours in a fully equipped machine shop can be considered
2 readily restorable, although our standards are more stringent
3 than that. They're case by case. But in this case we've got
4 a 30-minute restoration requiring very, very simple hand
5 tools and readily available replacement parts, so that
6 certainly qualifies.

7 Q Well, how many years do you have in the industry?

8 A I've been involved in the firearms industry, a combination
9 of the firearms industry and ATF since 1999.

10 Q So you have got eight years of experience in working with
11 firearms?

12 A Yes.

13 Q How many have you converted in those eight years?

14 A There has been several, as part of criminal
15 investigations.

16 Q So you have experience?

17 A Yes.

18 Q You have the tools?

19 A Yes.

20 Q You have the library?

21 A Yes.

22 Q All right. And so all those go into the makeup of your
23 determination, correct?

24 A No. Our determinations are based on what it would take an
25 average person with average tools, which is why we utilize

1 commonly available tools. And in most cases although we do
2 have knowledge, restoration of this type certainly does not
3 require all the knowledge and expertise that many of the
4 firearms enforcement officers possess.

5 Q Well, then back to the original question, if I'm going
6 into a gun shop to buy a semiautomatic, how do I know that
7 the gun meets the definition of readily restorable?

8 A I'm not sure that you would.

9 Q Okay.

10 Well, let's talk about something else. What types of
11 things can you classify as a machin-gun?

12 A Well, any weapon that shoots automatically more than one
13 shot with a single function of the trigger, the frame or
14 receiver of such a weapon, any part that is designed and
15 intended to convert a weapon into a machin-gun, and any
16 combination of parts from which a machin-gun can be assembled
17 if it they were under the control of a person.

18 Q So your agency has classified a 14-inch shoelace as a
19 machin-gun, has it not?

20 A Yes, we have.

21 Q And that was three years ago -- less than three years ago?

22 A I'm not sure when that happened.

23 Q Maybe I can refresh your recollection.

24 MR. CONTE: May I have this marked?

25 I'm marking this as A-10, Your Honor, for identification.

1 BY MR. CONTE:

2 Q Can you tell the ladies and gentlemen of the jury what
3 that is?

4 A This is an FTB letter to a gentleman by the name of Brian
5 Blakeley.

6 THE COURT: Do you want to give us a date?

7 A I'm sorry.

8 THE COURT: Date of the letter.

9 A Letter is dated September 30 of 2004.

10 BY MR. CONTE:

11 Q And that letter concludes that a shoelace, a 14-inch
12 shoelace with two knots on the end and two loops, is a
13 machinегun, does it not?

14 A It states that this item was designed and intended to
15 convert a semi automatic rifle into a machinегun. And it does
16 conclude that it was a machinегun as defined.

17 Q And the item is a 14-inch shoelace?

18 A The item was a device that was designed and intended to
19 convert a semi automatic rifle into a machinегun, yes.

20 Q Okay.

21 And how many other things have you classified, like a
22 shoestring, as a machinегun?

23 A We've made many machinегun classifications. I don't know
24 that I could describe each and everyone to you.

25 Q Let's say just your average citizen and I want to walk

1 into CVS and buy a shoelace. Do I have any problem with the
2 FTB telling me I am buying a machinегun?

3 A Of course not.

4 Q But it's happened to somebody else?

5 A I don't know that it has. FTB --

6 Q You have to --

7 THE COURT: Just a moment. One at a time.

8 A I'm sorry. FTB has not classified all shoestrings as
9 machinегuns. That's not what the letter says.

10 BY MR. CONTE:

11 Q Just that one.

12 A A shoestring that is used to convert a semi automatic rifle
13 into a machinегun when it's used in that manner would fit the
14 definition of a machinегun, yes.

15 BY MR. CONTE:

16 Q Now, let's talk about what it takes to render a frame or a
17 receiver inoperable.

18 A Okay.

19 Q What is it?

20 A By "inoperable," do you mean incapable of being fired
21 or --

22 Q Yes.

23 A Or destroyed?

24 Q Well, I guess something that doesn't meet your definition
25 of a machinегun.

1 A In order for the frame or receiver of a machinegun to be
2 considered destroyed, meaning that it is no longer subject to
3 the Gun Control Act as a firearm, and to the National
4 Firearms Act as a machinegun, it has to be torch-cut in two
5 pieces, using a cutting torch that has the capability of
6 displacing one-quarter inch of material. If it is cut as per
7 ATF specifications, it is no longer considered a firearm or a
8 machinegun and it is no longer subject to the Gun Control Act
9 or to the National Firearms Act.

10 Q Well, is there any in between?

11 A No. There is not. For machineguns, no.

12 Q So the only way you can render a receiver inoperable is to
13 torch-cut it twice?

14 A The number of cuts differs from specific firearm to
15 specific firearm. Some require two. Some require -- excuse
16 me, some require three. The vast majority require three and
17 some firearms require as many as four cuts.

18 Q Where do I go to find that information?

19 A It's available from ATF. Actually from our branch. We
20 provide information like that to members of the firearms
21 industry and the general public on a regular basis.

22 Q So I have to write you a letter?

23 A To obtain the information, yes.

24 Q So what if I'm just a guy who wants to walk into the gun
25 store and buy a semi automatic firearm?

1 A If you're looking for destruction procedures for
2 machinerguns, I would think you would be aware that you had a
3 machinergun before that.

4 Q Again, if I don't know if the guy in the store is trying
5 to sell me a semi automatic rifle, and they tell me it's a
6 semi automatic rifle, how do I know that it's a frame or
7 receiver of a machinergun that needs to be cut twice?

8 A We can -- if someone has a question like that, they can
9 send their item to our branch and we examine it and let them
10 know exactly what they have.

11 Q So I'm never going to know unless I write the federal --
12 the Firearms Technology Branch?

13 A Well, there's other resources available to -- people that
14 are useful in identifying certain design features and
15 characteristics of machinergun receivers.

16 Q From the ATF?

17 A From the ATF. There is a large number of on-line
18 resources. There is a multitude of different books, many of
19 which deal specifically with the M14 machinergun and its
20 semi automatic commercial counterpart. There is a wide
21 variety of information available on those rifles. They're
22 very prevalent and very popular.

23 Q I'm not talking about the M14. I'm talking about an
24 average citizen who wants to buy a semi automatic rifle
25 walking into Bill's Gun Store and trying to purchase one.

1 That's not illegal?

2 A I think the average citizen that is going in to buy an M14
3 pattern rifle, an enthusiast of that design, would certainly
4 recognize the presence of a connector assembly, which I think
5 is fairly common knowledge that it -- that's a machinegun
6 component and it's readily visible from the outside of the
7 firearm without any disassembly whatsoever.

8 Q You missed my question. I'm talking about somebody who is
9 just trying to buy a semiautomatic rifle who doesn't know an
10 M14 from a slab of beef.

11 I walk into that store, I say to the salesman, I want to
12 buy a semiautomatic rifle, and he pulls this item down from
13 the shelf and says, This is just what you need. It's a
14 semiautomatic rifle and I'll sell it to you for \$500.

15 How do I know if I'm buying something illegal?

16 A I thought I answered that question.

17 MR. REDKEY: That has been asked and answered a
18 couple times.

19 THE COURT: I think he has answered it.

20 MR. CONTE: We'll move on.

21 BY MR. CONTE:

22 Q Is it possible that thing had been destroyed and
23 recreated?

24 A No.

25 Q How do you tell that?

1 A Usually there is evidence of rewelding. If an M14
2 receiver or other machinegun receiver has been properly
3 destroyed via the approved torch cutting procedure that we
4 will provide, and someone has taken those parts or pieces of
5 that receiver and has removed the cutting slag and has
6 remanufactured that, there will be evidence of that rewelding
7 process.

8 Q Would an ordinary citizen be able to tell it's been
9 rewelded?

10 A The condition of the rewelded firearms does vary
11 substantially, based on the skill level of the person that
12 might be doing that sort of a rewelding process. The answer
13 to that question is maybe they would and maybe they wouldn't.
14 It all depends.

15 Q The trigger group on this gun is not part of the frame or
16 receiver?

17 A That's correct.

18 Q Is the trigger group ever a part of the frame or receiver?

19 A No.

20 Q What about on the AR15?

21 A Trigger group is a series of components; it's not a part
22 of the receiver.

23 Q All right. What is the receiver on an AR15?

24 A The receiver on an AR15 is the lower area that houses the
25 trigger components.

1 Q Does the trigger group have to be in there for it to be a
2 machi negun?

3 A No, it doesn't.

4 Q How many people work in the Firearms Technology Branch?

5 A There is approximately 11.

6 Q Do you get guns from companies in the Firearms Technology
7 Branch?

8 A On a regular basis, yes.

9 Q What does that have to deal with?

10 A What does that have to deal with --

11 Q Why do they send you guns?

12 A For a multitude of reasons. Part of our responsibility is
13 to examine firearms that are intended to be imported into the
14 country for sale. We examine those to determine if they are
15 sporting firearms or importable firearms.

16 We examine domestic items when a firearms manufacturer has
17 a new product or sometimes they have modified an existing
18 product and they're asking for our classification on how an
19 item, a given item, is to be classified and controlled under
20 the Gun Control Act or under the National Firearms Act. We
21 provide that information to them after examining a submitted
22 item.

23 Q So you make decisions whether they're firearms or just
24 regular rifles or semi automatic rifles?

25 A That's correct.

1 Q And so I guess that's back to what makes something not a
2 machinегun? How about if somebody took this M14 and put it
3 in some kind of a vice and just crunched that whole thing
4 together? Would it still be a machinегun?

5 A In addition to the approved torch cutting procedure, in
6 certain cases where there is a large amount of destruction to
7 a given receiver, our branch can approve an alternate
8 destruction method.

9 And if someone wants to destroy a machinегun receiver and
10 they have a destruction procedure that is very thorough, that
11 would prevent the receiver from being readily restored, they
12 can write to our branch, contact our branch, and present
13 their alternate destruction procedure to us. And if we feel
14 that it's sufficient and that it will render the firearm or
15 the machinегun completely destroyed and completely
16 nonrestorable, we may approve that method.

17 Q So there's different methods of rendering a machinегun
18 unrestorable?

19 A Yes.

20 Q And so cutting it twice is just one of -- well, it could
21 be many?

22 A That's the official method. As I said, there may be
23 others but those are approved on a case-by-case basis.

24 Q And so if you went into a gun store with this and
25 published in the gun store so that you can look and see and

1 know that you were buying something that was not illegal?

2 A ATF does publish information such as that from time to
3 time. It's disseminated through, among other entities, the
4 National Rifle Association. Information from the NRA is
5 very, very often displayed in gun shops. So yes, that
6 information may be available at a gun store.

7 Q But doesn't necessarily have to be?

8 A Well, if the gun store owner chooses not to display it,
9 then, no.

10 Q Again an innocent purchaser may mistakenly buy a
11 machinегun, correct?

12 A If he was not aware that there was an alternate
13 destruction method for destroying a machinегun receiver?

14 Q Uh-huh (affirmative).

15 A If he didn't have that information, he wouldn't know that
16 there was an alternate destruction method, no.

17 Q Does the Firearms Technology Branch ever make mistakes in
18 its opinions?

19 MR. REDKEY: Objection, Your Honor.

20 A Sustained.

21 BY MR. CONTE:

22 Q The M14 -- is that ever used as a sniper rifle?

23 A I'm sure that it has been from time to time, yes.

24 Q Was there a scope on that gun when you received it?

25 A No, there was not.

1 Q Was there any piece of paper that accompanied the M14?

2 A Evidence comes in to the branch with an evidence
3 transmittal. And that has information, such as the
4 submitting ATF agent's contact information, the exhibits are
5 numbered, they're briefly described, the type of examination
6 requested is designated, and we use that to base our report
7 on.

8 Q Do you have a copy of that?

9 A Not with me, no.

10 MR. CONTE: Your Honor, I request a copy of that,
11 both for the M14 and the VP70.

12 THE COURT: Mr. Redkey?

13 MR. REDKEY: I don't remember ever seeing that, Your
14 Honor. I will check, if I may, at the noon hour to see
15 whether that was delivered in the 500 pages of discovery.

16 THE COURT: This is the transmittal, as I understand
17 it, the transmittal sheet that accompanies the weapon when
18 it's sent in for testing.

19 MR. CONTE: Yes.

20 MR. REDKEY: I would be happy to look for that over
21 the lunch hour, Your Honor.

22 MR. CONTE: Very well.

23 BY MR. CONTE:

24 Q Let me talk about the VP70.

25 MR. CONTE: May I approach the witness?

1 BY MR. CONTE:

2 Q Would it be possible to purchase a 16-and-a-quarter-inch
3 barrel for this weapon?

4 A Not that I'm aware of, no.

5 Q You couldn't make one?

6 A Any firearm component can be manufactured. But I'm not
7 aware of a commercially available barrel, a
8 16-and-a-quarter-inch barrel for a VP70, no.

9 Q But you could manufacture a new one or extend one that is
10 currently on it, couldn't you, a manufacturer could?

11 A A manufacturer could make a new one, I think. It would be
12 very difficult to extend the original.

13 Q With a 16-and-a-quarter-inch barrel, that wouldn't be a
14 firearm under the National Firearms Act, would it?

15 A If a 16-and-a-half-inch barrel were present with that
16 pistol and with that shoulder stock, then no, it would not.

17 Q And what if another VP70 was present with that pistol and
18 that shoulder stock, a legal VP70?

19 A What do you mean by a legal VP70, sir?

20 MR. CONTE: May I have this marked?

21 I'm having this marked as defendant's Exhibit No.

22 A-11.

23 May I approach the witness.

24 THE COURT: You may.

25 BY MR. CONTE:

1 Q Let me show you what's marked as defendant's Exhibit No.
2 A-11 and defendant's Exhibit No. -- where is it marked?

3 MR. REDKEY: It needs to be marked as an exhibit.

4 MR. CONTE: I'll mark this as defendant's exhibit --

5 THE COURT: Mark the exhibit as A-12.

6 MR. CONTE: Thank you. I'll put the sticker on the
7 box. It has several components in it.

8 BY MR. CONTE:

9 Q Would you tell the ladies and gentlemen of the jury what
10 defendant's Exhibit No. A-11 is? That's A-12. What is A-11?

11 A A-11 is a VP70Z pistol. This is an ATF Form 3. It's an
12 application for a tax-exempt transfer of a firearm.

13 Q Can you tell the ladies and gentlemen of the jury what
14 that means?

15 A Traditionally, forms like this are used between firearms
16 dealers that both hold a special occupational tax stamp.
17 Traditionally or normally, National Firearms Act firearms
18 when they are in some cases manufactured or when they are
19 transferred, there is a \$200, in most cases, transfer tax for
20 those firearms from one person to another.

21 In the case of holders of a federal firearms license with
22 the added special occupational tax stamp, those holders are
23 traditionally tax-exempt. So they transfer firearms between
24 them without payment of the tax, and it would be on a form
25 such as this. The transfer is still noted. But there is no

1 transfer tax paid.

2 Q And how does that piece of paper -- the defendant's
3 Exhibit No. A-11 -- coincide with defendant's Exhibit No.
4 A-12?

5 A It looks like it describes this firearm. It does. It
6 describes this type -- this firearm as a machine pistol.

7 Q Okay.

8 So with that document I can actually -- can you put that
9 together for me?

10 A (Witness complies).

11 Q This is a fully automatic machinегun?

12 A Yes, it is.

13 Q And it's a short-barrelled rifle?

14 A It's not a short-barrelled rifle. It's a machinегun.

15 Q Okay.

16 What about --

17 A I might note that the machinегun classification overrides,
18 if you will, the short-barrelled rifle classification. Since
19 that item is capable of firing in an automatic manner, it's
20 classified as a machinегun. That -- like I said, that
21 overrides the short-barrelled rifle classification.

22 Q Now, can you connect defendant's Exhibit No. A-12 with
23 government's Exhibit No. --

24 THE COURT: You didn't finish the number.

25 BY MR. CONTE:

1 Q Government's Exhibit No. 10. What do we have there?

2 A Still a machin gun.

3 Q Okay. So it's registered?

4 A According to this document, yes.

5 Q So this stock, interchangeable with that gun, makes that a
6 registered machin gun?

7 A Well, this is a registered machin gun whether -- whether
8 the stock is there or not. It's registered by serial number
9 as a machin gun.

