

**TREASURY, POSTAL SERVICE, AND GENERAL
GOVERNMENT APPROPRIATIONS FOR
FISCAL YEAR 1999**

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

**COMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL
GOVERNMENT APPROPRIATIONS**

JIM KOLBE, Arizona, *Chairman*

FRANK R. WOLF, Virginia

ERNEST J. ISTOOK, JR., Oklahoma

MICHAEL P. FORBES, New York

ANNE M. NORTHUP, Kentucky

ROBERT B. ADERHOLT, Alabama

STENY H. HOYER, Maryland

CARRIE P. MEEK, Florida

DAVID E. PRICE, North Carolina

NOTE: Under Committee Rules, Mr. Livingston, as Chairman of the Full Committee, and Mr. Obey, as Ranking
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

MICHELLE MRDEZA, BOB SCHMIDT, JEFF ASHFORD, and TAMMY HUGHES,
Staff Assistants

PART 5

**STATEMENTS OF MEMBERS OF CONGRESS AND OTHER
INTERESTED INDIVIDUALS AND ORGANIZATIONS**



U.S. GOVERNMENT PRINTING OFFICE

47-740 O

WASHINGTON : 1998

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-056447-6

Statement on

Proposed Removal of the National Firearms Registration and Transfer Record
from the Custody of the Bureau of Alcohol, Tobacco and Firearms
and its Proposed Relocation to the Department of Justice

by

Eric M. Larson¹

Presented

before the

Subcommittee on Treasury, Postal Service and General Government
of the
Committee on Appropriations
House of Representatives

B-307 Rayburn House Office Building
Washington, D.C.

April 3, 1998

¹Eric M. Larson is a Contributing Editor to the *Official R. L. Wilson Price Guide to Gun Collecting*, the *Blue Book of Gun Values*, the *Standard Catalog of Firearms*, the *Official Price Guide to Antique and Modern Firearms*, and has been a Life Member of the National Rifle Association of America since 1968. His research has been published in *The Gun Report*, *CADA Gun Journal*, *Machine Gun News*, *Guns Illustrated*, *Small Arms Review*, *The Gun Journal*, and he is author of *Variations of the Smooth Bore H&R Handy-Gun: A Pocket Guide to Their Identification*. A journalist and demographer by training, he graduated with honors in 1974 from the University of Texas at Austin, where he also earned a Ph.D. and three master's degrees.

Mr. Chairman and Members of the Subcommittee:

My name is Eric M. Larson. I testified before this Subcommittee in 1996, and in 1997, and am doing so again this year, regarding serious errors in the National Firearms Registration and Transfer Record (NFRTR). The NFRTR was established under the National Firearms Act (NFA) of 1934. The NFA is designed to control firearms thought to be commonly used by criminals by requiring registration of the firearms, and using prohibitive taxes to reduce their manufacture, distribution, and ownership. It is a harsh federal law to discourage illegally manufacturing, selling, or possessing hand grenades, machine guns, and similar weapons, and the cutting down of conventional shotguns or rifles (regardless of their caliber) to make concealable firearms. Any violation of the NFA is a felony, carrying a penalty of up to a \$10,000 fine and 10 years imprisonment upon conviction.

The NFRTR is a permanent record of all transactions involving NFA firearms in the United States. It is currently located within the Bureau of Alcohol, Tobacco and Firearms (BATF), which under current law is responsible for administering the NFA. The NFRTR contains a variety of records, including the original registrations and subsequent transfers of NFA firearms to state and local law enforcement officers, state and local museums, private citizens who are legally qualified to own such firearms and are not prohibited from doing so under state or local law, of transfers to and from federally licensed NFA firearms dealers, and records of NFA firearms manufacture by federally licensed NFA firearms manufacturers. Because of the severe penalties for violations of the NFA, accurate record-keeping is essential to avoid unjust prosecutions, and the unlawful seizure of validly registered NFA firearms.

I am appearing before you today to respectfully ask the Subcommittee to consider removing the NFRTR from custody of the Bureau of Alcohol, Tobacco and Firearms (BATF), and to permanently reassign its functions to the Department of Justice. As you probably know, the Department of Justice is responsible for the "instant background check" of persons who wish to purchase handguns, which is scheduled to go into effect this year. Therefore, it would be relatively easy to incorporate the NFRTR into the existing infrastructure, and modifications to allow for administration of the NFRTR would likely be very minor. Removal of the NFRTR from BATF will also place these records within a professional organization that is capable of maintaining them, and probably will require a badly needed 100% record verification. The BATF (and, possibly, other law enforcement agencies) would continue to have access to the information in the NFRTR, for legitimate law enforcement purposes.

My knowledge about errors in the NFRTR evolved from the study of certain rare firearms that fell under the NFA in 1934 largely for technical reasons, not because they were commonly associated with criminal activities. Today, these firearms are historical artifacts that reflect a bygone era when there were no federal controls, and virtually no state controls, on firearms design. Thus, they represent a unique niche in U.S. firearms genealogy, because there is nothing else like them, and they are highly prized by collectors. As my research on these guns was published in major, reputable firearm reference books, collectors and persons who had inherited these firearms began contacting me. The BATF has represented my sole interest in discussing errors in the NFRTR to seek the

removal of these firearms from the NFA as collector's items, but that is not correct. In fact, my interests and this situation evolved as the result of my discovery of serious errors in the NFRTR, and my 1996 testimony makes that absolutely clear. It is in BATF's interest to try and focus attention away from errors in the NFRTR or impugn my motives, and that is what BATF has been doing.

BATF is correct in portraying me as a collector, but what changed my interest is the fact that some people who inherited some of these firearms told me that BATF alleged the firearms were not registered, then declared the firearms were contraband and must be forfeited to the Government; and apparently, some were. In other instances, people who were enraged by this situation told me they scoured their premises, found a valid registration document—and showed it to BATF. Then, allegedly, BATF said a mistake had been made and the NFRTR was amended to register the firearm to the new, lawful owner. In every instance, the people involved told me they were afraid of BATF, and didn't want to be identified, but wanted me to know this information. While there certainly is a "collector's item" interest in this situation, the loss or destruction of firearm registration records by the BATF clearly places my concerns in another dimension that is removed from gun collecting.

I was aware of these allegations for a number of years, but there seemed no way of proving them one way or the other because of the veil of secrecy that shields NFRTR records from public disclosure. The reason is that the NFA itself prohibits their disclosure as does the Tax Code of 1986, under which the BATF has deemed them to be "tax returns." The BATF also apparently uses the "tax return" angle to cover up wrongdoing by its agents and employees.

From my perspective, the situation regarding the firearms I was researching changed dramatically in March 1996, for two reasons.

First, I was asked by L. Richard Littlefield, then President of the Collectors Arms Dealers Association (CADA) to testify before this Subcommittee about getting a more reasonable treatment, as the law allows, for the smooth bore H&R Handy-Gun, Marble's Game Getter Gun, and similar firearms that came under the NFA in 1934 mainly for technical reasons. I'd known Dick since about 1989, and he was aware of my research, but CADA's testimony was not limited to these firearms. Indeed, one of the reasons CADA testified in 1996 was to ask for a change in the law to allow federally licensed firearms dealers to buy or transfer "curio or relic" firearms among themselves at gun shows. The law itself at that time was silent on the issue (that is, nothing in the legal code prohibited such transactions), but BATF took the position that such transactions were illegal, and nobody wanted to incur the legal expense of fighting the BATF. So, the law was ultimately changed to allow federally licensed firearms dealers to be able to buy and sell guns from each other at gun shows.

The second reason was that for the first time, valid and reliable evidence of the mismanagement and destruction of NFRTR records became available. This is a document that has been called the Busey Transcript, which was released under a Freedom of Information Act Request. This document is the record of a videotaped training session at BATF headquarters which occurred on October 18, 1995. At the session the then-Chief of the National Firearms Act Branch, Mr. Thomas Busey, stated that the error rate in the NFRTR was 50% when he first assumed his duties the year before; and that

BATF always testified in court that the NFRTR was 100% accurate, although that was not 100% true. Toward the end of his presentation, Mr. Busey discussed correcting a number of errors that he described, and stated:

What we're going to do is we're going to go back, starting with the latest entry and working back to the oldest entry and review every hard copy of every document with its entry into the data base to see if it's correct. I think originally we figured this would take 781 man days to do this with five people sitting at a computer eight hours a day.

But it's the only way that we can feel that we can ever get it completely accurate. *It was fine to begin putting everything in accurate a year ago or at least be guaranteed a year ago it was correct, but what are you going to do with the entries that go back to the early '80s and the '70s and the '60s?* [boldface added for emphasis].

It was an astonishing admission. Based on Mr. Busey's statements, and information about alleged errors in the NFRTR from firearms collectors, I analyzed statistical data that BATF had publicly released each year on NFRTR transaction activities since approximately 1990. In my 1996 testimony, I documented obvious errors in the NFRTR, including the fact that every year since at least 1992, the BATF reported registrations of firearms during years and in categories which they cannot logically or legally exist, and the apparent addition of firearms to the NFRTR for years before 1971. I also included a copy of the Busey Transcript in the Appendix to my 1996 testimony.

On May 21, 1996, less than a month after my testimony, U.S. District Judge John A. MacKenzie dismissed five convictions for nonregistration of NFA firearms on appeal, declaring that the NFRTR records were too unreliable to support a conviction. In fact, a BATF Special Agent, Mr. Gary N. Schaible, testified that BATF employees could in fact have destroyed the documents in question. The U.S. Attorney prosecuting the case declined to cross-examine, and the BATF has not appealed the dismissals. The BATF wants this case to go away. As I will show it isn't going to go away, because it is the object of continuing action in Federal Court.

Astonishingly, the BATF made no apparent effort to correct the problems that I identified, because I detected them in the next round of data it released the following year. So, I returned to testify before this Subcommittee nearly a year later using these data, and this time extensively documented credible instances of apparent mismanagement, misconduct and criminal wrongdoing by BATF. On May 10, 1997, I formally complained to the Treasury Department Inspector General (IG) about several specific events, but on June 5, 1997, the IG wrote and told me that it was declining to investigate—and was referring my complaint to BATF. In an effort to try and prevent what surely would have been another coverup, I contacted the House Committee on Government Reform and Oversight. In early October 1997, the Committee ordered the IG to: (1) independently audit the BATF's firearm registration practices; and (2) evaluate the BATF's internal report. The Treasury Department Inspector General has not, to the best of my knowledge, yet reported its findings to the House Committee.

Although the BATF internal report was completed in September 1997, I was unable to obtain a copy until late January 1998. The results were no surprise: the BATF completely exonerated itself, and its responses to my allegations seem to raise public scenery chewing to a new level. In response to statistical evidence I presented that BATF was adding firearms to the NFRTR after being confronted by their owners with valid registration documents, BATF stated that such apparent increases "may be" due to reclassifications of forms. Yet, when I asked NFRTR custodian Gary N. Shaible in April 1996 whether BATF had added firearms to the NFRTR because lawful owners presented valid documents of which BATF had no record, he stated: "Yes. I assume that's happened." Thus, it appears likely that at least some people have been unjustly prosecuted for possessing a lawfully registered firearm, for which BATF lost or destroyed the registration documents.

In an internal 1981 BATF report I obtained under a Freedom of Information Act request, but which BATF apparently released to me by mistake (I hadn't known it existed, and had not requested it), a long-time BATF employee stated that some firearms were registered to people who would then have been 112 years old—and that BATF knew they were dead! BATF's data show that of 14,259 NFA firearms registered from 1934 to 1939, 11,175 (78%) are still owned by the same person or organization who registered or obtained them that year. A person who was 21 years old in 1939 would be 80 years old in 1998. Is it safe to conclude that most of them are now dead?

Of the 58,904 firearms registered during the 1968 amnesty, 50,314 (85%) are still owned by the same people. Someone who was 21 years old in 1968 would be aged 51 in 1998; a 65-year-old would today be 95. At least some of these people are dead. Yet, BATF states in its internal report that some firearms may be registered to dead people, but BATF has no knowledge of this.

Mr. Chairman, each of the 58,904 amnesty registration forms has a social security number on it; it was a required data field for the registration to be accepted. It would take no more than a few hours to determine from the Social Security Death Index exactly how many of these 58,904 NFA firearms are registered to people who are dead. What does this say about the ability of the Government to keep track of firearms it believes are dangerous?

And how pervasive is this problem? Well, according to the most recent data BATF has publicly released (as of December 31, 1996), exactly 108,556 persons have never legally transferred the ownership of machineguns, bazookas, sawed-off shotguns, hand grenades, anti-tank rifles, and similar devices that they registered or acquired by transfer in or before 1971. Inasmuch as the NFA was enacted in 1934, this corresponds to ownership periods of from 27 to 64 years. Someone who registered an NFA firearm at age 65 in 1934 (the specific example cited by the BATF employee in the 1981 internal report) would have been 112 years old in 1981; in 1998, such a person would be 129 years old. Is this sound management on the part of the BATF? I think not.

I could go on at some length about these and similar issues, and have reserved them for the attachments to my testimony, but feel that I must discuss two more situations here. One of them potentially affects me personally; the other is valid and reliable evidence of both perjury and an attempt by BATF to continue to try and cover up errors in the NFRTR.

After my April 1996 testimony, through a series of Freedom of Information Act requests, I discovered that four firearms in my personal collection were apparently registered or transferred illegally by the BATF years before I lawfully acquired them. All of these firearms are smooth bore H&R Handy-Guns, and bear serial numbers 5592, 29691, 50885, and 53637. Two of them are new-in-box, are quite valuable, and came from the H&R Factory Collection. I documented this in my April 1997 testimony. As the attachments to my testimony today document, on January 31, 1998, I formally requested a statement from Nereida W. Levine, Chief of the National Firearms Act Branch, asking if the BATF plans to seize these firearms as contraband, and undertake a forfeiture action. In a letter dated March 3, 1998, Chief Levine confirmed what I already knew—namely, that the NFRTR shows that the firearms are legally registered to me, a question that I did not ask.

The question Chief Levine left unanswered, and which I re-asked in an immediate followup letter dated March 6, 1998, is whether the BATF considers these specific firearms as subject to seizure and forfeiture. I have received no response to this letter to date, and I don't believe it is because Chief Levine is unable to read. I think I have received no response because I have placed BATF between a rock and a hard place; namely, if BATF declares the firearms are contraband because BATF itself illegally registered or transferred them, that means the BATF has admitted at least some of what I have alleged, which is that the accuracy and integrity of the NFRTR has been compromised.

I frankly do not know if the BATF will move to seize these firearms after all this blows over. If so, I'll have documents to show to the U.S. Attorney who prosecutes that action, demonstrating that I have repeatedly attempted to deal with this matter as a responsible citizen by contacting the BATF, as well as my elected representatives in the Congress. Mr. Chairman, Members of the Subcommittee, if you legally bought something in a transaction that the Government approved years ago, how would you feel about having your Government forcibly invade your home, seize those items, and go to Federal Court to permanently take them away from you without any compensation? That is a tension that I have lived with for more than a year now, and I can tell you that I don't like it. Would you?

The second situation is evidence of both perjury and an attempt to continue to cover up errors in the NFRTR. Specifically, Mr. Schaible told a completely different story in the 1997 BATF internal report than he did under oath in federal court. In the 1997 internal BATF report, Mr. Schaible stated under oath that the registration documents I was referring to in my complaint were thought to have been destroyed some 8 years ago by contract employees, not BATF employees. Yet, my question specifically referred to the May 21, 1996, testimony, which Mr. Schaible gave under oath in Federal Court, and referred specifically to the BATF employees that Mr. Schaible stated could have destroyed the documents in 1994, which is considerably later than the 1986-87 time frame BATF cites. I have repeatedly gone over each word of each document, and I can find no obvious explanation for this blatant discrepancy. I understand that David N. Montague, Esq., a private attorney representing the defendant in this case, filed a Writ of Habeas Corpus on March 25, 1998, in federal court regarding the single outstanding conviction based, in part, on the discrepant testimony of Mr. Schaible. It seems to me as though the BATF is continuing to try and cover all of this up.

In an article entitled "Institutional Perjury," published in the October 1996 issue of *Voice for the Defense*, author James H. Jeffries III, Esq., stated that "the Busey tape was clearly exculpatory and clearly implicated every National Firearms Act prosecution and forfeiture in living memory." He concluded:

All across the country Assistant United States Attorneys, United States District Judges, and other federal and local law enforcement officials are going to learn what most defense lawyers and gun dealers have known for years and what the aftermath of Waco and Ruby Ridge starkly illustrated: BATF officers and agents lie, dissemble and cover up on an institutionalized basis. These are not aberrations; they are an institutional way of life. Just who is the criminal in these cases?

For the above reasons, and the documented evidence I have presented in my 1996 and 1997 testimonies, as well as in the self-explanatory attachments to this testimony, I would like to respectfully ask the Subcommittee to consider removing the NFRTR from custody of the Bureau of Alcohol, Tobacco and Firearms (BATF), and to permanently reassign its functions to the Department of Justice. The Department of Justice is the entity which actually conducts all of the background checks that the BATF, and other law enforcement agencies, use at trial for violations of the law, and has a much better system than does the BATF for assuring the accuracy and integrity of those records. In contrast, the BATF has destroyed NFRTR records, lied about it, and continued to lie about it.

As you know, the "instant background check" for persons who wish to purchase handguns is scheduled to go into effect later this year, and the Department of Justice is responsible for doing these record checks. Moving the NFRTR from BATF to the Department of Justice would mean that BATF (or its successor—I am hopeful of change in this area) would still certainly have access to these records for legitimate law enforcement purposes; however, the BATF could no longer illegally manipulate or destroy these records. The Department of Justice would have no institutional reason to do so and, indeed, would likely be more objective about maintaining their accuracy and integrity. In my judgement, by its past actions and continuing efforts at trying to cover up its wrongdoings, the BATF has forfeited any right to custody of the NFRTR.

When I was a student in the first Intergovernmental Relations class that the late, great, Barbara C. Jordan taught in 1979 at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, she told us:

"Government by the people is not a spectator sport."

Enough said, and I thank you all for the opportunity to present this information.

Statement on

Proposed Removal of the National Firearms Registration and Transfer Record
from the Custody of the Bureau of Alcohol, Tobacco and Firearms
and its Proposed Relocation to the Department of Justice

APPENDIX AND TESTIMONIAL EXHIBITS

by

Eric M. Larson¹

Presented

before the

Subcommittee on Treasury, Postal Service and General Government
of the
Committee on Appropriations
House of Representatives

B-307 Rayburn House Office Building
Washington, D.C.

April 3, 1998

¹Eric M. Larson is a Contributing Editor to the *Official R. L. Wilson Price Guide to Gun Collecting*, the *Blue Book of Gun Values*, the *Standard Catalog of Firearms*, the *Official Price Guide to Antique and Modern Firearms*, and has been a Life Member of the National Rifle Association of America since 1968. His research has been published in *The Gun Report*, *CADA Gun Journal*, *Machine Gun News*, *Guns Illustrated*, *Small Arms Review*, *The Gun Journal*, and he is author of *Variations of the Smooth Bore H&R Handy-Gun: A Pocket Guide to Their Identification*. A journalist and demographer by training, he graduated with honors in 1974 from the University of Texas at Austin, where he also earned a Ph.D. and three master's degrees.

251 Napolilli Lane
Fairbanks, Alaska 99712

2/19/98

Dear Chairman Burton,

My name is Noel Napolilli. I am a retired public school teacher of 28 years. I am writing to you regarding the seizure of my German MP-40, by BATF, in 1993.


I recently learned that my case was included in formal testimony last April before the House Subcommittee on Treasury, Postal Service and General Government Appropriations. I also discovered that it was specifically brought to the attention of Ms. Carol Bergen of the Treasury Department Office of Inspector General last October, although she has not contacted me.

Therefore I will not go into the legalities regarding my case here. I believe that the facts will speak for themselves. I simply would ask for your help in encouraging BATF to return my MP-40.

As you know, I sued BATF for the return of my MP-40 (serial 4212) when they refused to return it to me after I had voluntarily sent it to them for review of the firearm and it's registration paperwork (Form 3). I sent these to them because they questioned the fact that the MP-40 was legally registered. Their laboratory analysis determined that my paperwork was not a forgery, yet they still would not return my firearm or acknowledge its registration, because they had no record of it in their data base. In 1994, after many months of litigation, I dropped the suit against the advice of my councils. This was because my wife and I were fearful of BATF reprisals, the seizure of my sizable firearm collection, being "black balled" in future transactions requiring BATF approval and being harassed by constant "inspections". There was substantial evidence that these things would likely occur based on other incidents with which I was familiar. I also had to consider that the cost of continuing litigation against BATF was going to far exceed the value of the firearm involved. I was very upset about having to drop this case at the time. It became worse after I learned that BATF employees had destroyed other registration documents to avoid having to work on them and that their data base approached a 50% error rate. I feel that this entire incident was unnecessary and cavalier on BATF's part.

I would respectfully request your assistance in anyway you would be willing to provide.

Sincerely,


Noel Napolilli

cc

Chairman Orrin G. Hatch Committee on the Judiciary
Chairman Jim Kolbe Subcommittee on Treasury, Postal Service and General Government

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT FAIRBANKS

NOEL E. NAPOLILLI,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	F93-0037 (JKS)
UNITED STATES OF AMERICA,)	
)	COMPLAINT FOR RETURN
Defendant.)	OF PROPERTY

COMPLAINT

Plaintiff, Noel E. Napolilli, by undersigned counsel, brings the following complaint and for his cause of action alleges and complains as follows:

1. The plaintiff, Noel E. Napolilli, is a natural individual and an adult citizen of the State of Alaska and the United States of America, residing at 251 Napolilli Lane, Fairbanks, Alaska 99712, within the jurisdiction of this Court.

2. The defendant, United States of America, is the national sovereign and may be found within the jurisdiction of this Court.

3. This is an action for the return of personal property of the plaintiff wrongfully and illegally seized from the plaintiff by the United States and wrongfully and illegally withheld by the United States from the plaintiff. The events and acts complained of herein occurred in the State of Alaska and therefore within the jurisdiction of this Court.

4. The Court has jurisdiction over the parties to and the subject matter of this action by virtue of the provisions of Sections 1331, 1346(a)(2), 1356, 2201 and 2463 of Title 28 of the United States Code; Sections 5872(b) and 7323 of the Internal Revenue Code of 1986, Title 26 of the United States Code; Section 924(d)(1) of Title 18 of the United States Code and Federal Rule of Criminal Procedure 41(e); and the Court's equitable and anomalous jurisdiction.

5. Venue is proper in this judicial district by virtue of the provisions of Sections 1391(b) and 1402(a)(1) of Title 28 of the United States Code.

6. The plaintiff, Noel E. Napolilli, is, and at all times pertinent to this complaint was, licensed by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury (hereafter "BATF"), an agency and instrumentality of the defendant United States of America, as a dealer in firearms, doing business as Nap Armament, a sole proprietorship. He is, and at all times pertinent to this complaint was, a BATF Class 3 Special Occupational Taxpayer, that is, one who may engage in the purchase and sale of machineguns and other firearms as defined by Section 5845 of the National Firearms Act of 1934, as amended, 26 U.S.C. section 5845, Internal Revenue Code of 1986.

7. On or about July 13, 1985, the plaintiff purchased from a federally licensed Fairbanks, Alaska, firearms dealer a federally registered MP-40 machinegun, caliber 9 millimeter, serial number 4212 (hereafter "the firearm"), a World War II era German military machinegun commonly but mistakenly referred to as a "Schmeisser."

8. On or about August 26, 1985, the National Firearms Act Branch of BATF in Washington, D.C., through its authorized representative Gary Schaible, approved the transfer of the firearm from the seller to the plaintiff by execution of the required BATF Form 3, "Application for Tax-Exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer."

9. Following the official registration and transfer approval described in paragraph 8, above, plaintiff took possession of the firearm and remained in peaceful, uninterrupted and lawful possession of it until on or about February 3, 1992. Plaintiff has remained the sole and lawful owner of the firearm from July 13, 1985, through the date of filing of this complaint.

10. In September of 1991, BATF conducted a firearms dealer compliance inspection of the plaintiff's business. The inspection was satisfactory, with the exception that plaintiff had in his possession four National Firearms Act firearms (including the MP-40 which is the subject of this action) which the BATF inspector's inventory did not show as being registered to the plaintiff.

11. BATF was ultimately able to determine that its records were incorrect as to three of the four questioned firearms, and that those three were in fact lawfully registered to and properly in the possession of the plaintiff. BATF was apparently unable to determine from its own records however that the MP-40 was lawfully registered to the plaintiff (or to anyone).

12. In December 1991, plaintiff was requested by the National Firearms Act Branch of BATF in Washington, D.C., to

provide it with a copy of his Form 3 transfer and registration of the firearm and the plaintiff did so.

13. BATF Forms 3 are required by Treasury Regulations to be submitted in duplicate original. When the transfer and registration is approved, one original Form 3 remains with BATF as part of the National Firearms Registration and Transfer Record (26 U.S.C. section 5841(a)) and the second original is returned to the transferor for transmission with the firearm to the transferee. The transferee of a National Firearms Act firearm must retain possession of the duplicate original Form 3 so long as the firearm exists and is registered to him/her.

14. Confronted with a copy of an approved transfer and registration form which it apparently could not find in its own records, BATF took the position that the Form 3 must be a forgery. BATF then demanded the original form from the plaintiff with the expressed intention of submitting it to a BATF laboratory analysis. Plaintiff provided BATF with his original Form 3 as well as the firearm itself.

15. BATF's laboratory examination determined that the Form 3 was not altered or fabricated. The necessary implication of BATF's laboratory examination result, and of its course of behavior, is that BATF has lost or destroyed its own records of the firearm's provenance which BATF is mandated by 26 U.S.C. section 5841(a) to maintain.

16. BATF's lost or destroyed records would have consisted under the National Firearms Act of one of the following:

(A) A Form 1, "Application to Make and Register a Firearm" (non-commercial manufacture by an individual); or

(B) A Form 2, "Notice of Firearms Manufactured or Imported" (manufacture by a licensed manufacturer or importation by a licensed importer); or

(C) A Form 6, "Application and Permit for Importation of Firearms, Ammunition and Implements of War (not for use by Members of the United States Armed Forces)" (importation by a commercial importer); or

(D) A Form 6, Part II, "Application and Permit for Importation of Firearms, Ammunition and Implements of War (for use by Members of the United States Armed Forces) (importation by a non-commercial, U.S. service-member importer); or

(E) A Form 10, "Application for Registration of Firearms Acquired by Certain Governmental Entities" (by a law enforcement or military organization); or

(F) An IRS (ATF) Form 4467, "Registration of Certain Firearms during November 1968" (registration of existing but unregistered firearms during a thirty-day amnesty period in 1968); as well as some combination of the following forms for each successive registration and transfer:

(G) A Form 3, "Application for Tax-Exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer," (a tax-exempt transfer between special occupational taxpayers, i.e., importers, dealers and manufacturers); and/or

(H) A Form 4, "Application for Tax Paid Transfer and Registration of Firearm," (a tax-paid transfer to an individual who is not an importer, manufacturer or dealer); and/or

(I) A Form 5, "Application for Tax Exempt Transfer and Registration of a Firearm," (a transfer from a decedent's estates or a law enforcement organizations). In summary, the missing BATF records would show the complete history of the firearm since its manufacture or importation into the United States.

17. Undeterred by its inability to establish a forged registration or to locate its own registration records, BATF submitted the firearm to a technical examination and concluded that the firearm must have, at some undetermined time in the past, by person or persons unknown, been falsely registered by the original registrant as "remanufactured," a category of registration whereby a firearm previously rendered legally inoperable is restored to operating condition and registered or reregistered as an operable National Firearms Act firearm.

18. BATF has no evidence the firearm in question was originally registered as "remanufactured," or that it was otherwise registered improperly or unlawfully, and its determination to that effect is arbitrary, capricious and without foundation in fact or law. Moreover, BATF has lost or destroyed the original registration records, which it is mandated by law to retain and preserve, and which would establish beyond any question how the firearm was originally registered.

19. Purchasers of registered National Firearms Act firearms, such as the plaintiff, have no legal or practical means of determining the pedigree of a registered firearm and are totally at the mercy of BATF's approval of the transfer application and

registration (BATF Form 3, 4 or 5) by which the purchasers obtain authority to receive and possess the firearm. BATF refuses to disclose to subsequent registrants the prior registration and transfer forms pertaining to any National Firearms Act firearm, citing the taxpayer privacy provisions of the Internal Revenue Code, 26 U.S.C. section 6103. Thus, purchasers/transferees of National Firearms Act firearms are totally at the mercy of BATF's competence and diligence, or lack thereof, in obtaining valid and permanent possession of a validly registered firearm, and in being able to subsequently effect a legal transfer of such firearm. By their very nature, legally restricted and often of historical significance, National Firearms Act firearms ordinarily are valued at thousands of dollars each.

20. BATF is barred by its own violation(s) of law in losing or destroying required records from challenging the original registration of plaintiff's firearm and from drawing a single negative inference of improper registration from several possible types of registration, all others of which would be lawful and proper.

21. BATF is estopped from challenging the original registration of plaintiff's firearm by virtue of the approvals of the firearm's registration and transfer to the plaintiff, and to plaintiff's predecessor owner(s) and registrant(s).

22. In or about March 1992 BATF advised the plaintiff that it was refusing to return the firearm and that BATF intended to administratively forfeit the firearm as "contraband."

23. Despite repeated demands by the plaintiff, by counsel for plaintiff, and by members of Alaska's congressional delegation, BATF has refused to return the firearm. BATF's refusal constitutes an illegal seizure of the firearm and a taking of plaintiff's property without due process of law.

24. The United States is mandated by law to commence any "action or proceeding for the forfeiture of firearms ... within one hundred and twenty days of such seizure." 18 U.S.C. section 924(d)(1). The retention of the firearm by the United States and its failure to commence such a forfeiture action or proceeding is a denial of due process of law and an unconstitutional taking of plaintiff's property. The United States has lost any jurisdiction over the firearm which it might otherwise have had.

WHEREFORE, the plaintiff requests the following relief:

1. A declaratory judgment that BATF's seizure of the firearm and its refusal to return it are arbitrary, capricious and unlawful.
2. A determination that the United States is estopped by its conduct from determining that the firearm is not lawfully registered and properly in the possession of the plaintiff.
3. A determination that the United States has violated the provisions of the Firearm Owners' Protection Act of 1986, 18 U.S.C. section 924(d) (1), and is barred from forfeiting the firearm.
4. An order requiring the United States to immediately return the firearm to the plaintiff.
5. An award of the plaintiff's costs, expenses and reasonable attorney fees incurred in prosecuting this action.
6. A judgment for such other and further relief as is just and proper.

JAMES H. JEFFRIES, III
 3019 Lake Forest Drive
 Greensboro, North Carolina 27408
 Telephone: (910) 282-6024

LYNN E. LEVENGOOD
 Downes, MacDonald & Levengood
 1008 16th Avenue, Suite 200
 Fairbanks, Alaska 99701
 Telephone: (907) 452-5196
 Counsel for Plaintiff

Institutional Perjury

By James H. Jeffries, III

On October 18, 1995, Thomas A. Busey, then Chief of the National Firearms Act Branch of the Bureau of Alcohol, Tobacco and Firearms (hereafter "BATF") made a videotaped training presentation to BATF Headquarters personnel during a roll call training session. "Roll call training" is weekly or periodic in-house training for BATF officials — a routine show-and-tell whereby bureaucrats learn about each other's duties and functions.

Busey's National Firearms Act Branch administers the National Firearms Act of 1934,¹ the taxation and regulatory scheme governing machineguns, silencers, short-barreled rifles and shotguns, destructive devices, etc. In his capacity of NFA Branch Chief Busey was the official custodian of the National Firearms Registration and Transfer Record (hereafter "NFR&TR") mandated by 26 U.S.C. 5841.

Busey's presentation was anything but normal, routine or customary. In describing the NFR&TR, Busey made the startling revelation that officials under his supervision routinely perjure themselves when testifying in court about the accuracy of the NFR&TR.

Every prosecution and forfeiture action brought by the United States and involving an allegedly unregistered NFA firearm requires testimony under oath by a duly-authorized custodian of the NFR&TR that after a diligent search of the official records of which he/she is custodian, no record of the registration of the

firearm in question was found (or was found but showed a different registrant than the person being prosecuted).² An alternative method of proving the same facts is by admission into evidence of a certified copy under official Treasury Department seal of a similar written declaration by the custodian.³ This is a critical element of the government's proof and, according to Busey, occurred 880 times in 1995 alone (presumably Fiscal Year 1995).

Busey began his roll call presentation by acknowledging that "Our first and main responsibility is to make accurate entries and to maintain accuracy of the NFR&TR...." Moments later Busey makes the astonishing statement that

... when we testify in court, we testify that the data base is 100 percent accurate. That's what we testify to, and we will always testify to that. As you probably well know, that may not be 100 percent true.

Busey then goes on for several minutes describing the types of errors which creep into the NFR&TR and then repeats his damning admission:

So the information on the 728,000 weapons that are in the data base has to be 100 percent accurate. Like I told you before, we testify in court and, of course, our certifications testify to that, too, when we're not physically there to testify, that we are 100 percent accurate.

