

No. 82-8546

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,
Cross-Appellee,

v.

ONE REMINGTON .12 GAUGE SHOTGUN SERIAL NO. 322336V, WITH A BARREL
LENGTH OF 13 INCHES AND AN OVERALL LENGTH OF 24-3/4 INCHES,

Defendant-Appellee,
Cross-Appellee,

MARVIN CLARK BELL,

Claimant-Appellee,
Cross-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF GEORGIA,
ROME DIVISION

BRIEF FOR THE UNITED STATES OF AMERICA,

Plaintiff, Appellant,
Cross-Appellee

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Plaintiff-Appellant, Cross Appellee

STATEMENT REGARDING PREFERENCE

This case is not entitled to preference in processing
or disposition under 11th Cir. R. 12.

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STATEMENT REGARDING PREFERENCE

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STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests that oral argument be heard in
this case. This is a case of first impression in the Eleventh
Circuit. The appeal presents a question of statutory
interpretation that arose because the court below lacked a guide to
the statutory scheme in question. Oral argument will ensure that
all questions relating to the construction of the relevant statute
will be considered and resolved.

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STATEMENT OF THE ISSUE

Whether the District Court erred in finding that a .12-gauge shotgun modified by replacing the shoulder stock with a pistol grip and by shortening the barrel was "any other weapon" as defined in 26 U.S.C. section 5845(e) rather than a weapon made from a shotgun under 26 U.S.C. section 5845(a)(2).

STATEMENT OF THE CASE

On January 23, 1981, a forfeiture complaint was filed against a firearm manufactured by the claimant-appellee, Marvin Clark Bell. (Record at 1). The basis of the forfeiture complaint is that the firearm is a weapon made from a shotgun as specified in 26 U.S.C. section 5845(a)(2) and that Bell made the firearm without approval and payment of a \$200 making tax, [footnote 1] or in the alternative without paying the \$500 special occupational tax as manufacturer of "firearms." [footnote 2]

1. 26 U.S.C. section 5822 requires that a person intending to make a firearm first file an application with the Secretary and receive approval. 26 U.S.C. section 5821 imposes a tax of \$200 on the making of the firearm.

2. 26 U.S.C. section 5801 imposes a tax of \$500 per year on a manufacturer of firearms, and 26 U.S.C. section 5852(c) provides that a person qualified as a manufacturer is exempt from the making application and tax requirements for firearms he is qualified to manufacture.

Under the National Firearms Act, 26 U.S.C. section 5801, et seq. (hereafter referred to as "NFA"), taxes are imposed on the making and transfer of certain firearms and on the occupations of importer, manufacturer and dealer in these firearms. Under section 5801, a manufacturer of firearms must pay an occupational tax of \$500 per year. However, a manufacturer of a firearm classified as "any other weapon" must pay only \$25 per year. 26 U.S.C. section 5801. A firearms transfer tax is \$200 for each firearm transferred, except the transfer tax for "any other weapon" is only \$5. 26 U.S.C. section 5811(a). Bell has paid the \$25 "any other weapon" manufacturer's tax and was qualified as a manufacturer only of weapons classified as "any other weapon."

Bell purchased a Remington Model 870 "Wingmaster" .12 gauge pump shotgun and cut the barrel length down to 13 inches. Bell removed the shoulder stock of the shotgun and replaced it with a pistol grip. As modified, the firearm is 23-3/4 inches long. The Government's case is premised upon the fact that Bell thereby made a weapon made from a shotgun under section 5845(a) (2) and not an 'any other weapon' as specified in section 5845(a) (5) and (e). Therefore, Bell was not exempt under section 5852(c) from the making application and

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tax requirements, and his making violated the NFA. Consequently, the firearm is subject to forfeiture under 26 U.S.C. section 5872.

In a Cross-Motion for Summary Judgment, Bell asserted that his weapon had been improperly classified as a weapon made from a shotgun and should be classified as "any other weapon" as defined by 26 U.S.C. section 5845(e). (Record at 52). The district court concluded that Bell's weapon was "any other weapon" and granted Bell's motion on January 19, 1982. (Record at 68). In response, the Government filed a Motion for Relief From Judgment pursuant to F. R. Civ. P. 60(b). (Record at 74). The district court granted the Government's Motion on June 25, 1982, and vacated the judgment entered January 19, 1982. (Record at 125).