10 Q I'll let you do that.

11 Thank you.

12 Let's put this back. Court's indulgence. I want to make
13 sure everything gets back in the right place.

14 Now, I want to direct your attention --

15 MR. REDKEY: Your Honor, this is the matter that we
16 talked about earlier that we need it take up outside the
17 presence of the jury.

18 THE COURT: Well, I don't know what this matter is
19 that you're referring to.

20 MR. REDKEY: It's the letter we discussed this
21 morning.

22 THE COURT: Let's see you at side-bar for a moment.

23 (Following proceedings held at sidebar:)

24 MR. CONTE: Judge, I'm sorry -- I we've talked about
25 a number of issues. So I don't know what you're referring

1 to.

2 MR. REDKEY: This is Dennis Foutch letters we've had
3 four questions. It was included in my motion in limine
4 regarding entrapment by estoppel. This is the voucher letter
5 that prompted the response from Curtis Bartlett at FTB
6 responding to his questions.

7 THE COURT: What is the relevance in this case?

8 MR. CONTE: It says in here -- clearly, flatly
9 states -- and I'm not using this letter as the government
10 suggests. I'm not using it to try --

11 THE COURT: Tell me where you're going.

12 MR. CONTE: Next to the last paragraph in this
13 letter --

14 A This is the Bartlett letter that says --

15 BY MR. CONTE:

16 Q -- since the stock and the barrel can be used to assemble
17 a rifle that --

18 THE COURT: Where?

19 MR. CONTE: Last paragraph on that page.

20 THE COURT: All right. And you wish to see if the
21 witness agrees with that, basically?

22 MR. CONTE: Yes.

23 THE COURT: I think he's entitled to do that, don't
24 you? And if he doesn't agree with it, I think he's entitled
25 to show him the letter and see if that helps refresh his

1 memory.

2 MR. REDKEY: On redirect I'll put it in context.

3 THE COURT: Okay.

4 (Proceedings concluded)

5 BY MR. CONTE:

6 Q Well, first of all before I get to the letter, it wouldn't
7 be against the law to have two stocks for the same weapon,
8 would it?

9 A No.

10 Q And does the ATF allow a machinegun to be turned into a
11 semi automatic weapon?

12 A No.

13 Q Now, does the FTB have a position whether a
14 short-barrelled rifle exists before it's assembled?

15 A Certainly.

16 Q What is that?

17 A In a case like this, if a pistol is possessed --

18 Q Not a case like this. What the general policy, sir?

19 A I'm not sure what you mean.

20 Q Do they have a general policy?

21 A Well, I was trying to explain what that policy is.

22 Q Let me ask the question this way. Have they told people
23 that it's not a short-barrelled rifle until it's assembled as
24 such?

25 A No.

1 Q Let me show you what's been marked as defendant's Exhibit
2 No. A-13. May I approach?

3 THE COURT: You may.

4 BY MR. CONTE:

5 Q That talks about shipping a Glock pistol, a
6 16-and-a-quarter-inch barrel and a stock all together,
7 correct?

8 A No. This -- this letter is in reference to someone who is
9 interested in selling parts which can be attached to Glock
10 handguns consisting of a stock and a 16-and-a-quarter-inch
11 barrel.

12 Q Okay. If they sold the stock to somebody with a Glock
13 pistol, they could make a short-barrelled rifle?

14 A The letter says, "Combining the stock with the Glock
15 handgun would result in the making of a short-barrelled rifle
16 even if the stock is not actually attached to the handgun."

17 Q Now read the last paragraph on page 3.

18 A "We agree that sales of the stock and 16.25 inch barrel
19 even to persons who own Glock handguns requires no NFA
20 registration, since the stock and barrel can be used to
21 assemble a rifle that is not subject to the NFA. The making
22 of a short-barrelled rifle will occur only if the stock and
23 the Glock handgun are actually assembled into a
24 short-barrelled rifle or are otherwise combined to make a
25 short-barrelled rifle."

1 Q All right. So they're not a short-barrelled rifle until
2 they're combined or made into one, correct?

3 A No, sir. That's not correct.

4 Q That's what the letter says.

5 A The letter says if they are combined -- combining the
6 stock with the Glock handgun would result in making of a
7 short-barrelled rifle even if the stock is not actually
8 attached to the handgun.

9 Q All right. When you received government's Exhibit No. 10,
10 it wasn't attached was it? Gun was in the back --

11 A They were separated.

12 Q They were separated or the gun was in the holster?

13 A I don't think the gun was in the holster. They were
14 separated.

15 Q But the -- it is a holster too?

16 A It can be used as a holster.

17 Q Well, it's called a holster stock, isn't it?

18 A Okay.

19 Q So it can be used as a holster?

20 A It could be used as a holster.

21 Q And according to what you just read us, it's not a
22 short-barrelled rifle until it's attached as a
23 short-barrelled rifle. Isn't that what the letter said?

24 A No. That's not what the letter said.

25 Q What does the letter say?

1 A As I mentioned before, the letter is talking about not
2 only a shoulder stock, but a 16-and-one-quarter-inch barrel.
3 All those parts must be present for the entirety of this
4 letter to apply.

5 THE COURT: I think we should have for the record the
6 identification of the letter. Who it's from, who it's to,
7 and the date of the letter.

8 BY MR. CONTE:

9 Q Could you tell us who that letter is from, who it's to,
10 and the date?

11 A This is a copy of an FTB letter, so I'm not sure if
12 everything is completely accurate. But this appears to be a
13 legitimate copy of an FTB letter. It's dated October 5,
14 2001. It's addressed to Dennis M. Foutch, F-O-U-T-C-H. The
15 business name is Denny's Guns, and the address is 2001 Clay
16 Street, North Kansas City, Missouri 64116.

17 Q Who is it signed by?

18 A Curtis Bartlett.

19 Q Do you know who he is?

20 A Curtis Bartlett is the former chief of the Firearms
21 Technology Branch.

22 Q All together in this courtroom, right now, we have two
23 pistols and two stocks; is that correct?

24 A There is one machin-gun, one pistol, and two stocks.

25 Q All right. And those stocks fit on the machin-gun; is

1 that correct?

2 A They do.

3 Q When you came out here in May --

4 A That's correct.

5 Q Do you have to travel a lot in your job to inspect
6 weapons?

7 A On a regular basis, yes.

8 Q How many firearms did you inspect that day?

9 A I don't have the exact number in front of me. It was
10 approximately 12. 14 maybe.

11 Q How many of them were NFA weapons?

12 A There were several that I asked to be submitted to the
13 Firearms Technology Branch for further examination. The
14 reports that I wrote, detailed examinations, on a total of
15 five.

16 Q What were your findings on the other three weapons?

17 A In the first report, I looked at an RPD type, the VP70,
18 and a VG45 or VG1. The first exhibit, the RPD type, that was
19 not a firearm.

20 Q What was it?

21 A It was not a machin gun. The second --

22 Q Excuse me. What was the item?

23 A It was not a firearm and it was not a machin gun.

24 Q So would that be something we call a dummy?

25 A You could call it that, yes.

1 Q Just there for show?

2 A That's correct.

3 Q Okay. What's the third one on that report?

4 A Third one or the second one?

5 Q Second one would be the VP70, right?

6 A That's correct.

7 Q And third one?

8 A Third one was a VG45 or VG1-5, and that was a firearm.

9 The other two --

10 Q What do you mean, "firearm"?

11 A A firearm under the Gun Control Act, a regular
12 semi automatic rifle.

13 Q It was registered to Mr. Kwan?

14 A I don't know if it was registered or not. Gun Control Act
15 firearms are not normally required to be registered. I don't
16 know if state law -- I'm not sure about Washington State law.
17 But Gun Control Act firearms -- there is no federal
18 registration that is required as there is for National
19 Firearms Act firearms.

20 Q I'm sorry, I'm a little confused. Did you call the third
21 item a firearm?

22 A The third item, yes, was a firearm.

23 Q Under the NRA -- NFA?

24 A No. Under the Gun Control Act.

25 Q So it's really not a firearm as it's defined by the NFA.

1 It's just a regular gun?

2 A You can -- the Gun Control Act traditionally -- not
3 traditionally. The Gun Control Act controls what you would
4 know as regular firearms -- handguns, revolvers, rifles,
5 shotguns, things of that nature. The National Firearms Act
6 controls items such as machineguns, short-barrelled rifles,
7 short-barrelled shotguns, silencers, destructive devices,
8 things like that.

9 So even though you can say they're firearms, you need to
10 specify and say this is a firearm under the Gun Control Act,
11 or this is a firearm under the National Firearms Act.

12 This third exhibit, this VG45, it was a regular
13 semi automatic rifle. It was classified as a firearm under
14 the Gun Control Act. Those types of firearms don't normally
15 require any type of owner registration.

16 Q Finally, the fifth weapon that you sent back to FTB?

17 A Well, there were two. Those were detailed in the other
18 report. One was a MAT49-type item that was -- it was not a
19 firearm. It was not a machinegun. It was a dummy-type
20 weapon. The other was the M14 which was designated a firearm
21 and a machinegun.

22 BY MR. CONTE: Your Honor, I would like to finish my
23 cross-examination once I get those transmittal letters.

24 THE COURT: Well, it's 12:00. We'll take the noon
25 recess.

1 together, reglues it, can you tell whether it's been taken
2 apart and reput back together?

3 A Most of the time, yes.

4 Q Not all the time?

5 A If it's done with enough skill, which is exceedingly rare,
6 it is possible to have a cut machinегun receiver that is
7 rewelded. It's extremely rare, but it is possible.

8 Q We've already established that whoever worked on this gun
9 was quite good at it?

10 A Well, it's had some work. This gun has not been rewelded.

11 Q We couldn't even tell from the trigger assembly that it
12 had been changed, could we?

13 A Who do you mean by "we," sir?

14 Q Looking at it, you can't see anything obvious there that
15 it's been changed, correct?

16 A I noted on my examination that a component had been
17 changed, yes.

18 Q But you didn't notice that with your naked eye until after
19 you put the gun together and tried to fire and it still
20 wouldn't fire automatic, correct?

21 A I didn't attempt to fire the gun until I had determined
22 that the restoration was fully complete and it was functional
23 as a machinегun.

24 Q I'm sorry. You tried to -- you tried the dry fire and it
25 did not work fully automatic?

1 A Initially, yes.

2 Q That is when you investigated further and found that there
3 was a change to the trigger assembly?

4 A Correct.

5 Q Did you ever do any investigation as to how many
6 machineguns Mr. Kwan owns?

7 A No. That's not what our branch does.

8 Q Okay. Final question. You talked about special
9 occupational taxpayers, correct?

10 A Yes.

11 Q Could you tell the ladies and gentlemen of the jury what
12 that is?

13 A Well, to be involved in the business of selling or
14 manufacturing or importing firearms, a person or a business
15 entity is required to have a federal firearms license, since
16 there are rules and regulations that need to be followed when
17 a person or organization is engaging in the firearms
18 business.

19 Most federal firearms licenses enable a person or a
20 business entity to engage in the business of selling or
21 manufacturing or importing traditional Gun Control Act
22 firearms -- your regular rifles, pistols, shotguns, things of
23 that nature. If a given person or given business entity is
24 interested in participating in the business of selling,
25 manufacturing, or importing National Firearms Act weapons,

1 such as machi neguns, silencers, short-barrelled rifles, et
2 cetera, in addition to their federal firearms license, they
3 must also pay a special occupational tax.

4 Q Now, talking about the M16. Mr. Kwan had a manufacturer's
5 license, FFL, and an SOT, special occupational tax. Could he
6 have just sent the form in to ATF to make a sales sample?

7 A Yes.

8 Q And convert that gun to full automatic?

9 A That is what is enabled by someone holding a
10 manufacturer's FFL and a special occupational tax, yes.

11 Q So all he had to do was send in the form and ship the gun
12 out to a gunsmith, have him fix it, and make it full
13 automatic?

14 A That part is not correct, no.

15 Q What part of that isn't correct?

16 A If he held the manufacturer's license and he wanted to
17 manufacture an M16 using an AR15 receiver as a basis, the way
18 that is performed is to drill a hole through that receiver
19 that will accept a pin that retains an M16 machi negun sear.
20 That is one of the critical design features that
21 differentiate an AR15 semi automatic receiver from an M16
22 machi negun receiver.

23 If he was a licensed manufacturer with a special
24 occupational tax stamp and he was interested in manufacturing
25 a machi negun using an AR15 receiver as a basis, although he

1 could make application to do that, since he is the licensed
2 manufacturer, he would have to perform that operation
3 himself. The drilling of that hole constitutes the
4 manufacturing of a machinегun in that situation. That's not
5 the kind of operation that you can subcontract out unless the
6 place that you are sending that to is also a manufacturer,
7 then in this case, who holds a special occupational tax
8 stamp.

9 Q So again, if he sent it to a manufacturer with an SOT, he
10 could indeed have his machinегun?

11 A Yes.

12 Q Legally?

13 A Yes.

14 Q The VP70, let's assume that he has -- that VP70
15 government's Exhibit No. 10. And he goes to a show like the
16 machinегun show in Knob Creek, and somebody has the stock for
17 sale, correct?

18 A Yes.

19 Q Now assume he has an SOT, which he did, okay? When he
20 purchased that stock, he intended to use it with government's
21 Exhibit No. 10, the semi automatic VP70, all he had to do was
22 fill out the Form 2 and send it in to FTB to have a legal
23 gun, right?

24 A Well, the form would be submitted to the National Firearms
25 Branch, but, yes.

1 Q All he had to do was send in a form?

2 A That's correct.

3 Q And he didn't even have to pay any more money because he
4 was an SOT?

5 A That's also correct. The special occupational tax payment
6 covers making taxes by a manufacturer.

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

8 Thank you.

9 THE COURT: Mr. Redkey, redirect of the witness?

10 BY MR. REDKEY:

11 Q Starting with the last question first, Mr. Galbraith, I
12 think you said all he had to do with respect to the VP70 was
13 send in the form and he could get it registered; is that
14 correct?

15 A That's right.

16 Q But that's assuming that at the time he had an FFL and
17 SOT, correct?

18 A That is also correct.

19 Q He didn't have an FFL, say, in January of 2005, and did
20 not pay his SOT for January 2005, would he be able to get it
21 registered?

22 A He would not. If he had -- if he did not have an SOT and
23 an FFL and he possessed a pistol and the stock at the same
24 time, he would be in possession of an unregistered National
25 Firearms Act firearm, specifically a short-barrelled rifle.

1 Q If it wasn't registered, it would be --

2 A It would be considered contraband.

3 Q I want to talk to you briefly about the other VP70, which
4 I think is marked for identification as defense Exhibit No.
5 12, the box here. Do you recall that?

6 A Yes, I do.

7 Q Was that firearm submitted to you for examination?

8 A No, it was not.

9 Q Do you know where this firearm was on January 13 of '05?

10 A No, I don't.

11 Q Now, do you need a stock to make this pistol a firearm,
12 which is A-13?

13 A A firearm, no. It's a firearm by itself. It needs the
14 stock to be able to shoot automatically.

15 Q Now, that's what this stock does?

16 A That's correct.

17 Q Because of the selector switch on the side?

18 A That's right.

19 Q And that permits that gun to be fired full auto?

20 A Yes.

21 Q Without the shoulder stock, can it fire full auto?

22 A No, it will not.

23 Q But is it nevertheless a machi negun?

24 A It's registered as such, yes.

25 Q Because it is -- what?

1 A It's capable of full automatic fire with the shoulder
2 stock.

3 Q Now, talking about both A-13 and government's -- what's
4 been admitted as Exhibit No. 10, the firearm seized from
5 Mr. Kwan. You were asked some questions about the barrel --

6 A Yes.

7 Q -- of this gun. Can the barrel of this gun be undone and
8 replaced?

9 A Only at the factory.

10 THE COURT: Clarify which one you've got in your
11 hand.

12 MR. REDKEY: I'm sorry, this is 10. Is A-12 the same
13 type of gun.

14 A Yes.

15 BY MR. REDKEY:

16 Q And so would you be able to attach an extended barrel to
17 this firearm?

18 A The barrels are pressed into place with tremendous
19 pressure using a very specialized fixture that's available
20 only at Heckler & Koch. It's not the kind of operation that
21 could be performed by anyone else, really, even with enough
22 expertise without the proper equipment which is available
23 only at the manufacturer.