How bad was the error rate in the NFR&TR? Busey again:

... when I first came in a year

ago, our error rate was between 49 and 50 percent, so you can imagine what the accuracy of the NFR&TR could be, if your error rate's 49 to 50 percent.

Does anyone recall the phrase, "Hey, close enough for government work"?

Consider this matter in its starkest terms: a senior BATF official lecturing other senior BATF officials at BATF national headquarters in Washington, D.C., declares openly and without apparent embarrassment or hesitation that BATF officers testifying under oath in federal (and state) courts have routinely perjured themselves about the accuracy of official government records in order to send gun-owning citizens to prison and/or deprive them of their property. Just who is the criminal in these cases?

All this was too brazen for even some BATF officials to stomach. Acting on tips from several BATF officials (there are honest men and women in government, even in BATF), I promptly filed a Freedom of Information Act demand precisely describing the Busey tape. The first reaction was predictable. After reviewing the incriminating tape, BATF officials discussed whether they could get away with destroying it. Wiser heads prevailed; obviously any outsider who knew of the tape probably would learn of its destruction — and I would have. Or perhaps all the official shredders were on loan to the White House.

After much tooting and froing with a dismayed Department of Justice a transcript of the Busey tape was sent to me in February 1996. The Department of Justice was dismayed because the Busey tape was clearly *Brady* material. Every defense lawyer knows that under the Supreme Court's 1963 decision in *Brady v. Maryland*, 373 U.S. 83, the government is required in all criminal prosecutions to provide the defense, in advance of trial, with any evidence tending to show the defendant's innocence. Failure to do so can result in dismissal of an indictment, reversal of a conviction, or other sanctions. Willful failure to produce *Brady* material can constitute contempt of court, professional misconduct, or even a crime.

The Busey tape was clearly exculpatory and clearly implicated every National Firearms Act prosecution and forfeiture in living memory. Worse yet, Busey was only the tip of the iceberg. When the fog had cleared Justice learned that the NFR&TR inaccuracy problem had been the subject of internal BATF discussion since at least 1979. BATF's files were replete with minutes of meetings, statistical studies, memoranda, correspondence, etc., admiring the problem. The only thing missing was any attempt to correct the problem, or to reveal it to anyone outside the agency.³

Justice has now commenced the painful chore of advising every NFA defendant in the country of the situation. It did this with a recent mass mailing by United States Attorneys to defense lawyers and defendants of relevant BATF documents, including the Busey transcript.

The direct consequences of this institutional perjury are just now beginning to occur. In Newport News, VA, on May 21, 1996, United States District Judge John A. MacKenzie, after reviewing the Busey transcript, promptly dismissed five counts of an indictment charging John D. LeaSure with possession of machineguns not registered to him.⁴ LeaSure, a Class II NFA manufacturer,⁵ had received BATF transfer

approval for the five guns, but then decided to void the transfers and keep the guns, as he was legally permitted to do. He promptly faxed the voided Forms 3 to NFA Branch.⁶

BATF subsequently raided LeaSure and charged him with illegally possessing the five NFA firearms which, according to the NFR&TR, were registered to someone else. The government ignored the fact that on the date LeaSure said he voided the transfers there was a 21-minute call on his toll records from his fax number to NFA Branch's fax number — at a time when he could have had no idea he would one day be prosecuted for continuing to possess the guns. Rather, the prosecution produced NFA Branch firearms specialist Gary Schaible to testify as custodian of the NFR&TR that the government's official records did not show any voided transfers and therefore LeaSure was in illegal possession of the guns.⁷

In essence Schaible was testifying that "We can't find an official record and therefore the defendant is guilty." What we now know is that Schaible should have testified that "We can't find half our records — even when we know they're there — and therefore we're not sure if anyone is guilty."

The government's case was not aided when Schaible was forced to admit on cross-examination that two NFA Branch examiners were recently transferred because they had been caught shredding NFA registration documents in order to avoid having to work on them.⁸ Note that they were "transferred." Not disciplined. Not fired. Not prosecuted. Not destroyed in place. Transferred. Just who is the criminal in these cases?

It is too early to predict how many new trials, appeals and habeas corpus actions will result from this affair. Also of importance is the number of convicted felons presently suffering legal disabilities¹¹ from flawed firearms convictions and what effect the Busey disclosures will have on their situation.

The indirect consequences of BATF's conduct will not be so readily apparent but are potentially devastating. All across the country Assistant United States Attorneys, United States District Judges, and other federal and local law enforcement officials are going to learn what most defense lawyers and gun dealers have known for years and what the aftermath of Waco and Ruby Ridge starkly illustrated: BATF officers and agents lie, dissemble and cover up on an institutionalized basis. These are not aberrations; they are an institutionalized ethic, an organizational way of life. Just who is the criminal in these cases?

CLASSIFIED

FORENSIC DOCUMENT EXAMINER

Board Certified: Certified Fraud Examiner, 25+ years experience. Expert identification of hand writing, ink, paper, typing, etc. Analysis of documents in all courts including Federal and military, Civil and Criminal. Member AAFEP, IAF, etc. Upon request, FREE K&N & ASSOCIATES, Box 37079 El Paso 79937. Call (915) 591-9457. Fax (915) 598-9595.

Lawyers and defendants in NFA cases who have not received the "Bussey" package from the United States Attorney should be making prompt demands — both for the package and for an explanation of why it was not timely produced. I am acting as an informal clearing house for these matters. Those lawyers or dealers with questions or problems, or with new information, involving the Bussey phenomenon, or its continuing aftermath, are invited to contact me at (910) 282-6024.

[The author is a retired U.S. Department of Justice lawyer and a retired colonel in the Marine Corps Reserve practicing firearms law in Greensboro, NC. He is a 1959 graduate of the University of Kentucky and a 1962 graduate of the UK College of Law, where he was Note Editor of the Kentucky Law Journal. He is an associate member of TCDLA and holds BATF in minimum high regard.]

- 1 Public Law No. 474, ch. 757, 48 Stat. 1236-1240 (Act of June 26, 1934), 26 U.S.C. 1132-1132q; as amended by Act of April 10, 1936, ch. 169, 49 Stat. 1192; as codified by chap. 736, Act of August 16, 1954 (Internal Revenue Code of 1954), 68A Stat. 721-729; as amended by Public Law No. 85-859, Title II, 203, 72 Stat. 1427, 1428 (Act of September 2, 1958); as amended by Public Law No. 86-478, 1-3, 74 Stat. 149 (Act of June 1, 1960); as amended by Public Law No. 90-618, Title II, 201, 82 Stat. 1227-1235 (Act of October 22, 1968); as amended by Public Law No. 94-455, 90 Stat. 1834 (Act of October 4, 1976); as amended by Public Law No. 99-308, 109, 100 Stat. 449, 460 (Act of May 19, 1986); and as amended by

Public Law No. 100-203, 101 Stat. 1330 (Act of December 22, 1987); Internal Revenue Code of 1986, Title 26 United States Code, ch. 53, 26 U.S.C. 5801-5872 (Title II of the Gun Control Act of 1968).

- 2 See Federal Rule of Criminal Procedure 27 and Federal Rule of Civil Procedure 44. See also Rules 803(8), 901(b)(7), 902(1), (2), (4), and 1005 of the Federal Rules of Evidence.
- 3 Ibid.
- 4 5 U.S.C. 552.
- 5 The first rule of a bureaucrat is "Never disturb a body at rest." The second, "If I don't do anything, I can't do anything wrong." The third, "When in doubt, mumble."
- 6 United States v. LeaSure, Criminal No. 4:95CR54 (E.D. Va., Newport News Div.).
- 7 "Special Occupational Taxpayers" under 26 U.S.C. 5801 fall into one of three categories: Class III dealers can possess, sell and transfer NFA firearms; Class II manufacturers can, in addition, manufacture and register them; Class I importers can, in addition to all the foregoing, import them. All SOTs are also required to possess Federal Firearms Licenses, which themselves come in six different classifications. Throw in the import and export licenses and permits required, the various taxes imposed, and the state and local licensing and registration schemes involved, the mandatory record-keeping required, and the shipping and transportation limitations concerned, and you have a lawyer's paradise.
- 8 BATF Forms 3 are used to authorize tax-exempt dealer-to-dealer transfers and to re-register the firearm(s) involved to the transferee. There are numerous other transfer and registration forms used depending upon the nature of the transaction, the status of the parties involved, and the type of firearm and its origin.
- 9 Violations of the NFA are all 10-year, \$10,000 felonies. See 26 U.S.C. 5871. NFA firearms, which carry some impressive sticker prices, are also forfeit if used in any violation of the NFA. See 26 U.S.C. 5872.
- 10 We are left to conjecture where the NFA Branch shredder is located in relation to its fax machine.
- 11 In addition to the loss of civil rights imposed on convicted felons by the laws of most states, felons permanently lose the right under federal law to possess firearms, as well as being potentially debarred from service in the armed forces, civil employment in government, receiving security clearances, bidding on federal contracts, etc.

Advanced Criminal Law Seminar

A Novel Approach



Legal Assistants can become Board Certified in Criminal Law through the Texas Board of Legal Specialization.

In anticipation of the Board Certification exam, an Advanced Criminal Law seminar for Legal Assistants will be held in Austin, October 25-26, 1996.

Topics include: Rules of Evidence, Search & Seizure, The Penal Code, Jury Selection, Stress/Case Management, DWI Update, Juvenile Law, Discovery, and Ethics.

Susan Rogers Cooper, a crime novelist will be Friday's featured speaker. Dr. Matthew Ferrara, a clinical and forensic psychologist, will be the featured keynote speaker on Saturday.

If you would like registration information please contact:

Elizabeth Elliott, Law Office of David A. Sheppard
2414 Exposition D-210, Austin, Texas 78703 OR
pho: 512-478-9483, fax: 512-472-8418 e-mail: swr@swsg.com

STAFF

Editor-in-Chief William F. Alston

Managing Editor John C. Denton

Attorney/Editor
Clay Conrad

Executive Assistant/
Program Coordinator Lillian R. Foglie

Administrative Assistant/
Membership Coordinator Shannon M. McIntosh

CHARLES T. CANADY
12th District, Florida

COMMITTEE ON THE JUDICIARY
CHAIRMAN, SUBCOMMITTEE ON
THE CONSTITUTION

COMMITTEE ON AGRICULTURE

2432 RANKINS BUILDING
WASHINGTON, DC 20515-0912
(202) 225-1254

MARKS ALBERT BUILDING
129 SOUTH KENTUCKY AVENUE
SUITE 510
LANSING, MI 48201
(313) 888-2921

Congress of the United States
House of Representatives
Washington, DC 20515-0912

March 11, 1998

Mr. Craig Smith
1519 S Lake Rochelle Dr
Winter Haven, FL 33881-9646

Dear Mr. Smith:

Thank you for contacting me regarding an article alleging mismanagement, misconduct, and criminal wrongdoing by the Bureau of Alcohol, Tobacco, and Firearms (BATF). I appreciate hearing your views on this important issue.

Enclosed is the BATF's response to the article. I hope this information is helpful to you.

As a member of the House Judiciary Committee (which has BATF oversight jurisdiction), I will remember your concerns. Again, thank you for taking the time to contact my office. Please let me know whenever you have concerns regarding issues before the Congress.

Sincerely yours,

Chr.

Charles T. Canady
Member of Congress

CTC:jm

Enclosure



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

FEB 23 1998

FEB 26 1998

Honorable Charles T. Canady
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Canady:

This is in response to your November 13, 1997, request concerning allegations made by Mr. Eric M. Larson of mismanagement, misconduct and criminal wrongdoing by the Bureau of Alcohol, Tobacco and Firearms (ATF). Mr. Larson's allegations were contained in the October 3, 1997 issue of "Gun List." We apologize for the delay in responding to your request.

By way of background, Mr. Larson has been requesting information on the H & R Handy Gun and the Marble Game Getter firearms since approximately 1986 or 1987. Mr. Larson has requested that these firearms be removed from the scope of the National Firearms Act (NFA). Whenever Mr. Larson has contacted ATF with a question or request, ATF has provided the available information. In May of 1997, the Assistant Inspector General (IG) for Investigations, Department of the Treasury, received a letter from Mr. Larson making allegations against various ATF employees. The IG's Office forwarded the letter to the Director of ATF to conduct an appropriate investigation into these allegations. The article contained in "Gun List" references these allegations and suggests that the IG's Office has acted inappropriately in allowing ATF to investigate allegations of misconduct made against the agency.

Initially, we would note that it is the function of ATF's Office of Inspection to investigate allegations of wrongdoing made against ATF employees and that it was entirely proper for the IG's Office to forward Mr. Larson's letter to ATF for investigation. Furthermore, while ATF did conduct an internal investigation into the allegations made by Mr. Larson,

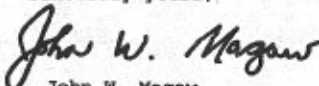
-2-

Honorable Charles T. Canady

the IG's Office also initiated an independent investigation into these allegations and that investigation is still ongoing. Due to this ongoing investigation we are unable to comment further on any action that might be taken with respect to the allegations made by Mr. Larson.

We hope that this information proves helpful in responding to your constituent. Please let me know if we can be of further assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "John W. Magaw". The signature is written in dark ink and is positioned above the printed name and title.

John W. Magaw
Director

GUN TALK

■ David Kewolski

Establishing Bill
Of Rights Day—
December 15

On December 15, 1791, the Bill Of Rights to the United States Constitution was ratified. Now Aaron Zelensky, founder of Jews For The Preservation Of Firearms Ownership wants to immortalize that date and that historic event with a nationally recognized Bill Of Rights Day.

Zelensky believes all the rights we enjoy as Americans are the result of a package envisioned by the founding fathers. As we know, the anti-gun members of our society would like us to accept some rights, give up others, modify still others. Of course, there are some smart, socially aware people out there who want to make those social and personal decisions for us.

As responsible gun owners and Americans, we're capable of making these decisions for ourselves. The criminals, of course, would like the social engineers to have their way. As predators looking for easy victims, they're not a far cry from the very real rights debate does not die. That criminals do not get a license to rob, more and still unarmed citizens. So he's proposing the Bill Of Rights Day as a way to focus on the real issues of liberty in this country.

In the next issue, we'll have more about this proposal.

A 208-page Record
Issue of *Gun List*!

In the last issue, I announced you were holding the biggest issue we had ever produced. That our supporters came back to give you a 208-page issue. Thank you again to advertisers and subscribers.

Colt Special
Issue—Oct. 31
Ad Deadline Is
Sept. 30

GUN LIST

701 East State Street
Joli, WI 54940-0011
(715) 445-2214

THE STANDARD REPORT



■ Ned Schwab

What Happens When The
BATF Breaks The Law?

On April 8, 1997, Eric M. Larson of Takoma Park, Maryland, documented credible instances of mismanagement, misconduct and criminal wrongdoing by the Bureau of Alcohol, Tobacco and Firearms (BATF) in testimony before Congress. His charges concern all firearms owners. But to the only result may be a far-reaching response from BATF. Can we change that?

I've known Eric for five years, and he's a meticulous researcher. His work on antique firearms, like Marlin's Game Getter Gun and the smooth bore H&R Hardy-Gun, is featured in such reputable books as *Standard Catalog of Firearms*, the *Blue Book of Gun Values* and the *Official Price Guide to Antique and Modern Firearms*.

The gun Eric researches and sends guns must be registered with BATF

at that time were registered to persons who would have been 112 years old. The BATF knew they were dead. BATF's most recent data show that of 14,359 NFA firearms registered from 1934-1939, 11,175 (78 percent) are still owned by the same person or organization. Of 38,904 firearms registered during the 1940s, 30,314 (78 percent) are still owned by the same people who registered or obtained them that year. What does this say about the ability of the government to keep track of firearms it believes are dangerous?

BATF Employees Destroy Records In 1996, a federal district court dismissed five convictions for possession of unregistered firearms on appeal after BATF Special Agent Gary N. Schabell testified that BATF employees have

refused Eric's complaint to BATF.

The Treasury Department has not refuted BATF's report on Eric's allegations, but at least two things are wrong. First, there's an obvious omission of interest on the part of BATF: its employees are a party to possible criminal misconduct, and it is in BATF's interest to exonerate itself. Second, the IG isn't doing its job.

The BATF Investigates Itself

The IG's failure to independently investigate these allegations has serious implications for everyone who collects or deals in firearms. Suppose you're a federally licensed collector or dealer, and a BATF Special Agent shows up to do a compliance inspection—checking guns to paperwork, and to look for errors. Can you tell BATF, "Let me check my records and I'll let you know if I've located any law?" Of course not. But what's precious about the IG has told BATF to do in responding to Eric's allegations: despite credible evidence of mismanagement, misconduct and criminal wrongdoing.

If you're disturbed by the way the IG responded to Eric's allegations please write: The Honorable Dan Burton, Chairman, House Committee on Government Reform and Oversight, 2157 Rayburn House Office Building, Washington, D.C. 20515 (202) 225-9474; fax: (202) 225-3974.

GL

"A federal district court dismissed five
convictions for possession of unregistered fire-
arms...a BATF Special Agent testified that
BATF employees destroyed registration
documents rather than working on them."

under the National Firearms Act (NFA) of 1934, enacted to control machine guns and other "gangster weapons," although they have never been identified as weapons favored by criminals.

Eric discovered a 1996 federal court case that proved BATF employees have deliberately destroyed NFA registration documents. The originals were not destroyed for doing so. If a gun owner loses (i.e., accident, house fire or disaster, such as a flood) his or her copy of the registration and BATF loses (or destroys) its copy, the firearm becomes contraband that must be forfeited to BATF. Is the BATF allowing the gun to be re-registered—or is the gun has been in the same family for more than 40 years and never used in a crime?

On April 8, 1997, Eric testified before the House Subcommittee on Treasury, Postal Service and General Government Appropriations, which funds BATF. His testimony appears in the published hearing record, which may be obtained for \$20 from the U.S. Government Printing Office, Congressional Sales Office, Washington, D.C. 20540 (202) 512-1686. Specify Stock No. 552-048-2081-1.

In addition to Eric's testimony, a 1991 Internal BATF study found that firearms

destroyed registration documents rather than work on them (United States vs. John David Leaford, Criminal No. 495CR54, Newport News, Virginia, May 21, 1996). The U.S. attorney prosecuting the case declined to cross-examine Schabell, and BATF has not appealed the decision.

Eric also submitted rough drafts of his research to BATF in February of this year and again in March, citing BATF to comment upon any errors or facts, interpretations or omissions that he may have made.

On May 16, 1997, Eric wrote to the Treasury Department Inspector General (IG) about these problems and requested that the IG consider conducting an independent forensic audit of the NFA registration data base. On June 5, the IG

Ned Schwab is a historian and a firearms collector who sells The Standard Catalog of Firearms, the encyclopedic reference and definitive price guide in the industry.



His other published works include Winchester Model 42 (1995), Winchester's Finest (The Model 21 (1995), and more recently, Winchester's Elite Action Rifle, Volume 1 (Model 1885 and 1888 (1992) and Volume 2 (Model 61 and Model 62 (1993). His articles have appeared in the American Rifleman and other firearms publications.

18 March 1998

How Firearm Registration Abuse & the "ESSENTIAL OPERATIONAL MECHANISM" of Guns May Adversely Affect Gun Collectors



ban some guns on the basis of "their essential operational mechanism."

Both issues may adversely affect gun collectors.

My concerns about registration evolved from my research on smooth bore pistols, which was published in two series of three-part articles in *CADA Gun Journal* (August, September and October 1994; and April, May and June 1995).

In 1997, my research triggered a Congressionally-directed audit of the firearms registration practices of the Bureau of Alcohol, Tobacco and Firearms (BATF)—the first ever by an outside entity. This audit is occurring because of my testimony before a Congressional subcommittee regarding the BATF's administration of the National Firearms Act (NFA) of 1934, and involves mismanagement, misconduct and criminal wrongdoing.

The NFA is designed to control firearms thought to be mainly used by criminals by requiring registration of the firearms, and using prohibitive taxes to reduce their manufacture, distribution, and ownership. It is a harsh federal law to discourage illegally manufacturing, selling or possessing hand grenades, machine guns and similar weapons, and the cutting down of conventional shotguns or rifles (regardless of their caliber) to make concealable firearms. Any vio-

lation of the NFA is a felony carrying a 10-year, \$10,000 fine penalty upon conviction.

NFA firearms are controlled under Title II of the Gun Control Act of 1968, and are said to have no legitimate sporting purpose. NFA firearms are often referred to as "Title II" firearms. Conventional rifles, shotguns, pistols and revolvers, which are considered to be sporting firearms, have considerably fewer legal restrictions and are controlled under Title I of the 1968 Act.

In 1934, a provision that would have included pistols and revolvers under the NFA failed to pass the Congress by a single vote. For technical reasons (because they were deemed concealable, but not to be pistols or revolvers) the Treasury Department ruled in 1934 that a small group of unusual or specialized firearms fell under the NFA. Most were relatively low-powered small-game guns, such as Marble's Game Getter Gun, the smooth bore .410 H&R Handy-Gun, and various animal trap guns. They were not—even in 1934—normally identified as "gangster weapons." Most others, such as knife-pistols, were obsolete long before 1934 and were designed more as gimmicks or gadgets than as firearms. All are

classified as "Any Other Weapon" (AOW) under the NFA. I estimate that fewer than 17,000 still exist today. AOWs manufactured in the United States in or before 1934 are among the rarest of firearms, and are highly prized by collectors.

What some people have told me regarding their discovery of one of these AOWs (usually a Game Getter or Handy-Gun) in the estate of a parent or other relative was disturbing. Upon attempting to transfer the ownership, ATF alleged the firearm was not registered—rendering it illegal contraband that nobody can own. But, after searching, some people said they found the registration. ATF then allegedly declared an error had been made, and processed the transfer. It is well-known that ATF will not allow any firearm, even a rare collector's item, to be voluntarily re-registered.

On April 30, 1996, I testified before the House Subcommittee on Treasury, Postal Service and General Government Appropriations, which funds the BATF. This opportunity occurred because the Collectors Arms Dealers Association (CADA) included me as a witness, at the invitation of its then-President, L. Richard Littlefield. I'd known Dick since about 1989.

Dick was aware of my research and thought it was time to make a case for a more reasonable treatment of these guns, as the law provides. Indeed, in 1938, 1945 and 1964, the Congress amended the NFA to provide for a more lenient treatment of many of these firearms, and in 1960 unanimously declared that all AOWs were mainly "gadget-type and unique weapons, which are often sought after by gun collectors," and unlikely to be used by criminals.

Under the Gun Control Act of 1968, the Congress provided that BATF could administratively remove such firearms from the NFA if it determined they are mainly collector's items and are not likely to be used as weapons. Under the 1968 provision, BATF may have administratively re-

moved 50,000 to 100,000 firearms from the NFA. Most are valuable shoulder-stocked Luger and Mauser semi-automatic pistols, or short-barreled Marlin or Winchester "trapper" carbines. After their removal, virtually none have been used by criminals.



My intention in testifying in 1996 was to: (1) put a well-researched case on record disclosing the law and legislative history that supports a more reasonable treatment for "Any Other Weapon" firearms which were manufactured in the United States in or before 1934, and (2) provide BATF with an opportunity to do the right thing. Perhaps predictably, BATF did absolutely nothing, although I also presented some evidence that BATF had made errors in its record-keeping on these guns.

So I came back and testified again on April 8, 1997, almost a year later, before the same subcommittee. This time, I provided more details of evidence I mentioned briefly in my 1996 testimony, by documenting credible instances of mismanagement, misconduct and wrongdoing by BATF in administering the NFA. I found evidence that BATF employees have: (1) destroyed firearm registration documents rather than work on them; (2) illegally registered nearly 2,500 NFA firearms after the 1968 amnesty period expired; (3) since 1981, continued to allow thousands of machineguns and other NFA firearms to be registered to people that BATF knows are dead; and (4) added firearms to the NFA database because owners confronted BATF with regis-

tration documents, for which BATF lost or destroyed its records. In 1996, a federal district court dismissed five convictions for possession of unregistered NFA firearms on appeal because of the unreliability of BATF's firearm registration records. Significantly, BATF did not appeal the dismissals.

In May 1997 I complained to the Treasury Department Inspector General (IG), and requested an investigation. The IG responded by referring my complaint to BATF—which was something like putting my request into a bottle and consigning it to the ocean off Cape

Horn. I made a further complaint to the Congress that the IG simply wasn't doing its job, and that BATF would probably simply exonerate itself. In early October 1997, the House Committee on Government Reform and Oversight directed the IG to independently audit the BATF's firearm registration practices. Further information about my 1997 testimony and the current IG investigation may be found on the Internet at the following address: <http://www.cs.cmu.edu/afa/cs.cmu.edu/user/ward-wel/public/nfalist/index.html>

How this case turns out will be critically important for gun collectors and the issue of firearm registration by the federal government. What happens when the government messes up the registration records? And what happens when the BATF breaks the law? At the least, in my judgement, the Congress will unquestionably not allow machineguns and similar firearms to continue to be registered to persons that the BATF has stated are dead.

Just as critical, in my judgement, is the issue of banning firearms on the basis of "their essential operational mechanism." I have quoted this phrase from a White House press

Continued on page 78



Continued from page 19

release dated November 15, 1997. It contains the text of a Memorandum to the Secretary of the Treasury, directing him to conduct a 120-day review of "whether modified semiautomatic assault-type rifles are properly importable under the statutory sporting purposes test," and to suspend all imports of these guns during the 120-day period.

I am concerned about how the BATF will ultimately interpret political directives such as this one, because of its past activities involving handguns that are designed to fire .410 shotgun ammunition. As I will show, there are important similarities and potentials for abuse of discretion.

During the early 1990s, I unsuccessfully petitioned ATF to remove the smooth bore H&R Handy-Gun from the NFA. There is no credible evidence that the Handy-Gun would be likely to be used as a weapon. Indeed, there are more than a dozen handguns designed to fire .410 ammunition on the market today. None are subject to the NFA because their barrels are rifled; however, more im-

portantly, none have been identified as weapons of choice by criminals. A single-shot .410 is a perfect small-game or rodent gun, and not good for much else.

In a letter to me dated July 20, 1994, BATF Director John W. Magaw denied my appeal. The reason, Mr. Magaw stated, is that there is no "practical" difference between an H&R Handy-Gun and a sawed-off shotgun. Interestingly, Mr. Magaw rejected my contention that there was no "practical" difference between an H&R Handy-Gun versus the .410 Thompson Contender pistol, a popular sporting firearm. "We fail to see the basis for this comparison," he wrote, "because the Contender pistol is not a smooth bore shot pistol subject to the NFA."

Mr. Magaw's statement regarding the .410 Contender is "interesting" because for 16 years, BATF field agents took exactly the opposite position—despite the fact that no less a person than then-BATF Director Harold A. Serr had ruled that the .410 Contender was not subject to the NFA. Mr. Serr made this ruling in an official Memorandum dated February 11, 1989, which was distributed throughout BATF, including all ATF agents and other employees with law enforcement or regulatory responsibilities.

Nevertheless, on June 18, 1969, BATF agents Cecil Wolfe and Paul Westenberger (Washington, D.C., national office) and Victor Fazio (Boston Office) threatened Kenneth Thompson and Warren Center, of Thompson/Center Arms, that BATF would

"I believe there are hundreds of thousands of modern .410 handguns in circulation today—the vast majority tucked in a fishing tackle box or hunting jacket to take on a hunting or fishing trip, for use against snakes, vermin or small game."

rule the .410 Contender to be an NFA firearm if they didn't stop manufacturing it. "Terminate production," Mr. Wolfe said, and instructed: "Whatever your story will be, please refrain from giving the impression that the 'Contender' is a firearm under the NFA." Mr. Wolfe's threat was flat out illegal, but effective. Mr. Thompson and Mr. Center complied, as do virtually all people who are threatened with either a criminal action or the economic disruption of their livelihood by a federal law enforcement agency with unlimited resources.

Mr. Wolfe's threat worked until 1985, when a Freedom of Information Act request by attorney Stephen P. Halbrook revealed the existence of the February 1969 memorandum.

Production of the .410 Contender soon resumed. Today, the .410 Contender is one of at least a dozen different modern handguns designed to fire .410 shotgun ammunition being currently manufactured and sold in the United States today. None are subject to the NFA because their barrels are rifled. Perhaps most importantly, none have to my knowledge ever been identified as weapons of choice used by criminals. I believe there are hundreds of thousands of modern .410 handguns in circulation today—the vast majority tucked in a fishing tackle box or hunting jacket to take on a hunting or fishing trip, for use against snakes, vermin or small game. I have found no credible evidence that any of these guns are commonly used in street crimes, or that they are weapons of choice by criminals.

In a 1981 prosecution, BATF argued in federal court that it was legally impossible for a firearm such as the smooth bore H&R Handy-Gun and a sawed-off shotgun to be regarded equal under the NFA. The law, BATF argued, requires a firearm like the Handy-Gun to be given "special and more lenient treatment" than a sawed-off shotgun. (In this particular case, a person sawed off the barrel of a 12 gauge shotgun, installed a pistol grip, and claimed it was an AOW.) The BATF presented an ironclad case that a sawed-off shotgun and an AOW are not identical, and cannot be identical according to law and legislative history. Although a sawed-off shotgun, a .410 H&R Handy-Gun, and a .410 Contender are all capable of firing identical ammunition through a barrel of nearly identical length, those shared characteristics are legally meaningless regarding their legal classification as firearms.

A similar example makes the point another way, and also illustrates why BATF's position is legally incorrect. Consider that the NFA prohibits the unauthorized cutting down of a conventional shotgun or rifle (regardless of caliber) to make a concealable firearm. Thus, a person who sawed off the barrel of a Ruger 10-22

carbine to a length of 10", and fashioned its stock into a pistol grip, would violate the NFA if he or she did not pay a \$200 tax to "make" the firearm, as well as obtain advance approval from BATF before making it. Note that a standard Ruger 10-shot semi-automatic target pistol with a 10" barrel is functionally identical to the sawed-off carbine. That is, each firearm is a semiautomatic, capable of firing 10 rounds of .22 caliber ammunition through a 10" barrel, and is concealable on the person.

It is clear, however, that the Congress, by requiring that a \$200 tax be paid to "make" a concealable firearm by cutting down a conventional rifle or shotgun, requiring advance permission to "make" such a firearm, and requiring its registration, that the Congress intends to reduce the legal manufacture of firearms made by cutting down conventional shotguns or rifles. The Congress has not, however, enacted a prohibitive tax and burdensome legal restrictions upon the manufacture and sale of a concealable, 10-shot semiautomatic firearm with a 10" barrel, such as the Ruger .22 caliber target pistol.

Yet, under Mr. Magaw's logic, BATF could outlaw the Ruger 10-shot semiautomatic target pistol because "there is no practical difference between the two types of weapons in terms of design and function." In this example, the point is clear and the language is much less emotional—and no less correct than in the example involving an H&R Handy-Gun. It is legally incorrect for Mr. Magaw to use the terms "design and function" to place a firearm in some classification that is different from what the Congress has specifically defined. Should an ordinary, perfectly legal .22 Ruger semiautomatic target pistol with a 10" barrel be outlawed simply because a sawed-off Ruger .22 semiautomatic carbine with a 10" barrel and a pistol grip is capable of firing the same ammunition and is also concealable? If Mr. Magaw's logic were followed, then BATF could

ally every sporting firearm in the United States.

Which bring us to 1997, and the White House memorandum to the

"In my judgement, gun collectors are on the verge of facing the gravest—and perhaps, the most bizarre—challenge ever concocted by the government."

Treasury Department regarding "Importation of Modified Semiautomatic Assault-Type Rifles," which was written at the order of President Bill Clinton. Again, consider the language: "Manufacturers have modified many of these weapons banned in 1969 to remove certain military features without changing their essential operational mechanism" (emphasis added).

I believe this is a pretty slippery slope. I predicted this would happen and said so in an article in the June 1996 issue of *CADA Gun Journal*, and I quote:

"The NFA is relevant to any citizen who owns a sporting firearm—not just to people who choose to own a gun for self-protection. The 'assault weapon ban' has lots of regulatory tensions, because 'assault weapons' are classified as Title I firearms. NFA firearms—machine guns, and the like—are classified as Title II firearms. Under the Gun Control Act of 1968, firearms that don't have a 'sporting purpose' are supposed to be classified under Title II. This is why I believe there will be continuous difficulty over how so-called 'assault weapons' are regulated. And if past history is any guide, ATF will misapply the law to include sporting firearms exempted from the ban."

In my judgement, gun collectors are on the verge of facing the gravest—and, perhaps, the most bizarre—challenge ever concocted by the government. Namely, how can one differentiate between collector's item semiautomatic firearms and so-called "assault weapons" if the basis for making a decision is "their essential operational mechanism"? It seems to me that "their essential op-

erational mechanism" is obviously identical. Where does that leave us?

To confront the "essential operational mechanism" issue, I have explained why firearms like Marble's Game Getter Gun and the smooth bore H&R Handy-Gun are valuable historical artifacts, and the fact that the Congress determined in 1960 they are

mainly collector's items and unlikely to be used as weapons by criminals. Why are they valuable historical artifacts? In short, they: (1) were created at a time when there were virtually no laws regarding firearm design; (2) are very specialized firearms that had a limited commercial market even at the time they were manufactured; (3) unlike any other NFA firearm, the Congress repeatedly lessened controls on them, although the NFA virtually destroyed the retail market for these types of firearms; (4) represent a unique niche in U.S. firearms evolution, design and genealogy, and there's nothing else like them; and (5) are extremely rare—I believe that fewer than 17,000 still exist. Yet, in 1997, these pre-1934 AOWs are still controlled as strictly as machineguns. I am committed to trying to achieve a more reasonable treatment under the law for these particular AOWs.