In granting judgment for Bell, the district court reasoned that the NFA could be interpreted so that Bell's gun fit within both the weapon made from a shotgun and "any other weapon" categories of "firearm." Thus, the weapon was subject to two tax rates. The court would not apply the higher tax rate to Bell's gun for two reasons: first, stated the court, Remington had paid the higher tax rate when it originally manufactured the shotgun and second, Bell had already paid under

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the lower tax rate. (Record at 129). This anomalous result, concluded the court, required legislative amendment of the NFA to correct.

Because the district court had requested in its order that the Government submit the entire text of the legislative history of the

NFA, (Record at 129), the Government filed a second Motion for Relief From Judgment containing this material on July 21, 1982. (Record at 131). The district court took no action on this Motion and the Government filed a Notice of Appeal on August 20, 1982. (Record at 184). Bell then filed a Notice of Cross-Appeal on August 25, 1982. (Record at 186).

SUMMARY OF THE ARGUMENT

By concluding that Bell's weapon could be classified as either a weapon made from a shotgun or "any other weapon," the district court has nullified the meaning of the phrase "weapon made from a . . . shotgun" found at 26 U.S.C. section 5845(a)(2). In so doing, the court ignored fundamental principles of statutory construction and arrived at an interpretation of section 5845(a)(2) which is contrary to the plain meaning of the words, inconsistent with the statutory scheme as a whole, and frustrates specific Congressional action designed to subject weapons made from shotguns to the more restrictive controls of the NFA.

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The plain meaning of NFA and its implementing regulations preclude the conclusion reached by the district court. Bell's weapon does not meet the definitional criteria for "any other weapons." Although the "any other weapon" definition covers smooth bore pistols which fire fixed shotgun ammunition, the regulations define pistol to exclude weapons altered to resemble pistols. Bell altered a shoulder-fired shotgun to fire using one hand and, thus, made a weapon from a shotgun covered by 26 U.S.C. section 5845(a)(2). Furthermore, an examination of the overall statutory structure demonstrates that Congress could not have intended the weapon in question to fall within two different categories of firearms, where it carefully designed a system of prohibitive taxes for all specifically designated types of firearms, and less restrictive treatment for a more general category of "other" weapons.

Finally, The legislative history of the NFA demonstrates that Congress amended the firearm definition specifically to cover weapons made by shortening the barrel and removing the shoulder stock of shotguns. This was accomplished by adding a new category of firearm to the NFA firearm definition--weapon made from a shotgun. A weapon made from a shotgun was identified

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by Congress as a weapon frequently used in crime. Like machineguns, Congress intended that these shotgun weapons be regulated under the prohibitive taxation scheme established by the NFA in order to control the traffic in this type of crime weapon.

The legislative history also shows that Congress intended an entirely different treatment for "any other weapons." This category of firearm was accorded a less restrictive tax treatment because generally "any other weapons" were perceived as gadget-type and unusual weapons valuable to collectors. Although deadly, they were also perceived as not likely to be used in crime.

STATEMENT OF JURISDICTION

This is an appeal of the final judgment of the district court entered on June 25, 1982, granting summary judgment in favor of the claimant, Marvin Clark Bell, filed pursuant to 28 U.S.C. sections 1291 and 1294(1).

ARGUMENT AND CITATIONS OF AUTHORITY

- I. THE PLAIN MEANING OF THE NATIONAL FIREARMS ACT REQUIRES THAT APPELLEE'S SAWED-OFF SHOTGUN BE CLASSIFIED AS A WEAPON MADE FROM A SHOTGUN AND NOT AS AN "ANY OTHER WEAPON."

This appeal involves an interpretation of the statutory definitions of "firearm" and related terms

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as used in the NFA. The relevant terms are defined in 26 U.S.C. section 5845, and provide in pertinent part as follows:

(a) Firearm.--The term "firearm means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and its not likely to be used as a weapon.