24 Q There was no additional barrel submitted to you for
25 examination with Exhibit No. 10?

1 A Absolutely not.

2 Q You were asked some questions about an M16, I think, and
3 an AR15 which are not part of this case but -- I think you
4 were asked if the -- if you manufacture a machinegun from an
5 AR15, can you get it registered. What was your answer?

6 A If a licensed manufacturer of firearms that holds a
7 special occupational tax stamp, if they want to manufacture a
8 machinegun, they can do so. If a private individual who is
9 not licensed or even someone who is licensed but does not
10 hold special occupational tax stamp wants to manufacture a
11 machinegun, they cannot do that.

12 The manufacture of machineguns has been restricted since
13 May 19 of 1986 to manufacturers of firearms who hold both an
14 07 federal firearms license and a special occupational tax
15 stamp.

16 Q By that, you mean an active, valid, still current FFL?

17 A Exactly.

18 Q I think you were asked with respect to Exhibit No. 10, you
19 were asked: Well, all he had to do was send in a form, then,
20 to get this registered?

21 And your answer was what?

22 A Under the assumption he held a current, valid, type 07
23 federal firearms license and a special occupational tax
24 stamp, that would be correct.

25 Q Assume that he did not have an valid FFL or SOT at that

1 time. Would he be able to register?

2 A If an individual who is not licensed and does not hold a
3 special occupational tax stamp wants to complete an ATF Form
4 1, which is an application to make and register a firearm,
5 which can be submitted to manufacture a short-barrelled
6 rifle, there is a certain order in which he needs to complete
7 that. He could have one or the other of those components.
8 He could have the pistol, primarily that's how it's done.
9 Someone will have the pistol. They will fill out the ATF
10 Form 1, the application to make and register a firearm, which
11 includes a description of the firearm that they are
12 interested in manufacturing, which in this case would be a
13 short-barrelled rifle. They would submit a making tax of
14 \$200 to ATF. When the form was approved and was returned to
15 them, at that time they could obtain the second component, in
16 this case a shoulder stock, and they would have a
17 legitimately registered short-barrelled rifle.

18 Q If they had an FFL and had paid the SOT?

19 A Either or. If they had the FFL and SOT and were engaged
20 in the business, or as a private individual if they had
21 submitted a Form 1 and received the approved Form 1 before
22 they obtained the second component, the shoulder stock.

23 If they're in possession of the shoulder stock and the
24 pistol at the same time before they received an approved Form
25 1, they have an unregistered short-barrelled rifle, which is

1 contraband until they received an approved Form 1.

2 Q Now, there was some discussion also about a letter which
3 I'll refer to as the Bartlett letter which I believe is
4 marked as Exhibit No. A- -- defense Exhibit A-13. Do you
5 have that in front of you?

6 A I do.

7 Q Are you familiar with that letter? Have you seen it
8 before?

9 A Yes. I've read through this letter.

10 Q Are you familiar with or have you seen the letter that
11 prompted the Bartlett letter?

12 A Yes, I have.

13 Q Is that a letter from Dennis Foutch to ATF?

14 A It is.

15 Q I'll ask that the clerk could hand to the witness what has
16 been marked for identification as government's Exhibit No.
17 11.

18 Do you have that before you?

19 A Yes, I do.

20 Q What is that?

21 A This is a letter from Denny's Guns. It's the same
22 business organization that I read the address from earlier,
23 from the copy of the reply letter that was sent. It was sent
24 originally on May 21 of 2001 to the ATF, National Firearms
25 Act Branch.

1 Q Does that appear to be a letter of three pages with a
2 diagram?

3 A Yes, it does.

4 Q And in that letter are there basically four questions
5 addressed to ATF?

6 A Yes, there are.

7 Q And are there four questions answered in the Bartlett
8 letter?

9 A Yes, there are.

10 Q The paragraph 4, question number 4, I'll refer to as the
11 Foutch letter of May 21, 2001, what is the question posed to
12 the ATF?

13 A In the original letter?

14 Q Yes.

15 THE COURT: Just a moment. It's not admitted into
16 evidence. I'm not going to have you read from --

17 MR. REDKEY: I'm going to offer Exhibit No. 11, our
18 government's Exhibit No. 11. And I don't believe defendant's
19 A-12 was -- I'm sorry A-13 was offered.

20 THE COURT: Let's do them one at a time. What are
21 you offering?

22 MR. REDKEY: Offer government's 11.

23 MR. CONTE: No objection.

24 THE COURT: 11 will be admitted. You can read from
25 it now.

1 (Exhibit No. 11 admitted.)

2 BY MR. REDKEY:

3 Q What is question number 4 in Mr. Foutch's letter?

4 A It reads, "Sale of the stock with a 16.25-inch barrel in
5 the upper picture, we expect to be able to sell the carving
6 kit consisting of the Glock stock and a 16.25-inch barrel
7 with an overall length of 38.25 inches to the general public
8 with no BATF paperwork except the above-mentioned warning
9 notices. Would this be correct?"

10 Q What is the above-mentioned warning notice?

11 A The above-mentioned notice reads, "All NFA rules apply.
12 Attaching this stock to any handgun without prior approval by
13 BATF is a felony. See your owner's manual."

14 Q And how did Mr. Bartlett from the FTB reply to that,
15 particularly with respect to page 3, lower paragraph? Last
16 paragraph?

17 THE COURT: Well, just a moment. That's not in
18 evidence. I know it's been read. Referred to earlier --

19 MR. CONTE: I'll move it into evidence to make things
20 easy.

21 MR. REDKEY: If not, I have it marked.

22 THE COURT: All right. A-13, the Bartlett letter,
23 will be admitted into evidence as well.

24 BY MR. REDKEY:

25 Q What does the last paragraph read there, sir?

1 A "We agree that sale of the stock and 16.25-inch barrel
2 even to persons who own Glock handguns requires no NFA
3 registration. Since the stock and barrel can be used to
4 assemble a rifle that is not subject to the NFA, the making
5 of a short-barrelled rifle will occur only if the stock and
6 the Glock handgun are actually assembled into a
7 short-barrelled rifle or are otherwise combined to make a
8 short-barrelled rifle."

9 Q And is the Glock barrel that was referred to here, based
10 on your experience and training, is that a replaceable
11 barrel?

12 A Yes, they are.

13 Q You can take the barrel off and put on the
14 16-and-quarter-inch barrel?

15 A Very quickly, yes.

16 Q Did I understand you correctly, you could not do that with
17 Exhibit No. 10?

18 A That's also correct.

19 Q Also in Mr. Bartlett's letter, I direct your attention to
20 page 2, apparently in answer to the question about selling
21 the stock to federal, state, and local law enforcement
22 agencies. Would you read the -- Mr. Bartlett's response to
23 that in the middle of page 2?

24 A "Glock pistols are not firearms under the NFA, and are not
25 required to be registered. However, combining the stock with

1 the Glock handgun would result in the making of a
2 short-barrelled rifle even if the stock is not actually
3 attached to the handgun."

4 Q That's a situation where there is no 16-and-a-quarter-inch
5 barrel; is that correct?

6 A That's correct.

7 Q In the kit. Okay.

8 MR. REDKEY: If I may have a moment. I think that's
9 all the questions, Your Honor.

10 MR. CONTE: I neglected to ask one question of this
11 witness. Could I propose just one question that is beyond
12 the scope of the government's --

13 THE COURT: Go to the podium.

14 RE-CROSS EXAMINATION

15 BY MR. CONTE:

16 Q My question is whether I could ask one question of this
17 witness that was -- would be outside of the scope?

18 THE COURT: Ask the question and we'll see if we get
19 an objection and we'll deal with it.

20 BY MR. CONTE:

21 Q I want to ask you about the M14, the sear release and the
22 selector shaft. Did you have to use the Dremel tool to
23 remove that?

24 A No. Only to cut them apart.

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

1 a nice day.

2 THE WITNESS: Thank you, Your Honor.

3 MR. REDKEY: We recall Special Agent Rich Byrd.

4 RICHARD BYRD

5 Thereupon, after being duly sworn testified as follows:

6 THE COURT: You're still under oath, sir.

7 DIRECT EXAMINATION

8 BY MR. REDKEY:

9 Q First, I would like to ask you a couple questions
10 about Exhibit No. A-12. Do you recognize this to be the
11 second H&K pistol that was discussed earlier in trial?

12 A Yes, sir.

13 Q And was that present at the defendant's house on January
14 of 2003?

15 A No, sir, it was not.

16 Q You didn't seize that gun, then?

17 A No, sir.

18 Q Where was the gun?

19 A It was in the evidence vault of Seattle Group One, ATF,
20 Office, Seattle, Washington.

21 Q And when did the ATF come into possession of that firearm?

22 A ATF took possession of that firearm from Mr. Kwan -- I
23 think it was March 16, 2004. They were responding to -- ATF
24 inspectors were at Mr. Kwan's house for an NFA verification
25 check, and they recovered that along with 18 other NFA dealer

1 samples that Mr. Kwan was no longer allowed to possess, since
2 his license had expired.

3 Q Was he prosecuted for any of those violations?

4 A No, sir, he was not.

5 Q Was any administrative action taken with respect to those
6 violations?

7 A Not aware of any, sir.

8 Q Now, when you executed the search warrant at Mr. Kwan's
9 residence in January of 2005, did you seize any replacement
10 barrels for any type of firearm?

11 A No, sir, we did not.

12 Q Did you see any replacement barrel for any type of
13 firearm?

14 A I didn't see any barrels. I don't recall seeing any
15 barrels for any replacement firearms.

16 Q Nothing over 16 inches?

17 A No, sir.

18 Q And when you sent Exhibit No. 10, which is this DB72, to
19 the firearms branch, did you send any replacement barrels
20 with it?

21 A No, sir, I did not.

22 Q Did you have any replacement barrels?

23 A No, sir, we did not.

24 Q I think that's all the questions I have, Your Honor.

25 THE COURT: Anyone else?

1 MR. CONTE: Court's indulgence. We'll be brief.

2 RECROSS EXAMINATION

3 BY MR. CONTE:

4 Q That gun was scheduled to go back to Mr. Kwan, right?

5 A Yes, sir, it was.

6 Q No question about that, correct?

7 A That's correct sir.

8 Q It's a pre-'86 dealer --

9 A Oh, no. Excuse me, sir, that VP70 was not one of the guns
10 that the judge ordered be returned.

11 Q No. It was seized on -- taken on March 6 with this
12 concurrent. It was then supposed to be transferred to Nevada
13 with the rest of his machinieguns, correct?

14 A I was not aware of it supposed to be transferred to
15 Nevada.

16 Q You weren't aware of that?

17 A No, sir.

18 Q You were aware that he has over 100 machinieguns in Nevada?

19 A Yes.

20 Q That VP70 was one of the ones that was supposed to be
21 shipped to Nevada by ATF?

22 A I'm aware of no agreement between ATF and Mr. Kwan and
23 shipping his firearms to Nevada for him.

24 Q All right. Well --

25 A There is -- there is no agreement that I'm aware of that

1 we were going to ship Mr. Kwan's firearms to Nevada for him.

2 Q Let me ask you this. You said you were there March 16.

3 A I was not there March 16.

4 Q You said the gun was seized March 16?

5 A Yes.

6 Q ATF took it?

7 A Yes.

8 Q Because --

9 A ATF Compliance was there for NFA verification check.
10 Mr. Kwan's license is expired. And NFA records indicated he
11 still had several post-'86 dealer sample machineguns that he
12 couldn't possess because he's no longer a licensee. During
13 their inspection they found these 19 firearms, these post-'86
14 dealer samples, and they called some agents out there to take
15 possession of them.

16 Q Let me show you --

17 MR. CONTE: I would like to have this marked, Your
18 Honor.

19 MR. REDKEY: Your Honor, can I have a word with
20 counsel while this is going on?

21 THE COURT: Yes.

22 BY MR. CONTE:

23 Q Tell us what the first exhibit, defendant's Exhibit
24 No. A-14 is?

25 A A letter from the Bureau of Alcohol, Tobacco, and Firearms

1 dated September 4, 2003, to Albert Kwan.

2 MR. CONTE: Move its admission, Judge.

3 MR. REDKEY: I object.

4 THE COURT: Let me see 11, please.

5 Well, you want to give me a little idea on the nature
6 of your objection?

7 MR. REDKEY: Relevancy, Your Honor. This is not a
8 compliance case, although the witness did mention the
9 compliance inspections issue, but only to show that the gun
10 had been seized prior to the execution of the search warrant
11 in January.

12 These letters, as I understand them, deal entirely with
13 Mr. Kwan's relationship with the compliance people at ATF,
14 not the law enforcement people at ATF. And that's an
15 entirely different can of worms that is not relevant and
16 opens the door to a lot of evidence that is going to take us
17 far afield, I think.

18 THE COURT: I don't know how far afield it will take
19 us, but this particular letter, Exhibit A-14, I'm admitting.

20 BY MR. CONTE:

21 Q Have you read the letter?

22 A Yes, sir.

23 Q In effect it extends his FFL for six months from September
24 or whatever the date of the letter is?

25 A September 4, 2003.

1 Q And the letter says it can be extended an additional six
2 months?

3 A That's correct.

4 Q And what office issued that letter?

5 A Looks like the -- it doesn't say on here, but it's
6 Atlanta, Georgia, so I'm guessing the licensing center.

7 Q So it's a letter authorizing him to continue with his FFL?

8 A Yes.

9 Q And now, defendant's Exhibit No. A-15, what is it?

10 A It appears to be a letter from ATF Compliance. Notice
11 that they are going to do an inspection and he should make
12 available all NFA firearms registered to him.

13 THE COURT: What's the date of the letter?

14 A March 8, 2004.

15 MR. CONTE: Move its admission.

16 MR. REDKEY: Same objection.

17 THE COURT: May I see the letter, please?

18 Why don't you publish for the jury, A-14 that's been
19 admitted. Jury wishes to see it. So I'll ask you to put it
20 on the screen for them.

21 I'm having a little different view of this letter, A-15.
22 The reason I admitted A-14 is because it does deal with
23 extending his license. And there was -- there is some issue
24 dealing with the effective date of the license and whether he
25 was or was not licensed at the particular time. This is a

1 little different subject dealing with verification of
2 information --

3 MR. CONTE: Judge, it doesn't really have a lot of
4 probative value. I was just offering it terms of the
5 sequence of events because the next letter talks about the
6 actual revocation of his license.

7 THE COURT: Well, I'm going --

8 MR. CONTE: I think what happened was they found out
9 at the NFRT Arms Inspection that he still had the FFL, where
10 it was erroneous.

11 THE COURT: I'm not entirely understanding any
12 probative value to A-15. It will be refused.

13 BY MR. CONTE:

14 Q Special Agent Byrd, this is the letter of September 4,
15 which acknowledges his application --

16 THE COURT: I'm sorry, what are you referring to now?

17 MR. CONTE: Defendant's Exhibit No. A-14.

18 THE COURT: The jury -- it's been published, has it
19 not. I don't know that you need to -- did you want to ask
20 more questions about it?

21 MR. CONTE: It extends his FFL for six months.

22 A That's what the letter appears to say.

23 BY MR. CONTE:

24 Q And he can renew that once it's expired?

25 A Yeah. It says at the end of that six months they can send

1 him another letter extending it for another six months.

2 Q Now, A-16.

3 A Yes, sir.

4 Q What is that?

5 A It appears to be a facsimile copy of a letter from ATF
6 Licensing Center in Atlanta, Georgia.

7 MR. CONTE: May I approach the witness?

8 THE COURT: You may. Do you want to give us the date
9 of that?

10 MR. CONTE: I move its admission.

11 MR. REDKEY: Same objection.

12 THE COURT Where is A-14?

13 A He's bringing it up, Your Honor.

14 THE COURT: All right. You've offered A-16, it
15 relates to A-14. I'm going to -- Mr. Redkey, you're
16 objecting to it?