Given the difficulties I have encountered, I believe that gun collectors are on the verge of beginning to experience serious problems in explaining to the government why certain semiautomatic rifles are collector's items. I also believe that gun control law and policy should be guided by facts, rather than by emotional appeals which bear no relationship to the particular firearms being regulated. ■

Eric M. Larson is a contributing Editor to the Blue Book of Gun Values, the Standard Catalog of Firearms, the Official Price Guide to Antique and Modern Firearms, and has been a Life Member of the National Rifle Association of America since 1958. His research has been published in The Gun Report, Machine Gun News, Gun Illustrated, and he is author of *Monsters of the Smooth Bore H&R Handy-Gun: A Pocket Guide to Their Identification*. A journalist and demographer by training, he graduated with honors in 1974 from the University of Texas at Austin, where he also earned a Ph.D. and three master's degrees.

Source: published in *Official R. L. Wilson Price Guide to Gun Collecting*, by R. L. Wilson. First edition. New York: The Ballantine Publishing Group/Random House, Inc., 1998, pages 56-59.

Smoothbore Pistols Firing Shotgun Shells

BY ERIC M. LARSON

As rare American cultural artifacts, certain smoothbore pistols originally manufactured in the United States in or before 1934 occupy a unique niche in U.S. firearms history and genealogy. They are highly prized by collectors, yet still inappropriately regulated strictly as machine guns by the Bureau of Alcohol, Tobacco and Firearms (ATF).

These guns were made when no federal laws (and relatively few state laws) affected firearms design. While it is rare, the most commonly encountered example is the 12¼"-barrel H&R Handy-Gun, designed to fire the 2½" .410 shotgun shell. It is one of several smoothbore pistols that competed with Marble's Game Getter Gun, a .22/44 or .410 combination firearm with a folding shoulder stock that was first manufactured in 1908. A few smoothbore pistols (such as the 20-gauge Ithaca Auto & Bungalow Gun) were marketed as defensive weapons, but most were relatively low-powered small-game guns.

Smoothbore pistols like the H&R Handy-Gun are currently regulated by the National Firearms Act (NFA) of 1934. The NFA is designed to control firearms thought to be mainly used by criminals by requiring registration of the firearms, and using prohibitive taxes to reduce their manufacture, distribution, and ownership. It is a harsh federal law to discourage illegally manufacturing, selling, or possessing hand grenades, machine guns, and similar weapons, and the cutting down of conventional shotguns or rifles (regardless of their caliber) to make concealable firearms.

Curiously, as passed in 1934, the NFA specifically excluded "a pistol or revolver," and still does today. As originally enacted, the NFA defined a "firearm" as:

A shotgun or rifle having a barrel of less than eighteen inches in length, or 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 a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

But several original versions of the bill that eventually was enacted as the NFA included "a pistol, revolver . . . or any other firearm capable of being concealed on the person" within the definition of an NFA "firearm." Under the NFA as originally proposed, pistols and revolvers would have been regulated as strictly as machine guns.

After debate, the bill was amended to remove pistols and revolvers, but not other concealable firearms. Thus, small firearms not readily classifiable as traditional pistols or revolvers (such as cane-guns, knife-pistols, and so forth) had to be registered. But Congress did not define the terms "pistol," "revolver," "rifle," "shotgun," or "any other weapon" under the original NFA in 1934. Consequently, ATF applied the NFA using administrative regulations.

When the original NFA became effective on July 26, 1934, all items defined as "firearms" had to be registered, and there was a \$200 tax on each transfer of ownership. The \$200 rate, set to equal the cost (in 1934) of a new .45 caliber Thompson Submachine gun, was designed to be prohibitive.

Why were smoothbore pistols, which were clearly designed as handguns, deemed not to be pistols? In 1926, the Bureau of Internal Revenue determined that the H&R Handy-Gun was "not a pistol or revolver within the meaning . . . and is not, therefore, subject to tax" under the Internal Revenue Act of 1926. The 1926 Act had exempted rifles, shotguns, and ammunition from a 10 percent firearms excise tax enacted in 1918, but, because of anti-handgun politics, retained it for pistols and revolvers (the .410 Stevens Off-Hand Shot Gun, another smoothbore pistol, also was exempted).

The 1926 ruling resulted from an agitation by the H&R and Stevens manufacturers, who argued that these firearms were useful to trappers, farmers, hunters, lumberjacks, and others who worked outdoors, being relatively compact and less bulky than a firearm intended to be fired from the shoulder.

A circa 1928 H&R advertisement states: "The 'Handy-Gun' is classified by the U.S. Government as a shotgun." Other documentation of the H&R Handy-Gun's classification as a "shotgun" has not been located. Interestingly, H&R catalogues from that era state that under the laws of some states, any firearm with a barrel less than 12 inches in length was defined as a pistol; consequently, the 12¼"-inch barrel caused the H&R Handy-Gun to avoid being regulated in those states as a pistol.

ATF determined that "since the manufacturer had argued successfully his point in 1926 that the H&R Handy-Gun was not a pistol, it was very easy for the Bureau in 1934 to point out . . . that the weapon could not be excepted from the definition of a firearm as defined in . . . the National Firearms Act . . . as being a pistol." "Therefore," ATF concluded, "it was easy" to place the H&R Handy-Gun within the term "firearm" as being "any other weapon" capable of

being concealed on the person. ATF used this interpretation to classify all smoothbore pistols as "any other weapon" under two different rulings, each dated August 6, 1934. Ruling S.T. 772 applies to "a so-called shotgun with a pistol grip, which fires a shot shell," and Ruling S.T. 779 to a firearm that is "a single shot, single trigger, and single hammer gun with a pistol grip, and is chambered for shot loads." The test, S.T. 779 states, "is not the length of the barrel, but whether the weapon is capable of being concealed upon the person."

Because the \$200 transfer tax vastly exceeded their value as firearms, no smoothbore pistol that was manufactured in 1934 was ever regularly, commercially manufactured again. Recognizing that some of these firearms have "legitimate uses," Congress reduced the \$200 tax to \$1 in 1938 for Marble's Game Getter Gun. The Congress declared: "The weapon to which the legislation refers may be utilized either as a shotgun or as a rifle and has legitimate uses." ATF administratively removed the 18-inch barrel variation from the NFA in 1939 because, "after reconsideration," it was not deemed concealable on the person.

In 1945, the Congress extended the \$1 tax reduction to a single-shot smoothbore pistol with a barrel at least 12 inches in length. This reduction applied to the .410 and 28 gauge H&R Handy-Gun, .410 Stevens, and .410 Crescent Certified Shotgun, among others. Again Congress spoke definitively, and determined that these firearms "are particu-

larly useful on farms and elsewhere for extermination of vermin and predatory animals, and in hunting and trapping activities where quick firing at close range is essential." The prohibitively high manufacturer, dealer, and transfer taxes, Congress found, work "an injustice both against those who need such low-powered, so-called small-game guns, and against those who make and deal in them."

In 1960, Congress changed the transfer tax to \$5 for all NFA firearms classified as "any other weapon" (which included all smoothbore pistols), recognizing that they were mainly of interest to collectors and not likely to be used as weapons.

Under the Gun Control Act of 1968, Congress provided that ATF could administratively remove any firearm (except a machine gun or destructive device, such as a land mine or hand grenade) from the NFA if it determined that the firearm is primarily a collector's item and is not likely to be used as a weapon. Since 1968, it appears that ATF may have removed 50,000 to 100,000, or more, firearms from the NFA as collectors' items; and that the vast majority of these firearms were shoulder-stocked pistols of the Mauser and Luger variety. Fewer than 10,000 smoothbore pistols manufactured in or before 1934 are estimated to have survived until 1997, out of an original production of less than 100,000 (see table). While Marble's Game Getter Gun is not a smoothbore pistol, it is included in the table because of its historical relevance.

Modern rifled-barrel pistols that are designed to fire

Estimated Total Production of Smoothbore Pistols and Marble's Game Getter Gun Originally Commercially Manufactured in the United States in or Before 1934 by Years of Production, and the Estimated Number That Have Survived Until 1997, Still Under Purview of the National Firearms Act of 1934, as Amended

<i>Name or type of firearm and years of manufacture</i>	<i>Estimated number original production until 1997</i>	<i>Estimated number that have survived until 1997</i>		
Smoothbore Pistols				
.410 bore H&R Handy-Gun (1921-1934)	48,600	4,860	20 gauge Ithaca Auto & Burglar Gun, Model A (1922-1926)	2,500
28 gauge H&R Handy-Gun (1921-1934)	5,400	540	20 gauge Ithaca Auto & Burglar Gun, Model B (1925-1934)	2,000
.410 Crescent Certified Shotgun (1932-1934)	4,000	400	All other smoothbore pistols (circa 1867-1934)*	3,000
.410 Stevens "Auto Shot" and "Off Hand" pistol (1923-1934)	25,000	2,500		
20 gauge Defiance Anti-Bandit Gun (1926-1927)	300	30	SUBTOTAL	90,800
				9,080
			Marble's Game Getter Gun	
			.22/.44 smoothbore, Model 1908 (1908-1914)	10,000
			.22/.410 smoothbore Model 1921 (1921-1942)	10,000
			TOTAL	110,800
				11,080

*These include the 20-gauge Remington Combination Pistol-Shotgun, .410 Victor Ejector Pistol, 20-gauge Knickerbocker Pistol, .410 or 20-gauge New Empire Auto & Burglar Gun, Marble's Game Getter .22/.44 Pistol, and others that are uncataloged and unknown at this time because of their extreme rarity (only a few, if any, may still exist). These do not include smoothbore pistols removed from the National Firearms Act of 1934, as amended, by the Bureau of Alcohol, Tobacco and Firearms (ATF) as collectors' items under the Gun Control Act of 1968.

shotgun shells are not subject to the NFA, that is, no federal registration with ATF or tax payment is required. The reason is that the Congress specifically exempted any pistol with a rifled barrel from the NFA in 1968. The pistols discussed in this research were originally manufactured with smoothbore barrels.

All of the smoothbore pistols and other firearms listed below are Class III firearms unless specifically noted. If they are not currently registered with ATF, their sale, transfer, or possession is illegal. Moreover, it is also illegal for any person to borrow or otherwise possess any NFA firearm that is registered to another person, even if the registered owner is present.

Because smoothbore pistols are not frequently bought or sold, establishing reliable values can be difficult. The values listed here are approximate, and may vary significantly according to local supply and demand. If ATF removed these rare firearms from NFA controls, as it has for 50,000 to 100,000 or more short-barreled Winchester and Marlin "trapper carbines" and various Luger, Mauser, and other shoulder-stocked pistols and other rare firearms, their values would probably increase substantially.

V.G. Exc.

CALIFORNIA ARMS CO.

San Jose, California, distributed circa 1926 to 1930, but manufactured by The American Machine Company in 1926-27; 2 1/2" shotgun or tear-gas shells only; total production was probably fewer than 300. Model A has 12 1/2" barrels and a checkered forearm; Model B has 12 1/2" barrels and a smooth forearm; Model C has 12" barrels and a smooth forearm.

Defiance Anti-Bandit Gun, 20 gauge, 12 1/4" or 12 1/2" double barrels,

Class III, Curio RARE

CRESCENT FIRE ARMS CO.

Norwich, Connecticut; Knickerbocker Pistol, circa 1900s; total production unknown, nickel-plated barrels, receiver is case-hardened, right side marked AMERICAN GUN CO./NEW YORK U.S.A., left side marked KNICKERBOCKER, fitted with checkered pistol grip resembling that of the Model I and Model 2 smoothbore H&R Handy-Gun; Victor Ejector, circa 1928-30, total production unknown, left side of receiver marked Victor Ejector/Crescent Fire Arms Co./Norwich, Conn. U.S.A., .410 on top left of receiver near breech, blued barrel marked GENUINE ARMORY STEEL, 2 1/2" shells only; and New Empire, circa 1932, blued barrels, left side of case-colored receiver marked Crescent Fire Arms Co./Norwich, Conn. U.S.A., right side marked New Empire, probably fewer than 50 manufactured, four known specimens bear serial numbers S-1, S-13, S-18 and S-19; referred to as "Crescent Auto & Burglar Gun" in a 1932 advertisement in *Hunter Trapper Trader*.

Knickerbocker Pistol, 20 gauge, 14" double barrels,

Class III, Curio RARE

Victor Ejector Pistol, .410 bore, 12" single barrel,

Class III, Curio RARE

New Empire, .410 bore or 20 gauge, 12 1/4" double barrels, V.G. Exc.
Class III, Curio \$700 \$900

CRESCENT-DAVIS ARMS CORP.

Norwich, Connecticut, circa 1930-32; production was probably fewer than 4,000; receiver may be blued, tiger-stripe or color case-hardened, left side marked Crescent Certified Shotgun/Crescent, Davis Arms Corp./Norwich, Conn. U.S.A.

Crescent Certified Shotgun, .410 bore, 12 1/4" single barrel, Class III, Curio 650 800

Add \$200 to \$500 for original cardboard box.

HARRINGTON & RICHARDSON ARMS CO.

Worcester, Massachusetts, 1921-34; total production about 54,000; 8" or 12 1/4" .410 or 28-gauge single barrel; more than 50 variations exist; values below assume choked .410 or unchoked 28-gauge with 12 1/4" barrel, case-hardened receiver marked H&R, HANDY-GUN, spur grip and plain trigger guard; early models have blued receivers and/or unchoked barrels, late models have choked barrels and/or hook on trigger guard. Other values may be estimated according to scarcity in serial number table, which is a work in progress. Private-branded or trade-branded (e.g., marked ESSEX GUN WORKS or HIBBARD MODEL W. H.) variations exist; all have nickel-plated receivers and blued barrels.

Variation	Estimated year(s) of manufacture	Observed serial number ranges .410 bore	28 gauge
MODEL 1			
Type I	1921-22	167 to 4981	5 to 4527
Type II	1922-23	5052 to 6588	5554 to 6274
Type III	1923-24	unknown to 6817	6973 to 7067
MODEL 2			
Type I	1924-25	8276 to 14660	10539 to 29731
Type II	1925-27	15159 to 38761	none observed
Type III	1927-30	39060 to 47528	44228 to 44247
MODEL 3			
Type I	1931	47642 to 48218	unknown to 48566
Type II	1932-33	48819 to 51655	none observed
Type III	1933-34	51920 to 53691	none observed

H&R Handy-Gun, .410 bore, 12 1/4" choked single barrel,

Class III, Curio
H&R Handy-Gun, 28 gauge, 12 1/4" unchoked single barrel,
Class III, Curio

Rare variations command premiums: 8" barrel, 25% to 50%; 18" barrel, 200% to 400%; unchoked .410, 20% to 50%; 28 gauge or Model 3 (only) with factory-equipped original detachable shoulder

stock, 150% or more; holster, \$75-\$200; serial matching box, \$150-\$400; early boxes are extremely rare.

ITHACA GUN CO.

Ithaca, New York, 1922-34; Model A (spur on grip), 2 1/2" shells only, about 2,500 manufactured, 1922-26; Model B (no spur), 2" shells, about 2,000 manufactured; variations exist; values below assume 20-gauge, 10" double barrels.

Auto & Burglar Gun, Model A.		
<i>Class III, Curio</i>	\$1,110	\$1,500
Auto & Burglar Gun, Model B.		
<i>Class III, Curio</i>	600	900

Only 11 special order or nonstandard (.410 bore, 28 gauge, and 16 gauge, with barrels from 10" to 26" in length) Auto & Burglar Guns have been documented. All are extremely rare, and command premiums of 100% or more; professional authentication is highly recommended. Original holsters (marked AUTO AND BURGLAR GUN/MADE BY/ITHACA GUN CO./ITHACA, N.Y.) are rare and worth \$300-\$500.

I. STEVENS ARMS CO.

Chicopee Falls, Massachusetts, Off-Hand from 1923-29, exact total production unknown, but probably about 23,000; Auto-Shot from 1929-34, about 2,000 manufactured.

Off-Hand Shot Gun No. 35, 410 bore, 8" or 12 1/4" single barrel.		
<i>Class III, Curio</i>	200	300
Auto-Shot No. 35, 410 bore, 8" or 12 1/4" single barrel.		
<i>Class III, Curio</i>	250	350

MARBLE ARMS & MFG. CO.

Gladstone, Michigan, successor in 1911 to Marble Safety Axe Co. First model from 1908-14, second model from 1921-42 (total production was about 10,000 for each model). The 18" barrel variations are exempt from the NFA only if an original shoulder stock is attached. In 1961, ATF ruled that if the shoulder stock is removed from any Game Getter, regardless of its barrel length, it becomes "a firearm made from a shotgun" requiring registration as a short-barreled shotgun with a \$200 transfer tax rate.

Marble's Game Getter Gun, Model 1908		
12" or 15" barrels, with shoulder stock attached,		
<i>Class III, Curio</i>	900	1,500

18" barrels, with shoulder stock attached,		
<i>Curio, Exempt from NFA</i>	\$1,000	\$1,800
Marble's Game Getter Gun, Model 1921		
12" or 15" barrels, with shoulder stock attached,		
<i>Class III, Curio</i>	650	850
18" barrels, with shoulder stock attached,		
<i>Curio, Exempt from NFA</i>	900	1,000

Boxed guns with accessories, nonstandard calibers (.25-20, .32-20, .38-40, etc.) command premiums of 50% to 200% or more; add \$75-\$150 for original shoulder holster. An extremely small number of Model 1908 Game Getters were originally manufactured as over-and-under double rifles, with rifled barrels. ATF requires these firearms to be registered as short-barreled rifles, with a \$200 transfer tax rate, if the barrels are less than 16" in length and originally manufactured with a shoulder stock. If the shoulder stock is removed, ATF has ruled it to be a "firearm made from a rifle," also requiring registration and a \$200 transfer tax.

Marble's Game Getter Pistol,		
Model 1908 9" barrels, 22/44 smooth bore,		
<i>Class III, Curio</i>		RARE

In approximately 1913, Marble manufactured an extremely small number of pistols with barrels ranging from 9" to 18" as experimental and special-order guns, using the Model 1908 receiver. These firearms are currently defined as "any other weapon" and must be registered; the transfer tax is \$5. These firearms may be reliably identified by the lack of an inlet in the receiver to attach a shoulder stock. One known specimen bears serial number 3837.

REMINGTON ARMS CO.

Ilion, New York, c. 1867-75; 20 gauge, singleshot with rolling block action; may be used as a pistol or shotgun; usually encountered with a detachable shoulder stock and classified as a "short-barreled shotgun" by ATF (\$200 transfer tax) in that configuration. Whether it qualifies for the \$5 transfer tax if unaccompanied by a shoulder stock is unclear. It cannot be classified as a Curio because it is an Antique firearm manufactured before 1899; it is also a Class III NFA firearm because it fires fixed (cartridge) ammunition that is currently available in ordinary commerce.

Remington Combination Pistol-Shotgun,		
11" single barrel,		
<i>Class III</i>		RARE

Note: The author wishes to thank Mr. Larson for his contribution of the text in this section. For more information on smoothbore pistols, Mr. Larson may be contacted at P.O. Box 5497, Takoma Park MD 20913; telephone (301) 270-3450.

• Assistant Regional Commissioner
Alcohol, Tobacco and Firearms
North-Atlantic Region

Alcohol, Tobacco and Firearms Division
National Office CP:AT:EO:JBC

Classification of the Thompson/Center "Contender" single shot pistol.

We have received a number of inquiries regarding the classification of the aboved mentioned pistol which is manufactured by Thompson/Center Arms, Rochester, New Hampshire.

Information available to this office discloses that the Thompson/Center "Contender" is manufactured in various pistol and revolver calibers such as .22LR, .22WBR, .22 Hornet, .22 Rem-Jet, .38 Special, .357 Magnum, .256 Winchester Magnum and possibly more. The caliber of the gun can be changed by changing barrels. However, the caliber combination in question, and on which this ruling is based, is the barrel made to accommodate either the .45 Long Colt or .410 shotshell. This barrel measures 6 13/16 inches and contains rifling (spiral lands and grooves). A 1 7/8 inch choke device attached to a 1 5/16 inch unrifled muzzle brake is added to the barrel. The choke device is not smooth bored but contains six straight lands (sometimes called flukes). These straight lands are flush with the rear of the choke tube but taper upward to a height of about 1/32 of an inch at the muzzle like small ramps. When a .410 shotshell is fired in this barrel the spiral rifling in the first 6 13/16 inches of the barrel gives the shot pattern a swirling motion. However, as the shot pattern passes through the muzzle brake and enters the choke tube, the straight lands of the choke tube purportedly stop the swirling motion and make the shot pattern more uniform instead of leaving the muzzle like a smoke ring with an empty center. A word of warning from the manufacturer makes it clear that the choke device must be removed before firing the .45 Long Colt cartridge, otherwise severe damage may result to both the shooter and the firearm.

It is the opinion of this office that the Thompson/Center "Contender" was, and is, originally designed as a pistol and its configurations conform to the definition of a pistol as that term is defined in Part 179.35, Title 26, C.F.R. As a pistol the "Contender" is not a firearm subject to the National Firearms Act as amended by Public Law 90-618.

(Signed) Harold A. Serr

Harold A. Serr
Director

CC: ALL REGIONS ✓
JBCain/mtc 1/24/69

[illegible]

REPORT OF TRIP TO THOMPSON/CENTER ARMS, ROCHESTER,NEW HAMPSHIRE, ON JUNE 18, 1969

CP:AT:EO:PHW

June 18, 1969

At 1:35 p.m. on June 18, 1969, a meeting was held at the Thompson/Center Arms, Route 11, Rochester, New Hampshire, 03867, regarding the status of the "Contender" when equipped with the .45/.410 dual caliber combination barrel and choke tube.

In attendance at this meeting were the following persons:

Mr. Kenneth Thompson - T/C Arms

Mr. Warren Center - T/C Arms

Mr. Robert Gustaffson - T/C Arms

Mr. Cecil Wolfe - National Office, ATFD

Mr. Victor Pesio - Boston Office, ATFD

Mr. Paul Westenberger - National Office, ATFD.

Mr. Wolfe opened the conference by stating the purpose of the visit, that being to reach a mutual agreement with Thompson/Center Arms regarding the future of the firearm when equipped with the .45/.410 barrel. Mr. Wolfe then gave a resume of past and current legislation on similar weapons, using the H&R Handy Gun as an example, and further citing the Congressional history surrounding the chain of events in past years.

The following reflects an accurate summary of the questions posed by the attendees of the Thompson/Center Arms:

Q. (Mr. Thompson) What will be the future action of ATFD?

A. (Mr. Wolfe) Two options - (1) Terminate production and IRS will live with the barrels already in existence or (2) IRS will issue a Revenue Ruling that the .45/.410 barrel on the "Contender"

causes it to fall under the purview of the NFA.

Q. (Mr. Gustaffson) What is the IRS position on shot shell ammunition and would this be applicable?

A. (Mr. Westerberger) Shot shell ammunition and shotgun ammunition were defined.

Q. (Mr. Thompson) This will put us out of business.

A. (Mr. Wolfe) Not necessarily. Manufacture could continue under the category of an NFA weapon.

Q. (Mr. Gustaffson) Would our distributors require licensing?

A. (Mr. Wolfe) The licensing requirements and transfer requirements were stated.

Q. (Mr. Gustaffson) What would occur if the barrel was only sold as an accessory item?

A. (Mr. Wolfe) Aspects of the individual concerned and the manufacturing tax liability were reviewed.

Q. (Mr. Center) Thompson/Center will load shotshells, brass or otherwise, what then?

A. (Mr. Wolfe) The "Contender" cannot be capable of firing existing shotgun ammunition. Shotshells of pistol calibers, if manufactured by Thompson Center, should use metallic casings rather than cardboard or plastic hulls.

Q. (Mr. Center) What about manufacturing shotshells using metallic rifle cartridge casings?

A. (Mr. Wolfe) We would assume the "Contender" would retain its pistol configuration and that shotshells would be of a cartridge

- 3 -

peculiar to pistols.

Q. (Mr. Thompson) Is there any objection to the "Contender" presently having several barrels chambered for rifle cartridges?

A. (Mr. Westenberg) There is no objection on the part of IRS. (The "Contender" presently comes with twelve assorted barrels, excluding special orders. The .22 Hornet, .22 Jet and .256 Winchester Magnum are rifle cartridges adapted to the "Contender.")

Q. (Mr. Center and Mr. Thompson) Resume of the "Contender" sales and purpose was offered. Wouldn't the fact that the "Contender" (.410) is used for sporting purposes be justification for its continued manufacture?

A. (Mr. Wolfe) No. The R&R Handy Gun also had a sporting purpose potential but still was an NFA weapon.

At this point in the conference, Mr. Center demonstrated the interchangeable barrel capability of the "Contender." This was followed by a tour of the entire Thompson/Center Arms Manufacturing facility, showing investment casting process, polishing, machining, engraving, bluing, assembly and test firing facility.

The conference was resumed as follows:

Mr. Wolfe repeated the definition of "Any other weapon" from the Gun Control Act of 1968 and the definition of a "Pistol" from Section 179.35 of National Firearms Act Regulations.

Q. (Mr. Center) The shot pattern of the "Contender" with the .45/.410 barrel splatters; it's not effective. The rifling is standard for the .45 caliber cartridge both in depth of the grooves and number of turns per barrel. Would this help?

- 4 -

A. (Mr. Westenberg) The rifling is appropriate but the firearm still chambers a .410 shotgun shell.

Q. (Mr. Thompson) We then can redesign to shoot shotshells.

A. (Mr. Wolfe) I'll redefine what we would sanction, shot shells being sanctioned pistol casings that were loaded or reloaded.

Q. (Mr. Wolfe) Purpose of choke on the "Contender."

A. (Mr. Westenberg) It straightens the shot on a line-of-barrel axis since the rifling causes it to spiral and become less effective.

Q. (Mr. Gustafson) I didn't get what you said you'd sanction. Please repeat it.

A. (Mr. Wolfe) We would condone a pistol which was designed to fire commercially available ball ammunition. If the ammunition was metallic and peculiar to a pistol and loaded with shot, the weapon would not come under the NFA as long as the bore was rifled and shotgun shells could not be fired. This would apply even if the choke attachment was installed.

Q. (Mr. Westenberg) Could we have accurate production figures to date on the guns sold; .45/.410 barrels sold and the inventory of finished and unfinished .45/.410 barrels?

A. (Mr. Gustafson) Yes, I'll mail them to you in a few days. We've sold about 5000 guns, 2000 barrels and probably have 1000 barrels in various stages of completion. We'll call our barrel maker and tell him to stop manufacture.

- 5 -

Q. (Mr. Gustaffson) And what will be the status of the weapons that are out with .45/.410 barrels?

A. (Mr. Wolfe) We'll live with those. I don't feel that the purpose of the law is being subverted.

Q. (Mr. Thompson) This will cause a stir. Who can be blamed for the sudden stop in production?

A. (Mr. Wolfe) If you say the Government asked us to quit there would be repercussions and a question about the status of those in existence. We would get heat although we've had heat before. As Harry Truman said, "If you can't stand the heat, get out of the kitchen." I might add that we have had inquiries in the past on the status of the "Contender." We have also had various manufacturing agreements with industry in the past in similar type situations involving potential automatic weapons. Whatever your story will be, please refrain from giving the impression that the "Contender" is a firearm under the NFA. I would recommend that you advise your distributors that in order to avoid any suggestion that the weapon might come under the controls of the Act, you decided to redesign the weapon so it won't chamber commercial shotgun ammunition.

Q. (Mr. Thompson) Could we fight this?

A. (Mr. Wolfe) My candid opinion is that it would depend on which court got the case.

Q. (Mr. Thompson) What would be the steps if we fought it?

A. (Mr. Wolfe) We would just issue a Revenue Ruling and then serve notice on Thompson/Center Arms, your lawyers would probably get a restraining order. From there we would probably have a hearing

- 6 -

to discuss the characteristics of the firearm, the applicable laws and the regulations. There would be appeals and finally a court determination.

Q. (Mr. Gustaffson) What would be the next step if it were an NFA weapon.

A. (Mr. Wolfe) Since the amnesty period is over there could not be registration. They would be contraband and subject to seizure. The owners would be in violation. There could possibly be a registration procedure set up.

Q. (Mr. Thompson) Would the court set this up?

A. (Mr. Wolfe) The court would not control this aspect.

Q. (Mr. Center) What effect would an 18" barrel make on the "Contender?"

A. (Mr. Westenberg) None. Since the "Contender" is not a shoulder weapon, barrel length would have no bearing.

At this point, Mr. Thompson stated that they would cease production of the .45/.410 barrels and would undertake a redesign. They expressed appreciation for the fact that we would allow them to dispose in commerce of the inventory of finished and unfinished barrels on hand.

All aspects of the meeting were cordial and no belief exists that Thompson/Center Arms will not abide by their agreement.

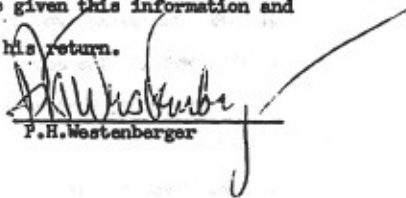

Cecil M. Wolfe


Paul H. Westenberg

- 7 -

ADDENDUM: MEMORANDUM OF PHONE CALL

Mr. Thompson phoned at 3:30 p.m. on June 19, 1969, to give a progress report on the status of the "Contender." He advised that letters have been sent to all their representatives and that advertising has been stopped. He further stated that the T/C facility had 2390 barrels in stock in various stages of completion. He further stated that this figure was higher than the previous estimate in that they did not compute the barrels which were in grinding operations. I stated that Mr. Wolfe would be given this information and that he would contact Mr. Thompson upon his return.


P.H. Westenberger



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JUL 20 1994

CC-43,771 FE:TGF

Mr. Eric M. Larson
Post Office Box 5497
Takoma Park, Maryland 20913

Dear Mr. Larson:

This is in response to your letters dated May 31, 1994, to the Assistant Secretary (Enforcement); June 3, 1994, to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF); and June 14, 1994, to Secretary Bentsen, asking for reconsideration of ATF's decision of March 23, 1992, denying your request for removal of the Harrington and Richardson Handygun (H & R Handygun) from the scope of the National Firearms Act (NFA), 26 U.S.C. Chapter 53. In support of your request for reconsideration, you submitted several articles. In the paragraphs to follow, we have addressed those portions of the articles which relate to your request for removal.

As you observed, one of the reasons for denying your request was ATF's conclusion that the H & R Handygun is similar in design and function to the sawed-off shotgun, a popular crime weapon that has been the subject of numerous Federal and State prosecutions. You contend that this position conflicts with the Government's argument in a United States district court case. In that case, the Government correctly pointed out the legal distinction in the NFA between a weapon made from a shotgun (e.g., a sawed-off shotgun) and an "any other weapon" (e.g., an H & R Handygun). Specifically, a sawed-off shotgun falls within the definition of "weapon made from a shotgun" in 26 U.S.C. § 5845(a)(2), while weapons such as the H & R Handygun are within the definition of "any other weapon" in 26 U.S.C. § 5845(e). From a legal standpoint, the difference is significant since the tax imposed on the transfer of these weapons is \$200 in the case of a weapon made from a shotgun but only \$5 in the case of an "any other weapon." However, as we stated in our letter of March 23, 1992, there is no practical difference between the two types of weapons in terms of design and function. Therefore, we see no conflict between the positions ATF has expressed with regard to these weapons.

Mr. Eric M. Larson

You also assert that a sawed-off shotgun has been converted from a shoulder fired weapon for the purpose of transforming it into an offensive weapon, while the Handygun was designed as a sporting pistol which is used as a small game gun. Again, you believe that this difference renders erroneous ATF's conclusion that the design of the two weapons is identical.

From a utilitarian perspective, the fact that the H & R Handygun is capable of being concealed and of firing a fixed shotgun shell makes it comparable in design to the sawed-off shotgun. The Handygun can be used as readily for anti-personnel purposes as for hunting small game or exterminating varmints. Furthermore, the fact that the H & R Handygun utilizes a receiver that is identical in mechanical design and function to various single shot .410 gauge shotguns produced by H & R indicates its similarity to a sawed-off shotgun. Finally, that Congress chose to include both weapons within the NFA definition of "firearm" indicates that both should remain subject to NFA controls unless it is clearly established that they meet the criteria for removal. As we have stated repeatedly, the criteria have not been met in the case of the H & R Handygun since we cannot conclude that it is not likely to be used as a weapon.

In further support of your request, you have again asked us to compare the H & R Handygun with the .45 Colt/410 gauge Thompson Contender pistol, a firearm you believe is similar to the H & R Handygun and which is distributed in commercial channels free of NFA controls. Again, we fail to see the basis for this comparison because the Contender pistol is not a smooth bore shot pistol subject to the NFA.

You also aver that ATF did not give adequate consideration to the statements of certain third parties in support of your request. The statements of third parties were considered but do not persuade us that H & R Handyguns would not likely be used as weapons if removed from NFA controls.