* * * *

(d) Shotgun.--The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

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(e) Any other weapon.--The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell,

weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

The district court, in holding that the weapon at issue is both a weapon made from a shotgun under section 5845(a)(2) and an "any other weapon" under section 5845(a)(5) and (e), arrived at an erroneous interpretation which is inconsistent with the plain meaning of the statute, the structure of the statute and the legislative history of the statute. For these reasons, the decision of the district court must be reversed.

A. Statutory Language

The literal words of the statute preclude the inexplicable conclusion of the district court that Bell's weapon fits into both the category weapon made

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from a shotgun and the category "any other weapon." First, nothing could be more explicit than the words of section 5845 (a) (2) which unequivocally describes weapons made by altering a traditional shotgun to within the size dimensions specified. Nothing could be any clearer than the fact that Bell quite literally sawed off the barrel of a shotgun and replaced the shoulder stock with a pistol grip bringing the weapon within the dimensions of the statute. Second, to find that such a weapon, specifically described, also falls within another category which purports to cover "other" weapons requires that we ignore the plain meaning of the word "other." The dictionary definition of the word "other" is that which is different, distinct and in addition to items previously mentioned. [footnote 3] Therefore, the district court's ruling violates the most fundamental rule of statutory interpretation that words be given their plain meaning. *Fitzpatrick v. Internal Revenue Service*, 665 F.2d 327, 329 (11th Cir. 1982); *United States v. Yeatts*, 639 F.2d 1186, 1189 (5th Cir. 1981), cert. denied, 452 U.S. 964. The court suggests that the problem be addressed by additional legislation, yet it is difficult to imagine how Congress could have been clearer in its choice of words.

3. Webster's International Dictionary, 1729 (2d ed. 1954).

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Moreover, by concluding that Bell's weapon fits within either category, the district court effectively reduces the phrase "weapon made from . . . a shotgun" found in section 5845(a)(2) to a nullity. The court in essence holds that these two categories are the same. This violates a basic principle of statutory interpretation that every phrase of a statute must be given effect and that statutes must not be interpreted so as to render certain provisions superfluous or insignificant. *United States v. Menasche*, 348 U.S.

528 (1955); Woodfork v. Marine Cooks & Stewards Union, 642 F.2d 966 (5th Cir. 1981).

B. Structure of the Statute

Even if the literal words of the statute are open to the redundancy found by the district court, such an interpretation is inconsistent with the overall structure of the NFA and, therefore, must be rejected. Rather, if reasonable and practical, the words of a statute should be interpreted in a manner which is consistent with all of the provisions of the statute. General Motors Acceptance Corp. v. Whisnant, 387 F.2d 774 (5th Cir. 1968).

The interpretation adopted by the district court is clearly inconsistent with the overall structure of the

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NFA, which contemplates that the "any other weapon" category is distinct from the other specifically enumerated weapons of section 5845(a). As noted earlier, all of the firearms defined in section 5845(a), and manufacturers, importers and dealers in these firearms, are subject to various taxing and registration requirements. If these taxes and other requirements were identical for all types of firearms covered by the Act, it would be unnecessary to resolve the classification of the firearm at issue. However, Congress chose to give firearms falling within the "any other weapon" category special and more lenient treatment. First, the tax on transferring an "any other weapon" is \$5, whereas the transfer tax on all other "firearms" is \$200. The occupational taxes for manufacturers of "any other weapons" is \$25 per year while the occupational tax for manufacturers of all other "firearms" is \$500 per year.

These factors lead to one unmistakable conclusion. The specifically enumerated firearms, such as weapons made from shotguns, were intended to be treated separate and distinct from weapons falling within the more general "any other weapon" category. For the district court to have found that a weapon made from a shotgun

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also qualifies as an "any other weapon" contradicted the overall statutory structure which was carefully designed to treat these two categories differently. The district court's interpretation results in the anomalous situation where it is the taxpayer's decision as to which tax to pay. [footnote 4]

II. THE DISTRICT COURT'S CONCLUSION THAT THE FIREARM IN QUESTION 1.5 -ANY OTHER WEAPON" RATHER THAN A WEAPON MADE FROM A SHOTGUN IS CONTRARY TO THE LEGISLATIVE HISTORY

In interpreting a statute, the final source of Congressional intent is found in the history of the legislation. Tennessee Valley Authority v. Hill, 437 U.S. 153, 184 (1978). A review of the NFA from its initial passage, and through several amendments demonstrates a constant Congressional concern with sawed-off shotgun type weapons. More specifically, a review of the history

of the NFA reveals specific action by Congress in 1960 to subject pistol type sawed-off shotguns to the more restrictive controls of the NFA.