17 MR. REDKEY: I am.

18 THE COURT: I'm going to admit A-16. I think it's
19 being offered and will be admitted. You want to publish
20 that?

21 MR. CONTE: Yes.

22 (Exhibit No. A-16 admitted)

23 BY MR. CONTE:

24 Q So you testified that ATF took the VP70 on March 16?

25 A That's correct.

1 Q Defendant's Exhibit No. 16, A-16, could you tell the
2 ladies and gentlemen of the jury what that says?

3 A It says, "Please be advised that the letter of
4 authorization for federal licensee number 99138255 sent to
5 you on September 4, 2003 was issued pursuant to a clerical
6 error. This letter of approval is retroactively cancelled
7 and was void from the beginning. The license was terminated
8 upon receipt of final notice of denial dated June 27,
9 2003" --

10 THE COURT: A little slower.

11 A -- "and signed for by you on June 28, 2003, rescind
12 pursuant to 27 CFR, Section 478, 1278

13 Please be advised you are precluded from conducting any
14 business with the referred LOA. Sincerely yours," -- and
15 it's signed, can't read the first name, something Bennett,
16 Chief, National Licensing Center --

17 BY MR. CONTE:

18 Q This is three days after the ATF did their compliance
19 inspection -- or their NFRT&R, national firearms transfer; is
20 that correct?

21 A Yes, sir.

22 Q Based on the letter from Atlanta, Mr. Kwan could have
23 well-believed he still had an FFL, correct?

24 MR. REDKEY: Objection, Your Honor, to what he might
25 have felt.

1 THE COURT: Sustained.

2 BY MR. CONTE:

3 Q The letter says he still has an FFL, correct?

4 THE COURT: The letter has been read to the jury. It
5 says what it says.

6 BY MR. CONTE:

7 Q Now, this is defendant's Exhibit No. A-11 which is a
8 Form 3 for the VP70, correct?

9 A It's kind of hard to read, sir.

10 THE COURT: Take it off the --

11 MR. CONTE: I would move the admission.

12 THE COURT: Well, it hasn't been admitted yet. I'm
13 not sure it's even been identified.

14 I think you need to identify it for the record and then,
15 unless there is an agreement with Mr. Redkey, we need to go
16 through the normal process of trying to get exhibits into
17 evidence.

18 MR. CONTE: May I approach?

19 BY MR. CONTE:

20 Q Can you tell the ladies and gentlemen of the jury what
21 that document is?

22 A It appears to be ATF Form 3, for Mr. Albert Kwan,
23 registration for H&K VP70 machin gun, serial number 2405.

24 Q The pistol, defendant's Exhibit No. 12?

25 A Yes, sir.

1 Q That gives him authorization to own that pistol, right?

2 A Yes, sir.

3 Q That's the golden form, that's his birth certificate?

4 A Yes, sir.

5 Q That's a pre-'86 dealer sample, correct?

6 A All it states on here is its limited to use as a sale
7 sample. It does not specify the pre-'86 sale sample.

8 Q So he's legally entitled to own it.

9 A If it's a post-'86 sale sample, at that time he would not
10 legally own it. If was pre-'86 sale sample, it would be.

11 Q Correct. And you weren't there, were you?

12 A No, sir, I was not.

13 Q And would it surprise you that there was a question at
14 that time as to whether some of those guns that were taken
15 were pre- or post-1986 dealer samples?

16 A That's possible.

17 Q And if it was in fact a pre-1986 dealer sample, he would
18 be legally entitled to have that weapon, correct?

19 A Yes pre-'86 samples you can keep.

20 Q And to comply with the state law of the State of
21 Washington, he would have then have to ship it with the rest
22 of his machineguns down to the state of Nevada?

23 MR. REDKEY: Objection. If the witness knows and it
24 calls for a conclusion of law, Your Honor --

25 THE COURT: Well, I think it does. Why don't you

1 restate your question. I'll sustain the objection.

2 BY MR. CONTE:

3 Q You know that Mr. Kwan and the rest of his collection was
4 moved to Nevada; is that correct?

5 A Yes, sir.

6 Q And that was with the concurrence of the ATF, correct?

7 A Yes, sir.

8 Q And do you know why they moved the 100 or so machi neguns
9 to Nevada?

10 A My understanding was that they were all post-'86 dealer
11 samples, and since his license had been denied, they were all
12 going to be sent down there until the issue with his license
13 had been settled.

14 Q And the 18 that they seized were questionable -- the
15 question is whether they were pre- or post-1986 dealer
16 samples, correct?

17 A My understanding is 19 that were taken from Mr. Kwan's
18 house were taken because they were post-'86 dealer samples
19 that he was not allow to possess.

20 Q In the State of Washington?

21 A Anywhere. Since his license had expired, he was no longer
22 able to possess a post-'86 dealer sample.

23 Q And nowhere on that form does it indicated whether it's
24 pre- or post-'86?

25 A Well, here it says, "limited to sales sample. Date of

1 transfer is 1994."

2 Q Special Agent Byrd, would the NFRT&R tell us whether it's
3 pre- or post-'86?

4 A It should.

5 Q Let me have another exhibit marked.

6 MR. REDKEY: I'm going to object, again, on a
7 relevancy grounds.

8 THE COURT: We haven't -- let's get it marked and
9 identified.

10 MR. REDKEY: Okay.

11 THE COURT: I can't rule on any relevancy issues
12 until I see it.

13 BY MR. CONTE:

14 Q Show you what's been marked defendant's Exhibit No. A-17,
15 can you tell the ladies and gentlemen of the jury what that
16 is?

17 A It appears to be a printout of the national firearms
18 registration transfer record.

19 MR. CONTE: Move defendant's Exhibit No. A-17.

20 MR. REDKEY: Your Honor, I object again on the
21 relevancy grounds. This is all bearing on a firearm that is
22 not the subject of the indictment, whose relevance only is
23 that it was not at defendant's residence when the search
24 warrant was executed. And we spent the last 15 minutes
25 talking about a gun that is not an issue at trial. So my

1 objection would be relevance to the whole line of
2 questioning.

3 THE COURT: I'm going to rule on this exhibit only.
4 And I'm going to refuse the exhibit. I don't see the
5 relevance to it.

6 MR. CONTE: Very well.

7 I have no further questions.

8 THE COURT: Anything further?

9 MR. REDKEY: No redirect.

10 THE COURT: You may step down.

11 MR. REDKEY: Your Honor, I'm prepared to rest,
12 subject to confirmation of the admission of the exhibits that
13 I believe have been admitted. I did not do so before now,
14 but now I would offer 9.1 through 9.5, which are certified
15 copies of the defendant's FFLs.

16 THE COURT: Any objection to the 9.1 to 9.5?

17 MR. CONTE: No, Your Honor.

18 THE COURT: They'll be admitted.

19 (Exhibit Nos. 9.1 through 9.5 admitted.)

20 MR. REDKEY: Again, subject to the confirmation of
21 admission of my exhibits, United States rests.

22 THE COURT: Let's be sure we know what is in and what
23 is not in, Mr. Redkey.

24 Madam clerk, do you have the list of government
25 exhibits that are in?

1 THE CLERK: I do, Your Honor.

2 THE COURT: Do you have today's?

3 THE CLERK: Yes.

4 THE COURT: All right.

5 Do you have any questions about any of your exhibits that
6 you want to ask about?

7 MR. REDKEY: No. I want to confirm that we have
8 No. 1, 4.1 through 4.7, 5.1, 7, 8, 9.1 through 9.5, 10, 11,
9 and 12.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: All right. They're all in.

12 MR. REDKEY: Thank you. Then we rest.

13 THE COURT: Thank you.

14 Are you ready to proceed counsel?

15 MR. CONTE: Could we have a side-bar.

16 (Following proceedings held at sidebar:)

17 MR. CONTE: I would move for judgment of acquittal on
18 both counts as to the first count --

19 THE COURT: How much time do you need? Maybe I can
20 let the jury out.

21 MR. CONTE: On the first count, the government has
22 shown -- knowing possession of a machin gun, that he knew
23 that it would function as a fully automatic machin gun. The
24 evidence is here that they had to take it apart. They had to
25 work on it and put it back together. As to whether it was

1 even readily restorable, again, it goes back to his
2 knowledge. And the gun was there. Appears as though it's
3 never been worked on. It's in very good condition, an expert
4 worked on it. And he had every reason to believe that based
5 on the evidence even in the light most favorable to the
6 government that -- never been fired fully automatic. No way
7 he knew it could have been fired fully automatic or even --
8 there is no information no evidence to show no -- knowing --
9 the use and function of the firearm was fully automatic.

10 As to Count 2, I think that the evidence here is that he
11 has two 57 stocks are interchangeable. US versus tomorrow
12 appearance settle alarms company and the letter from the BATF
13 to that are fray toy both say.

14 MR. REDKEY: Foutch.

15 MR. CONTE: Both say that they have to be combined to
16 be a short-barrelled rifle. That's a Supreme Court case.
17 And a letter from BATF and government hasn't -- the evidence
18 is that the gun you was in the stock. We also have the
19 evidence that he has another one and the stock
20 interchangeable and it's fully legal.

21 THE COURT: Well, I'm going to want to hear some
22 argument. Let's excuse the jury.

23 MR. REDKEY: It's time for the afternoon break.

24 (Proceedings continue)

25 THE COURT: Ladies and gentlemen of the jury, there

1 are some matters I need to take up outside your presence. It
2 will take more than just a couple of minutes, so we're going
3 to do it in open court. So we need to have you take an early
4 recess. It will be a little longer. The clerk will let you
5 know when we're finished here, and then we'll take our
6 afternoon recess. She'll come in and let you know when we've
7 begun the afternoon recess. So you'll know when to expect to
8 come back.

9 But this is a time when I need to talk to the lawyers in
10 your absence. So please, would you go to the jury room, and
11 we'll let you know as soon as we have information about
12 timing.

13 (Thereupon, the jury exited the courtroom.)

14 THE COURT: All right. Counsel. You can go ahead.

15 MR. CONTE: Judge, obviously we're not addressing the
16 possession issue. Clearly, he possessed them; they were in
17 his house. Indeed, he's a collector. But the issue here is
18 whether he knew the feature or features of the firearm that
19 made it a machinegun. Regardless of his knowledge of
20 firearms when he purchased the gun, there is no evidence in
21 here that he's ever fired it automatically, there is no
22 evidence that he knew that it could possibly fire
23 automatically, or that it contained internal components that
24 made it a frame or a receiver.

25 We don't believe that is the issue here, because the

1 knowledge that is imputed to Mr. Kwan, I think, is the
2 readily restorable. That's the issue. Not a frame or
3 receiver. Because the government took it, it did not
4 function as firearm, so he can't be imputed with that
5 knowledge.

6 Now, what knowledge can he be imputed with? The only
7 knowledge he can be imputed with is that he thought it was a
8 semi automatic. And the government has had no evidence here
9 to suggest that not a scintilla of evidence that he intended
10 or he knew that it could be readily restorable. And it
11 doesn't even matter how long it takes for them to restore it,
12 although I think that's arguable. The fact is that the
13 government has to prove that he knew the feature or features
14 which made it a machinegun. He didn't. The government
15 hasn't proved that in the light most favorable to them, even
16 with the manufacturer's license.

17 They have no knowledge he ever took it apart. Certainly
18 no knowledge -- never fired fully automatic. Certainly there
19 is no -- it wasn't changed from a machinegun into a
20 semi automatic by Mr. Kwan. I think the evidence has to be
21 that he acquired it while was a semi automatic. So that's the
22 first argument.

23 The second argument is whether it's readily restorable.
24 They have evidence that he has a manufacturer's license, but
25 there is no evidence whatsoever that he had any manufacturing

1 tools, even a Dremel tool, in his home. I think that if he
2 had, that Agent Byrd or somebody who searched the home that
3 day would have testified that he had that kind of equipment.
4 That equipment didn't exist.

5 So what we're stuck here with is that he has this gun.
6 And it fires semiautomatic. And the government has yet to
7 prove that he knew the features that made it a machinegun or
8 that he knew that it could be readily restored to a
9 machinegun.

10 Even readily, even the government's instructions for quick
11 efficiency with needless loss of time, reasonably fast, or
12 with a fair degree of ease, the gentleman who testified has
13 years of experience as an armorer and as a gunsmith and as an
14 expert. They haven't shown any evidence that Mr. Kwan had
15 the ability to change that, even over a protracted period of
16 time.

17 The instruction for knowing isn't shown if the defendant
18 is aware of the act and does the act through ignorance,
19 mistake, or actions. Government hasn't shown any knowledge
20 here in this case.

21 As concerns Count 2, I direct the Court's attention to
22 United States v. Thompson/Center Arms and the cite is cited
23 in my papers.

24 THE COURT: I've read the papers.

25 MR. CONTE: The Supreme Court in that case clearly

1 says that they had to be assembled. And in support of that
2 is the letter from BATF to Mr. Foutch, which is defendant's
3 Exhibit No. 13, I believe. Clearly, even the BATF is saying
4 they're not a short-barrelled rifle until they're assembled.
5 And when the Supreme Court and the BATF, acting in response
6 to the Supreme Court's case in Thompson, say the same thing:
7 It has to be assembled, then I think it has to be assembled,
8 and I think this Court needs to direct a verdict to Mr. Kwan
9 on that count.

10 THE COURT: Let me just respond to the second
11 argument, first. In reading the Thompson/Center Arms case, I
12 think I would agree that if on the date of the search and --
13 I will add possession of the firearm which according to the
14 indictment was January 13, 2005, if he had had that other
15 pistol in his possession, and he had what is the exhibit in
16 the case, the firearm that is the subject of Count 1, and the
17 one stock, I think you would have a pretty good argument.

18 But the information that -- and the Supreme Court in
19 Thompson/Center refers to a couple of circuit cases and makes
20 a distinction, and those cases are United States v. Cotkin,
21 where they say -- that involved a carbine together with all
22 the parts necessary to convert it into a machinegun, that was
23 a machinegun. The Circuit was denied. In United States v.
24 Seekman (phonetic), a pistol and attached shoulder stock
25 found in different drawers of the same dresser constituted a

1 short-barrelled rifle.

2 And once again, my reading of it indicates that they're
3 approving those cases while they draw a distinction and
4 conclude that where you've got -- and if the evidence had
5 been that on the date of the search, January 13, he had had
6 both pistols and one stock and he had the one pistol
7 registered, then I think I would agree with your argument
8 with respect to Count 2.

9 But that's not the facts as I understand them. By that
10 time the one pistol had been removed from his possession. So
11 he's got the one pistol and the one shoulder stock, and I
12 think those other cases are applicable and Thompson doesn't
13 require a different result. I'll deny the motion as to
14 Count 2.

15 I do want to hear from the government on Count 1 with
16 respect to the argument as to what -- and the question is:
17 What evidence is there in the case that the defendant knew he
18 knowingly possessed a firearm? And that firearm under the
19 statute may be designated as a machin-gun. So I think there
20 is evidence of the first element. But the second element is
21 the one counsel was relying upon. And I'm interested in
22 knowing what your response would be to what evidence there is
23 in the record that the defendant knew of the feature or
24 features of firearm that made it a machin-gun.

25 And in that regard, I think, what evidence -- to

1 paraphrase the statutory definition of machin gun that I
2 think is applicable -- what evidence is there that the
3 defendant knew that the weapon would either shoot as a
4 machin gun or could be readily restored to shoot
5 automatically more than one shot?

6 MR. REDKEY: Or even more importantly in our view,
7 Your Honor, is whether he knew that the frame and receiver of
8 that firearm was itself a machin gun.

9 THE COURT: The way I read the statute, when the
10 statute refers to the term, "also includes the frame or
11 receiver of any such weapon," I think that necessarily picks
12 up the definition of a machin gun, which means that it's a
13 frame or receiver of any machin gun; that is, a weapon that
14 either shoots automatically or can be readily restored to
15 shoot automatically. And frankly, if it goes to the jury on
16 Count 1, I'm going to change my tendered instruction to make
17 clear that any such weapon refers to a machin gun.