Your most recent correspondence states that ATF has not given fair and adequate consideration to your arguments and has responded cryptically to your requests for reconsideration. Our records indicate that ATF has corresponded with you 17 times concerning the H & R Handygun

- 3 -

Mr. Eric M. Larson

from 1987-1993. With the exception of the letter dated July 29, 1993, which briefly restated the basis for denial articulated in the March 23, 1992 letter, all of our letters have responded to the issues you raised.

Finally, we request that you delete from your articles the invitation to your readers to contact ATF for copies of court documents. Since these documents are public records, copies should be obtained by contacting the courts.

For the foregoing reasons, our decision must stand.

Sincerely yours,

Daniel R. Black
for John W. Magaw
Director

Table 1

Handguns with Rifled Barrels Designed to Fire .410 Shotgun Shell Ammunition
Currently Being Manufactured and Sold in the United States, by Name,
Caliber(s), Barrel Length(s), and 1996 Retail Price

<u>Name of handgun</u> <u>price</u>	<u>Caliber(s)</u>	<u>Barrel length(s)</u>	<u>1996</u> <u>retail</u>
American Derringer Model 1 (two-shot)	.45 Colt, .410 2½"	3"	\$320.00
American Derringer Model 4 (two-shot)	.45 Colt, .410 3"	4.1"	\$352.00
American Derringer Model 6 (two-shot)	.45 Colt, .410 3" and .45-70	4.1	\$387.50
D-MAX Sidewinder Revolver (6-shot)	.45 Colt, .410 3"	6.5" or 7.5"	\$750.00
FMJ Single-Barrel Derringer	.45 Colt, .410 2½"	4"	\$ 70.00
FMJ Double-Barrel Derringer	.45 Colt, .410 3"	6"	\$100.00
Thompson/Center Contender (single-shot)	.45 Colt, .410 3"	10"	\$227.50
Thompson/Center Stainless Contender (single-shot)	.45 Colt, .410 3"	10"	\$485.00
Thompson/Center Stainless Super 14 (single-shot)	.45 Colt, .410 3"	14"	\$520.00
Thompson/Center Stainless Super 16 (single-shot)	.45 Colt, .410 3"	16¼"	\$520.00
Thunder-Five (5-shot revolver)	.45 Colt, .410 3" and .45-70	2"	\$550.00

Sources: *Standard Catalog of Firearms*, by Ned Schwing and Herbert Houze. 6th edition. Iola, Wisconsin: Krause Publications, 1996, p. 757; and *Guns Illustrated*, 28th edition, by Harold Murtz (ed.). Northbrook, Illinois: DBI Books, 1996, pp. 147, 151-152, 154.



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

JAN 28 1998

REFER TO: L:D:AG
98-311

Mr. Eric Larson
P.O. Box 5497
Takoma Park, Maryland 20913

Dear Mr. Larson:

This is in response to your Freedom of Information Act (FOIA) request for access to information maintained by the Bureau of Alcohol, Tobacco and Firearms.

Your request for an administrative appeal dated December 26, 1997, in response to our letter dated December 22, 1997, is being processed as an initial request, because in the interim a final decision was made on the report you requested. Therefore, your request is granted in part. We are releasing portions of the record that contains exempt information and are withholding portions for the reasons indicated on the enclosed "Document Cover Sheet." We were unable to identify responsive records to items numbered two and three of your initial FOIA request dated September 28, 1997. Item three never materialized.

The fees associated with processing your FOIA request were not waived. Please submit your check or money order on receipt, in the amount indicated on the enclosed invoice.

Insofar, as your request has been partially denied by deletions, and some records were not located, you submit an administrative appeal by following the procedure outlined in Part III of the enclosed form, and also state your reasons if you believe the search was not adequate.

Sincerely yours,

Averill P. Graham
Senior Disclosure Specialist

Enclosure

DEPARTMENT OF TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FOIA/PRIVACY ACT INVOICE

Date: 01/27/98

Disclosure File Number: 98-311

INVOICE NUMBER: 98-46

Instructions to Payer

Send check or money order to "Bureau of Alcohol, Tobacco and Firearms", to the address shown below. Please include a copy of the invoice with your payment.

To: (Payer) Mr. Eric Larson
P.O. Box 5497
Takoma Park, Maryland 20913

From:
Chief, Disclosure Division
Bureau of Alcohol, Tobacco and Firearms
Room 8430
Washington, DC 20026

DESCRIPTION	COST	EACH	QUANTITY OR TIME	AMOUNT
Photocopies	\$.15	Page	51 pages	\$ 7.65
Review Time	\$28.94	Per hour	½ hour	\$14.47
Records Search	\$34.42	Per hour	1 1/4 hour	\$43.03

PLEASE PAY THIS AMOUNT →

\$65.15

DOCUMENT COVER SHEET: EXEMPTIONS LIST AND APPEAL RIGHTS		
PART I—Document Cover Sheet		
1. Requester's Name Mr. Eric Larson	2. File Number 98-311	3. Requested documents were referred by the following agency:
4. Documents are being released: <input type="checkbox"/> at cost <input type="checkbox"/> without cost	5. Package ends with document #: -51-	6. Total # of documents denied: -0-
7. Exemptions cited for information Blackened-out on pages released: (See Part II for explanation of exemptions)		
<input type="checkbox"/> (b) (2) <input type="checkbox"/> (b) (3) <input type="checkbox"/> (b) (4) <input type="checkbox"/> (b) (5) <input type="checkbox"/> (b) (6) <input type="checkbox"/> (b) (7) (A) <input type="checkbox"/> (b) (6) (B) <input type="checkbox"/> (b) (7) (C) <input type="checkbox"/> (b) (7) (D) <input type="checkbox"/> (b) (7) (E) <input type="checkbox"/> (b) (7) (F)		
8. Documents completely withheld:		
Document # — Exemption	Document # — Exemption	Document # — Exemption
_____	_____	_____
_____	_____	_____
_____	_____	_____
9. The records identified above have been determined to be most directly responsive to your request. Other records, described below, are available upon payment of 15 cents per page (or at no cost if a fee waiver has been granted). These records generally consist of duplicated or repetitive information that restates information contained in the package being released. A sample or index of these records is included in this release. The following records are available upon request:		
	Number of pages:	
(a) Exhibits to Report (See index on page _____)	_____	
(b) Surveillance Reports (See sample page _____)	_____	
(c) Interagency Telegrams and Messages (See sample page _____)	_____	
(d) Property Disposition records (See sample page _____)	_____	
(e) Newspaper or magazine articles (See sample page _____)	_____	
(f) Miscellaneous (See sample page _____)	_____	
(g) _____	_____	
<p>Note: To obtain copies of these records, identify which records you want, count the pages and multiply by 15 cents. Send check or money order payable to Bureau of Alcohol, Tobacco and Firearms (BATF) and mail to Chief, Disclosure Division; BATF, 650 Massachusetts Avenue, Room 8430, Washington, D. C. 20226. Request promptly for best service, as files are returned to field offices 15 days after this notice is mailed to you.</p>		
(Part II and Part III on reverse side)		



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

DEC 17 1997

F:SD:WAN
2146

MEMORANDUM TO: ATF Specialist

FROM: Chief, Firearms, Explosives and Arson
Services Division

SUBJECT: Memorandum of Clearance

I have reviewed Office of Inspection (OI) Report of Investigation, number 970178-01, dated October 22, 1997, and determined that disciplinary action is not warranted.

The report documents OI's investigation of allegations made against you and two other Bureau employees by Mr. Eric M. Larson of Takoma Park, Maryland. Mr. Larson sent a letter to the Office of the Assistant Inspector General (IG) for Investigation, dated May 10, 1997. Later forwarded to OI, Mr. Larson's letter alleges that you and the other Bureau employees committed the following offenses: 1) ATF employees destroyed firearm registration documents that they were required by law to maintain; 2) ATF employees registered approximately 2,500 unregistered National Firearms Act (NFA) firearms without the proper authorization from Congress; 3) you and another ATF employee perjured yourselves in two letters to Mr. Larson; 4) registration activity that ATF classifies as "other" could include registrations of firearms that ATF employees registered contrary to the law, and that ATF refused to disclose the nature of this registration activity; and 5) that a significant number of NFA firearms were registered to persons who were deceased. However, the investigation did not substantiate any of the allegations and I have found no evidence of any wrongdoing on your part.

Therefore, I am issuing this memorandum of clearance concerning the incident covered in the above-referenced OI report of investigation.

Walter A. Nelson

②



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

DEC 17 1997

F:SD:WAN
2146

MEMORANDUM TO:

Chief, Firearms Technology Branch

FROM: Chief, Firearms, Explosives and Arson
Services Division

SUBJECT: Memorandum of Clearance

The Professional Review Board (PRB) has reviewed Office of Inspection (OI) Report of Investigation, number 970178-02, dated October 22, 1997, and has determined that disciplinary action is not warranted.

The report documents OI's investigation of allegations made against you and two other Bureau employees by Mr. Eric M. Larson of Takoma Park, Maryland. Mr. Larson sent a letter to the Office of the Assistant Inspector General (IG) for Investigation, dated May 10, 1997. Later forwarded to OI, Mr. Larson's letter alleges that you and the other Bureau employees committed the following offenses: 1) ATF employees destroyed firearm registration documents that they were required by law to maintain; 2) ATF employees registered approximately 2,500 unregistered National Firearms Act (NFA) firearms without the proper authorization from Congress; 3) you and another ATF employee perjured yourselves in two letters to Mr. Larson; 4) registration activity that ATF classifies as "other" could include registrations of firearms that ATF employees registered contrary to the law, and that ATF refused to disclose the nature of this registration activity; and 5) that a significant number of NFA firearms were registered to persons who were deceased. However, the investigation did not substantiate any of the allegations and I have found no evidence of any wrongdoing on your part.

After a careful review of the report, I concur with the PRB. Therefore, I am issuing this memorandum of clearance concerning the incident covered in the above-referenced OI report of investigation.

Walfred A. Nelson

③



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

DEC 17 1997

A:AJL
2146

MEMORANDUM TO:

Chief, Revenue Division

FROM: Assistant Director, Alcohol and Tobacco
Programs


SUBJECT: Memorandum of Clearance

JAL
12/27/97

The Professional Review Board (PRB) has reviewed Office of Inspection (OI) Report of Investigation, number 970178-03, dated October 22, 1997, and has determined that disciplinary action is not warranted.

The report documents OI's investigation of allegations made against you and two other Bureau employees by Mr. Eric M. Larson of Takoma Park, Maryland. Mr. Larson sent a letter to the Office of the Assistant Inspector General (IG) for Investigation, dated May 10, 1997. Later forwarded to OI, Mr. Larson's letter alleges that you and the other Bureau employees committed the following offenses: 1) ATF employees destroyed firearm registration documents that they were required by law to maintain; 2) ATF employees registered approximately 2,500 unregistered National Firearms Act (NFA) firearms without the proper authorization from Congress; 3) you and another ATF employee perjured yourselves in two letters to Mr. Larson; 4) registration activity that ATF classifies as "other" could include registrations of firearms that ATF employees registered contrary to the law, and that ATF refused to disclose the nature of this registration activity; and 5) that a significant number of NFA firearms were registered to persons who were deceased. However, the investigation did not substantiate any of the allegations and I have found no evidence of any wrongdoing on your part.

After a careful review of the report, I concur with the PRB. Therefore, I am issuing this memorandum of clearance concerning the incident covered in the above-referenced OI report of investigation.


Arthur J. Libertucci

④

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
ACKNOWLEDGEMENT OF RECEIPT OF DOCUMENTS

NAME OF EMPLOYEE (Last, First, Middle)		DATE RECEIVED 12/17/97	TIME 9:50 AM
I HEREBY ACKNOWLEDGE THAT ON THE ABOVE DATE I RECEIVED: (Check appropriate box)			
<input type="checkbox"/> NOTICE OF PROPOSED ADVERSE ACTION			
<input type="checkbox"/> NOTICE OF ADVERSE ACTION			
<input type="checkbox"/> NOTICE OF PROPOSED SUSPENSION			
<input type="checkbox"/> NOTICE OF SUSPENSION			
<input checked="" type="checkbox"/> OTHER (Specify) Memorandum of Clearance			
SIGNATURE OF EMPLOYEE [Signature]		SIGNATURE OF PERSON DELIVERING DOCUMENT [Signature]	

ATF F 2754.1 (3-75)

REPLACES ATF FORM 80 (7-73) WHICH MAY BE USED

JPM 12/22/97

⑤



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

DEC 9 1997

M:P:R:DEK:ssw
2143

MEMORANDUM TO:

Assistant Director, Alcohol
and Tobacco

FROM: Chair, Professional Review Board

SUBJECT: Memorandum of Clearance for

The Professional Review Board (PRB) has reviewed Office of Inspection Report of Investigation, number 970178-03, dated October 22, 1997, and has concluded that a memorandum of clearance is warranted for Chief, Revenue Division. Accordingly, attached is the memorandum to the employee for your signature.

NOTE: If you disagree with this action, or have any questions about the PRB recommendation, please feel free to contact me at 202-927-8555 prior to signing the memorandum.

If you agree, please review, sign and date the memo, and then issue it to the employee. The employee may also be allowed to read the OI report should he ask to do so. Please forward a copy of the signed, dated memo, to:

, Chief
Employee and Labor Relations Branch
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W., Room 4300
Washington, D.C. 20226

It is important that you send this memo as soon as possible so that ELRB can close the case with the Office of Inspection. You should also complete page 1 of the OI Report of Investigation (ATF Form 8600.36, Investigation Referral Memorandum), items 12 through 15, and return the OI Report to the Office of Inspection.

6

Should you have any changes to the memo, please contact
your servicing employee relations specialist,
at 202-927-8640.

Don E. Keith

Attachments



**ASSISTANT
DIRECTOR**

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

OCT 24 1997

I:RJH
970178

**TO: Assistant Inspector General
for Investigations**

FROM: Assistant Director
Inspection

SUBJECT: Mismanagement and misconduct by -
- , - a and other unidentified
employees of the Bureau of Alcohol, Tobacco
and Firearms. Case Number: 97-1-075-R

I refer to your memorandum dated June 5, 1997, referring this matter for investigation.

The investigation has been completed and the report has been given to _____, Auditor, Chicago Office of Inspector General, who is reviewing this issue for the Treasury Office of Inspector General.

- Richard J. Hankinson

⑧

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM

970178-03

INSTRUCTIONS

1. The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted herewith for review, evaluation and administrative disposition. Only the persons officially charged with the aforementioned responsibility should review this report; the information contained therein should be disseminated on a need to know basis only.
2. After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto; Notice of final decision; Letter of reprimand; or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Chair, Professional Review Board

2. NAME OF EMPLOYEE(S)	3. POSITION AND GRADE Chief, Industry Compliance Div. GS-15	4. POST OF DUTY Bureau Headquarters
5. DATE ENTERED ON DUTY March 13, 1967	6. TYPE OF INVESTIGATION Integrity	
7. NAME AND SIGNATURE OF FORWARDING OFFICIAL Richard J. Hankinson	8. TITLE Assistant Director (Inspection)	9. DATE 10/22/67
10. REMARKS		

THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

cc: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Assistant Director (Firearms, Explosives & Arson);
Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

MR 12/20/67

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE

Letter of Clearance dated 12/17/67

(10)

13. NAME AND SIGNATURE OF RECEIVING OFFICIAL ARTHUR J. LIBERTUCCI	14. TITLE ASSISTANT DIRECTOR ALCOHOL AND TOBACCO	15. DATE 12/17/67
--	--	----------------------

ATF F 8600.36-1 (9-64) PREVIOUS EDITIONS ARE OBSOLETE

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM

970178-01

INSTRUCTIONS

1. The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted herewith for review, evaluation and administrative disposition. Only the person officially charged with the aforementioned responsibility should review this report; the information contained therein should be disseminated on a need to know basis only.

2. After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto, Notice of final decision, Letter of reprimand, or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Assistant Director (Firearms, Explosives & Arson) 11/24

2. NAME OF EMPLOYEE(S)

3. POSITION AND GRADE
ATF Specialist
GS-134. POST OF DUTY
Bureau
Headquarters

5. DATE ENTERED ON DUTY

February 22, 1972

6. TYPE OF INVESTIGATION

Integrity

7. NAME AND SIGNATURE OF FORWARDING OFFICIAL

Richard F. Harkinson

8. TITLE
Assistant Director
(Inspection)

9. DATE

10/22/97

10. REMARKS

THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS
INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

CC: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE

13. NAME AND SIGNATURE OF RETURNING OFFICIAL

14. TITLE

15. DATE

**DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM**

970178-02

INSTRUCTIONS

1. The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted here with for review, evaluation and administrative disposition. Only the persons officially charged with the aforementioned responsibility should review this report; the information contained therein should be disseminated on a need to know basis only.
2. After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto, Notice of final decision, Letter of reprimand, or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Chair, Professional Review Board

2. NAME OF EMPLOYEE(S)	3. POSITION AND GRADE Firearms Tech. Manager, GS-15	4. POST OF DUTY Bureau Headquarters
5. DATE ENTERED ON DUTY February 8, 1970	6. TYPE OF INVESTIGATION Integrity	
7. NAME AND SIGNATURE OF FORWARDING OFFICIAL Richard J. Haykinson	8. TITLE Assistant Director (Inspection)	9. DATE 10/22/97
10. REMARKS		

THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

cc: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Assistant Director (Firearms, Explosives & Arson);
Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE

13. NAME AND SIGNATURE OF RETURNING OFFICIAL	14. TITLE	15. DATE
--	-----------	----------

ATF F 8600.36 (11-94) PREVIOUS EDITIONS ARE OBSOLETE

**DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM**

970178-01

INSTRUCTIONS

- The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted herewith for review, evaluation and administrative disposition. Only the persons officially charged with the aforementioned responsibility should review this report; the information contained therein should be disseminated on a need to know basis only.
- After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto, Notice of final decision, Letter of reprimand, or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Assistant Director (Firearms, Explosives & Arson)

2. NAME OF EMPLOYEE(S)

-

3. POSITION AND GRADEATF Specialist
GS-13**4. POST OF DUTY**Bureau
Headquarters**5. DATE ENTERED ON DUTY**

February 22, 1972

6. TYPE OF INVESTIGATION

Integrity

7. NAME AND SIGNATURE OF FORWARDING OFFICIAL

Richard W. HAYKINSON

8. TITLEAssistant Director
(Inspection)**9. DATE**

OCT 22 1992

10. REMARKS

THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS
INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

cc: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE**13. NAME AND SIGNATURE OF RETURNING OFFICIAL****14. TITLE****15. DATE**

(13)

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM

970178-02

INSTRUCTIONS

1. The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted herewith for review, evaluation and administrative disposition. Only the persons officially charged with the aforementioned responsibility should review this report. The information contained therein should be disseminated on a need to know basis only.
2. After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto, Notice of final decision, Letter of reprimand, or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Chair, Professional Review Board

2. NAME OF EMPLOYEE(S)

3. POSITION AND GRADE

Firearms Tech.
Manager, GS-15

4. POST OF DUTY

Bureau
Headquarters

5. DATE ENTERED ON DUTY

February 8, 1970

6. TYPE OF INVESTIGATION

Integrity

7. NAME AND SIGNATURE OF FORWARDING OFFICIAL

Richard G. Hankins

8. TITLE

Assistant Director
(Inspection)

9. DATE

OCT 22 1970

10. REMARKS

THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS
INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

cc: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Assistant Director (Firearms, Explosives & Arson);
Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE

13. NAME AND SIGNATURE OF RETURNING OFFICIAL

14. TITLE

15. DATE

④

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
INVESTIGATION REFERRAL MEMORANDUM

970178-03

INSTRUCTIONS

1. The information contained in the attached report represents the results of an investigation conducted by the Office of Inspection. It is submitted herewith for review, evaluation and administrative disposition. Only the persons officially charged with the aforementioned responsibility should review this report; the information contained therein should be disseminated on a need to know basis only.
2. After action has been taken or a decision has been made that no action will be taken, both copies of this form should be endorsed in item 12 to

show clearly the nature of action taken and the effective date, or the decision that no action will be taken. Return both copies of this form and all of the investigative material to the address indicated in item 11 below. If disciplinary action is taken please also return a copy of any of the following papers which may be applicable: Notice of proposed adverse action (letter of charges) and any written or oral reply thereto, Notice of final decision, Letter of reprimand, or written confirmation of oral admonishment, SF 50 covering action taken.

1. REPORT FORWARDED TO

Chair, Professional Review Board

2. NAME OF EMPLOYEE(S)

3. POSITION AND GRADE

Chief, Industry
Compliance Div.
GS-15

4. POST OF DUTY

Bureau
Headquarters

5. DATE ENTERED ON DUTY

March 13, 1967

6. TYPE OF INVESTIGATION

Integrity

7. NAME AND SIGNATURE OF FORWARDING OFFICIAL

Richard J. Harkinson

8. TITLE

Assistant Director
(Inspection)

9. DATE

OCT 22 1967

10. REMARKS

✓ THIS REPORT IS NOT TO BE DUPLICATED UNLESS THE REPORT OR SECTIONS OF IT IS
INTENDED FOR USE AS MATERIAL RELIED UPON IN SUPPORT OF A DISCIPLINARY OR ADVERSE ACTION.

cc: ATF Form 8600.36, Report of Investigation, with exhibits, to:

Assistant Director (Firearms, Explosives & Arson);
Chief, Personnel Division, Bureau Headquarters;
Chief, Employee and Labor Relations Branch; and to
Assistant Inspector General for Investigations,
Office of Inspector General, Department of the Treasury

11. RETURN TO

OFFICE OF INSPECTION
BUREAU OF ATF
PO BOX 50202
WASHINGTON, DC 20091-0202

12. NATURE OF FINAL ACTION AND EFFECTIVE DATE

13. NAME AND SIGNATURE OF RETURNING OFFICIAL

14. TITLE

15. DATE

(15)

Larson's fourth allegation suggests that ATF is using the "other category" to illegally register firearms. However, this category is used when the computer program cannot recognize a non-standard document that has been submitted for registration. For instance, some registrations were actually filed in correspondence on letterhead. If an ATF employee entering the information into the computer enters a Form 3 as a Form 33, the program will assign the document to the "other" column. The fact that the form is entered in the "other" column does not mean that the firearm is illegally registered.

In his fifth allegation, Larson states that some of the NFA weapons registered may be registered to deceased persons. While it is possible that, unknown to ATF, some NFA weapons may be registered to deceased individuals, the integrity of the NFA is incumbent upon the individuals who possess legally registered firearms to report deaths and reregister the weapon.

In closing, Larson suggests two solutions to the problems he cites in his allegations. His first recommendation is to remove 17,000 "any other weapons" listed under the NFA. Although Congress did enable firearms classified as collectors' items to be removed from the NFA, contrary to Larson's interpretation it did not mandate their removal. Therefore, if an individual weapon is suggested for removal, ATF will consider the particular firearm on a case-by-case basis and determine if removal is warranted.

Furthermore, to address Larson's second solution, if the original registration of a firearm is misplaced, the owner needs only to contact ATF to obtain another copy. There is no need to re-register, and there is no need to establish an amnesty period as Larson suggests.

CHRONOLOGY OF INVESTIGATION

On June 10, 1997, the Office of Inspection (OI) received a memorandum from Raisa Otero-Cesario, Assistant Inspector General for Investigations (IG), that referred a letter alleging misconduct by Bureau of Alcohol, Tobacco and Firearms (ATF) employees. The complaint alleges that various employees of ATF have destroyed (and may have illegally added) National Firearms Registration and Transfer Records (NFRTR), have committed perjury in letters of response to the complainant, and have been negligent in removing firearms registered to deceased individuals.

In his letter dated May 10, 1997, Eric M. Larson sets forth the following allegations:

1. ATF employees have deliberately destroyed firearm registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by ATF Special Agent [redacted]. In analyses of data made public by ATF, I [Eric M. Larson] found that during 1992 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records.

2. ATF employees registered almost 2,500 unregistered NFA firearms on Form 4467 after December 1, 1968, without proper authorization by the Congress. In addition to not being authorized by the Congress, such registrations were prohibited by the Supreme Court in 1971, yet it appears that ATF registered 172 or more unregistered NFA firearms on Form 4467 after 1971. I have included an example of one apparently illegal post-December 1, 1968, Form 4467 registration in my testimony.

3. ATF employees [redacted] and [redacted] committed felony perjury in letters written to me dated March 23, 1992, and July 29, 1993, respectively. [redacted] and [redacted] each alleged that "an unlawful trafficker in drugs with an extensive criminal record: was in possession of a .410 bore H & R Handy-Gun "while committing drug violations." This alleged instance of criminal conduct was used to deny my petition to remove the H & R Handy-Gun from the NFA as a collector's item. In fact, a Freedom of Information Act request disclosed that the Handy-Gun was recovered from an acquaintance of the trafficker, who said that the trafficker had

- 970178-01
- 970178-02

- 970178-03

-3-

(18)

given it to him for safe-keeping (see pages 212-215, 222-230, and 233-236 of my 1996 testimony). Any person who petitions for removal of a firearm from the NFA must state the reasons under penalty of perjury. The plain language of the statute at Title 26, U.S.C., § 5861(1) and § 5871 applies to any person who knowingly makes or causes the making of a false entry on any document required to be prepared as a result of administering the NFA, including the legal decision regarding the classification of an NFA firearm. Both and deliberately falsified the facts of the case they cited.

4. Certain "registration activity" that ATF classifies as "OTHER" could include registrations of firearms that one or more ATF employees registered contrary to law, because ATF has refused to disclose the nature of this "registration activity." To the best of my knowledge, I've never heard of any forms numbered other than 1, 2, 3, 4, 5, 6, 9, 10 or 4467 being used to register or transfer NFA firearms. According to a letter to me dated January 9, 1997, from NFA Branch Chief

the "OTHER" category is "comprised of registrations where the form number is different from the other ones tabulated." , however, has declined to provide the names or numbers of these forms. Coupled with the other evidence of registration mismanagement I have documented, it appears that the "OTHER" category may represent firearms that were registered illegally, as noted in my 1997 testimony.

5. It appears that a significant number of NFA firearms are currently registered to persons who are deceased, and that ATF has been aware of this fact since at least 1981 and done nothing about it, as noted in my 1997 testimony. Consequently, a significant number of NFA firearms are now illegally possessed, in some instances by persons who are unaware they are in violation of the law. The reason is that many firearms classified as "Any Other Weapon" are rare collector's items that many people do not consider weapons, as noted in both my 1996 and 1997 testimonies.

(Exhibit 1, Larson letter)

On July 10, 1997, Special Agent (SA) , Office of Inspection (OI), interviewed Office of Chief Counsel Attorney ATF, who related the following facts:

- 970178-01
- 970178-02
- 970178-03

-4-

(19)

is currently employed by ATF, as an Associate Chief Counsel in the Office of Chief Counsel in Washington D.C. He is aware of an individual by the name of Eric Larson, whom he has spoken to and corresponded with concerning issues related to particular firearms, specifically, the H & R Handy Gun shotgun and the Marble Game Getter.

According to Larson has been requesting information on the Handy Gun and the Marble Game Getter since approximately 1986 or 1987. Larson has requested that the H & R Handy Gun be removed from the National Firearms Act (NFA) arguing that the firearm should only be classified as a curio or relic subject to the 1968 Gun Control Act.

has debated the issue with Larson on numerous occasions, both verbally and in writing. Furthermore, whenever Larson has contacted ATF with a question or request, ATF has provided the information available.

Regarding Larson's first allegation, stated that the conclusions Larson draws from testimony may be incorrect, and recommended that be contacted for the correct response.

In response to the third allegation, stated that neither nor perjured themselves in their letters to Larson. The information referred to in each letter, (letter dated March 23, 1992, and letter dated July 29, 1993) is true and correct based on the facts at the time. and of the Firearms Technology Branch authored the letter for response. Larson refers to a violation of 26 USC 5861(1) and 5871 by and stated that he is unaware of any violation in these two laws from correspondence between or and Larson.

responded to Larson's fifth allegation, which refers to inaccuracies in the NFRTR by explaining that the NFRTR only reflects changes in the record when an individual legally transfers and registers a previously registered weapon. The NFRTR has no way of detecting how many times a firearm may have been transferred between the years 1940 and 1968 unless the transfers were recorded in the NFRTR. stated that if ATF were to allow periodic amnesty periods, as Larson suggests, the NFA may be circumvented any number of times by individuals in violation of the law. For example, a person could obtain a firearm illegally and

wait for the amnesty period to register the illegally obtained firearm.

explained that when the original paperwork for a registered firearm is lost, the owner merely has to contact ATF to obtain copies of the original. If a firearm is already registered, there is no need to re-register the firearm.

Regarding Larson's first solution, explained that ATF is not required to remove a firearm from the NFA it determines that the firearm is not likely to be used as a weapon. ATF did not draw this conclusion regarding the H & R Handy Gun. stated that if Congress wants to remove the weapons from the NFA, it has the authority to do so. In the late 1950's or early 1960's, Congress did lower the tax on the "any other weapon" category from \$200 to \$5. The category, however, was not removed from the NFA. The H & R Handy Gun has the same configuration as a sawed-off shotgun and is readily concealable. This configuration makes the firearm an unlikely candidate for removal from the NFA.

states that Larson's second solution, that the Secretary of the Treasury grant an amnesty period as in 1968, is very unlikely to occur because another amnesty period is not warranted. Moreover, a new amnesty period could jeopardize pending investigations. This would also be an opportunity for people to avoid paying the tax to transfer the weapon. The 1968 amnesty was originally enacted to provide the public a brief opportunity to comply with the NFA as amended that year. The 1968 amnesty period served its purpose, and there is no legitimate reason for another amnesty.

SA presented with the above summary of his statement, and stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief.

On July 14, 1997, SA interviewed at his office in the NFA Branch. advised SA of the following information:

- stated that he has been employed by ATF for the past 25 years and has been assigned to the NFA Branch for approximately 16 years.

He is aware of an individual by the name of Eric Larson and has spoken with Larson about statistics concerning NFA weapons. states that Larson has been writing letters to ATF for many years regarding NFA weapons, in particular the H & R Handy Gun.

In response to Larson's first allegation regarding testimony in U.S. District Court, made reference to certain documents being destroyed at the NFA Branch. stated he made the comments in reference to thousands of Title II firearms manufactured by that were being exported to Various manufacturers were forwarding the paperwork for these firearms. 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. admits that Larson may have construed from his testimony that ATF employees were destroying documents, but this was not the case. suggested that if there was an increase in any NFA firearm registrations, it may have resulted from the changes made to reflect different form numbers being located and entered or from the transposition of registration dates on the original form. Such changes would have been added to the NFRTTR.

then addressed the second allegation in the letter, which concerns the filing of the proper paperwork for NFA firearms during the amnesty period Congress enacted in 1968. He explained that the backlog of paperwork received as a result of the amnesty program back in 1968 was very large, and the filing of these documents required extra time in order to get the registrations documented. In addition, paperwork was also received late, because certain groups of individuals were granted an extended period to file the paperwork. These individuals would have been granted extensions if, for example they were overseas when the amnesty period closed.

Regarding the fourth allegation, stated that Larson is referring to the statistics maintained by the NFA Branch. The "other" category Larson refers to in his letter is a category designated by the computer program that produces statistics when a standard form number is not provided. For instance, an individual entering the information into the ATF computer may enter a Form 3 as 33. This form would then be placed in the "other" category. If an application for

- 970178-01

- 970178-02

- 970178-03

-7-

22

registration were received in correspondence on letterhead, without a form number, this would also be placed in the "other" category. The fact that the form has been placed in the "other" category does not mean the form cannot be located. All registration correspondence is numbered and identified for proper filing.

In response to the fifth allegation, [redacted] stated that if a possessor of a legally registered NFA weapon passes away and the beneficiary of the estate wants to register that firearm in his or her name, ATF will do whatever is necessary to assist that individual in registering the firearm. The individual needs only to contact the NFA Branch, and an ATF employee will assist in any way.

[redacted] asserted in response to Larson's first solution that ATF will not arbitrarily remove any firearms from the NFA. Congress has the authority to do so and, if Congress deems it necessary to remove some of these firearms, it will do so.

In response to Larson's second solution, he stated that ATF will provide anyone copies of registration forms for documents that may have been misplaced or lost. Another amnesty period has been discussed by Congress, the White House, and ATF; however, the idea was rejected because of pending investigations and other issues related to the registration problems that may arise.

SA [redacted] provided [redacted] with the above summary of his statement, and [redacted] stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief.

On July 21, 1997, SA [redacted] interviewed [redacted] Chief of the Industry Compliance Branch. [redacted] advised SA [redacted] that he has spoken with Larson on the telephone concerning the removal of the H & R Handy Gun. [redacted] also advised SA [redacted] of the following facts:

He was the Chief of the NFA Branch in 1986 and 1987 and was unaware of any documents being destroyed by any ATF employee. At that time, some paperwork was missing and some contract employees hired by ATF were suspected of misplacing ATF paperwork.

stated that the Handy Gun has a configuration similar to the sawed-off or short-barreled shotgun. He likewise stated that it is within the purview of Congress to remove the firearm from the NFA.

