

The IG's representatives further requested me to "walk them through" the other evidence for my allegation, and I did so as follows.

ATF SPECIALIST GARY N. SCHAIBLE'S  
CONTRADICTION SWORN TESTIMONIES  
REGARDING THE DESTRUCTION OF  
NFA DOCUMENTS AT ATF

Version #1: NFA Branch clerks could have destroyed  
NFA documents in February 1994

The basis for my original allegation of ATF personnel destroying NFA documents is the sworn testimony in federal court in 1996 of ATF specialist Gary N. Schaible, who agreed in his testimony at the *LeaSure* trial<sup>14</sup> that NFA Branch clerks had thrown away documents rather than process them, and stated that this destruction could have occurred in February 1994 (1998, page 236, lines 19-25; page 237, lines 1-7). Mr. Schaible was questioned extensively about the destruction of NFA documents (1998, page 237, lines 8-25). The consequence of Mr. Schaible's testimony, and of other inaccuracies in the NFRTR, is that the presiding Judge dismissed five convictions under the NFA for possession of unregistered firearms (1998, page 239, lines 1-6). The trial transcript states that Mr. Schaible was a witness "called on behalf of the Government, having been first duly sworn, was examined and testified" as to the above facts (1998, page 217, lines 1-3).

Version #2: NFA documents were thrown away in 1988  
by ATF contract employees, not ATF employees

Mr. Schaible, however, told a completely different story during an internal 1997 ATF investigation of my complaint. Specifically, Mr. Schaible stated—under oath—that "Larson may have construed from his testimony that ATF employees were destroying documents, but this was not the case" (1998, page 90, lines 17-20). Mr. Schaible "stated he made the comments in reference to thousands of Title II firearms being manufactured by [deleted by ATF] that were being exported to [deleted by ATF]" (1998, page 90, lines 9-12). "Various manufacturers were forwarding the paperwork for these firearms," Mr. Schaible continued. "However, not all of the paperwork was entered properly into the NFA system. It was suspected that some of the contract employees had destroyed some of the documents in an effort to reduce case load" (1998, page 90, lines 12-17). Finally, in this internal 1997 ATF investigation, Mr. Schaible "stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief" (1998, page 91, lines 29-32).

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<sup>14</sup>*United States vs. John Daniel LeaSure*, United States District Court, Eastern District of Virginia, Newport News Division, Criminal No. 4:95CR54, May 21, 1996. Transcript of Proceedings Before the Honorable John A. MacKenzie, United States District Judge. Mr. LeaSure was a federally licensed manufacturer of NFA firearms. His only customers were military and intelligence agencies of the United States Government, and certain allied foreign governments. Mr. LeaSure did not sell his products to civilians, and was not accused of doing so.

In the 1997 internal ATF investigation of my compliant, another ATF employee stated that, as Chief of the NFA Branch in 1986 and 1987, he was aware that some documentation was missing, and ATF contract employees were suspected (1998, page 91, lines 37-41).

Version #3: A possible interpretation  
of Gary Schaible's sworn testimonies  
as ATF's managerial incompetence

This interpretation derives from what Mr. Schaible literally said in testimony at the LeaSure trial. What he testified to is that NFA Branch clerks "could have" destroyed Mr. LeaSure's NFA documents—not that NFA Branch clerks "did" destroy these documents. That's a pretty critical distinction, read literally. It seems possible that when confronted with the question about NFA Branch clerks destroying NFA documents, Mr. Schaible recalled the circa 1988 incident apparently involving the destruction of NFA documents by ATF contract employees, and reasoned that NFA Branch clerks could also have destroyed NFA documents because the situation had not significantly improved since 1988.

In other words, Mr. Schaible may have believed that NFA Branch clerks could have thrown NFA documents away because of the failure of ATF management to exercise normal managerial controls. As we have seen, the IG determined that ATF employees did not always follow procedures in processing NFA documents. Therefore, the notion that NFA Branch clerks "could have" have thrown the documents away was perfectly credible to Mr. Schaible. The ATF procedures may be fine, but unless people follow them the procedures are meaningless except as window dressing.