18 But I'm not impressed with that argument. So is there any
19 evidence in the case that he knew of the features of the
20 firearm that made it a machin gun?

21 MR. REDKEY: Yes. First of all, the testimony has
22 been that the frame or receiver is a machin gun by itself.
23 That is the, at least at this point, the undisputed testimony
24 before the jury.

25 THE COURT: It can't be a machin gun unless it's --

1 how does he know it's a machin gun? You still got to show
2 that he has knowledge.

3 MR. REDKEY: I'll move on to the external examination
4 of the firearm. The external examination of the firearm, as
5 The Court may recall, there is a selector stop replacement in
6 there where the selector switch usually is, which shows that
7 that was manufactured as a machin gun with the selector
8 switch that allows the gun to be alternated between full auto
9 or semi-auto. That is a tip-off to anybody with any
10 knowledge of firearms.

11 THE COURT: Was that selector switch on the exhibit,
12 the machin gun -- the one weapon?

13 MR. REDKEY: Yes.

14 THE COURT: At the time it was obtained from the
15 defendant?

16 MR. REDKEY: Yes. It was the selector lock, which is
17 that little plug that was in the machin gun when it was
18 seized. And in addition, there is another part there, which
19 is the connector assembly -- that long piece that slides on
20 the right-hand side of the gun which is a tip-off to anybody
21 who has any knowledge of machin guns that that is a
22 machin gun. It was manufactured as a machin gun.

23 And the defendant was no babe in the woods with respect to
24 firearms. He was a very knowledgeable collector. He had
25 books throughout his house, he had hundreds of firearms, and

1 although many of the counsel's questions were, gee, if I
2 walked in off the street, or you walked in off the street,
3 what would we think?

4 But that's not case here. We're talking about a defendant
5 who has a relatively high level of sophistication of
6 knowledge about firearms, the evidence has shown.

7 When he sees the M14, which is Exhibit No. 1, and sees
8 that selector lock on there and sees the connector assembly
9 on there, he is put on notice that, one, I think it's a fair
10 inference that he knew this was manufactured as a machinegun.
11 And that it still had parts that would allow it to function
12 as a machinegun and that he then knew that.

13 THE COURT: But I can't make a fair inference unless
14 I have some evidence to support it. It's a good argument.
15 But where is the evidence? What evidence has any witness
16 presented as to what the defendant knew.

17 MR. REDKEY: Well, Special Agent Byrd said that when
18 he went into the house and conducted his search, that there
19 were hundreds of firearms, and that they were well organized,
20 well taken care of, and that there were rows and rows and
21 shelves and shelves of manuals, textbooks, things that
22 actually he envied that the defendant had.

23 And which would certainly support an inference in allowing
24 the jury to decide that he had knowledge above that which
25 they might have or which I might have. It's a fair inference

1 to say that he knows guns, and he knows what he had there.
2 And he recognized the external parts that put him on notice
3 that that --

4 THE COURT: So you're saying that the fact that the
5 guns were all organized well and he had a lot of guns and he
6 had manuals, that is enough evidence to create some inference
7 that he knew that the weapon could be readily restored to
8 shoot in an automatic fashion. Is that what you're saying?

9 MR. REDKEY: Yes.

10 THE COURT: That's a stretch, isn't it.

11 MR. REDKEY: I think it's an inference that the jury
12 can draw from the evidence, Your Honor. I think they should
13 be allowed to decide that.

14 THE COURT: Well, I'm going to defer a ruling on
15 Count 1, and we're going to proceed. But I may well rule
16 before the case is submitted to the jury. I'm not entirely
17 satisfied there is any evidence in the case that would
18 support such an inference of any kind. The fact he's got his
19 guns all neatly stored and he's got lots of manuals and he
20 has been a dealer is different, it seems to me, than saying
21 that he knew or -- of the features of the firearm or the
22 feature or features that made it a machinegun.

23 MR. REDKEY: I also want to point out he had a
24 manufacturer's license, as well.

25 THE COURT: I understand the argument. I'm going to

1 reflect on it.

2 MR. CONTE: I would ask the Court to inspect the gun.
3 I think Mr. Redkey -- I'm not sure I understood Mr. Redkey's
4 response correctly. The selector switch on that gun is gone,
5 it's not there.

6 THE COURT: My understanding was that -- and maybe I
7 got it wrong and we'll go back and look at the record. I
8 thought the witness said that the selector switch was not on
9 the weapon.

10 MR. CONTE: That's correct.

11 MR. REDKEY: I didn't say otherwise. The selector
12 stop, the plug that was put in there --

13 THE COURT: Am I correct that there was no selector
14 switch on the weapon when it was obtained from the
15 defendant's premises?

16 MR. REDKEY: That is correct.

17 THE COURT: Without a selector switch, you cannot
18 fire the weapon automatically unless one is put on the
19 weapon; is that right?

20 MR. REDKEY: Essentially, yes.

21 THE COURT: All right.

22 So what we're now -- now you're asking me to infer is that
23 the defendant would have known or did know that the selector
24 switch could be put on the weapon and the weapon would thus
25 be made to fire automatically. This is not the only part,

1 but the selector switch is the obvious one.

2 MR. REDKEY: Our argument is that gun was
3 manufactured with a hole to put in a selector switch and
4 there is still a hole, but it's been plugged. Then someone
5 would with knowledge would say, that is where the selector
6 switch used to be, somebody put a plug, a selector stop, but
7 there used to be a selector switch there.

8 THE COURT: We have the two parts of the weapon that
9 are welded together. And you're asking me to find that there
10 is facts that the defendant knew that it could be readily
11 converted to operable automatic weapon. That's the issue.

12 I'm taking it under advisement, think about it overnight.
13 I think what we'll do is take about a 10-minute recess and
14 you can start your case.

15 All right. We'll be in recess until 3:00.

16 (Court in recess.)

17 MR. CONTE: I did a little more research on the
18 exhibit that the Court would not admit, A-17. It's the
19 national firearm registration transfer record. And it does
20 show that the gun, the VP70 that was taken from Mr. Kwan's
21 house -- the second one that was in the storage at ATF is a
22 pre-1986 dealer sample. And it was therefore -- the VP70
23 machinегun would then be legal for my client to own. I think
24 that's relevant.

25 THE COURT: Mr. Redkey, what do you think?

1 MR. REDKEY: The legality of that gun is not an issue
2 in this trial. The only reason that gun was brought in at
3 all, presumably, was to show that somehow he could have
4 interchanged parts, whether it worked. And it was also
5 important to establish that it was not at the house on
6 January 13, 2005, because the interchangeability argument is
7 gone then. It doesn't matter whether it was legal or where
8 it was or anything else. All that is completely irrelevant.

9 MR. CONTE: I think the jury thinks it's illegal.

10 THE COURT: The gun that is not at issue?

11 MR. CONTE: Yes. And I think it's very relevant,
12 even though it's not co-located with the other gun, I think
13 it's up to the jury to decide whether that stock could have
14 been used on the second gun. And if it's illegal, then it
15 can't be, then we have a real problem.

16 THE COURT: I'm going to admit the exhibit, A-17.

17 MR. CONTE: I'm going to have to have Madam Clerk
18 remark it.

19 THE COURT: Let's bring in the jury.

20 Please be seated, ladies and gentlemen.

21 Defense may call its first witness.

22 MR. CONTE: May I briefly call Agent Byrd to
23 introduce defendant's Exhibit A-17.

24 THE COURT: I've indicated it will be admitted into
25 the evidence. It's the exhibit that I had refused before,

1 and now am admitting it into evidence. If you need someone
2 to explain what it says, you may call the agent as --

3 MR. CONTE: We recall Special Agent Byrd.

4 RICHARD D. BYRD

5 Thereupon, after being duly sworn testified as follows:

6 THE COURT: You're still under oath.

7 RECROSS EXAMINATION

8 BY MR. CONTE:

9 Q Please state your name for the record.

10 A Richard D Byrd. B-Y-R-D.

11 Q I'll show you what's been admitted as defendant's Exhibit
12 No. A-17. Do you recognize that document?

13 A Yes.

14 Q Tell the jury what that is.

15 A It appears to be a printout from the ATF national firearms
16 and transfer record, for an H&K VP70 pistol, serial number
17 2405.

18 Q Is that the weapon that you brought in from the ATF?

19 A Yes, sir.

20 Q It was originally in Mr. Kwan's home?

21 A That is correct.

22 Q The first date that that gun was approved for registration
23 was before 1986; is that correct?

24 A Yes, sir.

25 Q Therefore, Mr. Kwan would have been legally permitted to

1 own that weapon, correct?

2 A Yes. It was as pre-'87 dealer sample. He would have
3 allowed to possess it even once his license had expired.

4 MR. CONTE: Thank you. Nothing further from this
5 witness.

6 THE COURT: Anything from Mr. Redkey?

7 MR. REDKEY: No.

8 THE COURT: Thank you, sir.

9 MR. CONTE: We call Mr. Len Savage.

10

11 LEN SAVAGE, the witness, after being duly sworn
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CONTE:

15 Q Please state your name for the record?

16 A My name is Len Savage.

17 THE COURT: You want to spell your last name for the
18 record.

19 A S-A-V-A-G-E.

20 THE COURT: Go ahead.

21 BY MR. CONTE:

22 Q Where are you from?

23 A Heard County, Georgia.

24 Q And how are you employed?

25 A I own a company called Historic Arms, LLC.

1 Q How long have you owned that company?

2 A Since about 2000, 2001.

3 Q How old are you?

4 A 40.

5 Q And how far did you go in school?

6 A Two years of college after high school.

7 Q And when did you become interested in guns?

8 A Since I can remember.

9 Q And your business, what exactly does your business do?

10 A We design reproductions of historic machin guns utilizing
11 as many of the original parts as possible.

12 Q How does that work?

13 A Well, we take machin gun parts, we assemble them so they
14 conform with the regulations of the ATF, make sure it's a
15 closed bolt, semi automatic only, send it to the ATF to verify
16 compliance, and then we offer it for sale.

17 Q And what, if any, background do you need to do that type
18 of business?

19 A Well, you've got to understand machining and welding, as
20 well as how firearms operate and the different systems.

21 Q And your historical approach would cause research into the
22 configuration of those weapons?

23 A Oh, yes, sir.

24 Q What type of weapons have you worked on?

25 A Worked on or designed?

1 Q Designed.

2 A The Bren Mark II semi automatic, RPD semi automatic, the Mag
3 58 semi automatic, the SGNB semi automatic, the 971 sport
4 rifle, and a host of other systems that are designed to
5 integrate with legal machin guns.

6 Q Now, besides your own company have you worked and
7 consulted with other companies?

8 A Yes, sir. That's the main thrust of my business, is
9 research design and development for other manufacturers.

10 Q And approximately how many other manufacturers have you
11 worked for?

12 A About six.

13 Q And you've been doing that all since 2000, 2001?

14 A Yes. Before then actually. I did some research and
15 development before that. But it was getting to the point
16 where I had to get my FFL.

17 Q And you said you had contact with the firearm technology
18 branch. How much contact have you had with them?

19 A Quite a bit. At least weekly on average.

20 Q And have you consulted with other people involving
21 firearms?

22 A Yes, sir.

23 Q Like who?

24 A Attorneys, lawyers, other manufacturers, people who own
25 extensive collections so I can examine some of the rarer

1 pieces.

2 Q Have you been hired as an expert by these people?

3 A From time to time.

4 Q And have you published articles about firearms?

5 A I've authored one. But there has been quite a bit that
6 have been authored by other people about my designs and our
7 firearms, as well as some other things involving the ATF.

8 Q And have you become involved in legislation concerning --

9 A Yes, I have.

10 Q What type of legislation is that?

11 A The short title was the Fairness in Firearms Testing Act.

12 Q What was that about?

13 A A real simple, short piece of legislation that would
14 require the firearms technology branch to videotape all their
15 testing and examinations.

16 MR. CONTE: Your Honor, we offer Mr. Savage as an
17 expert.

18 THE COURT: Do you wish to voir dire?

19 MR. REDKEY: If I could ask a couple questions.

20 THE COURT: You may.

21 VOIR DIRE EXAMINATION

22 BY MR. REDKEY:

23 Q Good morning, Mr. Savage. I'm Bill Redkey.

24 A Good afternoon.

25 Q I had a chance to look at your CV. I want to make sure I

1 didn't miss anything with respect to your qualifications.

2 Is it correct that you've never actually testified as a
3 witness before in a court of law?

4 A I've never been allowed to testify. They usually dismiss
5 the charges beforehand.

6 Q Now, you list no military service either; is that correct?

7 A That is correct.

8 Q And no trade schools in gunsmithing?

9 A No trade schools in gunsmithing, but I'm a journeyman
10 machine builder by trade. I have an honorable withdrawal
11 card from the United Auto Workers.

12 Q But no gunsmithing?

13 A A gun is a machine. It's a little bit bigger than a
14 pocket watch, a little bit smaller than a car. A machine is
15 a machine. The same principles apply.

16 Q Have you had any formal training in firearms
17 classification?

18 A No, sir.

19 Q Have you had any formal training in federal firearms laws?

20 A No, sir.

21 Q Have you had any specialized training in Winchester or
22 M-14s?

23 A No, sir.

24 Q H&K VP 70s?

25 A No, sir. No formal training, but I've fired all these

1 weapons, examined them in my day-to-day operations at Knob
2 Creek, working with other manufacturers. But no formalized
3 schooling.

4 Q That is, no schooling where people with superior knowledge
5 would check your progress and make sure you were learning
6 along the right path and firing with correct knowledge -- in
7 other words, no supervision over that schooling?

8 A Well, I've gone to other manufacturers who have been in
9 the business quite a bit longer than I have and had them
10 school me. If that's your definition of schooling then I've
11 obviously had it.

12 Q Go ahead.

13 A But it wasn't at a university or recognized school, no.

14 Q You haven't taken any armorer's courses from Beretta,
15 Glock, Smith & Wesson, so forth?

16 A Well, an armorer's course is a maintenance course. No, I
17 haven't.

18 Q And I believe you got your 07 SOT FFL four years ago, in
19 2003; is that correct?

20 A 2003 I don't believe is correct. I believe it was 2001.

21 Q I stand corrected.

22 MR. REDKEY: We pass, Your Honor.

23 THE COURT: All right. You may inquire.

24 DIRECT EXAMINATION

25 BY MR. CONTE:

1 Q You were retained by me; is that correct?

2 A That is correct.

3 Q I'm paying you a fee?

4 A Yes, sir.

5 Q So we have that straight, would you tell the ladies and
6 gentlemen of the jury what the fee is?

7 A \$3,500 plus travel, to cover my expenses coming here.

8 Q Now, when I first retained you I sent you some photographs
9 of an M-14; is that correct?

10 A Yes, sir.

11 Q And I also sent you the FTB reports on the M-14 and the
12 VP70; is that correct?

13 A That is correct.

14 Q On specifically the M-14 -- you wrote a report about both
15 to me, correct?

16 A Yes, sir.

17 Q And specifically on the M-14 you were operating under a
18 misbelief that they weld on that sear attached to the frame;
19 is that correct?

20 A Are we talking about the weld on the sear release and the
21 selector shaft?

22 Q Yes, sir.

23 A By looking at the photograph it looks like the weld goes
24 beyond just those two components and attached to the lug
25 underneath.

1 Q And you subsequently learned that that is not true. You
2 were here for Mr. Galbraith's testimony?

3 A Yes, sir.

4 Q And he testified that it wasn't welded to it; is that
5 correct?

6 A Yes, sir. That's correct.

7 Q And you examined that firearm?

8 A Yes.

9 Q What were your findings?

10 A Well, when I examined the firearm -- when I looked at the
11 photographs and I look at his report the pieces that he's
12 talking about, the sear release and selector shaft, were
13 still permanently attached to the receiver. If they weren't
14 attached to the receiver he would have had no need to use a
15 tool to cut anything off. It would have fell out or he could
16 have removed it.