Finally, also stated that when the paperwork for a legally registered NFA firearm is lost, the owner need only contact ATF for copies of the original. ATF has the original documents, and a copy can be forwarded to the legal owner.

Another amnesty period for the registration of NFA weapons must be authorized by Congress and the Secretary of the Treasury.

SA presented with the above summary, and stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief.

(Exhibit 2, Letter from to Eric Larson dated July 29, 1993)

On July 31, 1997, SA contacted Eric Larson by telephone to arrange an interview concerning his correspondence to the IG. Over the telephone, Larson stated that NFA status of a firearm known as the Game Getter put him over the edge on this issue, and he felt that there should be one person in the United States that stands up for what he believes in. Larson stated that he works for the Government Accounting Office (GAO) in the section that audits ATF. Larson added that he is not involved in the audit of ATF. He stated that he would like to meet with SA and he would try to think of anything he may have forgotten to put in his letter to the IG.

On August 1, 1997, SA interviewed , Chief of the Firearms Technology Branch, ATF. stated that he has been employed by ATF since November 1972 and knows of Eric Larson. advised SA of the following:

The letter that Larson refers to was authored by ATF Counsel from information obtained by Assistant Chief of the Firearms Technology Branch.

stated that if Congress wants to change the law as it pertains to some NFA weapons, he would have no problem with it. Congress has the authority to amend the law with respect to NFA weapons. If the law were changed, ATF would adhere to whatever change was made.

He added that ATF would help, in any way possible, an individual obtain proper paperwork for NFA registration.

(Exhibit 3, Letter from
23, 1992)

to Eric Larson dated March

On August 1, 1997, SA interviewed , Chief of the Firearms and Explosives Regulatory Section, ATF. informed that he has been employed by ATF for the past 25 years and has been in his current position since January 1996. stated that he knows of an individual by the name of Eric Larson and has written a response letter to Larson. advised SA of the following:

With regard to Larson's fifth allegation, if the relatives of a deceased person notify ATF about the death of a firearm owner and wish to reregister the firearm, ATF will help, in any way it can, to facilitate the registration process. However, the only way ATF would be aware of someone's passing away is if the family of the deceased advised ATF.

In response to Larson's first solution, is not aware that ATF can legally remove NFA firearms without the approval of the Congress.

In response to Larson's second solution, ATF does not have the authority to establish a 90-day waiting period. If the original copy of the NFA registration is lost, the owner of the firearm need only contact ATF and a copy will be provided.

SA provided with the previous summary, and stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief.

On August 1, 1997, SA interviewed , Chief of the National Firearms Act Branch, ATF. stated that she has been employed by ATF for 11 years and has been in her current position since March 1996. She knows of an individual by the name of Eric Larson and has had corresponded with him. advised SA of the following:

In reference to Larson's first allegation, stated that she is unaware of any original documents being destroyed by any ATF employees. The testimony given in U.S. District Court by concerned contract employees hired by ATF who were suspected of destroying or misplacing ATF documents. Such activity

is by no means recent and occurred well over 8 years ago.

Regarding Larson's fourth allegation, the "other" category of registrations is used to capture non-standard documents. For instance, if a Form 3 is entered as a Form 33, the computer software would automatically place the form in the "other" column. If an individual files a registration on correspondence with letterhead, the entry is also entered as "other." Furthermore, if errors are located, they are corrected.

Concerning Larson's fifth allegation, if heirs or executors of estates of deceased individuals wish to transfer legally registered firearms to themselves, they must contact ATF. ATF will conduct a query for the individual and the particular firearm and advise the individual of the procedure to register. If an executor finds a firearm that is not registered, ATF will advise of abandonment procedures for the weapon. stated that family of the deceased go through enough without having to worry about firearms they were unaware of.

In response to Larson's first solution, Levine stated that ATF should not make a blanket removal of some 17,000 firearms classified as "any other weapons." She suggested that some of these weapons may be looked at on a case-by-case basis and examined individually for removal from the NFA.

Regarding Larson's second solution, copies of lost registrations are requested by registered owners and the requests are responded to. There would be no reason for another amnesty period, as it would serve no purpose.

SA provided with the previous summary, and stated under oath that the facts contained in the summary are true and correct to the best of her knowledge and belief.

(Exhibit 4, Letter from January 9, 1997)

to Eric Larson dated

On August 1, 1997, SAs Eric Larson and his attorney, following:

and

OI, met with

Larson stated the

He had nothing to add to his allegations, and he felt he had filed everything that pertained to the issue.

- 970178-01
- 970178-02
- 970178-03

-11-

26

He stated that he received the case information referred to in his third allegation through the Freedom of Information Act. This was the only case pertaining to the issue that he had received, and he felt that ATF had no other cases pertaining to the misuse of the H & R Handy Gun.

On August 5, 1997, SA [redacted] interviewed [redacted] Assistant Chief of the Firearms Technology Branch, who has been employed with ATF since 1973. [redacted] stated the following:

He knows of Eric Larson and has supplied information about the H & R Handy Gun to the Office of Chief Counsel for responses to Larson's inquiries. The case cited by Larson refers to a case from the Portland, Oregon, Post of Duty in which an H & R Handy Gun with a metal cannabis leaf tacked onto the stock was seized during an investigation. The firearm was taken into custody from an acquaintance of an individual by the name of John D. Dudley. The case included a Title 26 charge and a felon-in-possession charge. Dudley, however, was not charged with possession of the firearm in question.

There are numerous cases across the United States involving the criminal possession of an H & R Handy Gun. [redacted] cited three other investigations that he is aware of that took place between 1990 and 1992. This does not preclude the possibility that other investigations may have been going on that [redacted] was unaware of. The fact that only one was presented to Larson under his Freedom of Information request does not mean that there were no other investigations of this sort taking place or that no cases had been adjudicated prior to Larson's request.

SA [redacted] presented [redacted] with the previous summary, and [redacted] stated under oath that the facts contained in the summary are true and correct to the best of his knowledge and belief.

On August 5, 1997, SA [redacted] telephoned SA [redacted] of the Portland, Oregon, Field Office about defendant John Dudley. SA [redacted] stated the following:

He investigated a previously convicted felon by the name of John David Dudley of Jacksonville, Oregon, in 1990. Dudley was suspected of methamphetamine trafficking, possession of stolen property, and being a felon in possession of firearms.

- 970178-01
- 970178-02
- 970178-03

-12-

(27)

was contacted by a local task force concerning Dudley after Dudley was stopped on a traffic violation and found to be in possession of an unregistered pen gun and a Browning 9mm handgun. Shortly thereafter, a State search warrant was executed at the residence of one of Dudley's associates, Recovered from were 27 firearms, including an H & R Handy Gun, which, along with all of the other firearms located, allegedly belonged to Dudley. advised authorities that Dudley requested that keep the firearms at his residence. Dudley was taken into custody, and presented the case to the U.S. Attorney's Office for prosecution. The Assistant United States Attorney (AUSA) handling the case decided to indict Dudley on possession of the two firearms found during the traffic stop. The AUSA decided not to indict Dudley for the other 27 firearms that were recovered from Dudley was indicted for violations of 18 U.S.C. 922(g)(1) and Title 26 5861(d). Dudley was subsequently sentenced in July 1991 to 60 months imprisonment followed by 36 months supervision.

(Exhibit 5, Copy of ATF Form 3270.1 reference IN #93360-90-4058 S.)

LIST OF EXHIBITS

1. Letter from Eric Larson Takoma Park, Maryland, to Inspector General Valerie Lau, dated May 10, 1997.
2. Letter from _____ Chief of the Firearms and Explosives Division, to Eric Larson, dated July 29, 1993.
3. Letter from _____, Chief of the Firearms Technology Branch, to Eric Larson dated March 23, 1992.
4. Letter from _____ Chief of the National Firearms Act Branch to Eric Larson, dated January 9, 1997.
5. Copy of ATF Form 3270.1 regarding John David Dudley, investigation #93360-90-4058 S from Portland, Oregon, Field Office.

May 10, 1997

Ms. Valerie Lau, Inspector General
Office of the Inspector General
Department of the Treasury
1500 Pennsylvania Avenue, N.W., Room 2412
Washington, D.C. 20220

Dear General:

I am writing to call your attention to, and provide specific documented valid and reliable evidence of, what appear to me to be serious instances of mismanagement, misconduct and illegality by employees of the Bureau of Alcohol, Tobacco and Firearms (ATF) in administering our Nation's federal gun control laws. I have presented this evidence in testimony to the House Appropriations Subcommittee on April 30, 1996,¹ and on April 8, 1997.² I have enclosed a copy of my 1997 testimony for your convenience of reference.

All of these instances of apparent mismanagement, misconduct and illegality involve the National Firearms Act (NFA) of 1934, as amended, which is a statute that falls under the Tax Code of 1986, and thus involves taxpayer information. Taxpayer information is secret under Internal Revenue Service (IRS) rules and the law, but under court rules and criminal case law, prosecutors are required to disclose any information that could be used to impeach a government witness. Consequently, the instances I have identified here appear to affect certain types of prosecutions for alleged violations of the NFA, and in particular the alleged nonregistration of NFA firearms.

Based on my 1996 and 1997 testimonies, it appears that one or more ATF employees have, in the course of their official duties, committed a number of serious acts which are contrary

¹"Statement of 'Curio or Relic' Firearms Manufactured in or Before 1934 Which Are Also Classified in the 'Any Other Weapon' Category Under the National Firearms Act (NFA) of 1934, as Amended," by Eric M. Larson, in *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997, Part 5*. Testimony of Members of Congress and Other Interested Individuals and Organizations. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 104th Congress, 2nd Session. Washington, D.C.: U.S. Government Printing Office, 1996, pages 37-274.

²"Statement on Proposed Removal of Certain Firearms Manufactured in the United States in or Before 1934 from Purview of the National Firearms Act (NFA) of 1934, as Amended, and Their Reclassification as 'Firearms' as Defined in Title 18, U.S.C., Chapter 44," and "Errors in the National Firearms Registration and Transfer Record: A New Amnesty Period May be Required to Correct Them."

to law. Consequently, I would like to respectfully ask you to consider conducting a criminal investigation of a number of specific instances where it appears that ATF employees have violated the law. From the nature of these possible violations, it appears that it may be desirable for you to consider conducting a forensic audit of the National Firearms Registration and Transfer Record (NFRTR), as these data may have been illegally created or altered. It may also be necessary to have such a forensic audit conducted by an entity which is totally independent from ATF, to avoid any conflict of interest that would obviously result from allowing ATF to investigate itself.

These specific alleged acts are as follows:

1. ATF employees have deliberately destroyed original firearm registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by ATF Special Agent Gary N. Schaible.³ In analyses of data made public by ATF, I found that during 1992 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records.

2. ATF employees registered almost 2,500 unregistered NFA firearms on Form 4467 after December 1, 1968, without proper authorization by the Congress. In addition to not being authorized by the Congress, such registrations were prohibited by the Supreme Court in 1971, yet it appears that ATF registered 172 or more unregistered NFA firearms on Form 4467 after 1971. I have included an example of one apparently illegal post-December 1, 1968, Form 4467 registration in my 1997 testimony.

3. ATF employees Edward M. Owen, Jr. and Terry L. Cates committed felony perjury in letters written to me dated March 23, 1992, and July 29, 1993, respectively. Mr. Owen and Mr. Cates each alleged that "an unlawful trafficker in drugs with an extensive criminal record" was in possession of a .410 bore H&R Handy-Gun "while committing drug violations." This alleged instance of criminal conduct was used to deny my petition to remove the H&R Handy-Gun from the NFA as a collector's item. In fact, a Freedom of Information Act request disclosed that the Handy-Gun was recovered from an acquaintance of the trafficker, who said that the trafficker had given it to him for safe-keeping (see pages 212-215, 222-230, and 233-236 of my 1996 testimony). Any person who petitions for removal of a firearm from the NFA must state the reasons under penalty of perjury. The plain language of the statute at Title 26, U.S.C., § 5861(i) and § 5871 applies to any person who knowingly makes or causes the making of a false entry on any document required to be prepared as a result of

³United States vs. John Daniel LeaSure, Criminal No. 4:95CR54, Newport News, Virginia, May 21, 1996. Transcript of Proceedings before the Honorable John A. Mackenzie, United States District Judge. United States Court, Eastern District of Virginia, Newport News Division.

administering the NFA, including a legal decision regarding the classification of an NFA firearm. Both Mr. Owen and Mr. Cates deliberately falsified the facts of the case they cited.

4. Certain "registration activity" that ATF classifies as "OTHER" could include registrations of firearms that one or more ATF employees registered contrary to law, because ATF has refused to disclose the nature of this "registration activity." To the best of my knowledge, I've never heard of any forms numbered other than 1, 2, 3, 4, 5, 6, 9, 10 or 4467 being used to register or transfer NFA firearms. According to a letter to me dated January 9, 1997, from NFA Branch Chief Nereida W. Levine, the "OTHER" category is "comprised of registrations where the form number is different from the other ones tabulated." Ms. Levine, however, has declined to provide the names or numbers of these forms. Coupled with the other evidence of registration mismanagement I have documented, it appears that the "OTHER" category may represent firearms that were registered illegally, as noted in my 1997 testimony.

5. It appears that a significant number of NFA firearms are currently registered to persons who are deceased, and that ATF has been aware of this fact since at least 1981 and done nothing about it, as noted in my 1997 testimony. Consequently, a significant number of NFA firearms are now illegally possessed, in some instances by persons who are unaware they are in violation of the law. The reason is that many firearms classified as "Any Other Weapon" are rare collector's items that many people do not consider weapons, as noted in both my 1996 and 1997 testimonies.

ATF's most recent data (as of December 31, 1996) disclose that of the 14,259 firearms registered during 1934 to 1939, exactly 11,175 (78.4 percent) are still currently owned by the person or government entity that registered or acquired it during that same time period. And of the 58,904 firearms registered in 1968, a stunning 85.4 percent are still owned as of 1996 by the same persons who registered or received them by transfer in 1968. Consider that in 1981, an internal ATF study reported:

We have the condition where people who registered firearms under the original National Firearms Act at age 65 would now be 112 years old. We know that these people are dead and their heirs have not taken the necessary steps to contact us so that the involuntary transfer created by the registrant's death can be formalized.⁴

One result of ATF's negligence is that some persons who own certain rare, valuable firearms that have special value to collectors have been instantly transformed into criminals. The reason is that through natural disasters (such as the recent floods in North Dakota, house fires, and similar tragic events), the owners of these firearms have lost their copies of the documents which prove their lawful ownership, and the law does not allow these firearms

⁴"Status Report: National Firearms Registration and Transfer Record (NFRTR)," by Deron A. Dobbs. Internal ATF report dated July 1, 1981.

to be voluntarily re-registered. I believe there are two possible solutions to this problem, and neither requires legislation. The reason is that each solution may be achieved by administrative action on the part of ATF. These solutions are:

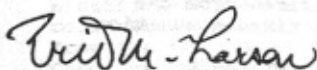
1. Administratively removing approximately 17,000 "curio or relic" firearms classified as "any other weapon" under the NFA, which were originally commercially manufactured in or before 1934 (but not replicas thereof). The Congress determined that these "any other weapon" firearms were mainly collector's items and not likely to be used as weapons in 1960. It was not until 1968 that the Congress passed legislation enabling these firearms to be removed from the NFA as collector's items.
2. Establishing a 90-day amnesty period to allow persons who may have innocently lost their copies of the registration form to re-register these firearms. The Congress has authorized such amnesty periods to be established by the Secretary of the Treasury under § 207(d) of the Gun Control Act of 1968.

For the past several years, in response to my petitions or requests, ATF has refused to implement either solution that I have proposed. I believe that removing these firearms from the NFA is an ideal solution, but also believe that an amnesty period may also be an appropriate solution.

I hope that you will take prompt action to resolve the problems that I have documented. If you have any further questions, please contact me.

Thank you.

Very truly yours,



Eric M. Larson
P.O. Box 5497
Takoma Park, Maryland 20913
(301) 270-3450

cc: The Honorable Janet Reno
Attorney General
Department of Justice

The Honorable Bill Archer
Chairman
House Committee on Ways and Means



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

JUL 29 1993

Mr. Eric M. Larson
Post Office Box 5497
Takoma Park, MD 20913-5497

Dear Mr. Larson:

This is in response to your July 12, 1993, follow-up letter to Treasury Secretary Bentsen. In your letter you take issue with our response, on Secretary's Bentsen's behalf, to your June 14, 1993, request that the H & R Handygun be removed from the National Firearms Act (NFA).

H & R Handyguns currently fall within the "any other weapon" category of NFA weapons. As defined in 26 U.S.C. 5845(e), the term "any other weapon" means:

(A)ny 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. . . . Such term shall not include a pistol or a revolver having a rifled bore, or rifles bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

The weapons meet this definition because of their concealability on the person (having an approximate overall length of 17 inches), and because they are smooth bore pistols designed to fire a fixed shotgun shell. They have been subject to the NFA since the Act was originally enacted in 1934.

The H & R Handygun was manufactured between 1920 and 1934. Although the exact number of Handyguns manufactured is unknown, available information suggests that between 20,000 and 25,000 were made in different gauges and calibers. The value of the Handygun is estimated to range from \$400 to \$600 for standard variations, with scarcer versions exceeding that amount.

(34)

970178

EXHIBIT NO. 2

Mr. Eric M. Larson

Pursuant to 26 U.S.C. 5845(a) and the regulations in 27 C.F.R. 179.25, the Bureau of Alcohol, Tobacco and Firearms (ATF) may remove weapons other than machineguns and destructive devices from the scope of the NFA which, although originally designed as weapons, are determined by reason of their date of manufacture, value, design, and other characteristics to be primarily collector's items and not likely to be used as weapons.

The removal of weapons from the scope of the NFA is an action not taken lightly by ATF, and the requester has a heavy burden of establishing that an item is not likely to be used as a weapon. This is particularly true where, as in the present case, a substantial number of weapons are sought to be removed. In addition, your request requires close scrutiny in view of prior congressional action with respect to H & R Handguns and similar NFA weapons.

In 1945 and 1960, Congress amended the NFA by changing the rate of tax on the transfer of these smooth bore shot pistols with the scope of the "any other weapon" category. Because the weapons were found to be of interest to collectors and useful for certain legitimate purposes, Congress in 1945 reduced the original \$200 transfer tax to \$1 and in 1960 changed the transfer tax to \$5 for all weapons within the category "any other weapon." It is significant that, although the shot pistols were considered collector's items, Congress did not choose to remove them from the NFA. Moreover, the legislative history shows that Congress deliberately left these weapons within the purview of the NFA:

However, this "any other weapon" category will continue to be subject to the present control provisions applicable to all firearms under present law. As a result, the safeguards of present law are maintained, while applicable taxes are lowered to the level which makes it possible for gun collectors to obtain novel weapons in the category . . .

S. Rep. No. 1303, 86th Cong., 2d Sess. 2, reprinted in 1960 U.S. Code Cong. & Admin. News 2111.

As previously stated, one of the criteria to be considered in acting upon a removal request is the "design" of the weapon. The design and function of the H & R Handgun are identical to that of the sawed-off shotgun, which is also

(35)

Mr. Eric M. Larson

subject to the NFA. Both weapons are smooth bore handguns which fire a fixed shotgun shell and are concealable on the person. The weapons differ in two regards, neither of which relate to their design or function: (1) the typical sawed-off shotgun is made by converting an existing shotgun into a shot pistol, whereas the H & R Handygun was originally manufactured as a shot pistol; and (2) the sawed-off shotgun is subject to the NFA because it fits within the definition of "weapon made from a shotgun" in 26 U.S.C. 5845(a)(2), whereas the H & R Handygun is within the NFA definition of "any other weapon." Practically speaking, however, the two weapons are substantially the same.

The sawed-off shotgun is a popular crime weapon and has been the subject of numerous Federal and State prosecutions. This is attributable in part to the availability of such weapons. As stated above, sawed-off shotguns are produced by simply altering conventional, sporting shotguns which are readily available in the marketplace and which are not themselves subject to the NFA's registration or other requirements.

Although H & R Handyguns have not frequently been used in crimes, these weapons have been found in the possession of criminals. The subject of a recent ATF case was an unlawful trafficker in drugs with an extensive criminal record. While committing drug violations, this person was in possession of two NFA weapons, a sawed-off Savage Arms shotgun and a .410 bore H & R Handygun. H & R Handyguns may well become a crime problem if they become readily available in commerce. We believe that their limited availability is affected by the fact that the weapons have not been manufactured since the 1930's, as well as the fact that they have been subject to NFA controls since 1934. Under the NFA, weapons not registered in the National Firearms Registration and Transfer Record are contraband and cannot be lawfully transferred. Possessors of registered weapons may only transfer the weapons pursuant to applications approved by ATF. Transfer applications are denied if the transferees' receipt and possession of the weapons would violate any law.

As stated above, the removal of a weapon from the NFA requires a finding that it would not likely be used as a weapon. We believe that removal of H & R Handyguns would increase the circulation of these weapons in commerce and their availability to those who would use them for criminal purposes. Because of the number of weapons originally manufactured, we cannot conclude that they would not find

Mr. Eric M. Larson

their way into criminal hands and be put to unlawful use. As previously stated, it is believed that 20,000 to 25,000 were manufactured, but the precise figure is unknown. In addition, we do not believe that the value of the weapons is so high as to make the weapons inaccessible to criminals. Because the weapons are identical in design to the sawed-off shotgun, we have no doubt that those acquired by criminals would be used for unlawful purposes. For the above reasons, it has not been established that the weapons would not likely be used as weapons if removed from the NFA.

In support of your request, you have cited examples of ATF's removal of certain other weapons from the NFA. Specifically, you refer to Mauser and Luger pistols with shoulder stocks and trapper carbines. In our view, these weapons are distinguishable from the H & R Handygun in that neither they nor any similar weapons have constituted a crime problem. You also suggest that we compare the H & R Handygun with the .45 Colt/410 bore Thompson Contender pistol, a firearm which you state is similar to the H & R Handygun, is distributed in commercial channels today, and is not considered a crime weapon. We do not believe this to be a valid comparison because the Thompson Contender pistol is not a smooth bore shot pistol and is not a weapon subject to the NFA.

Accordingly, we must affirm our denial of your request to remove the H & R Handygun from the scope of the NFA since we cannot conclude that such weapons, if removed from the Act, would not likely be used as weapons.

Sincerely yours,

Terry L. Cates
Chief, Firearms and Explosives Division

MAR 23 1992

CC-40,647 FE:CLK

Mr. Eric M. Larson
Post Office Box 5497
Tacoma Park, Maryland 20913-5497

Dear Mr. Larson:

This is in response to your request for removal of the Harrington and Richardson Handygun (H & R Handygun) from the scope of the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

The weapons in question are .410 and 28 gauge H & R Handyguns which currently fall within the "any other weapon" category of NFA weapons. As defined in 26 U.S.C. § 5845(e), the term "any other weapon" means:

[A]ny 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. . . . Such term shall not include a pistol or a revolver having a rifled bore, or rifles bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

The weapons meet this definition because of their concealability on the person (having an approximate overall length of 17 inches), and because they are smooth bore pistols designed to fire a fixed shotgun shell. They have been subject to the NFA since the Act was originally enacted in 1934.

The H & R Handygun was manufactured between 1920 and 1934. Although the exact number of Handyguns manufactured is unknown, available information suggests that between 20,000 and 25,000 were made in different gauges and calibers. The value of the Handygun is estimated to range from \$400 to \$600 for standard variations, with scarcer versions exceeding that amount.

(38)

970:70

EXHIBIT NO. 3

- 2 -

Mr. Eric M. Larson

Pursuant to 26 U.S.C. § 5845(a) and the regulations in 27 C.F.R. § 179.25, the Bureau of Alcohol, Tobacco and Firearms (ATF) may remove weapons other than machineguns and destructive devices from the scope of the NFA which, although originally designed as weapons, are determined by reason of their date of manufacture, value, design, and other characteristics to be primarily collector's items and not likely to be used as weapons.

The removal of weapons from the scope of the NFA is an action not taken lightly by ATF, and the requester has a heavy burden of establishing that an item is not likely to be used as a weapon. This is particularly true where, as in the present case, a substantial number of weapons are sought to be removed. In addition, your request requires close scrutiny in view of prior congressional action with respect to H & R Handguns and similar NFA weapons.

In 1945 and 1960, Congress amended the NFA by changing the rate of tax on the transfer of these smooth bore shot pistols within the scope of the "any other weapon" category. Because the weapons were found to be of interest to collectors and useful for certain legitimate purposes, Congress in 1945 reduced the original \$200 transfer tax to \$1 and in 1960 changed the transfer tax to \$5 for all weapons within the category "any other weapon." It is significant that, although the shot pistols were considered collector's items, Congress did not choose to remove them from the NFA. Moreover, the legislative history shows that Congress deliberately left these weapons within the purview of the NFA:

However, this "any other weapon" category will continue to be subject to the present control provisions applicable to all firearms under present law. As a result, the safeguards of present law are maintained, while applicable taxes are lowered to the level which makes it possible for gun collectors to obtain novel weapons in this category

S. Rep. No. 1303, 86th Cong., 2d Sess. 2, reprinted in 1960 U.S. Code Cong. & Admin. News 2111.

As previously stated, one of the criteria to be considered in acting upon a removal request is the "design" of the weapon. The design and function of the H & R Handygun are identical to that of the sawed-off shotgun, which is also

(39)

Mr. Eric M. Larson

subject to the NFA. Both weapons are smooth bore handguns which fire a fixed shotgun shell and are concealable on the person. The weapons differ in two regards, neither of which relate to their design or function: (1) the typical sawed-off shotgun is made by converting an existing shotgun into a shot pistol, whereas the H & R Handygun was originally manufactured as a shot pistol; and (2) the sawed-off shotgun is subject to the NFA because it fits within the definition of "weapon made from a shotgun" in 26 U.S.C. § 5845(a)(2), whereas the H & R Handygun is within the NFA definition of "any other weapon." Practically speaking, however, the two weapons are substantially the same.

The sawed-off shotgun is a popular crime weapon and has been the subject of numerous Federal and State prosecutions. This is attributable in part to the availability of such weapons. As stated above, sawed-off shotguns are produced by simply altering conventional, sporting shotguns which are readily available in the marketplace and which are not themselves subject to the NFA's registration or other requirements.

Although H & R Handyguns have not frequently been used in crimes, these weapons have been found in the possession of criminals. The subject of a recent ATF case was an unlawful trafficker in drugs with an extensive criminal record. While committing drug violations, this person was in possession of two NFA weapons, a sawed-off Savage Arms shotgun and a .410 gauge H & R Handygun. H & R Handyguns may well become a crime problem if they become readily available in commerce. We believe that their limited availability is affected by the fact that the weapons have not been manufactured since the 1930's, as well as the fact that they have been subject to NFA controls since 1934. Under the NFA, weapons not registered in the National Firearms Registration and Transfer Record are contraband and cannot be lawfully transferred. Possessors of registered weapons may only transfer the weapons pursuant to applications approved by ATF. Transfer applications are denied if the transferees' receipt and possession of the weapons would violate any law.

As stated above, the removal of a weapon from the NFA requires a finding that it would not likely be used as a weapon. We believe that removal of H & R Handyguns would increase the circulation of these weapons in commerce and their availability to those who would use them for criminal purposes. Because of the number of weapons originally manufactured, we cannot conclude that they would not find

Mr. Eric M. Larson

their way into criminal hands and be put to unlawful use. As previously stated, it is believed that 20,000 to 25,000 were manufactured, but the precise figure is unknown. In addition, we do not believe that the value of the weapons is so high as to make the weapons inaccessible to criminals. Because the weapons are identical in design to the sawed-off shotgun, we have no doubt that those acquired by criminals would be used for unlawful purposes. For the above reasons, it has not been established that the weapons would not likely be used as weapons if removed from the NFA.

In support of your request, you have cited examples of ATF's removal of certain other weapons from the NFA. Specifically, you refer to Mauser and Luger pistols with shoulder stocks and trapper carbines. In our view, these weapons are distinguishable from the H & R Handygun in that neither they nor any similar weapons have constituted a crime problem. You also referred to ATF's "removal" of the Marble Game Getter with an 18-inch barrel from the "any other weapon" category. This weapon was not removed from the NFA because it was not subject to the Act in the first place. Because of its overall length, it is not considered concealable on the person and, therefore, does not fall within the definition of "any other weapon." You also suggest that we compare the H & R Handygun with the .45 Colt/410 gauge Thompson Contender pistol, a firearm which you state is similar to the H & R Handygun, is distributed in commercial channels today, and is not considered a crime weapon. We do not believe this to be a valid comparison because the Thompson Contender pistol is not a smooth bore shot pistol and is not a weapon subject to the NFA.

Accordingly, we must deny your request to remove the H & R Handygun from the scope of the NFA since we cannot conclude that such weapons, if removed from the Act, would not likely be used as weapons. Nevertheless, we commend you for your thorough research and presentation and regret that our decision could not be more favorable.

Sincerely yours,

SIGNED

Edward M. Owen, Jr.
Chief, Firearms Technology Branch

(41)

1/10/81



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

LARØ1Ø997

JAN - 9 1997

E:RE:FN:GS

Mr. Eric M. Larson
P.O. Box 5467
Takoma Park, MD 20913

Dear Mr. Larson:

This is in response to your letter of November 21, 1996, in which you request confirmation of statements made about data in the "NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON" table. You enclosed a copy of the table with data through December 31, 1995.

The table shows Form 4467 registrations after 1971 and before 1968. We believe that there are errors in the date or form fields which cause the registrations to appear in those years.

The table shows pre-1934 data. This data results from errors, blanks, or misrepresented characters in the date field which cause the registrations to appear prior to 1934. This statistical report was developed several years after the implementation of the automated database and the programmer apparently included a procedure to capture these date ranges because errors in the date field showed dates prior to 1934.

You asked about the "OTHER" column in the table. This category would be comprised of registrations where the form number is different from the other ones tabulated. An incorrect form number would be counted in that column.

In regard to items 5 and 6 of your letter, we are constantly verifying the information in our database. If we do locate a record where the date, form number,

(42)

970178

EXHIBIT NO. 4

ATF Stat. Pw
Doc. 96-242

Mr. Eric M. Larson

or other information was not entered correctly, we enter the correct information. These actions may then result in an adjustment to previously generated statistics.

We would like to point out that errors in the date or form number fields would not affect the thoroughness of a search of the database by NFA Branch personnel. We use a search methodology that ensures a thorough review of the database for all possible responsive entries and an examination of the original registration document.

Finally, you asked whether a firearm would be added to the Registry if a person possessed a valid registration that was not in the Registry. The document that person possesses is his or her evidence of registration. It would be added to the National Firearms Registration and Transfer Record if the information was not already in the Record.

We trust this has been responsive to your request. Should any additional information be needed, please contact us at (202) 927-8330.