The Treasury IG determines ATF contract  
employees destroyed NFA documents

In the Treasury IG's investigation, "the Chief, Firearms and Explosives Regulatory Division, clarified statements made by [Mr. Schaible] in his May 1996 testimony." The Chief stated that Mr. Schaible "was referring to an incident in 1988 when NFA Branch management suspected that two contract employees were disposing of documents." Apparently Mr. Schaible was unable to speak for himself.

In a Memorandum to the ATF Director, the IG stated that "in 1988, contract employees had improperly disposed of certain documents"<sup>15</sup> In the IG's report, this statement becomes: "National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and numbers of records destroyed" (October IG Report, page 1). Why didn't the IG resolve the discrepancies in Mr. Schaible's sworn statements, by talking with Mr. Schaible?

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<sup>15</sup>This statement is quoted from a Memorandum for John W. Magaw, ATF Director, dated October 26, 1998, from Richard B. Calahan, Deputy Inspector General, Department of the Treasury, in October 1998 IG report, where it has been placed directly after the front cover.

In my judgement, Mr. Schaible stated the truth at the LeaSure trial that NFA Branch clerks could have thrown NFA documents away. A better understanding of Mr. Schaible's predicament can be gleaned by reading the entire Transcript of Proceedings, in addition to what I just quoted from it.<sup>16</sup>

The fact is, Mr. Schaible was facing a Senior United States District Judge who granted Mr. LeaSure a new trial because ATF withheld Brady material—material that could have exonerated the defendant at trial (see discussion in next section regarding the "Busey tape").

It seems reasonable to conclude that Mr. Schaible would have particularly good reasons to choose his words and deliver his testimony very accurately; had he not, I think the Judge would have thrown the book at Mr. Schaible, if the Judge thought that Mr. Schaible was not being truthful.

More contradictions:

Were the contract  
employees fired or not?

Thus, as we have seen, Mr. Schaible agreed that NFA Branch clerks could have destroyed Mr. LeaSure's NFA documents in February 1994, but later Mr. Schaible (and at least one other ATF official) stated that the year was actually 1988 and involved ATF contract employees. The other ATF official attested that "these contract employees were immediately removed from their assignment to the NFA Branch" (October IG Report, page 7, lines 20-22), but this contradicts Mr. Schaible's testimony. Specifically, Mr. Schaible testified at the LeaSure trial: "No, they weren't fired. They eventually quit, yes, but, no, nothing like transferred or fired" (1998, page 237, lines 14-16).

The result of Mr. LeaSure's new trial was that the Honorable John A. MacKenzie, Senior United States District Judge, dismissed all 5 convictions having to do with nonregistration.

It is significant that the Assistant United States Attorney prosecuting the case did not cross-examine Mr. Schaible, nor did the Government appeal any of the five dismissals of convictions for nonregistration of NFA firearms.

I believe the reason ATF did not contest the dismissals of these 5 convictions, is that were ATF to lose the case on appeal, the ruling would become case law and resulted in overturning thousands of convictions in other cases. The bench trial that was conducted did not result in a written opinion and, therefore, is not in the West system of legal citations of cases and is generally not known to or available to attorneys.

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<sup>16</sup>The entire May 21, 1996, Transcript of Proceedings appears on pages 195 to 276 of my 1998 testimony. It is preceded by testimony by Mr. LeaSure, who presented it, and documents the withholding of the "Busey Tape" by ATF—evidence which caused the presiding Judge to dismiss 5 convictions against Mr. LeaSure for nonregistration of NFA firearms.

Why 1988 could be a better year for  
the illegal destruction of NFA documents  
than the February 1994 time frame,  
from the ATF's perspective

It is my further belief that senior ATF personnel decided, after being institutionally faced with my compliant of destruction of NFA documents, to shift the blame to "contract employees" and to a different time frame of 1987-88, for two reasons. First, ATF personnel would be removed from the hot seats resulting from the deliberate destruction of NFA documents, arguably serious federal criminal offenses. Second, shifting to a different time frame places the alleged document destruction further in the past and, presumably, perhaps less of a problem than a more recent (i.e., February 1994) time frame in which many convictions for nonregistration of firearms under the NFA could be legally questioned. In particular, changing the year of alleged document destruction to the year 1988 also gets the destruction safely away from the 1992 to 1996 time frame in which I analyzed the NFRTR data. But it sure didn't make any difference in the *LeaSure* case.