In light of this history and purposes of the NFA, the district court's opinion is without foundation. In enacting the NFA, it was the intention of Congress to

4. Record at 129. The district court also mistakenly concluded that the original manufacturer of the shotgun, Remington, had paid an NFA tax upon initial manufacture of the shotgun. However, Remington did not make an NFA firearm.

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discourage the production and transfer of weapons such as the one made by Bell which are commonly characterized as sawed-off shotguns. [footnote 5] An exposition of the legislative history of the NFA plainly demonstrates the error in the district court's holding.

As enacted in 1934, the NFA imposed an annual occupational tax of \$500 on all persons engaged in the business of manufacturing firearms. 48 Stat. 1236, 1237. A prohibitive transfer tax of \$200 was imposed

5. See, e.g., H.R. Rep. No. 1780, 73d Cong., 2d Sess. 1 (1934) ("there is no reason why anyone except a law officer should have a machine gun or sawed-off shotgun"); S. Rep. No. 1444, 73d Cong., 2d Sess. 2 (1934) (same); H.R. Rep. No. 2457, 75th Cong. 3d Sess. 1 (1938) ("Congress in enacting the National Firearms Act sought to regulate the sale, transfer, and license of machine guns, sawed-off shotguns, sawed-off rifles, and other firearms, other than pistols and revolvers, which may be concealed on the person, and silencers"); S. Rep. No. 1951, 75th Cong., 3d Sess. 1 (1938) ("The National Firearms Act . . . relates to machine guns, sawed-off shotguns . . ."); S. Rep. No. 1495, 82d Cong., 2d Sess. 1-2 (1952) ("The principal purpose of the [National Firearms Act] was to control the traffic in machine guns and sawed-off shotguns, the type of firearms commonly used by the gangster element. * * * Since the effective control over fully automatic firearms, such as machine guns and machine pistols, has made it difficult for criminals to obtain such firearms, the sawed-off shotgun has become the favorite offensive weapon of such criminals. By the comparatively simple device of purchasing standard shotguns from legitimate dealers and then sawing off the barrels . . ., criminals are able to make vicious weapons without incurring the penalties of the act"); H.R. Rep. No. 1714, 82d Cong., 2d Sess. (1952) (same); S. Rep. No. 1303, 86th Cong., 2d Sess. 2-5 (1960); H.R. Rep. No. 914, 86th Cong., 1st Sess. 2-5 (1959); S. Rep. No. 1501, 90th Cong., 2d Sess. 44 (1968); H.R. Rep. No. 1956 (Conference Rep.), 90th Cong., 2d Sess. 34 (1968).

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upon the transfer of any NFA "firearm." Ibid. Thus, the traffic in these weapons was greatly restricted. The term "firearm" was

defined [footnote 6] as "[1] a shotgun or rifle having a barrel of less than eighteen inches in length, or [2] any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or [3] a machine gun, and [4] includes a muffler or silencer for any firearm" These firearms were identified as those most often used in crime. [footnote 7]

6. 48 Stat. 1236.

7. Other weapons not identified as crime guns were accorded a less restrictive treatment under the NFA. Four years after enactment of the NFA, Congress added a very narrow proviso to both the occupational and the transfer tax provisions making them inapplicable to a combination rifle and shotgun because the weapon had "legitimate uses." H.R. Rep. No. 2457, supra, at 1; S. Rep. No. 1951, supra, at 1. In lieu of the prohibitive taxes, Congress imposed a nominal tax on the manufacturer and transfer of such weapons. In 1945, Congress added a second narrow proviso to the occupational and transfer taxes for "low-powered, so-called small game guns" used on farms and elsewhere for extermination of vermin and predatory animals and in hunting and trapping activities." H.R. Rep. No. 869, 79th Cong., 1st Sess. 1; See, S. Rep. No. 520, 79th Cong., 1st Sess. 1; See, 59 Stat. 531. This was perceived as a logical extension of the 1938 proviso covering a similar weapon.