Sincerely yours,

Chief, National Firearms Act Branch

(43)

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		INVESTIGATION IS <input checked="" type="checkbox"/> ROUTINE <input type="checkbox"/> SENSITIVE <input type="checkbox"/> SIGNIFICANT		Page 1 of 2 pages
REPORT OF INVESTIGATION (Law Enforcement)				
TO: Special Agent in Charge Seattle District Office		(2) CIP Seattle: FY-90-Narcotics		
TITLE OF INVESTIGATION DUDLEY, John David		INVESTIGATION No. (Include Suspect No.) 93360-90-40588		
TYPE OF REPORT (Check applicable boxes)		BUREAU PROGRAM		PROJECT(S)
<input type="checkbox"/> PRELIMINARY	<input type="checkbox"/> COLLATERAL (Request)	<input checked="" type="checkbox"/> TITLE I TITLE II TITLE VI TITLE VII TITLE VIII TITLE IX	<input type="checkbox"/> FIREARMS <input type="checkbox"/> EXPLOSIVES	<input type="checkbox"/> TARGETED OFFENDER <input type="checkbox"/> TERRORIST/EXTREMIST <input type="checkbox"/> OGD <input type="checkbox"/> ITAR <input type="checkbox"/> SEAR <input type="checkbox"/> OMO <input type="checkbox"/> OTHER (Specify)
<input checked="" type="checkbox"/> STATUS	<input type="checkbox"/> COLLATERAL (Reply)			<input checked="" type="checkbox"/> Achilles
<input type="checkbox"/> FINAL	<input type="checkbox"/> INTELLIGENCE	<input type="checkbox"/> TOBACCO <input type="checkbox"/> ALCOHOL		
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> REFERRAL (Internal)			
A. DETAILS:				
<p>This status report relates to alleged violations of federal firearms laws by John David Dudley, a multiple convicted felon, who was unlawfully using and carrying firearms while trafficking in drugs in the Judicial District of Oregon. This investigation is classified as CIP: Narcotics.</p> <p>John David Dudley has a criminal history dating back to 1977. Dudley's criminal history reflects four felony convictions, one for first degree theft and three for the delivery and possession of controlled substances. Dudley also has four misdemeanor convictions, numerous arrests for both the possession and delivery of controlled substances, ex-con in possession of a firearm, parole violations, burglary, theft and most recently, the manufacture of controlled substances. John Dudley is currently under two separate Oregon state indictments for possession of a controlled substance, methamphetamine and marijuana; manufacturing a controlled substance, methamphetamine; criminal conspiracy; and ex-con in possession of a firearm.</p> <p>On November 29, 1989, based on information received from a confidential informant about drug activity, the Jackson County Narcotics Enforcement Team (JACNET), served a search warrant at John Dudley's residence. Oregon. During service of this warrant, a small quantity of methamphetamine, photos of a "Streetsweeper" shotgun lying on the car seat of John Dudley's Corvette and the owner's manual for the "Streetsweeper" were seized. On November 30, 1989, John Dudley was subsequently arrested for possession of a controlled substance/methamphetamine.</p> <p>On March 30, 1990, a search warrant was served on a shop building located at Oregon. Officers discovered a methamphetamine lab and numerous firearms in a hidden compartment next to the lab. Evidence was found that linked John Dudley and another individual to the lab. JACNET officers found drug records and property in the lab that relate to John Dudley.</p> <p>On April 12, 1990, a search warrant was served at John Dudley's residence (described as a fifth wheel trailer) Oregon. During this search, an AMT, .45 caliber pistol, bearing serial number B23196.</p>				
10. SUBMITTED BY (Name)		11. TITLE AND OFFICE		12. DATE
13.		S/A, Portland, OR POD		10/19/90
14.		15. TITLE AND OFFICE		16. DATE
17. APPROVED BY (Name)		RAC, Portland, OR POD		10/19/90
		18. TITLE AND OFFICE		19. DATE

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS REPORT OF INVESTIGATION—CONTINUATION SHEET (Criminal Enforcement)		PAGE <u>2</u> OF <u>3</u> PAGES
TITLE OF INVESTIGATION DUDLEY, John David		UNIQUE IDENTIFIER 93360-90-40585
DETAILS (Continued) was found in a gym bag that also contained several ounces of both methamphetamine and marijuana. Numerous letters, receipts for telephone bills and other correspondence in the name of John Dudley were found in this same residence. Prior to the service of the warrant, John Dudley was stopped while leaving his property and advised of the warrant; he chose not to remain on the premises. In another trailer on this same property, an associate of John Dudley, was found to be in possession of a small amount of methamphetamine. Subsequently, John Dudley was indicted in state court for (1) manufacturing a controlled substance, methamphetamine, (2) possession of a controlled substance, methamphetamine, (3) possession of a controlled substance, marijuana, and (4) ex-con in possession of a firearm.		
On April 21, 1990, a weapon made from a shotgun was seized during a consent search of Oregon, pursuant to an arrest warrant for John Dudley. a resident of stated that "Dudley owns all the guns" that were found in the residence, and that Dudley and had brought the guns over to house at different times during a two-week period. A total of 27 firearms, including the weapon made from a shotgun, were found and seized from the residence. Three of the above firearms were found to be stolen.		
On June 1, 1990, sheriff's deputies went to Oregon, (John Dudley's residence) to do a follow-up investigation of a burglary, and smelled phenylacetic acid and P2P on the property. Based upon the deputies' experiences with methamphetamine laboratories and the odors associated with the chemicals used in the making of methamphetamine, a search warrant was issued and executed at the address. In addition to stolen property, an operating methamphetamine lab was discovered in a shed located on the property. Four firearms were seized during execution of the search warrant, including a shotgun which was strategically placed atop the doorway leading into the methamphetamine laboratory. Subsequently, John Dudley and two other suspects were indicted in state court for (1) criminal conspiracy, (2) manufacturing a controlled substance, (3) possession of a controlled substance, and (4) ex-con in possession of a firearm. Arrest warrants were issued for all three; John Dudley turned himself in and was released on bail.		
A firearms trace of the Cobray "Streetsweeper", 12 ga., semiauto shotgun, bearing serial number 6193, found during a search warrant on the residence of revealed that it was purchased by Both individuals are known associates of John Dudley. transported several firearms, including the Cobray "Streetsweeper" shotgun, to residence, allegedly at John Dudley's request.		
The Jackson County Narcotics Enforcement Team currently has a total of 55 firearms in custody from various seizures that are linked to John David Dudley.		

(45)

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE 3
REPORT OF INVESTIGATION—CONTINUATION SHEET (Criminal Enforcement)		OF 3 PAGES
TITLE OF INVESTIGATION DUDLEY, John David	UNIQUE IDENTIFIER 93360-90-40588	
DETAILS (Continued)		
<p>A trace has been initiated on several of the other firearms that were seized by JACHET.</p> <p>At present, ATF/Portland has no property in custody relating to this case.</p> <p>AUSA has expressed interest in pursuing federal prosecution for violations of federal firearms laws in this case.</p> <p>Investigation to continue.</p>		

96

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOLS, TOBACCO AND FIREARMS		1. INVESTIGATION IS <input checked="" type="checkbox"/> ROUTINE <input type="checkbox"/> SENSITIVE		2. Page 1 of 1	
REPORT OF INVESTIGATION (Law Enforcement)		<input type="checkbox"/> SIGNIFICANT		3. Page 1 of 1	
TO: Special Agent in Charge Seattle District Office		3. MONITORED INVESTIGATION INFORMATION (Number and Branch) (3) CIP Seattle: FY-90-Narcotics			
TITLE OF INVESTIGATION DUDLEY, John David		4. INVESTIGATION NO. (Include Serial No.) 93360-90-40588			
5. TYPE OF REPORT (Check applicable boxes)		6. BUREAU PROGRAM		7. PROJECTS	
PRELIMINARY		X TITLE I		TARGETED OFFENDER	
COLLATERAL (Request)		TITLE II		TERRORIST/EXTREMIST	
STATUS		TITLE VI		GOOD	
COLLATERAL (Reply)		TITLE 9		HAR	
FINAL		TITLE 10		SEAR	
INTELLIGENCE		TOBACCO		CND	
SUPPLEMENTAL		ALCOHOL		OTHER (Specify)	
				X - Shilleg	
8. DETAILS:					
<p>This status report relates to alleged violations of federal firearms laws by John David Dudley, a multiple convicted felon, who was unlawfully using and carrying firearms while trafficking in drugs in the Judicial District of Oregon. This investigation is classified as CIP: Narcotics.</p> <p>John David Dudley has a criminal history dating back to 1977. Dudley's criminal history reflects four felony convictions, one for first degree theft and three for the delivery and possession of controlled substances. Dudley also has four misdemeanor convictions, numerous arrests for both the possession and delivery of controlled substances, ex-con in possession of a firearm, parole violations, burglary, theft and most recently, the manufacture of controlled substances. John Dudley is currently under two separate Oregon state indictments for possession of a controlled substance, methamphetamine and marijuana; manufacturing a controlled substance, methamphetamine; criminal conspiracy; and ex-con in possession of a firearm.</p> <p>As described in the previous status report, from November 1989 to June 1990, five search warrants were executed by the Jackson County Narcotics Enforcement Team (JACNET) on John Dudley's residence or his associates' residences that contained Dudley's property. During these search warrants, numerous firearms, various quantities of both methamphetamine and marijuana, a "boxed" methamphetamine lab and an operating methamphetamine lab were discovered by police officers. During an April 21, 1990, search warrant on one of John Dudley's associates, two Title II firearms were found that belonged to Dudley.</p>					
THE FOLLOWING EVENTS HAVE OCCURRED SINCE THE LAST STATUS REPORT:					
<p>On December 11, 1990, a Jackson County Sheriff's deputy spotted a stolen vehicle and followed it until the vehicle came to a stop. Two white males exited the vehicle and the deputy immediately recognized the driver as being John Dudley. Both John Dudley and his passenger, were taken into custody for the unauthorized use of a motor vehicle. was later released). Officers discovered a pistol, in plain view, wedged between the console and passenger side seat. Officers found that the pistol, an F.N. Browning .38p pistol, bearing serial number 295501, was loaded, complete with</p>					
10. SUBMITTED BY		11. TITLE AND OFFICE S/A, Portland, OR POD		12. DATE 01/10/91	
		13. TITLE AND OFFICE RAC, Portland, OR POD		14. DATE 01/10/91	
15. APPROVED BY		16. TITLE AND OFFICE SAC, Seattle District Office		17. DATE	

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE 2
REPORT OF INVESTIGATION—CONTINUATION SHEET (Criminal Enforcement)		OF 2 PAGES
TITLE OF INVESTIGATION DUDLEY, John David		UNIQUE IDENTIFIER 93360-90-4058S
<p>DETAILS (Continued)</p> <p>one round in the chamber and ready to fire. A computer check on the pistol revealed that it had been stolen during a residential burglary in Jackson County two months previously. Officers also discovered a cylindrical metal object in Dudley's left jacket pocket. Upon further examination the object proved to be a .38 caliber pen gun. The .38 caliber pen gun does not have a serial number. John Dudley was arrested for the unauthorized use of a motor vehicle and ex-con in possession of a weapon.</p> <p>On January 2, 1990, AUSA _____ agreed to indict John Dudley for felon in possession and the unlawful possession of an unregistered Title II firearm, based upon Dudley's December 31, 1990, arrest. Based upon the rationale that Dudley intimidates several of the potential witnesses against him and that once he is in custody, these same witnesses may be willing to testify, AUSA _____ wants to make a supplemental indictment on several of Dudley's previous arrests after he is taken into federal custody.</p> <p>On January 3, 1990, the F.N. Browning 9mm pistol, described above, was fingerprinted by the Jackson County Sheriff's laboratory with negative results. Both the F.N. Browning, 9mm pistol, bearing serial number 295501, and the suspected .38 caliber pen gun, no serial number, discovered during the December 31, 1990, arrest of John Dudley, were taken into custody by ATF/Portland. Additionally, the two unregistered Title II firearms, allegedly owned by John Dudley and seized in an April 21, 1990, JACNET search warrant, were taken into custody by ATF/Portland:</p> <ol style="list-style-type: none"> 1. Savage Arms, Stevens Model 94, Series M, .12 gauge shotgun, bearing serial number R000079, barrel length of 13-3/4 inches, and an overall length of 21-11/16 inches. 2. Harrington & Richardson, H & R Handy-Gun, .410-12 m/m choke, bearing serial number 37757, barrel length of 12-1/4 inches. <p>The .38 caliber pen-gun, taken from John Dudley on December 31, 1990, will be sent to Firearms Technology Branch for a Title II determination.</p> <p>An NFA search was conducted under the name of John David Dudley, with negative results.</p> <p>On January 9, 1991, this case was presented before a federal grand jury. It is anticipated that Dudley will be indicted for his 12/31/90 illegal possession of two firearms.</p> <p>Investigation to continue.</p> <p>ATTACHMENTS:</p> <p>ATF F 3100.7 - Case Summary ATF F 3400.16 - Property Inventory (3)</p>		

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		1. INVESTIGATION IS <input checked="" type="checkbox"/> ROUTINE <input type="checkbox"/> SENSITIVE <input type="checkbox"/> SIGNIFICANT		Page 1 of 2 pages
REPORT OF INVESTIGATION (Law Enforcement)				
2. TO: Special Agent in Charge Seattle District Office		3. MONITORED INVESTIGATION INFORMATION (Number and Branch) (8) CIP Seattle: FY-90-Narcotics		
4. TITLE OF INVESTIGATION DUDLEY, John David		5. INVESTIGATION No. (Include Suggested No.) 93360-90-4058S		
6. TYPE OF REPORT (Check applicable boxes)		7. BUREAU PROGRAM		8. PROJECT(S)
<input type="checkbox"/> PRELIMINARY	<input type="checkbox"/> COLLATERAL (Request)	<input checked="" type="checkbox"/> TITLE I	<input type="checkbox"/> FIREARMS	<input type="checkbox"/> TARGETED OFFENDER
<input type="checkbox"/> STATUS	<input type="checkbox"/> COLLATERAL (Reply)	TITLE II		<input type="checkbox"/> TERRORIST/EXTREMIST
<input checked="" type="checkbox"/> FINAL	<input type="checkbox"/> INTELLIGENCE	TITLE III	<input type="checkbox"/> EXPLOSIVES	<input type="checkbox"/> ODD
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> REFERRAL (External)	TITLE IV	<input type="checkbox"/> TOBACCO	<input type="checkbox"/> ITAR
		TITLE V	<input type="checkbox"/> ALCOHOL	<input type="checkbox"/> SEAR
				<input type="checkbox"/> CIO
				<input checked="" type="checkbox"/> OTHER (Specify) Achilles

9. DETAILS:

This report is submitted to update the status and request property disposition regarding the investigation of John David Dudley. Dudley is a multiple convicted felon, who was unlawfully using and carrying firearms while trafficking in drugs in the Judicial District of Oregon. This investigation is classified as CIP: Narcotics.

John David Dudley has a criminal history dating back to 1977. Dudley's criminal history reflects four felony convictions, one for first degree theft and three for the delivery and possession of controlled substances. Dudley also has four misdemeanor convictions, numerous arrests for both the possession and delivery of controlled substances, ex-con in possession of a firearm, parole violations, burglary, theft and most recently, the manufacture of controlled substances.

As described in the previous status reports, from November 1989 to June 1990, five search warrants were executed by the Jackson County Narcotics Enforcement Team (JACNET) on John Dudley's residence or his associates' residences that contained Dudley's property. During these search warrants, numerous firearms, various quantities of both methamphetamine and marijuana, a "boxed" methamphetamine lab and an operating methamphetamine lab were discovered by police officers. During an April 21, 1990, search warrant on one of John Dudley's associates, two Title II firearms were found that belonged to Dudley. On December 31, 1990, John Dudley was stopped while driving a stolen vehicle and found to be in possession of a 9mm pistol and a .38 caliber pen-gun, he was arrested for the unauthorized use of a motor vehicle and ex-con in possession of a weapon.

An NFA search was conducted under the name of John David Dudley, with negative results.

On January 9, 1991, this case was presented before a federal grand jury; John Dudley was subsequently indicted for violations of federal firearms laws, Title 18 U.S.C., Section 922(g), and Title 26 U.S.C., Sections 5861(d) & 5871.

10. SUBMITTED BY (Name) S/A	11. TITLE AND OFFICE S/A, Portland, OR POD	12. DATE 08/12/91
13.	14. TITLE AND OFFICE ARAC, Portland, OR POD	15. DATE 08/12/91

DEPARTMENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		PAGE 2
REPORT OF INVESTIGATION—CONTINUATION SHEET (Criminal Enforcement)		OF 2 PAGES
TITLE OF INVESTIGATION DUDLEY, John David	UNIQUE IDENTIFIER 93360-90-4058S	
DETAILS (Continued)		
<p>On January 17, 1991, John Dudley was arrested by ATF/Portland, and he is currently in the custody of the Federal Bureau of Prisons.</p> <p>On May 9, 1991, John David Dudley pled guilty to the original indictment.</p> <p>On July 22, 1991, John David Dudley was sentenced to 60 months imprisonment with three years of supervised release. Permission is requested to destroy the seized property in this investigation and to release the retained property back to the Jackson County Sheriff's Office.</p> <p>ATTACHMENTS:</p> <p>ATF F 3270.6 - Progress Record of Defendant ATF F 3400.16 - Property Inventory - Request for Disposition. (3) ATF F 1850.23 - Release of Property</p>		

50

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS		
PROGRESS RECORD OF DEFENDANT		
1. INVESTIGATION NUMBER (Through suspect) 93360-90-4058S	2. COURT DOCKET NUMBER CR91-60011	3. JUDICIAL DISTRICT OREGON
4. COPY TO (Check appropriate box)		
<input type="checkbox"/> ASSOCIATE DIRECTOR (Law Enforcement) <input checked="" type="checkbox"/> OTHER (Specify) <u>S/A Mike Meadows</u>		
<input checked="" type="checkbox"/> SPECIAL AGENT IN CHARGE		
<input type="checkbox"/> CHIEF, EXPLOSIVES TECHNOLOGY BRANCH		
<input type="checkbox"/> CHEMIST IN CHARGE (Specify location)		
5. RESULT OF GRAND JURY HEARING OR INFORMATION FILED (List each count, including citation and narrative of statute.)		6. DATE
<u>DUDLEY, John David</u> True Bill Indictment Count 1: Title 18 U.S.C., 922(g)(1) Felon in Possession of Firearm Count 2: Title 26 U.S.C., 5861(d) and 5871 Possession of an Unregistered Title II Firearm		01/11/91
7. RESULTS OF TRIAL OR OTHER FINAL DISPOSITION (Including appeals) (List all counts. Use reverse for additional space.)		8. DATE
PLED GUILTY to both counts 1 and 2 of the original indictment. Sentenced to 60 months imprisonment followed by three years supervised release.		05/09/91 07/22/91

50

Responses to the Bureau of Alcohol, Tobacco and Firearms' Internal Investigation of my complaint

My five original allegations quoted from my letter dated May 10, 1997, to the Treasury Department Inspector General:	BATF's responses quoted from the "Synopsis" of its internal investigation and final report dated September 8, 1997:	My comments:
<p>"1. ATF employees have deliberately destroyed original firearm registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by ATF Special Agent Gary N. Schaible.</p> <p>In analyses of data made public by ATF, I found that during 1992 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records."</p>	<p>"OI determined that the ATF employees referred to in the first allegation as being suspected of destroying records were, in fact, contract employees who were hired to assist in the backlog of paperwork that resulted from an influx of registrations as per [deleted by ATF]."</p> <p>"Depending on the year in question, if there was an increase in any National Firearm Act (NFA) firearm registrations, as alleged, this may have been an adjustment as a result of a different form number or registration data for the particular firearm."</p>	<p>Page 23 (references are to the FOIA page numbers) states that contract employees were suspected regarding missing NFA paperwork during 1986-87; on page 22, Mr. Schaible apparently identifies this same incident as the subject of his May 21, 1996, testimony, yet in his 1996 testimony Mr. Schaible states that BATF employees could have thrown away the defendant's registration documents in 1994. It does not appear that these discrepant statements, each made under oath, can be reconciled.</p> <p>BATF offers no empirical evidence for this hypothetical interpretation, and does not even directly answer the question. Proof of firearms being added may be established by determining if a "docket number" (first created in 1976 for keeping track of incoming paperwork) is found on the records of firearms registered in or before 1971, and by other methods that BATF apparently did not employ.</p>

"2. ATF employees registered almost 2,500 unregistered NFA firearms on Form 4467 after December 1, 1968, without proper authorization by the Congress.

In addition to not being authorized by the Congress, such registrations were prohibited by the Supreme Court in 1971, yet it appears that ATF registered more than 172 unregistered NFA firearms on Form 4467 after 1971.

I have included an example of one apparently illegal post-December 1, 1968, Form 4467 registration in my 1997 testimony."

"To address the second allegation, ATF continued to register weapons after 1971 because the backlog of paperwork that resulted from the amnesty period was very large and filing the documents required extra time. In addition, some individuals were granted extra filing time if they were out of the country when the time expired for filing.

A statement on Form 4467 states that "This form cannot be accepted for registration of a firearm except when received by Director during the time period November 2, 1968, through December 1, 1968." As my 1997 testimony documents, each Form 4467 had a date/time stamp applied on the rear to indicate receipt, and actual time filed in some cases was in 1969; however, a Freedom of Information Act request disclosed that the date of registration, which BATF reports in its statistics, is the actual date the form was filled out by the person who registered the firearm, and BATF's own data indicate that nearly 2,500 firearms were registered on Form 4467 after 1968.

BATF has not answered whether it has illegally registered firearms on Form 4467, despite clear evidence that it has done so. Notably, BATF has not disclosed any required notice in the *Federal Register* or other Congressional authorization to accept registrations after December 1, 1968.

"3. ATF employees Edward M. Owen, Jr. and Terry L. Cates committed felony perjury in letters written to me dated March 23, 1992 and July 29, 1993, respectively.

Mr. Owen and Mr. Cates each alleged that "an unlawful trafficker in drugs with an extensive criminal record" was in possession of a .410 bore H&R Handy-Gun "while committing drug violations."

This alleged instance of criminal conduct was used to deny my petition to remove the H&R Handy-Gun from the NFA as a collector's item.

"Regarding Larson's third allegation, the truthful information furnished to Larson by [deleted by ATF] and [deleted by ATF] in their respective letters involves a criminal case in Oregon investigated by ATF. The suspect, John David Dudley, a multi-convicted felon, dealt in narcotics and illegally possessed firearms which included an H&R Handy-Gun. Dudley was charged and subsequently pled guilty in Federal court on Federal firearms violations.

The H&R Handy-Gun in question was, in fact, in the possession of an acquaintance of the drug trafficker at the time of the violations. BATF's manner of stating "possession" implies that the trafficker was carrying the H&R Handy-Gun on his person at the time the drug crimes were committed. BATF has interpreted that the drug trafficker was in "constructive" possession of the H&R Handy-Gun, even though he was not charged with illegally possessing it (see page 27 of the internal BATF report). There is the truth, and then there is the legal truth.

[3. continued] In fact, a Freedom of Information Act Request disclosed that the Handy-Gun was recovered from an acquaintance of the trafficker, who said that the trafficker had given it to him for safe-keeping (see pages 212-215, 222-230, and 233-236 of my 1996 testimony).

Any person who petitions for removal of a firearm from the NFA must state the reasons under penalty of perjury.

The plain language of the statute at Title 26, U.S.C., § 5861(l) and § 5871 applies to any person who knowingly makes or causes the making of a false entry on any document required to be prepared as a result of administering the NFA.

Both Mr. Owen and Mr. Cates deliberately falsified the facts of the case they cited."

As noted, the characterization may not have been legally false; however, it was definitely misleading.

"4. Certain 'registration activity' that ATF classifies as "OTHER" could include registrations of firearms that one or more ATF employees registered contrary to law, because ATF has refused to disclose the nature of this 'registration activity.'

To the best of my knowledge, I've never heard of any forms numbered other than 1, 2, 3, 4, 5, 6, 9, 10 or 4467 being used to register or transfer NFA firearms.

According to a letter to me dated January 9, 1997, from NFA Branch Chief Nereida W. Levine, the 'OTHER' category is 'comprised of registrations where the form number is different from the other ones tabulated.'

Ms. Levine, however, has declined to provide the names or numbers of these forms.

Coupled with the other evidence of registration mismanagement I have documented, it appears that the "OTHER" category may represent firearms that were registered illegally, as noted in my 1997 testimony."

Larson's fourth allegation suggests that ATF is using the "other" category to illegal register firearms. However, this category is used when the computer program cannot recognize a non-standard document that has been submitted for registration.

For instance, some registrations were actually filed in correspondence on letterhead.

If an ATF employee entering the information into the computer enters a Form 3 as a Form 33, the program will assign the document to the "other" column.

The fact that the form is entered in the "other" column does not mean that the firearm is illegally registered.

During each year from 1992 to 1996 (the most recent year for which the BATF has released NFRTR data), there were more than 8,000 entries under the "OTHER" data category. What are these "non-standard documents?"

There is a separate "LTR" category, which Gary Schaible stated contains firearms that were registered or transferred on letterhead, when standard forms were not available.

A normal computer program for sensitive documents would not accept the incorrect entry of a form, and data entry could not proceed. How many other errors were created in the NFRTR because of a failure to properly debug the computer software?

Neither does it mean that an incorrectly registered or transferred firearm can be located in the NFRTR. Consider the statement of Mr. Thomas Busey in the October 1995 "Roll Call Training" session: "It was fine to begin putting everything in accurate a year ago or at least be guaranteed a year ago it was correct, but what are you going to do with the entries that go back to the early '80s and the '70s and the '60s?"

"5. It appears that a significant number of NFA firearms are registered to persons who are deceased, and that ATF has been aware of this fact since at least 1981 and done nothing about it, as noted in my 1997 testimony.

Consequently, a significant number of NFA firearms are now illegally possessed by persons who are unaware that they are in violation of the law.

The reason is that many firearms classified as 'Any Other Weapon' are rare collector's items that many people do not consider weapons, as noted in both my 1996 and 1997 testimonies.

"In his fifth allegation, Larson states that some of the NFA weapons may be registered to deceased persons. While it is possible that, unknown to ATF, some NFA weapons may be registered to deceased individuals, the integrity of the NFA is incumbent upon the individuals who possess legally registered firearms to report deaths and reregister the weapon.

"Unknown to ATF?" Excuse me.

As my testimony and letter to the IG state, an internal BATF report dated July 1, 1981, by BATF employee Deron Dobbs, states: "We have the condition where people who registered firearms under the original National Firearms Act at age 65 would now be 112 years old. We know that these people are dead and their heirs have not taken the necessary steps to contact us so that the involuntary transfer created by the registrant's death can be formalized."

[5. continued] ATF's most recent data (as of December 31, 1996) disclose that of the 14,259 firearms registered during 1934 to 1939, exactly 11,175 (78.4 percent) are still currently owned by the person or entity that registered or acquired it during that same time period.

And of the 58,904 firearms registered in 1968, a stunning 85.4 percent are still owned as of 1996 by the same persons who registered or received them by transfer in 1968.

Consider that in 1981, an internal ATF study reported: "We have the condition where people who registered firearms under the original National Firearms Act at age 65 would now be 112 years old.

We know that these people are dead and their heirs have not taken the necessary steps to contact us so that the involuntary transfer created by the registrant's death can be formalized."

BATF's most recent (as of December 31, 1996) data disclose that exactly 108, 556 persons have never legally transferred the ownership of machineguns, bazookas, sawed-off shotguns, hand grenades, anti-tank rifles, and similar devices that they registered or acquired by transfer in or before 1971.

Of the 58,904 amnesty registrations, 50,314 (85.4%) are still owned by the same person. Since the social security number was a required data field, it would take no more than a few hours to determine from the Social Security Death Index exactly how many NFA firearms are registered to people who are dead—and when those people died.

My summary of the problems, issues, and proposed solutions, quoted from my letter dated May 10, 1997, to the Treasury Department Inspector General:	BATF's responses quoted from the "Synopsis" of its internal investigation and final report dated September 8, 1997:	My comments:
<p>"One result of ATF's negligence is that some persons who own certain rare, valuable firearms that have special value to collectors have been instantly transformed into criminals.</p> <p>The reason is that through natural disasters (such as the recent floods in North Dakota, house fires, and similar tragic events), the owners of these firearms have lost their copies of the documents which prove their lawful ownership, and the law does not allow these firearms to be voluntarily re-registered."</p>		<p>The 5th Amendment apparently applies to the Bureau of Alcohol, Tobacco and Firearms as an institution. But who answers for the institution?</p>

SOLUTION #1: "Administratively removing approximately 17,000 'curio or relic' firearms classified as 'any other weapon' under the NFA, which were originally commercially manufactured in or before 1934 (but not replicas thereof).

The Congress determined that these 'any other weapon' firearms were mainly collector's items and not likely to be used as weapons in 1960.

It was not until 1968 that the Congress passed legislation enabling these firearms to be removed from the NFA as collector's items."

[Larson's] first recommendation is to remove 17,000 "any other weapons" listed under the NFA.

Although Congress did enable firearms classified as collector's items to be removed from the NFA, contrary to Larson's interpretation it did not mandate their removal. Therefore, if an individual weapon is suggested for removal, ATF will consider the particular firearm on a case-by-case basis and determine if removal is warranted.

I never stated anywhere in my letter of complaint, or in either my 1996 or 1997 testimony, that the Congress mandated any firearm to be removed from the NFA as a collector's item. Identify exactly where I stated this. That is not what the law says, and I didn't say that. On page 115 of my 1996 testimony, I did state: "Mr. Chairman, no legal evidence exists to show that the Congress sought to exclude the [Marble's 'Game Getter Gun] from the removal provision under the 1968 Act." I made this statement because of the fact that the BATF formally determined (in writing) that the Game Getter was mainly a collector's item and was unlikely to be used as a weapon; however, the BATF legal counsel later took the position that it nevertheless could not be removed because the Congress excluded it from the removal provision. My 1996 testimony (see pages 107 to 118) cites the law, legislative history, and documents that there is no legally valid and reliable evidence to support BATF's interpretation.

SOLUTION #2: "Establishing a 90-day amnesty period to allow persons who may have innocently lost their copies of the registration forms to re-register these firearms.

The Congress has authorized such amnesty periods to be established by the Secretary of the Treasury under § 207(d) of the Gun Control Act of 1968."

"Furthermore, to address Larson's second solution, if the original registration of a firearm is misplaced, the owner needs only to contact ATF to obtain another copy."

There is no need to re-register, and there is no need to establish an amnesty period as Larson suggests.

BATF presumes a fact not in evidence, and for which reasonable doubt exists: namely, that BATF has not lost or destroyed its copies of original registrations. It appears that for more than 100,000 NFA firearms, there is just a single document (the original registration) in the NFRTR to prove ownership. As noted in my 1996 testimony (see pages 92 to 95) and 1997 testimony (see page 72), I asked Mr. Gary Schaible if BATF had ever added firearms to the NFRTR because BATF had no record of the original registration—but the original owner did. He stated: "Yes. I assume that's happened." BATF's conclusion is premature, since it appears that BATF has lost or destroyed original registrations.

In a "Response to letter from Senator [James A.] McClure" dated November 29, 1979, bearing symbols LL:JJD:ajw, Philip B. Heyman, Assistant Attorney General, Criminal Division; and Lawrence Lippe, Chief, General Litigation & Legal Advice Section, Criminal Division, Department of Justice, stated that if an individual had a valid NFA firearm registration document, but that BATF could not find any record of it in the NFRTR, "the only solution would be to declare another amnesty period. The Secretary [of the Treasury] is empowered to do this under existing legislation."

January 31, 1998

Nereida W. Levine
Chief, National Firearms Act Branch
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Chief Levine:

I am writing this letter to request from you a written statement from the Bureau of Alcohol, Tobacco and Firearms (BATF) regarding the legal status of four National Firearms Act (NFA) firearms that I currently own, which apparently were illegally registered years before I acquired them, as well as the BATF's policy regarding the legal status of other NFA firearms that may have been illegally registered without the knowledge of their current owners.

I discussed these issues at some length in my 1997 testimony before the Subcommittee on Treasury, Postal Service and General Government Appropriations, to the point of specifically identifying each firearm by serial number and citing or providing relevant documentation.

It is perplexing that BATF did not address any of these issues in its recent internal investigation that is based on my testimony. I also find it difficult to imagine that you, as Chief of the National Firearms Act Branch, would not be concerned about the accuracy and integrity of the National Firearms Registration and Transfer Record (NFRTR). After all, the only documentation that any lawful owner of an NFA firearm has to justify the legality of its possession, are documents issued by the NFA branch.

What if NFA firearms were registered illegally? What if BATF's records are inaccurate, or missing? What if BATF chooses to confiscate an affected NFA firearm—even though its current owner acquired the firearm lawfully, BATF approved the transaction, and the current owner had no knowledge of past defects in the history of the firearm which BATF later interprets as transforming the firearm into illegal contraband? Can the lawful owner have faith in the "title" to his or her firearm, and rely totally upon the documentation of an approved transaction by the BATF as evidence that he or she lawfully possesses the firearm? Apparently not.

My concerns are not hypothetical, theoretical, or a "fishing expedition" to try and create problems that do not exist, because BATF has already confiscated at least one NFA firearm after alleging it was illegally registered at some time in the past, though without knowledge by its owner and after BATF had approved the transfer of its ownership.

It is a fact that BATF confiscated an NFA firearm from Noel Napolilli of Fairbanks, Alaska, on the grounds that it had been illegally registered sometime in the past by unknown persons, although BATF issued Mr. Napolilli a lawful registration document for the firearm when he purchased it for \$2,500 in 1985. When BATF moved to seize the firearm in 1993, Mr. Napolilli filed a lawsuit to

demand its return, but dropped the lawsuit before the case could be brought to trial. James H. Jeffries III, Esq., of Greensboro, North Carolina, who acted as Mr. Napolilli's attorney, told me that the case was dropped because Mr. Napolilli's wife was afraid that BATF agents were going to kill Mr. Napolilli in retaliation for the lawsuit. Since this period was during the unpleasantness at Ruby Ridge and Waco, Mr. Napolilli's wife's concerns may be understandable, and probably any person who is married can understand the need for domestic tranquility. In any case, Mr. Napolilli, as far as he knew, lawfully purchased the firearm and was issued a registration document by BATF in 1985. Suddenly, in 1992, BATF alleged there was absolutely no record that the firearm had ever been registered, even though BATF had issued a registration document entitling Mr. Napolilli to lawfully possess the firearm. I included a copy of the Napolilli case with my April 8, 1997, testimony, and at that time the Subcommittee placed it into its permanent files.

The Tax Code and the NFA each prohibit disclosure of the past history of NFA firearms because such information or documents are considered to be "tax return" information, so the average person who owns an NFA firearm cannot learn anything about its provenance—legal or otherwise. My case is rather unusual because through the humble virtue of diligence I learned the history of certain firearms that I own. The average person has no means of questioning a forfeiture action by BATF based on the provenance of a firearm, or any protection against BATF flat out lying.

I am the current lawful owner of four smooth bore H&R Handy-Guns bearing serial numbers 5592, 29691, 50885, and 53637, as evidenced by my possession of a BATF issued-and-approved Form 4 for each firearm. These are the only documents which evidence my lawful ownership of these firearms, and BATF is the only entity which can issue them. I obtained some documents, or copies of documents, regarding past transfers of these firearms from the former owners, mainly because they respected my dedication as a firearms researcher and thought the documents would be an interesting addition to my collection.