17 When the weld on that earlier photograph that you were
18 showing earlier -- the way that those are assembled --

19 MR. CONTE: May I return the photograph?

20 BY MR. CONTE:

21 Q Let me put one of the photographs on the screen for you.
22 I'll direct your attention to defendant's Exhibit No. A-7.
23 Can you see that?

24 A Yes, sir.

25 Q What is it showing?

1 A Well, it's a picture of the receiver sear release and
2 selector shaft. You can see the weld right here
3 (indicating). And it shows that the two pieces were joined
4 together. What is not brought up is those two pieces cannot
5 be removed from that receiver unless you cut that weld. And
6 welding by definition is to permanently join two pieces of
7 metal together. It's not designed to be temporary.

8 Q All right. So we have a permanent change to the receiver?

9 A Correct. That's permanently attached.

10 Q Now, you reviewed the FTB report on the M-14, correct?

11 A Yes, sir.

12 Q And did you find any errors in the report?

13 A Yes, sir.

14 Q And what were they?

15 A Mr. Galbraith stated in his report that he didn't modify
16 the receiver in Exhibit No. 45 in any way. He said that
17 twice in his report. Then why did he need a Dremel, rotary
18 tool? He had to use a machine, a machine tool to cut the
19 weld in order to remove those parts because those parts could
20 not be removed unless that was cut.

21 Q Were there any other omissions in the report?

22 A It lacked any scientific method or documented, established
23 procedure he followed. It also lacked a timeline.

24 Q What do you mean a timeline?

25 A He didn't state in his report when he started, when he

1 ended, with his test. There is no timeline.

2 Q And that's important why?

3 A Because the time it takes to turn something from a
4 semiautomatic firearm to a machinegun is significant to ATF.

5 Q All right. Did he list the procedures that he used in the
6 report?

7 A He didn't list any procedures. He just goes on to state
8 what he did. He didn't say these are the procedures I'm
9 going to be following, and then go through and how they
10 applied to that weapon. It's obvious from the report that
11 when it didn't work the first go-around when he did his
12 function test or dry-fire test he just threw more parts at it
13 until he could get it to fire full auto. There is nothing
14 that says that he can go one step, two steps, five steps, 20
15 steps. He could just have continued to throw parts at it
16 until it goes full auto.

17 Q Well, I believe he testified when he was on the stand that
18 once a machinegun always a machinegun. Was that true for
19 government's Exhibit No. 1?

20 A Well, that's a misleading statement. That's not true. I
21 have personal knowledge that that is not true.

22 Q What personal knowledge is that?

23 A When I submit a sample to FTB for approval with the
24 government sometimes my first tryout doesn't work out so
25 well. And they'll point out features or characteristics that

1 they don't like and say because of these features or
2 characteristics it's a machinегun. They ship it back to me.
3 I take a look at what they said the features and
4 characteristics were. And then I would modify that to be in
5 accordance with the law and resubmit it to firearms
6 technology branch.

7 At least one incidence that I can think of off the top of
8 my head when they were going to send it back to me they said
9 you must file a Form 2 -- a Form 2 is where you declare and
10 you notify the government that you're going to manufacture a
11 machinегun. Sometimes they require it before they ship it
12 back to you. Sometime they don't.

13 If you file a Form 2 you have notified the government
14 you've manufactured a machinегun. They send my sample back
15 to me. And then I look at the features and characteristics
16 they say are offensive to the law. With respect to that I'll
17 modify that weapon and resubmit it to firearms technology
18 branch for analysis.

19 And in one incidence, the SGMB semi automatic, they then
20 declared it to be a firearm under 18 USC or illegal and
21 unlawful to possess. I filed a memorandum of update to the
22 NFRTR, gave them a copy of ATF's report declaring it to be a
23 lawful firearm and asked it to be removed from the registry.
24 And it was no longer a machinегun at that point, and I sold
25 it to a customer.

1 Q All right. I guess the follow-up question is: Is a frame
2 or receiver always a firearm -- a machinegun?

3 A

4 It depends. That would depend on what type of weapon
5 we're talking about.

6 Q What about the M-14 that was brought in -- government's
7 Exhibit No. 1?

8 A The frame or receiver is, as he said, the heart of the
9 weapon.

10 THE COURT: Is there a difference between the frame
11 and the receiver? Or are they different words to describe
12 the same thing?

13 A It can be very confusing.

14 Sometimes what you would think would be the frame or
15 receiver -- government's Exhibit No. 1. The frame or the
16 receiver is a frame or receiver because the barrel attaches
17 to it, the sights are on it, and the bolt and bolt carrier
18 are within it.

19 However, on an AR-15 or M-16 that same housing that holds
20 the barrel, holds the sights, holds the bolt and bolt carrier
21 isn't a firearm, and you don't even have to fill out a 4473
22 to purchase one.

23 BY MR. CONTE:

24 Q Where is the frame or receiver on the AR-15?

25 A That would be what they consider the lower receiver and it

1 houses the trigger group and the butt stock and pistol grip.

2 Q So I guess that begs the question: What is the most
3 important part of the gun? Is it the frame, the receiver, or
4 the trigger group? Frame or the trigger group?

5 A That's a moving target and subject to interpretation and
6 reinterpretation.

7 Q Well, does the FTB change their interpretation of what is
8 the frame or receiver or machinегun over time?

9 A Yes, sir.

10 Q How often does that happen?

11 A It can happen -- how often does it happen? I can only
12 tell you it's happened to me more than once.

13 Q So would it be possible at one point for them to designate
14 one point of the AR-15 as the receiver and another time it
15 could be the lower part?

16 A Not to my knowledge on that particular firearm. But on
17 some other firearms or firearm systems that I'm very familiar
18 with at one point the government determined it to not be a
19 firearm nor a machinегun, and then ten months later wrote me
20 a letter saying we've changed our mind; not only is this a
21 firearm it's a machinегun.

22 Q So the FTB is capable of making mistakes?

23 A Oh, yes, sir. They've made multiple mistakes in dealing
24 with my company.

25 Q And to your knowledge have they made mistakes with other

1 companies?

2 A Yes, sir.

3 Q And what about -- I'll withdrawal that question.

4 A This --

5 Q There's no, question sir.

6 You were here during Mr. Galbraith's testimony. You heard
7 his testimony, correct?

8 A Yes, sir.

9 Q And he testified that he could make a machinegun out of a
10 semi automatic?

11 A That's entirely correct. All semi automatics can be turned
12 into a machinegun if you give enough time and effort into
13 them. Some much faster than others.

14 Q Well, you've read his report on the M-14. How much
15 training and experience would you need in firearms to make
16 the same changes that he was able to make whether it's 30
17 minutes to two hours?

18 A Well, somebody more than average would have to understand
19 how to do that so that they didn't damage it when they
20 attempted it.

21 Q Could you damage the frame or receiver with a Dremel tool?

22 A Certainly.

23 Q So before you make any changes to it you probably have to
24 have some experience. Would that be a fair statement?

25 A Yes, sir.

1 MR. CONTE: Court's indulgence.

2 BY MR. CONTE:

3 Q The guns you supply are all historical replicas?

4 A Most of them.

5 Q And the methods that Mr. Galbraith talked about today and
6 the M-14, if they applied to your guns what would happen?

7 A I'm afraid if -- if you were allowed to just remove weld
8 in order to change a semiautomatic to a full automatic then
9 certainly one or two of my firearms would fall under that and
10 would be illegal under that type of criteria that you
11 described.

12 Q What does a weld do to a gun?

13 A Well, it can do many things. You can join parts together.
14 Specifically, if you were to remove the weld in my Bren
15 semiautomatic, the only difference in my Bren semiautomatic
16 receiver and a fully automatic Bren is weld on the interior
17 left-hand rail. If you remove the weld from that it would
18 become a machinегun receiver. But that would be illegal.

19 Q To your knowledge has the M-14 ever been sold to the
20 general public?

21 A Yes, sir.

22 Q When was that?

23 A 1963 to '65. The DCM, now called the civilian
24 marksmanship program, utilized very much similar methods in
25 manufacturing a semiautomatic version of the M-14 and sold it

1 to the general public. Thousands of them.

2 Q And how long did that go on?

3 A I believe in 1968, 1970, the ATF changed its mind. They
4 originally approved that type of method and then
5 approximately 1970 changed their mind from my research.

6 Q Has the M-14 ever been used as a sniper rifle?

7 A I believe so.

8 Q Is that used in semi or full automatic mode?

9 A Semi. You wouldn't -- a sniper rifle to me would indicate
10 that a scope would be mounted. I would not want to try to
11 attempt to shoot an M-14 with a scope on it.

12 MR. CONTE: I have nothing further. Thank you.

13 THE COURT: Cross of the witness.

14 CROSS-EXAMINATION

15 BY MR. REDKEY:

16 Q Mr. Galbraith, you were not present during Adam
17 Galbraith's -- I'm sorry, Mr. Galbraith's examination of the
18 firearms in this case, were you?

19 A No, sir, I was not present. I'm going off his report and
20 the photographs.

21 Q So you just read the report of his technical examination?

22 A And what it did contain or did not contain. That is
23 correct.

24 Q You were observing here today as he gave his testimony?

25 A Yes, sir.

1 Q And wouldn't you agree that that was a very professional
2 technical examination that he recreated here today?

3 A Yes, sir.

4 Q You don't doubt his credentials as an expert, do you?

5 A I don't doubt his credentials. I doubt his conclusions.

6 Q You've never actually restored an M-14 from semi automatic
7 to full automatic or vice-versa, have you?

8 A No, sir.

9 Q But you're familiar with the cutting tool that
10 Mr. Galbraith talked about here today, the Dremel tool?

11 A Yes, sir.

12 Q Is that a tool that you use in your firearm manufacturing?

13 A That's one of many I have.

14 Q That's a tool that is fairly common in the industry, isn't
15 it?

16 A It is.

17 Q It's fairly common? You can probably go down to Home
18 Depot and buy it, couldn't you?

19 A Yes, sir.

20 Q And you agree with the report that -- and Mr. Galbraith's
21 testimony -- that he had to cut a small weld on the sear
22 release, is that right, on the internal mechanism?

23 A Yes, sir. But that same operation performed, say, on an
24 SKS rifle which is commonly available would turn it into a
25 machinегun and it would not require any more parts.

1 Q Okay. And that particular part that was welded was not
2 welded to the frame and the receiver, was it? Let's use the
3 term "receiver." Is receiver the term that is usually used
4 with respect to machineguns and frames or more with pistols
5 and so forth?

6 A They have been interchanged in our industry.

7 Q I'll call it a receiver.

8 A That's fine.

9 Q There wasn't actually any change to the receiver itself,
10 was there?

11 A That's incorrect, sir.

12 Q Why?

13 A Because those two parts were permanently attached to that
14 receiver by weld. At that point in time you could not remove
15 those parts unless you machined off that weld. At that point
16 in time it became one homogenous unit.

17 Q So your testimony is that simply by removing that weld he
18 altered the receiver of that firearm?

19 A Certainly.

20 Q But you would agree that it's a fairly simple procedure to
21 cut that weld and you probably do that many times during a
22 week or month of your manufacturing?

23 A It is a simple procedure. But as I've told you there is
24 other firearms out there that you could do that to that you
25 could render into a machinegun far faster than the 30 minutes

1 that he said it took him to do this.

2 Q So your answer is it is a fairly quick and easy procedure?

3 A It is if you know precisely what you're cutting and where
4 to cut it and how to cut it. Had somebody been untrained
5 what they would have done they could have cut right through
6 that lug and rendered that thing ruined, and there is no way
7 parts could have fit, and they could have actually harmed the
8 shooter.

9 Q But you would agree that Adam Galbraith is not such a
10 person. He's --

11 A No. He has extensive knowledge.

12 Q So when he did it fairly quickly and fairly simply you
13 would agree that that is how it was done, wouldn't you?

14 A I would agree that Mr. Galbraith could do that fairly
15 simply and fairly quickly because he's an expert not an
16 average person.

17 Q And wouldn't you agree that it's a fairly simple and quick
18 procedure to simply remove the trigger group from that
19 firearm?

20 A Certainly.

21 Q And to remove the stock from that firearm?

22 A Certainly.

23 Q And wouldn't you agree also that it's fairly quick and
24 simple to reinstall the parts that you heard him testify
25 about?

1 A But even he didn't realize the parts were modified. He
2 said so in his report.

3 Q The trigger group, he said there was a piece on the
4 trigger group that had been modified?

5 A Sear had been removed in the Exhibit 1 to preclude it from
6 firing fully automatically.

7 Q Right. That's part of the trigger group, isn't it?

8 A Yes, sir. But if he's an expert and he didn't realize it
9 right away, how could anybody else?

10 Q Maybe he didn't look.

11 THE COURT: Just a moment. Don't argue with the
12 witness. You can ask questions. He'll give answers. That
13 is the way we proceed.

14 BY MR. REDKEY:

15 Q So but my point is that part is not on the trigger group;
16 is that correct?

17 A What part? I don't understand.

18 Q The part that was ground down that prevented it from
19 firing full auto.

20 A That's a part of the trigger group, yes.

21 Q Not part of the receiver?

22 A That is correct.

23 Q When he discovered that all he had to do was just switch
24 out the trigger group and put in a new one; is that correct?

25 A When you say "just switch out" they happen to have an

1 extensive firearms collection. Even I as a manufacturer
2 would have to make arrangements and have it shipped in and
3 find one that hasn't been altered.

4 Q So then you would agree that at least the trigger group
5 part is something that is available on the open market. It's
6 not a restricted part?

7 A It's available. It's not readily available. You can't
8 walk down to your Wal-Mart and buy one.

9 Q But if you were in business you could find it somewhere,
10 Internet catalogs, etcetera?

11 A Certainly, if you were in the business.

12 Q Now, you talked a little bit about these M-14s that were
13 sold at one point to the general public.

14 Do you recall that testimony?

15 A Yes, sir. That is correct.

16 Q And by your testimony those guns were sold to the DCM?

17 A Not sold to the DCM. The director of civilian
18 marksmanship is what DCM stands for. They were sold to the
19 general public through the DCM. And this is what my research
20 indicated. I had to find out. I couldn't tell from the
21 photograph whether or not that was a DCM-sold rifle or not.

22 Q And then later they were recalled, according to your
23 testimony?

24 A I didn't say they were recalled. I said that the ATF
25 changed its mind.

1 Q And when was that?

2 A I believe 1970.

3 Q And, in fact, wasn't it around 1968 when the Gun Control
4 Act was enacted?

5 A Yes, sir.

6 Q And that affected the change in the law with respect to
7 those guns, didn't it?

8 A Yes, sir. That's where readily restorable I guess got its
9 start because people were just removing internal components
10 from their firearms and saying, Okay, it won't shoot. And
11 this new law addressed that.

12 Q Because it was too easy to switch it out and restore it to
13 full auto?

14 A You didn't have to make any alterations at that point. It
15 just didn't have to fire is my understanding.

16 Q But you are familiar generally with the Winchester M-14;
17 is that correct?

18 A I'm familiar with the M-14, T and W. Quite a few other
19 manufacturers. I looked and examined and fired.

20 Q I'm focusing on the Winchester M-14. You're aware that
21 that was manufactured to fire in both semi automatic and full
22 automatic mode; is that correct?

23 A That is correct.

24 Q And it was manufactured with what was called a selector or
25 selector switch so that you could choose which mode to shoot

1 it in; is that correct?

2 A Yes, sir, that is correct.

3 Q And it is the frame and receiver I think you agreed is the
4 heart of the firearm and that's the part of the firearm, is
5 it not, that permits that gun to fire in a full-auto mode?

6 A That is incorrect.

7 Q Correct me.

8 A You have to have all the other ancillary equipment. You
9 have the full auto trigger group, the selector, you have to
10 have --

11 Q To be sure, there are other parts, but that is the part
12 that allows those other parts to interact and shoot full
13 automatic; is that correct?

14 A That is correct. And it's also very confusing because if
15 those same rules apply then every AR-15 upper would have to
16 be considered a machinegun because they allowed the same
17 thing.