Finally, at the very least, it has been established that Mr. Schaible testified erroneously in Federal Court. Mr. Schaible's affirmation, under oath, that NFA Branch clerks could have destroyed Mr. LeaSure's NFA documents in February 1994, has been contradicted by Mr. Schaible and at least one other ATF official—also under oath—as an incident that occurred in 1988. Both statements cannot possibly be true.

It seems to me that Mr. Schaible's contradictory sworn testimonies do not make him a credible witness for the Government in criminal trials. Yet, Mr. Schaible testified that NFRTR records and an NFRTR records search was accurate on February 24, 1999, at a criminal trial in Indianapolis, Indiana.<sup>17</sup>

The tragedy of Gary Schaible's  
contradictory sworn testimonies

A citizen may be prosecuted for making false statements to the Government. ATF routinely prosecutes people for doing so. Making a false statement to the Government is illegal, under § 1001 of Title 18, United States Code (i.e., "It is illegal to lie to the Government"). Any federal employee who lies to the Government during an internal agency investigation of misconduct—whether he or she is under oath or not—has committed a crime and can be prosecuted.

It took me a while to get a copy of the internal 1997 ATF report, which is a much different report from the two Treasury IG reports. The 1997 internal ATF report was finally released to me—four months after it was completed—at a cost to me of \$65.15, and I had to file a Freedom of Information

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<sup>17</sup>*United States vs. William R. Gevedon*, Case Number IP-96-139-CR T/F, United States District Court, Southern District of Indiana. Mr. Gevedon was charged with 7 violations of the NFA, and a jury found him guilty on all charges on February 26, 1999.

Act request to get it. Something I didn't request, and which ATF stuck in the report directly behind the cover page, was 14 pages of copies of internal memorandums in which ATF cleared itself and its employees as being innocent of all my charges (maybe anything to increase my costs for copying it).

A statement in the copy of the first letter was repeated throughout the rest of the letters: "However, the investigation did not substantiate any of the allegations [made by Mr. Larson] and I have found no evidence of wrongdoing on your part" (1998, page 70, lines 19-21). Thus, I had to wade through 14 pages of ATF's self-serving exonerations of its own misconduct before getting to the actual report. I believe that ATF put those 14 pages into the report first as a means of demonstrating to me that ATF has the power to complete exonerate itself from credible charges of wrongdoing.

I shared the internal 1997 ATF report with several attorneys who specialize in NFA cases. One of them, Robert E. Sanders, Esq., is a former ATF Assistant Director for law enforcement—the ATF division that locks people up. I asked him what he thought of Mr. Schaible's contradictory testimony. He stated:

Well, this is very troubling. First we have NFA Branch clerks throwing documents away in 1994, and now that's changed to ATF contract employees throwing them away in 1988. We can't decide if Gary has committed perjury or not, because the only way that can occur is if he is indicted by a federal prosecutor and a jury makes that determination. But I'm very disappointed in all of this, and in Gary—these changing stories with the [NFRTR] records, this is very troubling.

I asked Mr. Sanders why no inquiry had been made, or apparently been made, by some court official, or prosecutor. Surely, I said, somebody in the prosecutor's office would have noticed these discrepancies. Wouldn't somebody get involved? Mr. Sanders replied:

Well, Eric, if you're talking about somebody indicting Gary for perjury, you can't do that and I can't do that—federal prosecutors don't take cases based on what people like you and me tell them. No citizen can turn somebody in for perjury. Federal prosecutors don't take cases from the public; they only take cases from a federal law enforcement agency that has investigated those cases and recommends prosecution.

You tell me, what federal law enforcement agency is going to even investigate the contradictions in Gary Schaible's testimonies, much less refer him to federal prosecution? It just isn't going to happen. If you and I committed perjury, a federal law enforcement agency would investigate us, refer our cases to a federal prosecutor, and we'd be put on trial—count on that. And we would be convicted, too. But don't count on that happening to Gary.