It was not until 1996, under various Freedom of Information (FOIA) requests, that I was able to learn from BATF the dates of original registration of the firearms that I own. On the basis of this information supplied by BATF, I believe that the four firearms identified above were illegally registered by BATF and that BATF may attempt to confiscate them as contraband at some unknown time in the future for that reason. Since the accuracy and integrity of BATF's firearm registration records is unknown, the situation that I have identified is of potential concern to tens of thousands of people who probably believe they legally own firearms after receiving approved registration and transfer forms from the BATF. The apparently illegal registrations of my firearms on Form 3 or Form 4 considerably widens the potential for other illegal registrations, because these are very commonly used in ordinary transactions to transfer title of ownership.

A group of smooth bore H&R Handy-Guns bearing serial numbers 5592, 43950, 50885, 52551, and 53637 were transferred by and from H&R to Peter Dowd in 1986, using a Form 3 transfer form approved by BATF. Yet, these were not "new" firearms; these guns had existed since at least 1934. As my 1997 testimony documents, H&R advised BATF in writing on November 27, 1953, that "H & R has not manufactured Handy-Guns since the [NFA] law was passed in 1934," and later states that "in the last two (2) years, all our Handy Guns in .410 gauge and 28 gauge were exported to

Canada." Serial numbers 5592 and 50885 are new in their original boxes, and former H&R employees have advised me that H&R had possessed these guns for many years. Yet, under a FOIA request, BATF stated that three of these guns—which I bought during the early 1990s—were originally registered by BATF on April 16, 1986, the date of application for their transfer by H&R; indeed, this is the same date listed on the Form 3 transfer from H&R to Mr. Dowd.

A manufacturer is supposed to register unregistered NFA firearms it has manufactured on Form 2, and Form 3 is supposed to be only used to transfer the ownership of NFA firearms that are already registered. Registering an NFA firearm on Form 3 seems to be a clever way to register an unregistrable NFA firearm, because it places the firearm into the NFRTR, and raises questions about the accuracy and integrity of the NFRTR—and the conduct of whomever approved the transfers (in this particular case, the Form 3 transfers were approved by Gary Schaible via facsimile signature, which may also raise questions about who has access to the signature facsimile machine). As you may know, the U.S. Supreme Court prohibited the registration of such unregistered NFA firearms on April 5, 1971. Consequently, it appears that BATF illegally registered the five firearms described above, three of which I lawfully purchased and was issued lawful registrations by BATF.

The other smooth bore H&R Handy-Gun in question that I own is a rare 28 gauge bearing serial number 29691. I purchased it from the estate of its former owner, whose executrix gave me the old registration (a Form 4 that was approved by BATF on March 23, 1972). According to BATF, this firearm was originally registered on March 2, 1972, more than a year after the U.S. Supreme Court prohibited such a registration. Finally, the old Form 4 that I possess bears the signature of the person who approved its transfer to its now-deceased former owner: the Director of the then-Alcohol, Tobacco and Firearms Division, Rex D. Davis. Based on examples of Mr. Davis' signature on official BATF letters in an unrelated court case during the same time period, it appears that Mr. Davis is not the person who signed this Form 4. Thus, in addition to the firearm being illegally registered by BATF, it appears that someone within BATF forged Mr. Davis' signature. Both of the events that I have documented—an apparently illegal registration, and an apparently forged transfer document—definitely are violations of the NFA.

I respectfully request that you, as Chief of the NFA Branch, state in writing to me what BATF's policy is regarding the legal status of these four smooth bore H&R Handy-Guns and, specifically, whether BATF regards them as lawfully owned by me or as unlawful contraband because they were apparently illegally registered or illegally transferred (or both) without my knowledge by BATF years before I purchased them. This is a law enforcement, compliance, regulatory, and policy issue that potentially affects me as well as thousands of other persons who have lawfully purchased NFA firearms as evidenced by BATF's approvals of these transactions.

I am going to let personal concerns involving selected NFA firearms that I legally purchased speak, in part, as well, for the many people who have contacted me over the years about similar concerns. These people are genuinely terrified of BATF as an arm of the Internal Revenue Service (IRS), and as a law enforcement agency that has in the past over-reacted in situations in which human life was apparently unnecessarily lost. No person should fear being victimized by the unlawful actions of a federal law enforcement agency.

If you are unable or unwilling to provide me with a written official answer, and policy position, addressing these issues, I am going to take action against you personally regarding your conduct in the performance of your official duties, through appropriate channels.

Very truly yours,

(signed—Eric M. Larson)

Eric M. Larson
P.O. Box 5497
Takoma Park, Maryland 20913

cc: Ms. Carol Bergen, Office of the Inspector General, Department of the Treasury
The Honorable Jim Kolbe, Chairman
Subcommittee on Treasury, Postal Service and General Government
The Honorable Dan Burton, Chairman
House Committee on Government Reform and Oversight
The Honorable Orrin G. Hatch, Chairman
Senate Committee on the Judiciary



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

MAR - 3 1998

F:NFA:GS
179.101/98-4516

Mr. Eric M. Larson
PO Box 5497
Takoma Park, MD 20913

Dear Mr. Larson:

This is in response to your letter of January 31, 1998, in which you request confirmation of the registration status of four Harrington and Richardson Handy Guns.

The National Firearms Registration and Transfer Record reflects that the following four Handy Guns are lawfully registered to you as follows:

Serial number 5592, Form 4, approved October 6, 1989
Serial number 29691, Form 4, approved August 22, 1994
Serial number 50885, Form 4, approved October 24, 1989
Serial number 53637, Form 4, approved October 17, 1990

Should any additional information be needed, please contact us at (202) 927-8330.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Nereida W. Levine", is written over a horizontal line.

Nereida W. Levine
Chief, National Firearms Act Branch

March 6, 1998

Nereida W. Levine, Chief
National Firearms Act Branch
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Chief Levine:

Thank you for your letter of March 3, 1998, responding to my letter dated January 31, 1998, regarding the legal status of four (4) H&R Handy-Guns that are currently registered to me, given that they were apparently illegally registered by BATF without my knowledge many years before I purchased them, and thus these firearms may be subject to forfeiture. These firearms bear serial numbers 5592, 29691, 50885, and 53637. I raised a number of questions about these specific firearms, as well as about BATF's policies regarding NFA firearms it may have illegally registered or transferred in the past—unknown to their current lawful owners.

Your letter states that "the National Firearms Registration Record reflects that the[se] four Handy Guns are lawfully registered" to me. This response does not fully address the issues that I raised, as explained below.

There are three things at issue. One is whether I could be prosecuted for possessing these guns—was there some crime? I think the answer is clearly no. It is not a crime to possess a firearm that was ever transferred or registered in violation of the National Firearms Act (NFA). Nothing in Title 26, United States Code, § 5861 says so.

Second is whether any of these four firearms are subject to forfeiture under Title 26, United States Code, § 5872. That seems to encompass any firearm ever involved in a violation of the statute. I don't see how a statement that the listed guns are registered to me means BATF is claiming the listed guns were never, to its knowledge, involved in a violation of the NFA.

In short, I believe I am safe from criminal prosecution with regard to these four firearms, and I have always thought that. However, then as now, I don't see any representation from BATF that BATF doesn't think these four firearms are not subject to forfeiture. I don't see how just because BATF states these firearms are registered to me, means they were never registered or transferred in violation of the NFA and, therefore, subject to forfeiture.

Third is what BATF's position is regarding the legal status of NFA firearms that the BATF itself illegally registered or transferred. The law seems to state that such firearms are subject to forfeiture regardless of when the violation of law occurred, and regardless of whether the person who bought the firearms was aware of any such violations. Does BATF take any position that there is a statute of limitations upon such forfeitures?

An important element of my January 31, 1998, letter asked BATF for a statement regarding its viewpoint regarding a forfeiture action or actions against these specific firearms. I would, therefore, very much appreciate it if you would be kind enough to state what BATF's policy is regarding any possible forfeiture action against these four specific firearms. If BATF intends to seize these firearms because BATF without my knowledge illegally registered or transferred any of them in the past before I lawfully purchased them, I would like to be informed immediately. If BATF does not intend to seize these firearms, I would appreciate it if you would be kind enough to state, in writing, that BATF does not regard any of these firearms as subject to forfeiture.

I recognize there is, unfortunately, an adversarial element regarding interpretations of law as it regards gun control. I honestly wish this was not so. I hope that you will accept my good wishes and apologies for continuing to bring matters of concern to your attention. My reason for doing so is that I would like to have these issues publicly and openly resolved.

Thank you.

Sincerely,

(Signed—Eric M. Larson)

Eric M. Larson
P.O. Box 5497
Takoma Park, Maryland 20913

cc: The Honorable Dan Burton, Chairman
House Committee on Government Reform and Oversight

The Honorable Jim Kolbe, Chairman
House Subcommittee on Treasury, Postal Service, and General Government

The Honorable Orrin G. Hatch, Chairman
Senate Committee on the Judiciary

February 8, 1998

John W. Magaw
Director
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Dear Director Magaw:

I am writing to alert you to a serious flaw in the Bureau of Alcohol, Tobacco and Firearms' (BATF) recent internal report that was submitted to the Treasury Department Inspector General in response to my May 10, 1997, letter describing apparent mismanagement, misconduct, and criminal wrongdoing by BATF agents or employees. Right now I am preparing a detailed rebuttal of many of the report's findings, but in the meantime would like to respectfully request that you consider addressing one of the most egregious flaws in the internal BATF investigation. I am taking the time to write to you personally, because I plan to ask Chairman Jim Kolbe, Subcommittee on Treasury, Postal Service, and General Government Appropriations, to request you to address these matters in a formal hearing this Spring.

What I'm asking you to consider doing now is pretty simple: namely, doing some straightforward computer runs using existing data to determine if BATF has added firearms to the National Firearms Registration and Transfer Record (NFRTR) because there was no record of the registration of said firearms, after BATF was confronted with a valid registration document by their lawful owners. I will describe how I became aware of this problem, what I did to independently determine that it actually existed, and will identify a method for detecting the extent of this problem.

As my research on the smooth bore H&R Handy-Gun, and other "Any Other Weapon" category NFA firearms has become better known, through publication in the *Standard Catalog of Firearms*, the *Blue Book of Gun Values*, and the *Official Price Guide to Antique and Modern Firearms*, a number of people have contacted me for additional information. What some of these people alleged was very disturbing—that BATF had moved to confiscate a family heirloom firearm because the firearm was allegedly not registered, but BATF added the firearm to the NFRTR data base after the lawful owner produced a valid registration. This has not been a common event, and I don't think more than five people have ever told me this. Because the NFA and the Tax Code each require an NFA document to be regarded as a "tax return," these records aren't open for inspection or research.

Until the Thomas Busey matter came up and a transcript of Mr. Busey's remarks in his capacity as Chief of the National Firearms Act Branch about serious errors in the NFRTR was made public, I believed there was no way to determine the truth or falsity of the allegations of firearms being "added" to the NFRTR. I then re-thought the situation and inspected and analyzed the data on firearm transactions as reported from the NFRTR data base, which BATF has publicly released since approximately 1989. I examined the records of Form 1 registrations from 1934 to 1971, and all Form 4467 (Amnesty Period) registrations, to see if the number of registrations changed over time. In

theory, the original date of a firearm registration should not change, but I found otherwise; specifically, the number of original registrations showed apparent *increases* over time. This was consistent with the allegations I'd heard that BATF had added firearms to the NFRTR data base. It also appeared that BATF had illegally registered NFA firearms on Form 4467 (nearly 2,500) after December 1, 1968, when the Amnesty Period expired.

At the time, in the spring of 1996, I was preparing to testify before the House Subcommittee on Treasury, Postal Service and General Government Appropriations, which as you know funds BATF. I wanted to address this issue of "lost-then-found" registrations, and post-December 1, 1968, Form 4467 registrations, and wondered what I could do to independently confirm whether firearms were, indeed, being added to the NFRTR, so I called Mr. Gary N. Schaible, because I recognized how serious this issue is. For me to testify about matters involving possible misconduct or criminal wrongdoing by a federal law enforcement agency is something I regarded as a grave matter. Specifically, given the nature of my employment, it would be professionally ruinous for me to give such testimony without providing significant and credible, documented evidence.

In an April 1996 telephone interview, I asked Mr. Schaible if, in fact, BATF had ever added firearms to the NFRTR because lawful owners produced valid registrations, yet there was no record of the firearm in the NFRTR. Mr. Schaible answered: "Yes. I assume that's happened." I asked Mr. Schaible this question several times, and each time the answer was the same; I definitely did not misunderstand him. Mr. Schaible also stated that BATF had registered NFA firearms on Form 4467 after December 1, 1968, but could not explain those apparently registered in 1972 and later (such registrations were prohibited by an April 5, 1971, U.S. Supreme Court decision). My account of talking with Mr. Schaible appears on pages 88 to 96 of my 1996 testimony (see official printed hearing record).

In my 1997 testimony, I simply carried my 1996 findings forward one year and dealt with this issue in considerably more detail. Specifically, I determined that BATF may have added 119 or more firearms to the NFRTR during 1992 to 1996 (the most recent year for which data were then available) after being confronted with a valid registration (see pages 51 to 67 of my 1997 testimony, in the official printed hearing record). In a previous letter, NFA Branch Chief Nereida W. Levine stated that adjustments to data to correct errors may cause changes in the statistics, and that if a firearm was lawfully registered but not in the NFRTR data base, it would be added.

In my May 10, 1997, complaint to the Treasury Department Inspector General, I stated, in part:

In analyses of data made public by ATF, I found that during 1992 to 1996, ATF may have added 119 or more firearms to the NFRTR which were originally registered on Form 1 or Form 4467 during 1934 to 1971, for which ATF lost or deliberately destroyed the original records.

The implication of such registrations "lost or deliberately destroyed" by BATF is that if the lawful owner loses his or her copy as well, the firearm is instantly transformed into unlawful contraband that nobody can own. The proven fact of such loss by BATF would require that another amnesty period

be established to correct the NFRTR, so the stakes in this matter are quite high. In a "Response to letter from Senator [James A.] McClure" by Philip B. Heymann and Lawrence Lippe of the Department of Justice dated November 29, 1979, bearing symbols LL:JJD:ajw, stated that if a lawful owner presented a valid registration for which no record in the NFRTR existed, "the only solution would be to declare another amnesty period. The Secretary [of the Treasury] is empowered to do this under existing legislation."

BATF's internal investigation into this matter is unsatisfactory, because it leaves the question of "lost-then-found registrations unanswered. Specifically, the BATF report states:

Depending on the year in question, if there was an increase in any National Firearms Act (NFA) firearm registrations, as alleged, this may have been an adjustment as a result of a different form number or registration date for the particular firearm.

This response to my allegation is unsatisfactory because the increases I documented certainly "may have been" the result of any number of things, and because the response is not legally definitive; indeed, BATF has cited no empirical, documented evidence backing up its response.

In contrast, I suggested at least one method in my testimony that could establish with definitive legal certainty whether the increases in NFA firearm registrations that I detected are, in fact, the result of BATF adding firearms to the NFRTR after being presented with valid registrations by the firearms' lawful owners. The following method, in fact, is summarized from pages 74 to 77 of my 1997 testimony (again, see the official printed hearing record). In brief, the method involves comparing the "docket number" in the NFRTR for specific firearms with the original registration dates of these firearms. In approximately 1976, BATF began assigning unique "docket numbers" to paperwork (such as NFA firearm registration and transfer forms) that came in for processing. As we have seen, I have alleged that 119 or more firearms may have been added to the NFRTR during 1992 to 1996, for original years of registration from 1934 to 1971; and note that NFA Branch Chief Levine stated to me in a letter dated January 9, 1996, that a firearm "would be added to the National Firearms Registration and Transfer Record if the information was not already in the Record."

Director Magaw, a simple computer run that compared original years of registration of NFA firearms from 1934 to 1971 with "docket numbers" might well conclusively establish whether or not BATF lost or destroyed original registrations and was forced to add them back when confronted with valid registrations by the firearms' owners. If a firearm originally registered in 1936 or 1968 or 1954 or 1962 or 1945 had a "docket number," that would be pretty conclusive evidence that the firearm had been "added" to the NFRTR as the result of a lost registration. Such a computer run could be done in as little as 10 to 20 minutes; it is not complicated.

Of course, independent manual verification and inspection of any paperwork/documents identified in such a search would have to be done. It would also have to be determined if there were any suspicious "breaks" in the "docket number" sequence that would indicate tampering with records, such as to try and cover up whether firearms had been added.

The astonishing thing is that nobody at BATF apparently tried to match "docket number" with year of original firearm registration, but it is not astonishing if you consider that BATF management may have specifically prohibited doing this check of the records. After all, proof that BATF lost or destroyed records, in the opinion of the Department of Justice, requires that another amnesty period be established. In addition to the adverse publicity that would result, such dereliction of duty would seriously call into question the competence of BATF to administer this Nation's firearms control laws.

In the past, BATF has covered up wrongdoing of this type. In the Busey case, I invite your attentions to Mr. Busey's remarks on October 18, 1995. He said, in part:

Let me say that when we testify in court, we testify that the data base is 100 percent accurate. That's what we testify to, and we will always testify to that. As you probably well know, that may not be 100 percent true . . . we're hoping [that numerous cross-checks using multiple identifiers] eliminates the possibility that anything goes out erroneous because we know you're basing your warrants on it, you're basing your entries on it, and you certainly don't want a Form 4 waved in your face when you go in there to show that the guy does have a legally-registered Title 2 weapon. I've heard that's happened. I'm not sure . . . when I first came in a year ago, our error rate was between 49 and 50 percent, so you can imagine what the accuracy of the [NFRTR] could be, if you're error rate's 49 to 50 percent.

BATF's internal investigation of Mr. Busey's remarks does not inspire confidence. Consider the sole statement of Special Agent Joseph E. Dugan, who was assigned to the case:

On November 30, 1995, I interviewed BUSEY under oath. The scope of this interview was limited in accordance with the discussion I had with Mr. [Associate Chief Counsel (Firearms and Explosives) Jack B.] Patterson. BUSEY related the following in an affidavit, which is attached hereto:

When he said that members of his staff testify that the NFRTR database is 100% accurate although they know otherwise, he made a misstatement of the facts. What he meant to convey was the fact that the database contains certain inaccuracies which can be attributed to human error. His personnel testify only to the accuracy and diligence of their search and make no comment, either in court or on any official document, concerning the accuracy of the database. If he were asked about the accuracy of the database under either direct or cross examination, he would reply that the database contains evidence of human error. He would then explain how a search is performed.

You will note that Mr. Dugan avoided asking Mr. Busey about "a Form 4 waved in your face when you go in there to show that the guy does have a legally-registered Title 2 weapon. I've heard that's happened." Well, I checked the Form 4 data, and found that a BATF agent could have had a legal Form 4 "waved in" his or her face at least 625 times during 1992 to 1996 (see pages 68 to 72 of my 1997 testimony). Moreover, BATF has officially identified "Approved form never updated in NFRTR" as a significant problem (see pages 100 to 106 of my 1997 testimony). Finally, the indented

statement in Mr. Dugan's report, which implies quoted material, isn't actually an "affidavit" from Mr. Busey. The statement is simply what Mr. Dugan says that Mr. Busey would say, and is hardly a direct legal statement. In my judgement, Mr. Dugan didn't ask Mr. Busey about Form 4 and other NFRTR problems because he was specifically directed not to.

The preceding discussion suggests why I had so little faith in BATF's internal review process, that I contacted the House Committee on Government Reform and Oversight to try and prevent what surely would have been just another coverup. As you know, the Committee has requested the Treasury Department Inspector General to: (1) conduct an independent audit of BATF's firearm registration practices; and (2) evaluate the BATF's internal report. The latter has been completed, and the former is apparently still ongoing.

I believe that the Government employs competent criminal investigators, but will their political masters in the Executive Branch allow them to go where the evidence leads? What for me began as a simple concern about lawful heirs who have inherited certain rare, collector's-item firearms being unjustly deprived of these firearms, has evolved into a more lengthy analysis of how BATF has administered the National Firearms Act and obviously serious problems with the NFRTR database.

Director Magaw, you are in a position to require BATF personnel to answer the questions that I have asked truthfully, directly, and completely. So far, BATF has responded with hypothetical or misleading answers that simply are not legally sufficient, and do not cite any definitive, empirical evidence as normally would be required in an audit or investigation. Where are the work papers? BATF's reply to me is that none can be identified. Similarly, a list of witnesses "never materialized."

Today is February 8, 1998. I am sure you will receive this letter within a few days. There is roughly a 2-month period between now and when BATF's Appropriations hearings will be held. I am providing Chairman Kolbe with a copy of this letter at the same time I have sent it to you, and I sincerely hope that he considers asking you to respond to this letter for the record.

Very truly yours,

(signed—Eric M. Larson)

Eric M. Larson
P.O. Box 5497
Takoma Park, Maryland 20913

cc: Ms. Carol Bergen, Office of the Inspector General, Department of the Treasury
The Honorable Jim Kolbe, Chairman
Subcommittee on Treasury, Postal Service and General Government
The Honorable Dan Burton, Chairman
House Committee on Government Reform and Oversight
The Honorable Orrin G. Hatch, Chairman
Senate Committee on the Judiciary

Federal Workers Must Tell Truth, Court Says

Separate Charges Can Be Brought for Lying About Misconduct

By Joan Biskupic

Washington Post Staff Writer

The Supreme Court ruled unanimously yesterday that federal workers who deny a job-related misconduct charge can be separately charged and disciplined for lying.

The justices rejected a claim that the practice violates a person's right to due process of law and means that any time a worker must respond to an allegation during an agency investigation, he or she risks a separate false-statement charge if the whole truth is not told. Chief Justice William H. Rehnquist wrote for the court that workers "cannot with impunity knowingly and willfully answer with a falsehood."

Separately, the justices ruled by a 6 to 3 vote in a Virginia capital case that a judge need not instruct a jury about mitigating evidence that might persuade it to give a defendant life in prison rather than death. The justices, also ruling 6 to 3, struck down a New York law that allows in-state residents to deduct alimony payments but denies the deduction to nonresidents filing New York returns.

The federal employees' case was brought by six workers who were disciplined for misconduct and subject to extra sanctions for making false statements, including the lead challenger in the case, Lester E. Erickson, a police officer at the Bureau of Engraving and Printing. During an investigation into "mad laughter" harassing telephone calls at the agency, Erickson said he did not know who was making the calls. Eventually, it was discovered that Erickson had encouraged someone to make a call. The bureau wanted to fire him for his part in the incident and for lying about it, but the federal Merit

Systems Protection Board disallowed the double punishment and reduced his sanction of firing to a 15-day suspension.

When the government appealed, the U.S. Court of Appeals for the Federal Circuit said an employee cannot be charged for making a false statement when it involves the denial of another charge. The appeals court reasoned that under the constitutional guarantee of due process, an accused person is entitled to a meaningful opportunity to be heard and that "employees might be reluctant to deny charges for fear that their denials would be construed as 'denials of facts,' subjecting them to additional charges."

But the high court said the opportunity to be heard does not include the opportunity to lie and noted that a criminal defendant's right to testify does not include the right to commit perjury. Lawyers who represent federal workers said yesterday the ruling in *Lachance v. Erickson* will put new pressure on public employees. They noted that unlike in criminal trials in which defendants need not testify, federal employees have an obligation to answer questions and agencies can draw negative inferences when people refuse to respond.

A related pending case tests whether a denial of wrongdoing during an agency investigation may subject the person to prosecution under a statute making it a felony to lie with respect to any matter within the jurisdiction of a federal agency. A ruling in *Brogan v. United States* is likely before the justices recess this summer.

In the Virginia case, Douglas M. Buchanan was convicted and sentenced to die for the 1987 murders of his father, stepmother and two young

stepbrothers. During his sentencing hearing, testimony over two days detailed Buchanan's troubled family background and mental and emotional problems. Buchanan wanted the judge, who specifically instructed the jury on the aggravating circumstances of the crime, to specifically instruct the jury about mitigating circumstances, including his troubled background. The judge refused and an appeals court upheld the death sentence.

In affirming the sentence in *Buchanan v. Angelone*, Rehnquist wrote for the majority that although a defendant must be able to present relevant mitigating evidence, the court has never required states to structure in a particular way how juries consider the evidence.

He said it was enough for the judge to tell the jury to base its decision on "all the evidence." Justices Stephen G. Breyer, John Paul Stevens and Ruth Bader Ginsburg dissented. In a statement by Breyer, they said ambiguous instructions "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty."

In the New York case, the court said the state lacked sufficient justification for treating residents and nonresidents differently on the alimony tax deduction, violating the Constitution's mandate that states give nonresidents all the "privileges and immunities" given its own people.

FOR MORE INFORMATION

For a list of upcoming cases on the Supreme Court docket, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

ORRIN G. HATCH, UTAH, CHAIRMAN

STROM THURMOND, SOUTH CAROLINA
 CHARLES E. GRASSLEY, IOWA
 JULEN SPECTER, PENNSYLVANIA
 HUBBARD T. REED, TENNESSEE
 JON KYL, ARIZONA
 MIKE DEWINE, OHIO
 JOHN ASHCROFT, MISSOURI
 SPENCER ABRAHAM, MICHIGAN
 JEFF SESSIONS, ALABAMA

PATRICK J. LEAHY, VERMONT
 EDWARD M. KENNEDY, MASSACHUSETTS
 JOSEPH R. BIDEN, JR., DELAWARE
 HERBERT KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 RUSSELL D. FEINGOLD, WISCONSIN
 RICHARD J. DURBIN, ILLINOIS
 ROBERT G. TORRICELLI, NEW JERSEY

MAURA COHEN, Chief Counsel and Staff Director
 BRUCE A. COHEN, Minority Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

October 27, 1997

Mr. Eric M. Larson
 P.O. Box 5497
 Takoma Park, Maryland 20913

Dear Mr. Larson:

Thank you for your letter regarding the Bureau of Alcohol, Tobacco and Firearms (BATF). I care deeply about the rights provided and protected under the Constitution of the United States and appreciate the opportunity to respond to your concerns.

I am aware of the alleged violations committed by BATF agents. Trying to balance the public's need for effective law enforcement and the rights of individual citizens is often difficult. But it can be done. Unfortunately, the BATF is plagued by continued allegations of abuse and misconduct.

In the past, the Judiciary Committee has thoroughly investigated the actions of federal law enforcement agencies in connection with the tragedies at Waco and Ruby Ridge. I am committed to pursuing credible allegations through exhaustive and fair hearings in the Judiciary Committee. You can be sure that I will do everything in my power as Chairman of the Senate Judiciary Committee to impress upon federal law enforcement officials that they must implement policies that prevent abuse and punish those who overstep their authority.

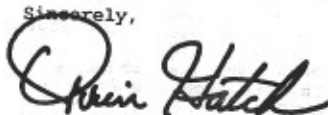
Meanwhile, the government still has the responsibility to perform the regulatory functions now executed by the BATF. The question that remains, then, is how best to perform these functions while preventing future abuses. I am currently reviewing the feasibility of three specific suggestions for the future of the BATF: first, congress could abolish the BATF and transfer its functions to the FBI; second, congress could dissolve the BATF while assigning its enforcement functions to the Secret Service and its regulatory functions to the U.S. Customs Service; and third, congress could put the BATF under the authority of the Department of Justice, allowing that Department to review its policies and procedures.

October 27, 1997
Page 2

Ultimately, I will do everything I can to maintain the balance between effective law enforcement and protected civil rights.

Again, thank you for writing to me on this important issue.

Sincerely,



Orrin G. Hatch
Chairman

OGH:jgg

ORRIN G. HATCH, UTAH, CHAIRMAN

STROM THURMOND, SOUTH CAROLINA
 CHARLES E. GRASSLEY, IOWA
 ARLEN SPECTER, PENNSYLVANIA
 FRED THOMPSON, TENNESSEE
 JON KYL, ARIZONA
 MIKE DUNN, OHIO
 JOHN ASHCROFT, MISSOURI
 SPENCER ABRAHAM, MICHIGAN
 JEFF SESSIONS, ALABAMA

PATRICK J. LEAHY, VERMONT
 EDWARD M. KENNEDY, MASSACHUSETTS
 JOSEPH R. BIDEN, JR., DELAWARE
 HERBERT KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 RUSSELL D. FEINOLD, WISCONSIN
 RICHARD J. DURBIN, ILLINOIS
 ROBERT G. TORRICELLI, NEW JERSEY

MARY J. COOPER, Chief Counsel and Staff Director
 DAVID A. COHEN, Senior Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 11, 1998

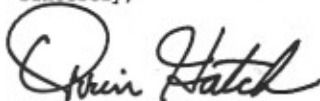
Mr. Eric M. Larson
 P.O. Box 5497
 Takoma Park, MD 20913

Dear Mr. Larson:

Thank you for your letters regarding the BATF in which you included testimony given before the House of Representatives' Appropriations Committee. I appreciate the information you provided because it is essential to the oversight role of the Judiciary Committee. Your concerns, combined with the concerns of others like you, provide insight that would be difficult for me to obtain in any other way. I will certainly keep your information in mind when considering future legislation dealing with the BATF.

Once again, thank you for taking the time to write to me on this important issue.

Sincerely,



Orrin G. Hatch
 Chairman

OGH:jgg

JOHN D. LEASURE
5007C VICTORY BLVD., BOX 360
YORKTOWN, VIRGINIA 23693
TEL: 757-874-7717

MARCH 31, 1998

THE HONORABLE JIM KOLBE, CHAIRMAN
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL
GOVERNMENT.
HOUSE OF REPRESENTATIVES
B 307 RAYBURN HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515-6028
TEL: 202-225-5834

DEAR CHAIRMAN KOLBE,

I AM ENCLOSING THE FOLLOWING MATERIAL THAT REFER TO EFFORTS
BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TO COVER UP
ERRORS IN THE NATIONAL FIREARMS REGISTRATION AND TRANSFER
RECORD, AND TO ILLEGALLY WITHHOLD EXCULPATORY EVIDENCE IN
CRIMINAL PROSECUTIONS.

I WOULD RESPECTFULLY ASK THAT MY TESTIMONY BE MADE PART OF
THE WRITTEN RECORD.

CHAIRMAN KOLBE, I WOULD ALSO ASK THAT YOU SUPPORT CHAIRMAN
DAN BURTON IN REQUIRING THE TREASURY DEPARTMENT INSPECTOR
GENERAL TO DO A CREDIBLE INVESTIGATION INTO THE B.A.T.F. AND
THE NATIONAL FIREARM REGISTRATION AND TRANSFER RECORD.
AND TO ALSO SUPPORT REMOVING THE N.F.R.T.R. FROM B.A.T.F. AND
TRANSFERRING IT PERMANENTLY TO THE DEPARTMENT OF JUSTICE.

THANK YOU.

SINCERELY,


JOHN D. LEASURE

Testimony

Statement on

Efforts by the Bureau of Alcohol, Tobacco and Firearms to
Cover Up Errors in the National Firearms Registration and
Transfer Record and to Illegally Withhold Exculpatory Evidence
in Criminal Prosecutions

by

John D. Leasure
5007C Victory Blvd., Box 360
Yorktown, Virginia 23693

Tel: 757-874-7717

Presented

before the

Subcommittee on Treasury, Postal Service and General Government
of the
Committee on Appropriations
House of Representatives

B307 Rayburn House Office Building
Washington, D.C.

April 3, 1998

Testimony

Mr. Chairman and Members of the Subcommittee:

My name is John D. Leasure. I have prepared this testimony because I have an important story to tell about how part of the legal system in this country is broken. I say "part of the legal system," because certainly all of it is not broken. In addition to having 5 felony convictions reversed because the Bureau of Alcohol, Tobacco and Firearms (BATF) withheld exculpatory evidence, having the opportunity to personally bring this matter to your attention by myself, in my own words, means a great deal to me. There is still a cloud over my name right now, but it is my hope that the Federal Court system will clear me.

I prepared this testimony for three basic reasons.

First, I want to document for the Congress how BATF illegally withheld exculpatory evidence in the course of charging me with and prosecuting me for so-called "crimes" that were artificially created only by flawed firearm registration records.

Second, and perhaps most importantly, I want to place in the formal record of this hearing evidence that the BATF is continuing to try and cover up its misdeeds, and is thus continuing to try to illegally prosecute some people on the basis of firearm registration records that BATF knows good and well are not reliable.

Third, I hope that by bringing this information to your attention, the Subcommittee can help keep what unjustly happened to me from ever happening again to somebody else.

All of the laws that I have been accused of violating are part of the National Firearms Act (NFA) of 1934. The NFA regulates the manufacture, sales or distribution, and possession of machineguns, bazookas, anti-tank rifles, land mines, hand grenades, sawed-off shotguns, firearm silencers, rockets, and similar implements of war. In addition to law enforcement reasons, there are many legitimate activities involved with these items.

Museums have them, people study them for research and development purposes, other people collect them as historical artifacts, and they are regularly used in movies. I will not try and address all of these uses here, and instead will begin by explaining how I got where I am today from my perspective.

PERSONAL BACKGROUND

Testimony

I am an inventor of firearm silencers, which are sometimes called "suppressors," because they reduce or eliminate the sound of a firearm being discharged. I hold a patent on my silencer invention, which was patented in 1992, and which is considered among the best in the industry.

While I have sold perhaps a handful of these items to certain qualified individuals, virtually all of my clientele has been the U.S. Government, its foreign-government allies, and law enforcement agencies. In other words, my business is not with the civilian market. As a federally licensed manufacturer under the NFA, I was legally qualified to manufacture silencers as well as any other NFA firearm or device.