18 Q All right. And you had frequent interaction with ATF and
19 FTB; is that correct?

20 A That is correct.

21 Q So you have actually come to rely to some degree, or maybe
22 to a great degree, on their expertise in deciding the
23 classification of firearms; is that correct?

24 A To a degree. Sometimes I don't always agree with them. I
25 don't always rely on them. We discuss it. I've developed a

1 professional relationship with the firearms technology branch
2 over the years.

3 MR. REDKEY: If I may have a few moments.

4 Your Honor, I have no further questions of this
5 witness.

6 THE COURT: Any redirect?

7 MR. CONTE: No, thank you, Your Honor.

8 THE COURT: All right. Thank you, sir. You may step
9 down, you're excused. Have a nice day, sir.

10 MR. CONTE: May I check to see if my witness has
11 arrived?

12 THE COURT: Certainly.

13 THE CLERK: Step forward please.

14 BENJAMIN LEE

15 Thereupon, after being duly sworn testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CONTE:

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

20 A My full name is Benjamin Lee, L-E-E, last name.

21 THE COURT: You may inquire.

22 BY MR. CONTE:

23 Q Mr. Lee, how old are you?

24 A Pardon me?

25 Q How old are you?

1 A 52.

2 Q Where were you born?

3 A Taiwan.

4 Q And how long have you lived in the United States?

5 A 34 years.

6 Q And did you come directly to United States or did you make
7 any stops in between?

8 A I was born in Taiwan, grew up in Hong Kong. That is where
9 I know Mr. Albert Kwan.

10 Q When did you first meet Albert Kwan?

11 A Late '60s or early '70s.

12 Q Approximately how old was Mr. Kwan at that time?

13 A 10.

14 Q Before I go on, how are you employed, sir?

15 A Pardon me?

16 Q How are you employed?

17 A I'm self-employed.

18 Q As a --

19 A I have a trading company. I own many, many businesses.

20 Q So you met Mr. Kwan when he was nine or ten years old,
21 correct?

22 A Correct.

23 Q Have you kept in touch with him ever since?

24 A Yes, I have.

25 Q And in the last 20 years, do you have weekly contact with

1 hi m?

2 A Yes.

3 Q Are you aware of his hobbies?

4 A Absolutely.

5 Q And could you tell the ladies and gentlemen of the jury
6 what his hobbies are?

7 A Well, ever since he was kid I would visit his home. And
8 he plays -- he likes Army uniform, Army models, we play with
9 a lot of little model things. He will glue them together and
10 paint them. And he collects a lot of this kind of toys and
11 he put them very neatly in his book shelf and his drawers.
12 That is unlike kids in our age who play many other things.
13 But it's very obvious he has a very focused interest on this
14 type of things.

15 Q Things having to do with the War?

16 A Pardon me?

17 Q With the War, Armies?

18 A Yeah. He will read a lot of magazines, collect things
19 from World War I, World War II, whatever he can get his hands
20 on.

21 Q He's been doing that since you met him at age nine or ten?

22 A Yes.

23 Q And he does it still today, to your knowledge?

24 A Yes.

25 Q And you've been to his home?

1 A Yes, I have.

2 Q And you've seen some of his collection?

3 A Yes.

4 Q And he collects guns?

5 A Yes.

6 Q Does he collect anything besides guns?

7 A Pardon me?

8 Q Besides guns?

9 A He collects all the magazines, books, uniforms, badges,
10 patches, I mean, anything related.

11 Q Have you seen his uniform collection?

12 A Yes, I have.

13 Q And how extensive is it?

14 A Extremely. To me, it's unbelievable. The entire
15 collection he have, he can open a museum, to me.

16 Q Let me ask you one final question. You've known him so
17 long. Do you know what his reputation is for truthfulness
18 and honesty?

19 A Albert's reputation, he's a gentleman. He's harmless. He
20 doesn't do anything wild. He's very obedient.

21 Q Do you have an opinion about his truthfulness and honesty?

22 A He's a very honest man. He doesn't lie.

23 MR. CONTE: Nothing further.

24 MR. REDKEY: No questions.

25 THE COURT: Thank you, sir, you may step down. Have

1 a nice day, sir. Call your next witness.

2 MR. CONTE: Bear with me.

3 THE CLERK: Step forward, please.

4 EUGENE THOMAS LASCH, JR.

5 Thereupon, after being duly sworn testified as follows:

6 DIRECT EXAMINATION

7 THE CLERK: Please state your name for the record and
8 spell your last name.

9 A Eugene Thomas Lasch, Jr.

10 THE COURT: Just a moment let's get a spelling of the
11 last name.

12 A L-A-S-C-H.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MR. CONTE:

16 Q How are you employed?

17 A I work for the Department of Army as a civilian at Fort
18 Lewis, Washington.

19 Q And how long have you worked there?

20 A Since September 2004.

21 Q Now, do you know Mr. Albert Kwan?

22 A Yes, I do.

23 Q How do you know him?

24 A Mr. Kwan was one of my soldiers when I was the First
25 Sergeant of the 307th in NY company in Tumwater, Washington.

1 Q Do you know what year that was?

2 A It would have been July -- July of '97.

3 Q And your rank in the reserves?

4 A I was a First Sergeant when I retired.

5 Q And Mr. Kwan's rank when you retired?

6 A When I retired he was a Staff Sergeant -- Sergeant First
7 Class, now.

8 Q He worked under you?

9 A Yes. He was one of my team leaders.

10 Q Good worker?

11 A Yes, he was.

12 Q Do you have an opinion about his truthfulness and honesty?

13 A His truthfulness, he's above reproach. He had couple of
14 investigations from his security clearances, and same thing I
15 told them. Trust him, and never had any problems with him.

16 MR. CONTE: Nothing further.

17 THE COURT: Any cross?

18 MR. REDKEY: No cross.

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

21 MR. CONTE: Judge, it's 4:00. Is this a good time to
22 quit?

23 THE COURT: Do you have another short witness?

24 MR. CONTE: Probably, yes.

25 THE COURT: Let's probably call them.

1 THE CLERK: Step forward please.

2 DAVID MITCHELL LADINES

3 Thereupon, after being duly sworn testified as follows:

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

6 A David Mitchell Ladines, L-A-D-I-N-E-S.

7 THE COURT: You may inquire.

8 DIRECT EXAMINATION

9 BY MR. CONTE:

10 Q Where are you employed, sir?

11 A I'm a pastor at Spangler Community Church.

12 Q How long have you been a pastor at Spangler Community
13 Church?

14 A I was ordained almost five years ago.

15 Q And do you know this gentleman sitting here?

16 A Yes.

17 Q Could you identify him for the ladies and gentlemen of the
18 jury?

19 A My friend, Albert Kwan.

20 Q How long have you known him?

21 A I met Albert in 1986. We were serving at Fort Lewis
22 together.

23 Q What was your position at Fort Lewis?

24 A I was a journalist, a military journalist, at the time
25 working at the Ranger newspaper, and he and I became friends.

1 Q You've been in close contact with him ever since?

2 A Yes. He's been a friend of our family over the years.
3 And has family picnics -- after I left the military in 1990,
4 I went to work at the Bellevue Journal American Newspaper,
5 just down the street from Albert, so it gave us an
6 opportunity to continue our friendship and stay in close
7 touch.

8 Q Let me ask you, do you know what his reputation is in the
9 community for truthfulness and honesty?

10 A Yes. Albert is probably one of the more eccentric friends
11 that I know, but he's also probably one of the honest
12 people -- most honest people I know, as well. He's a good
13 friend and a person of integrity.

14 MR. CONTE: Nothing further.

15 THE COURT: Any cross?

16 MR. REDKEY: No cross.

17 THE COURT: Thank you, sir. You may step down. Have
18 a nice day. You're excused.

19 MR. CONTE: My next witness is quite long.

20 THE COURT: All right. Let me see the lawyers at
21 side-bar for a moment.

22 (Sidebar held)

23 THE COURT: Ladies and gentlemen of the jury, I just
24 wanted to try and get a fix on how we're doing and how the
25 trial is proceeding so we can advise you of that. We're

1 hopeful that all of the evidence will be concluded tomorrow.
2 And it's entirely possible that we'll have the time tomorrow
3 to instruct and have you hear final arguments. But that may
4 go into the following day. But we're making good progress,
5 and in all likelihood, the evidence will be concluded
6 tomorrow. And it's probable that we'll have the final
7 arguments and you may begin your deliberations late in the
8 day.

9 If and when you begin your deliberations, we'll follow
10 normally the same type of schedule. That is, that we ask you
11 to stay until about 4:30. If you're deliberating and don't
12 reach a verdict, come back the following day at 9:00 and
13 resume deliberations.

14 So that will be the general schedule. Leave your notes in
15 the jury room. You're reminded not to do any independent
16 research. You're ordered to have a pleasant evening. It's a
17 nice day out there and we'll see you tomorrow morning.
18 Please be back in the jury room prior to 9:00 so we can start
19 at that time.

20 All right. I need to talk to the lawyers after the jury
21 is excused. Let's rise for the jury.

22 (Thereupon, the jury exits the courtroom.)

23 THE COURT: I would like to spend a few minutes
24 working on instructions with you so that by the time you
25 leave we have the final instructions. So what I would

1 propose to do is take about a 10-minute recess and then I can
2 either do it here in open court on the record if you want the
3 Court reporter present, or we can go into my chambers in the
4 conference room and work on instructions there. And if the
5 defendant wants to be present, he can come in there but we
6 wouldn't have the benefit of the Court reporter. Ultimately
7 if we do it that way, I'll give you an opportunity to make
8 your formal exceptions.

9 MR. REDKEY: Either way is fine.

10 MR. CONTE: Either way.

11 THE COURT: Does the defendant wish to be present
12 while we talk about instructions?

13 MR. CONTE: No, Your Honor.

14 THE COURT: Well, let's -- he has an absolute right
15 to be present. So you talk to him about it.

16 MR. CONTE: I think the defendant should be present.

17 THE COURT: Well, well do it on the record then.
18 Let's take ten minutes. I'll come back and we'll do it right
19 here.

20 (Short recess taken)

21 THE COURT: All right. What I propose we do is, I
22 had previously, Friday, sent you proposed instructions that
23 the defense has now filed written objections, docket No. 121.
24 What I propose to do is go through their proposed
25 instructions and comment on what I am inclined to do. I'll

1 hear argument on the subject and see if there is anything
2 else that hasn't been noted in the filed objections.

3 First, Instruction 14. Defense has suggested that
4 basically we take out the words, "as designed to shoot" in
5 line 2 of my Instruction 14. I'm inclined to do that. I
6 don't think that's really what we're talking about. I think
7 we're talking about a weapon that either shoots or it can
8 readily be restored to shoot.

9 MR. REDKEY: Well, Your Honor, if I may address that.
10 I couldn't disagree more. Our theory is that the M14 was
11 designed as a machin gun. That is the testimony. It was
12 designed to shoot in a fully automatic mode. And the frame
13 of receiver of that firearm thereby is, itself --

14 THE COURT: So whether it can shoot, whether it's
15 been -- under that theory, every rifle is a machin gun.

16 MR. REDKEY: If it's manufactured as a machin gun, it
17 remains a machin gun. That is the law. If it's designed to
18 be a machin gun, which is --

19 THE COURT: I didn't --

20 MR. REDKEY: That's what brings the receiver into
21 focus on this. If that firearm is designed originally as a
22 machin gun and the receiver is unaltered, it remains a
23 machin gun by definition because it was designed to shoot in
24 a fully automatic mode.

25 THE COURT: The whole case is focused on whether it

1 can be readily restored to shoot. Now you were telling me
2 this was already designed to be a machin-gun to shoot
3 automatically. So that's the end of the story.

4 I'm having some problem with that.

5 MR. REDKEY: Our case has always been two theories.
6 One is that it was designed to shoot as a machin-gun. The
7 receiver, therefore, is a machin-gun. That's why Special
8 Agent Tuerler's testimony was so important. That's why Adam
9 Galbreath's testimony was so important -- to say that that
10 frame and receiver itself is a machin-gun. The gun was
11 designed to shoot full auto, which is what that receiver
12 allows it to do. Without that receiver it cannot be a
13 machin-gun. Those words are vital to our theory of the case.

14 THE COURT: I'm going to ask Mr. Conte -- maybe we
15 should talk about it right now.

16 The problem with taking it out is that those words are in
17 the statutory definition of machin-gun. So if I take it out,
18 maybe although not necessarily the government's main
19 argument, it is in the statute. It's difficult for me to
20 change the meaning of the statute. To eliminate a
21 machin-gun -- it's defined in different ways, and one of them
22 is something that is designed to shoot automatically. So how
23 do I take it out?

24 MR. CONTE: Because the issue here is, is it really
25 readily restorable? It can't be both. The government can't

1 proceed on both theories. They're mutually inconsistent.
2 They come in here and say, Oh, it's readily restorable so
3 it's a machinegun. Then they say, Well, no wait a minute,
4 it's a frame or receiver, so it's a machinegun anyway.

5 That is inconsistent, yet it's impossible to defend. It's
6 just not the way the cases are interpreted. If it's readily
7 restorable, that's the issue the jury has to determine, not
8 whether it's a frame or receiver.

9 We know, because we start out under the assumption that
10 it's not a machinegun. Because it's not functioning as a
11 machinegun. So the only way we can get to readily restorable
12 is to start back at the beginning to where it is not a
13 machinegun.

14 THE COURT: But the statute uses the words "or."
15 It's designed to shoot or can be readily restored to shoot
16 automatically. What you're doing is, I am reading out of the
17 statutory definition, not only is it designed to shoot, but
18 the word "or."

19 MR. CONTE: But they're mutually exclusive.

20 THE COURT: I understand, but the government is
21 entitled to argue both. That's what Congress has defined a
22 machinegun as.

23 MR. CONTE: But it's --

24 THE COURT: I understand your argument. I'm
25 sympathetic to it, frankly. But Congress has put this in

1 26 U.S.C. section 5845(b). These are the words of that
2 statute that define a machin gun. I'm going to leave those
3 words in. Unless you can provide me something overnight that
4 persuades me to the contrary.

5 The other change that -- I know that you had wanted me
6 to eliminate the last sentence of the instruction. Once
7 again, that's in the statutory definition. But the witnesses
8 have, I think, agreed that the frame or receiver really
9 amounts to the same.

10 What I propose, first, is that we take "frame or" out of
11 there and just deal with the receiver, which is, I think,
12 what is applicable here. And then instead of saying "any
13 such weapon," I propose to change "such weapon" to
14 "machin gun," to make clear we're talking about -- the term
15 also includes the receiver of a machin gun, as machin gun is
16 defined in the first paragraph.

17 Any objection to that change?

18 MR. CONTE: Same objection.

19 THE COURT: All right.

20 Any objection from the government on that?

21 MR. REDKEY: No, Your Honor.

22 THE COURT: The next one is Instruction 15. The
23 defense wants me to change my instruction to read, "The term
24 'readily restored' means only simple mechanical operation,"
25 et cetera.

1 I'm satisfied that the definition that I have provided in
2 the Instruction 15 I have given you is consistent with the
3 Ninth Circuit case, which obviously governs my ruling, Mark
4 Brown v, TRW Rifle, found at 447 F.3d 686, 2006 case. I
5 think the definition I have comes right out of that case.
6 It's consistent with it. I'm trying not to make any change.

7 Defense want to be heard further on that subject?

8 MR. REDKEY: Not from us, Your Honor.

9 MR. CONTE: My objection is still noted.

10 THE COURT: All right.

11 Instruction 18. You propose that I add a fourth sentence
12 or fourth element that the defendant assembled that VP70Z
13 into a short-barrelled rifle. This is the issue we discussed
14 earlier in your motion to dismiss it in United States v.
15 Thompson/Center Arms, found at 504 U.S. 505. If in fact the
16 defendant had had possession of that second handgun, pistol,
17 the VP70M series, and it hadn't been taken away, I think that
18 this would be -- I think that case would suggest that
19 additional element. But we don't have that situation as of
20 the date of this search. We've got the defendant having only
21 the VP70 -- I think it's Z, and the hand stock. That being
22 the case, I don't think United States v. Thompson applies. I
23 think, actually, the cases I indicated earlier today, the
24 circuit cases that they referred to, are on point. And so
25 I'm inclined to not add that fourth sentence that you are

1 proposi ng.