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In 1939, the NFA was codified as part of the Internal Revenue Code of 1939 without substantive change. [footnote 8]

In 1952, Congress' attention was again drawn to the sawed-off shotgun problem and Congress acted to cover the activity of individuals who made their own sawed-off shotguns. A gap existed in the NFA's coverage because generally, making a single firearm was not "engaging in the business" of manufacturing firearms. Thus, a person could circumvent the NFA occupational tax by purchasing a shotgun and sawing off the barrel. If the weapon was not transferred, no transfer tax would attach. See, S. Rep. No. 1495, supra, at 2, quoted in fn. 5, supra. To close this gap, Congress taxed "the action of sawing off the barrel or otherwise making" a sawed-off shotgun. Ibid. See, 66 Stat. 87. Persons engaged in the business of manufacturing sawed-off shotguns were exempted from this making tax since they were already subject to the occupational and transfer taxes. Ibid.

In the Internal Revenue Code of 1954, Congress acted to tighten the controls over sawed-off shotguns by defining "shotgun" and "any other weapon." "Shotgun"

8. See, Internal Revenue Code of 1939, 53 Stat. 291 (transfer tax): Section 3260 of the Internal Revenue Code of 1939, 53 Stat. 392-393 (occupational tax).

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was defined as "a weapon designed . . . and intended to be fired

from the shoulder and made to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger." 68A Stat. 726. "Any other weapon" was defined as "any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, but . . . not pistols or revolvers or weapons designed, made or intended to be fired from the shoulder and not capable of being fired with fixed ammunition." 68A Stat. 726. The Congressional purpose in defining these terms was to establish that the NFA did not cover antiques but only "such modern and lethal weapons, except pistols and revolvers, as could be readily used by criminals or gangsters." H.R. Rep. No. 1337, supra; S. Rep. No. 1622, supra; 1954 U.S. Code Cong. & Ad. News 4542, 5209. However, the shotgun definition created another gap in the NFA. Replacing the shoulder stock of a shotgun with a pistol grip created a weapon something other than a "shotgun" since such a weapon was no longer designed or intended to be fired from the shoulder. Such an altered shotgun would only be covered by the NFA if it was within the scope of the "any other weapon" portion

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of the "firearm" definition. Thus, the altered shotgun would have to be a weapon "from which a shot is discharged by an explosive . . . (and which is) capable of being concealed on the person . . ." before such a weapon would be subject to the NFA. 68A Stat. 726.

In 1960, Congress acted to close the loophole created by the 1954 shotgun definition. The "firearm" definition was amended to include "any weapon made from a . . . shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches" 74 Stat. 149. See, H.R. Rep. No. 914, supra, at 2-3; S. Rep. No. 1303, supra, at 3. The sponsor of this amendment was explicit in indicating that this was its intended purpose. [footnote 9]

9. "Experience through the years has demonstrated that the type of concealable weapon controlled under the National Firearms Act which has most frequently figured as a crime problem is the weapon that is made from a rifle or shotgun by cutting it down in length so as to make it concealable on the person. Under the present law, if a rifle or shotgun is altered by cutting off the barrels so that the barrel length is less than that prescribed in the definition of a "firearm," then the weapon clearly becomes subject to the criminal provisions of the law. In many cases, however, the criminal not only cuts off the barrel of a conventional rifle or shotgun but also may cut off the shoulder stock and thus create a one-hand weapon of greater concealability than had he sawed off the barrel alone. In the past, criminals apprehended with such weapons attempted to avoid prosecution on the ground that the weapon they

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With respect to "any other weapon," Congress in 1960 also reduced the occupational and transfer taxes applicable to these firearms. The reason for this change was explained as follows:

It is understood that firearms in the "any other weapon" category included gadget-type and unique weapons, which are often sought after by gun collectors. Moreover, it appears doubtful that criminal elements use these types of weapons to any significant extent in their criminal activities, particularly since the alternatives of a pistol or a revolver, neither of which is subject to this firearms tax, are available. S. Rep. No. 1303, supra, at 4; H.R. Rep. No. 914, supra, at 4.

The 1960 amendments demonstrate that while Congress intended to ease the tax restrictions on "any other weapons," it was adamant that sawed-off shotguns remain subject to the prohibitive occupational and transfer taxes. Sawed-off shotguns were to be subject to the NFA regardless of whether they were equipped with a pistol grip or intended to be fired from the shoulder. If the

9. (cont'd) created by cutting off the barrel and the stock of a shotgun or a rifle was in fact a pistol since it was a one-hand weapon. In the view that it was just this type of criminal weapon that Congress sought to control in the National Firearms Act, I am suggesting an amendment to the definition of the term "firearm" by adding the language, "or any weapon made from a rifle or shotgun--whether by alteration, modification, or otherwise-if such weapon as modified has an overall length of less than 26 inches'." 105 Cong. Rec. 16204 (1959) (remarks of Representative King).

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shotgun was modified in any way which resulted in a shotgun less than 26 inches long, Congress intended it to be covered by the "weapon made from a shotgun" portion of the "firearm" definition.

III. THE DISTRICT COURT'S INTERPRETATION OF THE "ANY OTHER WEAPON" DEFINITION CONFLICTS WITH LONGSTANDING AND CONTEMPORANEOUS ADMINISTRATIVE CONSTRUCTION OF THE TERM.

The court has apparently concluded that Bell's weapon fits within that portion of the section 5845(e) definition of "any other weapon" which reads, "a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell" (Record at 128).

In its interpretation of section 5845(e), the district court has overlooked a regulation defining terms used in the "any other weapon" definition which would preclude its conclusion that a weapon made from a shotgun could also qualify as an "any other weapon." This portion of the "any other weapon" definition only covers pistols or revolvers. The Treasury Department regulations issued under the NFA define pistols as weapons originally designed to be fired with one hand. The pistol definition in the regulation specifically excludes "any gun altered or converted to resemble a

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pistol." 27 C.F.R. section 179.11 [footnote 10]. Bell's weapon was

originally designed by Remington as a shotgun and was intended to be fired from the shoulder. Thus, it fails to satisfy the definitional criteria established for pistols.

This valid regulation reasonably implementing tax laws should be given the effect of law. See, *United States v. Cartwright*, 411 U.S. 546, 550 (1973); *United States v. Fisher*, 353 F.2d 396 (5th Cir. 1965). Moreover, this regulation was adopted immediately after the NFA was amended in 1960 (T.D. 6557, 1961-1 C.B. 655, 656), when Congress removed hand-held sawed-off shotguns from the "any other weapon" category and made them one of the specifically enumerated firearms. It is well established that regulations promulgated by an agency charged with administering a statute is entitled to

10. 27 C.F.R. section 179.11 reads in pertinent part: Pistol. A weapon originally designed, made, and intended to fire a small projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s). The term shall not include any gadget device, any gun altered or converted to resemble a pistol, any gun that fires more than one shot, without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition.

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considerable weight. *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 158 at fn. 3 (1981); *Mississippi Coast Marine, Inc. v. Bosarge*, 637 F.2d 994 (5th Cir. 1981). This is particularly true where the interpretation is longstanding and contemporaneous, and where Congress has reenacted the statute without pertinent change. *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *Leary v. United States*, 395 U.S. 6 (1969).

There is no room for a dilemma concerning the classification of Bell's weapon. It was originally a shotgun and when Bell altered this shotgun he made a weapon from a shotgun as specified in 26 U.S.C. section 5845(a)(2).

The district court has erroneously relied upon *United States v. Fisher*, supra, to support its conclusion that the weapon Bell made by altering a shotgun should be classified as "any other weapon." The court in *Fisher* was dealing with a weapon originally designed as a one-hand gun firing a shotgun shell. Thus, it was never in issue in *Fisher* that the weapon was "made from a . . . shotgun." An originally designed one-hand weapon firing a shotgun shell is "any other weapon." A weapon created by sawing off parts of a shotgun is a "weapon made from a . . . shotgun."

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CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that two copies of the Plaintiff-Appellant's Brief were duly mailed, postage pre-paid, to David W. Porter, Esquire, Attorney for Claimant-Appellee, Morris and Manning, Suite 2150, 230 Peachtree Street, Atlanta, Georgia, 30303, on this __ day of November, 1982.

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