2 Do you wish to be heard?

3 MR. CONTE: Yes. The two cases cited by The Court,
4 earlier are cases where the items could only be assembled
5 into an illegal firearm. What we have here is that the
6 government erroneously took Mr. Kwan's VP70. They had it.
7 They knew. The people Mr. Stahlfeld was dealing with back
8 then knew it was Mr. Kwan's and it had to be returned to him.
9 So the possession of that pistol is -- I think the government
10 will agree, it's Mr. Kwan's pistol. He's entitled to have it
11 back.

12 The only thing --

13 THE COURT: I don't know that that has been
14 established at this point. I know that there was some
15 discussion about whether they took it, and whether they were
16 going to give them back, or whether it was going to be sent
17 to Nevada. But I don't think at this point the record is
18 clear.

19 MR. CONTE: Well, I think Special Agent Byrd
20 testified that once we established that it was a pre-'86
21 dealer sample, that Mr. Kwan was entitled to possession.
22 That's what he testified to here first thing, as my first
23 witness. I thought it was clear as a bell that his testimony
24 is it's his gun and he's now entitled to it because it's a
25 pre-'86 dealer sample. Now that leads to the next --

1 THE COURT: Mr. Redkey, do you agree that that is so?

2 MR. REDKEY: May I?

3 THE COURT: Yes.

4 MR. REDKEY: Maybe he can speak for himself here. It
5 would be better than translating.

6 SPECIAL AGENT BYRD: I read off the NFTR transcript
7 that he had it registered in 1977.

8 THE COURT: It's a pre-act gun. So it was legally in
9 his possession.

10 SPECIAL AGENT BYRD: Again, With those documents
11 there, it appears that it is. But without any further
12 investigation I couldn't say for 100 percent sure.

13 THE COURT: The fact that you've got it, it's not
14 physically in his possession, but basically it's his gun, and
15 has been or should be or will be returned; is that right?

16 SPECIAL AGENT BYRD: Yes, if it turns out to be
17 pre-'86, we will return it.

18 THE COURT: Mr. Redkey, that being the case then it
19 seems this element is appropriate; is it not?

20 MR. REDKEY: I couldn't disagree more, Your Honor.

21 THE COURT: That's fine.

22 MR. REDKEY: In the Thompson case, seven of the nine
23 Supreme Court Justices said firearms do not need to be
24 assembled in order to constitute an NFA short-barrelled
25 rifle. Seven of the nine Justices of the Supreme Court said

1 that's not the case. That's what the Seekman case is all
2 about which the Court noticed earlier. The only instance in
3 which the Court has ruled that it must be assembled is if you
4 have a barrel that can make it longer than the 16 inches,
5 which is the threshold requirement for a short-barreled
6 rifle, if you have a kit that has a barrel that can be
7 replaced on that gun to make it a long rifle instead of a
8 short-barrelled rifle.

9 In this particular firearm, you can't even have the
10 barrel --

11 THE COURT: But as I understand it, the second VP70M
12 series weapon he legally had in his possession and registered
13 it. And if he put the stock on that weapon, it would be
14 legally possessed by him; is that right? Isn't that what
15 your witness said? That that was tax exempt?

16 MR. REDKEY: But not if the gun that is Exhibit No.
17 10 is in that holster, and its close proximity, that makes it
18 a short-barrelled rifle without assembly. Unless there is
19 long barrel somewhere nearby --

20 THE COURT: Let me see if I can understand. We've
21 got a VP70 -- I'm asking you to assume that on his table at
22 home is both of the VP handguns and one stock. Take those
23 facts. Would he be entitled to this fourth element, that is
24 the -- because if, as I understand it, he puts the second
25 VP70 pistol in the stock, he legally possesses it, he's

1 registered it, he doesn't have to pay any -- he has done
2 whatever he has to do, he's legally entitled to do that; is
3 that right?

4 MR. REDKEY: He's legally entitled to possess the
5 first VP weapon that was taken from him.

6 THE COURT: And use it with that stock. Let's assume
7 that the second weapon had been in the stock. Would that
8 have been legally permitted?

9 MR. REDKEY: No. Absolutely not.

10 THE COURT: Why not?

11 MR. REDKEY: That would have been a short-barrelled
12 weapon.

13 THE COURT: Didn't he have it registered? Hadn't he
14 paid the tax?

15 MR. REDKEY: I thought you said the second weapon.

16 THE COURT: He's got two -- as I understand it, he's
17 got two pistols. One he's legally registered. And if he
18 puts that pistol in that stock -- in the stock, I think your
19 witness conceded that that was lawfully permitted for him to
20 do.

21 MR. REDKEY: The gun which is not the subject.

22 THE COURT: All right. So isn't that the same kind
23 of situation that we have in this Supreme Court case, where
24 you had a situation where the defendant can -- he puts one
25 gun in the stock, it's legal and perfectly all right. And he

1 hasn't done anything wrong. He puts it in the other, it's a
2 short-barreled rifle. And until he puts it in one or the
3 other, I think the Supreme Court case says it's not a
4 short-barreled rifle.

5 MR. REDKEY: What they are saying is, if there is a
6 way to make it a long barrel rifle with the kit, then yes,
7 that is correct. As long as there is way to make it legally
8 with that kit, then it's not a short-barrelled rifle.

9 THE COURT: But if he puts the one he's got
10 registered with the stock, whether it's long barrelled or
11 not, he's registered it. He's not possessing an illegal gun
12 at that point. If that were the only two items he had, it
13 becomes complicated because he's got yet the weapon which is
14 the subject matter of Count 2, and to even make it a little
15 more complicated, he's put that weapon in the holster stock
16 if you will, for safe keeping, if you will.

17 MR. REDKEY: Yes. But he had a shoulder
18 stock/holster with the first firearm. That was already an
19 assembled firearm.

20 THE COURT: I understood that he only had one stock
21 holster. Am I mistaken on that?

22 MR. REDKEY: No, there were two. He had one with the
23 gun that was taken from him in March, and he had --

24 THE COURT: Was that assembled or not?

25 MR. REDKEY: I don't think we know the answer to

1 that. But it was --

2 THE COURT: So we have two pistols and two stocks.

3 MR. REDKEY: Yes. And stock that was found was with
4 the gun that is charged in Count 2.

5 THE COURT: Well --

6 MR. REDKEY: He didn't need a second stock, unless he
7 was going to put it on --

8 THE COURT: I had understood there was just one
9 stock.

10 MR. CONTE: There is two. But I think Mr. Redkey
11 misreads Thompson/Center Arms, because in Thompson/Center
12 Arms -- it's the same situation. In Thompson/Center Arms,
13 they had a 16-and-a-quarter-inch barrel. All we have is two
14 stocks. It's a matter of putting them together. I don't see
15 any difference between -- if he puts a 16-inch barrel on
16 there, it's legal. If you put the other one in there, it's
17 illegal. The Court said they had to be connected. And
18 likewise with two stocks, it's almost the exact same fact
19 pattern. Exact same pattern. If you put them on either one,
20 if you use the VP stocks on the VP70, they're perfectly
21 legal. Until you connect the stock to the VP70Z, it's
22 nothing.

23 THE COURT: Well, but he has two got
24 short-barrelled -- I think where we end up is he's got in his
25 possession two short-barrelled rifles. He's got two pistols

1 and he's got two stocks and he only registered one of them.

2 So that being the case, I don't think that I'm going to
3 add this fourth element to the instruction. I'll read the
4 case again tonight, but I'm not persuaded at this point that
5 that fourth element should be added.

6 MR. STAHLFELD: May I quickly make -- and I
7 apologize. I know we all want to get out of here.

8 The very first basic point is that I find it unusual that
9 the government would argue that it could take the VP70M that
10 was the licensed gun away from him, and then argue it wasn't
11 present.

12 THE COURT: And I'm assuming for purposes of my
13 trying to sort through it that it was present, although it
14 was down the street in government's possession.

15 MR. STAHLFELD: That being the case, if we were
16 taking a position that the VP70M was here on this table, and
17 that Mr. Kwan had two stocks there, I would make the argument
18 that I believe he is entitled to that instruction because
19 that is no different than in the Thompson/Center Arms case,
20 had Mr. Kwan two -- a 16-inch barrel and an 18-inch barrel.
21 That is, you can have any additional parts go on that
22 original gun. It doesn't change the fact in Thompson/Center
23 Arms that that original gun was legal. In our particular --
24 because it was not a short-barrelled rifle.

25 In our particular case, it's legal because he had already

1 filled out the paperwork and had the SOT status.

2 THE COURT: Well, he's got that status for one gun.
3 And he's got two guns. That's the problem.

4 MR. STAHLFELD: As a matter of analysis, if he had
5 had one gun here with two stocks, both which attached there,
6 that's no different than if he had a 16-inch barrel and an
7 18-inch barrel. They both can go on that gun, and because
8 they both can go on that gun, they both would be covered by
9 that gun's registration.

10 THE COURT: I think it's different. Because here
11 we've got regardless of which -- and I don't know what
12 exhibit the first gun is.

13 MR. REDKEY: 10.

14 THE COURT: Whatever stock he puts the 10 on, Exhibit
15 10 on, it becomes a short-barrelled rifle. And he's only got
16 a license or he's only registered one. So under the
17 hypothetical that I'm presenting, I'm assuming that if the
18 ATF had given back -- they took it away but had given it
19 back, because it's his, and he's entitled to have it
20 returned. Isn't that where we are? That's what you have
21 argued.

22 MR. STAHLFELD: That's fine. And I would argue that
23 if he had all four items here on this table right now, as a
24 matter of law he does not have a short-barrelled rifle until
25 one or the other of the stocks is actually attached to the

1 short-barrelled rifle, because if either of them are attached
2 to the VP70M, the machinegun that had the paperwork on it, if
3 they're both able to be attached to that, they're both able
4 to be legal to that one gun, just as if you had two different
5 barrels in the short-barrelled rifle case in Thompson/Center
6 Arms.

7 You could have a barrel that was 16 inches and a barrel
8 that was 18 inches, or a stock that had a pistol grip
9 shoulder stock or one that did not. You can have two
10 different parts, but they are still covered by that one
11 lawful gun, that is, under Thompson/Center Arms, because one
12 gun was lawful or one possible combination was lawful, the
13 government had to show that the actual combination -- that
14 is, putting together was unlawful. And in this case, because
15 he has one lawful gun, he can have different combinations,
16 different stocks, different barrels, different holsters, that
17 would cover that one lawful gun. It's only one he has
18 stepped outside of the lawful combinations and put it in the
19 unlawful combination --

20 THE COURT: Let's assume that he takes the lawful
21 pistol that he's registered and puts it in one of those
22 stocks. He's registered. That's legal. The problem is he's
23 got another pistol and another stock left over. And that is
24 what makes it different than the contender pistol and the
25 barrels and the Supreme Court case, because in that case, if

1 he used one barrel that was legal. If he used the other, it
2 was not legal.

3 I think we've got a different situation. I'm persuaded
4 that the fourth element should not be added. I'm not going
5 to do that.

6 All right.

7 Defendant also proposes an instruction on the theory of
8 the case, Count 1. And -- and cites me to the Smith cases.
9 I've read both of those Smith cases. Let me put it this way.
10 At this present time I'm not going to give this instruction.

11 Clearly, we would need the testimony of the defendant and
12 if I hear that testimony, then perhaps you can argue again as
13 to whether it should be added. But at this point, there is
14 no testimony to support this type of instruction. Even if we
15 hear his testimony, it's not all together clear to me that I
16 would give this instruction because I think you can argue
17 from the instructions that I would be giving -- I mean, the
18 testimony would be whether he knew or didn't know that it was
19 a machin-gun or that it could be restored to be an operable
20 machin-gun.

21 But in any event, I don't really have to cross that bridge
22 until and if we get the testimony, and then I'll hear your
23 arguments.

24 On the Count 2 argument instruction that you had proposed,
25 I think it repeats what I've already got in the instructions

1 and its argument, and I'm not going to give that instruction.

2 That concludes the objections that I've received. Are
3 there any objections to the Court's proposed instructions
4 with the changes I've indicated from the government?

5 MR. REDKEY: No.

6 THE COURT: Are there any other proposed changes from
7 the defense?

8 MR. CONTE: No, Your Honor, Court's indulgence.

9 THE COURT: Was that a no or not?

10 MR. CONTE: We are requesting a missing evidence
11 instruction.

12 THE COURT: Well, I haven't seen it presented yet.

13 MR. CONTE: I didn't think about it. I'll file one
14 tonight.

15 THE COURT: Is this the notice that apparently -- the
16 transmittal sheet?

17 MR. CONTE: No, we have --

18 THE COURT: What is the missing evidence?

19 MR. CONTE: Photographs of the M14 on the night it
20 was seized.

21 THE COURT: All right. Well, you haven't -- until
22 this moment mentioned the missing evidence instruction. Let
23 me ask Mr. Redkey, do you think they're entitled to one.

24 MR. REDKEY: No. I would have to refresh my
25 recollection on the law, since I have not looked at it

1 recently. But I recall that there is sort of a mens rea
2 element there where it has to be --

3 THE COURT: You better both file something tonight.
4 Is there a Ninth Circuit Pattern Instruction that deals with
5 that?

6 MR. CONTE: I haven't looked. It came up yesterday.

7 THE COURT: We might need a character of the witness
8 for truthfulness. Although I think the general instruction
9 just says treat it like any other witness, but perhaps we
10 need that, in light of the testimony we've heard. I don't
11 think there is a Ninth Circuit Pattern Instruction. File
12 something what you think you want tonight, and I'll look at
13 it in the morning on the missing evidence.

14 Let's just take a look at the -- Pattern Instruction of
15 the Ninth Circuit 4.4 reads that you've heard evidence that
16 the defendant's character for truthfulness, honesty. In
17 deciding the case you should consider that evidence together
18 with and in the same manner as all other evidence of the
19 case.

20 I think maybe we need that instruction, in light of the
21 testimony of the witnesses. Does the government have any
22 objection?

23 MR. REDKEY: No, Your Honor.

24 THE COURT: Does the defense?

25 MR. CONTE: I submitted another instruction.

1 THE COURT: In your original submissions?

2 MR. CONTE: No. It was filed last night.

3 THE COURT: Well, I thought I went through each of
4 your pages of --

5 MR. CONTE: Could have been filed the night before.
6 Court's indulgence. It was filed as an attachment.

7 THE COURT: I have it here.

8 MR. CONTE: It was filed on Monday.

9 THE COURT: I have it. I'm inclined to give the
10 Ninth Circuit one. I have the Ninth Circuit right next to
11 the one you filed. I'm going to give the Ninth Circuit
12 pattern, instead. That is where we're trying this case.

13 MR. CONTE: I understand. I would note my objection
14 because --

15 THE COURT: I didn't hear you sir.

16 MR. CONTE: I would note my objection, given the
17 verbiage of my proposed instruction.

18 THE COURT: I'm still not hearing you. You're noting
19 your objection?

20 MR. CONTE: Yes.

21 THE COURT: Are there any other changes to the
22 instructions from the defense?

23 MR. CONTE: Your Honor, we realized last night that
24 we hadn't said anything about the holster being a dual-use
25 item. And I'm not sure whether the instructions cover that.

1 I have to look at them again tonight. I do want to alert The
2 Court that it came up. It was a thought that Mr. Stahlfeld
3 had. I haven't thought it through yet.

4 THE COURT: Any other objections to my -- the Court's
5 propose the instruction?

6 MR. REDKEY: No.

7 THE COURT: Any objections from either side on the
8 Court's proposed verdict form?

9 MR. REDKEY: No.

10 MR. CONTE: No, Your Honor.

11 THE COURT: We'll have the revised pages, there's
12 just a couple of changes to one or two of them and the new
13 Character Instruction available for you when you come to
14 court tomorrow. We'll be in recess.

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17 (Court adjourned)

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C E R T I F I C A T E

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

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

Dated thi s 9th day of October, 2007.

/S/ Nichol e Rhynard

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