I also make a good product. You may not have heard of me before today, but I'm sure you all have heard of Tom Clancey, the author of Without Remorse.

Well, the technical information in that book regarding firearm silencers came from me.

My legal problems with BATF forced me to close my first company, Precision Arms International, which was located in Saluda, Virginia. As a convicted felon, I cannot possess any firearm, nor hold a federal manufacturer's license. At the moment, I am a consultant to SiOpts.

HOW MY LEGAL PROBLEMS STARTED

In February 1994, I was contacted by BATF for a compliance inspection. When Inspector Charles Turner arrived at my place of business, we tried to retrieve my records via the computer. I had problems with the computer, so he left and returned two days later with a computer printout of my supposed inventory provided by the NFA branch in Washington, D.C. When our records didn't match, Inspector Turner said he would return in a few days. Three days later he returned, along with three other BATF agents, with a search warrant. I offered the hard copies of my records to Special Agent Karen Dutton, but she said they were not interested in the hard copies. They seized approximately 60 items, saying they would be in touch with me. (Trial Jan. 18, 1996, Page 96, Line 1-25.)

Throughout I called the Norfolk BATF office numerous times inquiring as to the status of my inventory and trying to find out exactly what was going on. I was told, "It is still pending." In late 1994 I was forced to close up my company, Precision Arms International, due to poor business. I was told by a good customer that word had gotten around that I was having problems with BATF.

I re-opened my business in Newport News, Virginia under the name of Silent Options. In November 1995 I was contacted by Special Agent Karen Dutton and told the grand jury had returned a true bill on my indictment

Testimony

and I had better get a lawyer. When my lawyer, David N. Montague of Hampton, Virginia, called on November 16, 1995 to the U.S. Federal Eastern District Court, he spoke with Arenda Wright-Allen, Assistant U.S. Attorney. She told Mr. Montague I had NOT been indicted, but my case was still under investigation. Three days later, and two days before Thanksgiving, I received my indictment, delivered by a U.S. Marshal. The grand jury had met on November 14, 1995 and returned a true bill.

We obtained a copy of Special Agent Karen Dutton's testimony of the grand jury hearing. In her testimony, she testified I had in my possession three unregistered functioning machine guns. These "machine guns" were small replacement parts I was licensed to possess. This tainted the testimony to the grand jury. As a matter of fact, these were replacement parts of a United States military project. Even though during my trial Judge MacKenzie questioned why I was even charged with this count, it still was an issue we had to spend time and money fighting and proving my innocence. Furthermore, this prevented the negotiation of reducing my charge to a misdemeanor, and points were added to my sentencing guidelines for this count, even though I was found not guilty. (Grand jury hearing, 11-14-95, Page 10, Line 16.)

In December 1995 David N. Montague, my attorney, asked Arenda Wright-Allen if there was any way this could be reduced to a misdemeanor and was told absolutely not. On January 18 and 19, 1996, my trial was held in the U.S. District Court, Eastern Division, Newport News, Virginia, before the Honorable John A. MacKenzie. During the trial, Gary Schaible, who is in charge of record certification for the NFA branch in Washington, D.C., testified their records were 100 percent accurate, and that he had made only one mistake in his 20 years of service. Judge MacKenzie took the case under advisement. (Page 107, Line 23).

In February 1996 I was found guilty on four of the six counts.

In March 1996, through a Freedom of Information Act Request by attorney James H. Jeffries, III, we obtained a transcript of a roll call training session conducted by Tom Busey, Chief of the NFA branch of the BATF. Mr. Busey, in this October 1995 training session, admitted their records were at best 50% accurate. Mr. Busey also stated when testifying in court cases, agents testify the records are 100% correct. Gary Schailbe was present at this meeting. (BATF Roll Call Training Session NFA Branch, October 1995, Page 9, Line 3)

"Let me say that when we testify in court, we testify that the data base is 100% accurate. That's what we testify to, and we will always testify to that. As you probably well know, that may not be 100% true. (BATF Roll Call Training Session NFA Branch, October 1995, Page 19, Line 4).

"This quality review team, when I first came in a year ago, our error rate was between 49% and 50%, so you can imagine what the accuracy of the National Firearms Registration and Transfer Record could be, if your error rate is 49% to 50%" (Please refer to the enclosed roll call

Testimony

training session tape.)

On March 29, 1996, David Montague wrote a letter to Judge MacKenzie requesting the case be dismissed based on the roll call training session, and regarding Count 1, Mr. Montague wrote, "Count 1 would have been fatally tainted by the multiple acts of misconduct by the Government." (Letter to Judge MacKenzie, 3-29-96).

In April 1996, my attorney filed the roll call training transcript with the court for a motions hearing. It was mailed certified return receipt. The very next day, Mr. Montague received this same transcript from Arenda Wright-Allen, which she filed with the court, only her copy left out seven consecutive pages. It's interesting to note those seven pages contained all the information about the BATF admitting their records were at best 50% accurate.

On May 21, 1996, in a hearing before the Honorable John A. MacKenzie, all counts but one were thrown out due to Gary Schaible's new testimony wherein he perjured himself, and he stated there were examiners at the BATF NFA branch in Washington, D.C. who shredded registration and transfer documents. Furthermore, this was exculpatory material withheld by the prosecution. (Court hearing, 5-21-95, Page 42, Line 19 to Page 44.)

The sentence given was 12 months, but I was let out on bond pending appeal. One interesting point, in my sentencing guidelines prepared by probation officer Sharon Thayer, she included counts of which I was found not guilty. This upped the sentencing range dramatically. (Court hearing 5-21-95, Page 70, Line 5.) U.S. attorney Arenda Wright Allen appealed my sentence.

In June 1996, Stephen Halbrook became attorney of record and noted our appeal based on the ambiguity of the law.

In May 1997, the Court of Appeals, Fourth Circuit, upheld the conviction and refused to hear oral argument on the appeal. The Fourth Circuit remanded my sentence back to Judge MacKenzie to comply with the rules of United States versus Koon. In August 1997, David Montague returned as the attorney of record and noted my appeal to the United States Supreme Court. In October 1997, the Supreme Court refused to hear the case.

David Montague has two motions to file. One is to dismiss stating BATF obtained a search warrant based on the accuracy of their records knowing full well their records were at best 50% accurate. In addition, if this transcript had been turned over before trial, which it should have been, it would have left Count 1, the count on which I was convicted. Even though I was licensed by the BATF to manufacture silencers, I was still convicted for possessing them. However, that count by itself could have been reduced to a misdemeanor under the Tax Code, and as I stated earlier, we tried to get this reduced but were told absolutely not.

Testimony

However, I must state I feel Count 1 should have been thrown out due to the ambiguity of the law. Federal Register, Vol. 53, No. 62, Rules and Regulations, Section 179.102. This is also stated in "Your Guide to Federal Firearms Regulation, 1988-89," Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms. Please see excerpts from Jan. 18 & 19, 1996 trial, Page xx, Line, Page xx, Line xx, Page xx, Line xx.

A MISCARRIAGE OF JUSTICE

Why was Gary Schaible able to perjure himself on the stand with no repercussions? If the normal citizen were to perjure himself, they would be tried and most probably convicted. In the roll call training session tape, Tom Busey states there are over 800 cases they are trying based on the accuracy of their records. How many other people are in jail or have felony convictions on their records because of the BATF's lying about the accuracy of their records?

Why weren't Inspector Turner and Special Agent Karen Dutton interested in the hard copies of my records?

Why was Karen Dutton able to testify incorrectly to the grand jury thereby obtaining an erroneous charge against me, and in essence, extra points added to my sentencing guidelines?

Why was Brady material withheld?

Why did Arenda Wright-Allen leave out seven consecutive pages from the roll call training session transcript, which in these seven pages, it's clear Gary Schaible perjured himself? The Department of Justice stated they sent the complete transcript out to all U.S. attorneys.

Why was I "given time" in my sentencing guidelines for charges I was found not guilty? How can a person be given sentencing enhancements/points for counts he was found not guilty? If this is correct law, why have trials?

Why would the Court of Appeals, Fourth Circuit, not even hear oral argument on my case?

Why did the U.S. attorney, Arenda Wright-Allen, tell my attorney, David Montague, that I had not been indicted, yet she was the U.S. attorney who presented my case to the grand jury two days prior? She told Mr. Montague I was under investigation. The grand jury met on November 14, 1995 and Mr. Montague spoke with Ms. Wright-Allen two days later on November 16, 1995.

How can someone who truly believes they are complying with the laws be sent to jail for 12 months? (With the distinct possibility of receiving 51 months.)

Testimony

Please read David Montague's letter, June 4, 1996, to Michael E. Shaheen, Junior, Director, Office of Professional Responsibility, U.S. Justice Department, regarding the removal of seven pages from the roll call training session transcript; obstruction of justice/tampering with evidence.

I had just re-opened my business in June of 1995 and things were going great. I felt I had recovered my reputation BATF's raid on my prior business. I had pending orders in excess of \$500,000. News in the gun/defense industry travels fast, and by the beginning of December 1995, I was being told by customers, "We'll get back to you."

Additionally, I have spent the majority of my life in the defense industry and I was now left with no current job skills to find a new career. Needless to say, this was a severe financial strain on my family.

TESTIMONY AND RESEARCH
OF ERIC M. LARSON

In January 1998--less than 3 months ago--I became aware that Eric M. Larson had testified before this Subcommittee about errors in the National Firearms Registration and Transfer Record, or NFRTR. Mr. Larson became interested in these errors from a completely different perspective, that of hearing about collectors who had firearms confiscated by BATF even though the firearms were legally registered to them. I would like to briefly say that the relatively small number of firearms that Mr. Larson is concerned about (he estimates there are roughly 17,000 of them) are, indeed, in my professional opinion, firearms that are only of interest to collectors. They came under the NFA for mainly technical reasons, and we in the business often encounter them. In a significant number of cases, people simply don't recognize them as NFA firearms--because they look like what they are, obsolete firearms that obviously were manufactured many years ago. I believe that what Mr. Larson has suggested is reasonable, which is to either allow people to voluntarily re-register these guns, or to simply remove them from the NFA as collector's items. I hope you will consider doing this, based on his research and testimony.

Having said that, I am mainly interested in Mr. Larson's work for two very different reasons. First, he independently confirmed what I experienced, and what those of us in the NFA business have recognized for many years. Namely, that the NFRTR records are a mess. They are not totally a mess, of course, but they are enough of a mess to cause unjust prosecutions, for a Federal Judge to deem them unreliable enough to support convictions, and for the BATF not to appeal those dismissals of charges. That's pretty unreliable.

Second, Mr. Larson followed up his testimony with a complaint to the Treasury Department Office of Inspector General, which ultimately turned

Testimony

into written proof of an attempt by the NATF to still try and cover up errors in the NFRTR. Briefly, Inspector General refused to investigate Mr. Larson's complaint, and instead turned it over to the BATF. The BATF then did an internal investigation, completely exonerated itself, and then refused to release the report for a long time. The report was completed in September 1997, but Mr. Larson was unable to obtain a copy until late January 1998. He kindly shared this report with us.

I will not go into Mr. Larson's complaint here, except to say that one specific complaint he made was about the deliberate destruction of registration documents by BATF employees. As we have seen, this is what Mr. Schaible testified to at my trial, and it is one of the reasons that Judge MacKenzie dismissed 5 of my convictions. Yet, the BATF told a completely different story than the one Mr. Schaible related under oath in federal court in response to Mr. Larson's complaint. Specifically, the BATF stated in its internal report that the documents were thought to have been destroyed some eight years ago by contract employees; however, in my trial, Mr. Schaible did not state this. Instead, Mr. Schaible acknowledged, under direct examination, that registration forms belonging to Mr. Leasure could, in fact, have been destroyed by BATF employees. (May 21, 1996, transcript, Page 42, Line 19 through Page 43.)

Also (incredibly, in my opinion), the BATF is continuing to try and withhold the Busey Tape, which is clearly Brady Material. In a letter dated March 18, 1998, less than 3 weeks ago, the BATF denied a Freedom of Information Act request by Mr. Larson for a copy of the videotape. BATF gave as the reason, and I quote: "Your request is denied pursuant to Title 5, U.S.C. 552(b) (6) as release of this video tape would constitute an invasion of Mr. Busey's privacy."

Mr. Chairman, not only is BATF's refusal to release this information an outrage, what Mr. Busey states on the tape is an outrage: namely, that he knew good and well how messed up the records were. Listen to what Mr. Busey states toward the end of the videotape, and I quote:

"What we're going to do is we're going to go back, starting with the latest entry and working back to the oldest entry and review every hard copy of every document with its entry into the data base to see if it's correct. I think originally we figured this would take 781 man days to do this with five people sitting at a computer eight hours a day."

"But it's the only way that we can feel that we can ever get it completely accurate. It was fine to begin putting everything in accurate a year ago or at least be guaranteed a year ago it was correct, but what are you going to do with the entries that go back to the early '80s and the '70s and the '60s?"

PROPOSED REMOVAL OF THE NFRTR FROM BATF
AND RELOCATING IT TO THE DEPARTMENT OF JUSTICE

Testimony

I learned about 3 weeks ago that Mr. Larson was planning to recommend that this Subcommittee consider removing the NFRTR from the custody of the BATF, and relocate it within the Department of Justice.

I believe this is a reasonable and necessary action, for several reasons. First, the Department of Justice is the organization that does all of the background checks anyway. Second, the Department of Justice has the capability to professionally manage these records, as it has done do with fingerprint records for many, many years. The BATF has proven, by its actions, that it is incapable of managing these records, but more importantly that it is continuing to try and cover up errors in the NFRTR and thus continue to try and prosecute innocent people. Third, the BATF (or indeed, whatever government agency has the responsibility for enforcing federal gun control laws) would still have access to these records, and have the ability to use them for legitimate law enforcement purposes.

Fourth, and perhaps most importantly, moving the NFRTR to the Department of Justice would provide an objective, legal interface between these records and the BATF. In other words, the BATF could not manipulate these records or misuse them, because they would be in the custody of a disinterested federal agency that has an incentive to maintain their integrity.

Mr. Chairman, I don't know the political and practical details of how you do these things, but I strongly support Mr. Larson's suggestion that the NFRTR be completely removed from the BATF, and turned over to the Department of Justice.

EFFECTS OF BATF'S PROSECUTION ON MY PERSONAL LIFE

I don't know that I can adequately express how it feels to be wrongly accused of, tried and convicted for crimes that I did not commit. I can tell you that it takes over your life from then on. I think about it every day, and worry about what is going to happen to me and to my family.

In May of 1995 I married the love of my life, and with her I also enjoyed becoming a father to her five year old son. As you know, six months later I was served with the indictment. It is almost impossible, and I have said, to put into words the stress that befell our home life, for the fear of having my son lose his new father would have been devastating to him, not to mention my sorrow as well. My wife and I have both gone through depression, mental anguish, and our son's school performance has suffered.

My wife was a court stenographer who enjoyed going to court for the state felony dockets. After seeing such a gross miscarriage of justice, she was mentally no longer able to perform her duties in court hearings. She

Testimony

lost all faith in the justice system.

We feared for our safety due to retaliation by the BATF, echoes of Waco, Ruby Ridge, and John Lawmaster went through our minds constantly. Even today, we fear that writing to you will prompt retaliation by the BATF.

People who I thought were my friends would no longer talk to me. A close friend finally told me others were afraid if they were associated with me, there would be retaliation by the BATF towards them. This friend also told me that's why no one would testify on my behalf. Furthermore, the night before my trial, a very close friend who wasn't afraid to testify, received an anonymous call stating he better not show up at trial. During this time I received numerous prank calls, some using foul language, and constant hang-ups. I never even bothered asking anybody in the NFA manufacturer or dealer industry to testify on my behalf about the same kinds of errors in the NFRTR they have experienced. The BATF scares them, because the BATF can put you out of business. Knowing what it has done to me, I could never criticize anybody for putting their wife, family and business interests first. I am proof that nobody will step forward and help.

These are just a few examples of the hell we went through and are still continuing to experience, for peace of mind and reputation are not acquired overnight.

In legal fees, our bill with David Montague is \$28,300, and the clock is still ticking. We had previously paid him \$7,000. (This is not included in the \$28,300.) Stephen Halbrook's bill was \$24,500. We still owe \$18,000. This does not include the countless hours spent worrying about the case; time working on the case; time it has taken away from my family and business life; and time trying to keep it all together financially and emotionally.

CONCLUSION

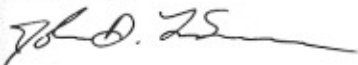
Mr. Chairman, on March 25, 1997, my attorney filed a writ of Habeas Corpus on my single remaining conviction. As I write these words, I don't know what is going to happen, but I feel like we have a sound case that is based on valid and reliable evidence. It is possible that by the time you read these words, I will be a totally free man, but I don't want this to stop here.

I came forward with this story mainly because I don't want any other person to ever experience what I went through, because of messed-up records and an effort by the BATF to lie about and cover up exculpatory evidence. This is the part of the legal system that is broken, and I sincerely hope that you and other Members of the Subcommittee will use your authority to support reforms that prevent any of this from ever happening again.

Testimony

Thank you for the opportunity to have shared this information with you. I will be glad to try and assist you and anybody else in the task of fixing this very serious problem.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. LeaSure", with a long horizontal flourish extending to the right.

John D. LeaSure

DAVID N. MONTAGUE
ATTORNEY AND COUNSELOR AT LAW

1 EAST QUEEN'S WAY
SECOND FLOOR
HAMPTON, VIRGINIA 23669

TELEPHONE: (804) 722-7441

FACSIMILE: (804) 722-8189

March 29, 1996

The Honorable John A. MacKenzie
Senior United States District Judge
Eastern District of Virginia
Walter E. Hoffman U. S. Courthouse
600 Granby Street
Norfolk, Virginia 23510

Re: United States v. John Daniel Leasure, Criminal No. 4:95cr54

Dear Judge MacKenzie:

On yesterday, I received a letter with multiple enclosures from Assistant U. S. Attorney Arenda Wright Allen, Esq. It appears that Mrs. Allen also sent a copy of this letter, with the enclosures, to you.

The letter is quite extraordinary for several reasons, and I believe it is appropriate for me to bring these to your attention. I am, of course, sending Mrs. Allen a copy of this letter.

In the first place, this case was tried before you in Newport News more than two months ago, and resulted in the conviction of Mr. Leasure on 4 of the 6 counts in his indictment. Mrs. Allen's letter of March 26, 1996, states that the accompanying information is sent "to avoid any suggestion that the [Justice] Department has not provided all relevant material in this matter."

My understanding of the Brady rule is that the potentially exculpatory disclosure is to be made to the defense before the trial. It doesn't do much good two months later.

Secondly, on March 25, 1996, we sent to Mrs. Allen by Certified Mail, Return Receipt Requested, a supplement to our motion for new trial with various materials attached, including a copy of the transcript of the departmental briefing given to the Bureau of Alcohol Tobacco and Firearms (BATF) by then NFA Branch Chief Thomas Busey, in October, 1995, and the Return Receipt shows that it was received by Mrs. Allen on March 26—the same day as her letter to me.

Third, she includes as the first item among her enclosures the same transcript of Mr. Busey, except her copy of the transcript omits the last six pages which contained, we thought, the admissions most damaging to the Government's case. Her version of the transcript ends with page 15, but page 16, (we filed the whole thing) has Busey saying: "we maintain these [NFRTR search] files for future reference in case one or the other of us has to CYA for one reason or another."

The Honorable John A. MacKenzie
March 29, 1996
Page Two

And on page 19 he says: "when I first came in a year ago, our error rate was between 49 and 50 percent."

Another interesting item is in the portion of the transcript submitted by Mrs. Allen, and appears at page 9:

"Let me say that when we testify in court, we testify that the data base is 100 percent accurate. That's what we testify to, and we will always testify to that. As you probably know, that may not be 100 percent true."

In Mrs. Allen's next exhibit, a handwritten affidavit by Mr. Busey, he finds it necessary to assert that: "Neither I nor my staff have never [sic] perjured themselves regarding this accuracy. . . ."

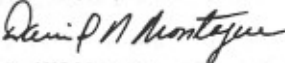
Assuming this means that they have not committed perjury, it is shocking that he would feel it necessary to issue such a disclaimer.

This casual and flippant attitude on the part of a senior BATF official is unbecoming, unprofessional and inappropriate, but far more importantly, the *sine qua non* of the Government's case on Counts 2, 3 and 6 of the indictment was the testimony and certification of Gary Schaible of the BATF that the weapons in question were not registered to Mr. Leasure. The fact that this assertion was based on data that at that time (February, 1994) suffered from a "49 or 50 percent" error rate is absolutely appalling. Had we known these facts, I believe the entire case would have been dismissed because: (a) Counts 2-6 would have been subject to reasonable doubt as a matter of law, and (b) Count 1 would have been fatally tainted by the multiple acts of misconduct by the Government.

I would request that you convene a hearing to consider the Defendant's Motion for New Trial and for such other relief as the Court might find appropriate.

With kind regards.

Yours very truly,



David N. Montague

cc: Arenda Wright Allen, Esquire
Mr. John D. Leasure

DAVID N. MONTAGUE
ATTORNEY AND COUNSELOR AT LAW

1 EAST QUEEN'S WAY
SECOND FLOOR
HAMPTON, VIRGINIA 23669

TELEPHONE: (804) 722-7441

FACSIMILE: (804) 722-8189

May 24, 1996

MAILED & FAXED (804) 441-6689

Arenda Wright Allen, Esquire
Assistant U.S. Attorney
World Trade Center, Suite 8000
101 West Main Street
Norfolk, VA 23510

Re: U.S. vs LeaSure
Criminal Number 4:95cr54

Dear Mrs. Allen:

On yesterday I received a call from an out-of-state lawyer who specializes in the defense of NFA cases.

He informed me that he had just received in one of his cases a letter similar to the one you wrote to me in this case on March 26, 1996, with, apparently, most of the same exhibits.

A significant difference, however, was the fact that he received the entire Dusey transcript, and not just the first fifteen (15) pages, as I did.

You will recall that I raised that question in my letter to Judge MacKenzie of March 29 and again in remarks to the Court on May 21 in Newport News. On neither occasion did you offer any explanation, nor did your witness, Gary Schaible of the BATF, have any explanation for the missing seven (7) pages, in which most of the damaging admissions occur.

At this point, it is obvious that someone removed those critical pages from your exhibit. While I do not suggest that that person was you, I do need an explanation, and if you cannot provide it, I shall plan to write next week to the Director of the Office of Professional Responsibility at the Justice Department.

Please advise me as to what you know about the following:

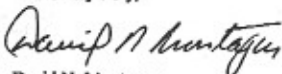
- (1) Was your letter to me of March 26 unique to the LeaSure case, or was it part of a nationwide notification to defense lawyers involved in similar cases?
- (2) Was the substance of the letter your work, or was it suggested by anyone else?

(3) From whence did you receive the exhibits which accompanied that letter?

(4) If the answer to question three (3) is: The Justice Department, did you send out the exhibits exactly as received, or did you or anyone you know of make any changes to them?

I realize that next week is a short week, but I shall hope to hear from you by Thursday, May 30.

Yours very truly,

A handwritten signature in dark ink, appearing to read "David N. Montague". The signature is fluid and cursive, with the first name "David" being more prominent.

David N. Montague

cc: Mr. John LeaSure

/slb



U.S. Department of Justice

United States Attorney
Eastern District of Virginia8000 World Trade Center
101 West Main Street
Norfolk, Va. 23510-1624

804/441-6331

May 29, 1996

David N. Montague, Esq.
1 East Queens Way, Second Floor
Hampton, Virginia 23669Re: United States v. John Daniel Leasure
Criminal No. 4:95cr54

Dear Mr. Montague:

Please be advised that the entire packet which I mailed to you on March 26, 1996, was xeroxed in total from the original packet sent to my office from the U.S. Department of Justice, Criminal Division.

Sincerely,

HELEN F. FAHEY
UNITED STATES ATTORNEY

By:

Arenda L. Wright Allen
Assistant United States Attorney

DAVID N. MONTAGUE
ATTORNEY AND COUNSELOR AT LAW

1 EAST QUEEN'S WAY
SECOND FLOOR
HAMPTON, VIRGINIA 23669

TELEPHONE: (804) 722-71

FACSIMILE: (804) 722-81

June 4, 1996

Michael E. Shaheen, Jr., Esquire
Director, Office of Professional Responsibility
U.S. Justice Department
Room 4304
Main Justice Building
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Shaheen:

I write to bring to your attention a matter which has been of great concern to me in recent weeks.

I have been involved as defense counsel in a case brought under 26 USC Section 5861(d)&(i) in the Eastern District of Virginia, styled U.S.A. v. John Daniel Leasure, Criminal Number 4:95cr54.

Briefly, the case involved a prosecution of Mr. Leasure, a federally licensed Class 2 Manufacturer specializing in research and development of firearm suppressors, or "silencers", and the holder of a patent for what is probably the best silencer in the world. The offenses charged in a 6-Count indictment came before the Honorable John A. MacKenzie for a two-day bench trial on January 18 and 19, 1996, for a variety of record-keeping violations, but no substantive violations.

Initially, by Order entered February 1, 1996, Judge MacKenzie found Leasure guilty of 4 of the 6 counts of the indictment, all of which involved the record-keeping functions of the NFA Branch of the Bureau of Alcohol, Tobacco and Firearms (BATF) except Count 1, which was for possessing unsuccessful experimental silencers without serial numbers.

At the sentencing hearing on May 21, 1996, the Judge was given access to additional information which had become available after the trial, consisting principally of a transcript of a training presentation made to the BATF in October, 1995, by Thomas Busey, then Chief, National Firearms Act Branch, BATF.

Page 2

This transcript was hushed up by BATF after it was made because extremely damaging admissions about a "49-50 percent" error rate in the NFRTR (National Firearms Registration and Transfer Record). Mr. Busey stated that great strides had been made since he had been on the job (from October, 1994).

This, of course, cast great doubt on all cases antedating Busey's tenure, including this one, which had arisen in February of 1994.

Within a month, Busey had been reassigned to the tobacco section of BATF, and his transcript remained secret until it was produced pursuant to a FOIA request made by James H. Jeffries, III, Esquire, of Greensboro, North Carolina, on November 7, 1995.

Actual production was made to Mr. Jeffries on or about March 1, 1996, about 1 1/2 months after Mr. LeaSure's case had been tried, and he sent a copy of the 22-page transcript.

I assembled several exhibits, including the Busey transcript and sent to the Court with a copy to Assistant U.S. District Attorney, Arenda Wright Allen, Esquire, the attorney in charge of the Government's case.

On the same day that the Return Receipt indicates Mrs. Allen got my correspondence (March 26, 1996), a letter was sent to me by Mrs. Allen with the same Busey transcript, except that the last 7 pages had been removed, these being where virtually all of the damaging material appeared.

I have asked Mrs. Allen to explain this, and I finally heard from her on May 29, 1996, stating that she had sent me everything she had gotten from the Justice Department.

As a result of the foregoing disclosures, together with the testimony of Gary Schaible of the BATF that the agency was having a problem with NFRTR clerks destroying registration faxes, Judge MacKenzie threw out all of the convictions except Count 1, and on it he substantially reduced the Guideline indicated penalty. This conviction is being appealed.

At this point, I am seeking as full an explanation as possible of what appears to be government misconduct at fairly high levels involving obvious violations of the Brady rule, coverups by the police (BATF), and tampering with evidence by the Department of Justice.

The situation was brought more forcefully to my attention when I received a pho call from Mr. Jeffries on Friday, May 24, 1996, advising that he had just received a letter from tl Assistant U.S. District Attorney on a case he had with a number of attachments. Knowing that had received a generally similar letter from Mrs. Allen, he wanted to compare them.

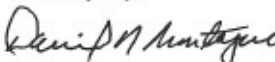
The letters and the attachments turned out to be identical, suggesting that it was a mass mailing from the Justice Department (through local AUSDA's) to perhaps hundreds of NFA Branch (Section 5861) cases across the country affected by Busey's statements.

Page 3

In addition, Mr. Jeffries' version of the Busey transcript was complete, making it obvious that someone had removed the pages from my version of the transcript.

Please let me know if I may provide you with any further information about this. I shall await your response.

Yours very truly,



David N. Montague

cc: John Leasure
Arenda Wright Allen, Esquire

Attachments:

1. March 26, 1996, letter from Arenda Allen, Esquire, forwarding Busey transcript and other exhibits.
2. My March 29, 1996, letter to Judge MacKenzie.
3. Mrs. Allen's letter to me of May 29, 1996.



U. S. Department of Justice
Office of Professional Responsibility

Washington, D.C. 20530

OCT 3 1996

David N. Montague, Esq.
1 East Queen's Way
Second Floor
Hampton, VA 23669

Dear Mr. Montague:

Thank you for your letter and the material you sent to us on June 4, 1996. We have opened an investigation into the matter.

If you have any questions about this, please contact me or Assistant Counsel George Ellard on (202) 514 - 3365.

Sincerely,

Michael B. Shaheen Jr.
Counsel



U. S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

NOV 21 1996

David N. Montague, Esq.
1 East Queen's Way
Second Floor
Hampton, VA 23669

Dear Mr. Montague:

In a letter dated June 4, 1996, you brought to our attention the fact that Assistant U.S. Attorney Arenda Allen had sent you an incomplete transcript of certain remarks made by an agent with the Bureau of Alcohol, Tobacco, and Firearms.

Ms. Allen has affirmed to us that which she told you: she forwarded to you in its entirety the material sent to her by the Criminal Division at Main Justice. We have told that component that some of the material it sent to U.S. Attorneys Offices appears to have been incomplete.

Thank you for bringing this matter to our attention.

Sincerely,

George Ellard
George Ellard
Assistant Counsel

DAVID N. MONTAGUE
ATTORNEY AND COUNSELOR AT LAW

4 EAST QUEEN'S WAY
SECOND FLOOR
HAMPTON, VIRGINIA 23669

TELEPHONE: (804) 722-7441

FACSIMILE: (804) 722-8189

November 27, 1996

George Ellard, Esquire
Assistant Counsel
U.S. Justice Department
Room 4304
Main Justice Building
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Ellard:

I have your letter of November 21, 1996, for reply. You certainly appear to have missed most of the point of my earlier correspondence.

In the first place Thomas Busey should not be referred to as an "agent" of BATF. In fact, he was the Chief of the National Firearms Act Branch for that agency, and his "certain remarks" came from a lengthy training session for all BATF weapons agents.

What Mr. Busey stated was an appalling truth: that when he joined the Bureau the error rate for their records for firearms registrations was 50%, meaning agents' testimony in registration cases was worthless and that perhaps hundreds of gun dealers and manufacturers (including my client, almost) were in prison with felony convictions that should have been acquittals.

To make matters worse, Mr. Busey was summarily fired and the transcript of his remarks hushed up. Busey's career now languishes in the Tobacco Division. His remarks did not become known to the world until obtained on an FOIA request from gun attorney, James H. Jeffries, III, of Greensboro, N.C., who in turn, had heard by the grapevine that such a transcript existed.

After Mr. Jeffries got the transcript, BATF realized the jig was up and immediately sent it to the Justice Department who in turn transmitted it to Assistant U.S. Attorneys handling cases of this type.

My question was, had BATF deleted the crucial last seven (7) pages of the transcript and thereby almost all of the damaging admissions? Apparently you have not even looked into this.

The more serious possibility was and is that a very scary conspiracy existed between the Justice Department and BATF to conceal all of these improper convictions even though the price was an unknown number of innocent men and women who had had their lives and reputations ruined.

Your off-handed treatment of the situation suggests an indifference to a matter going to the essence of the administration of justice and due process.

Yours very truly,

David N. Montague

David N. Montague

cc: Mr. John D. Leasure
/slb



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

March 18, 1998

REFER TO: L:D:MRL
98-514

Mr. Eric M. Larson
P.O. Box 5497
Takoma Park, MD 20913

Dear Mr. Larson:

This is in response to your Freedom of Information Act request dated January 3, 1998, for information maintained by the Bureau of Alcohol, Tobacco and Firearms.

You have requested "a complete and unredacted copy of the videotape created by the Bureau of Alcohol, Tobacco and Firearms which pictures Mr. Thomas Busey, Chief, National Firearms Act Branch, during a "Roll Call Training Session, or about October 18, 1995". Your request is denied pursuant to Title 5, U.S.C. 552 (b)(6) as release of this video tape would constitute an invasion of Mr. Busey's privacy.

Insofar that your request has been denied, you have the right to request an administrative appeal. Such appeal must be addressed to the Assistant Director, Liaison and Public Information, at the above address and be received within 35 days of the date appearing on this letter. Your letter should state any arguments in support of your request.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Marilyn R. LaBrie".

Marilyn R. LaBrie
Disclosure Specialist

QUESTIONS AND ANSWERS CONCERNING THE REGULATION
OF MACHINEGUNS AND SILENCERS UNDER THE
NATIONAL FIREARMS ACT AND THE GUN CONTROL ACT,
AS AMENDED BY PUB. L. NO. 99-308

SILENCERS

QUESTION: What controls are placed on silencer kits, partial silencer kits and an individual silencer part by Pub. L. No. 99-308?

ANSWER: The Gun Control Act and the National Firearms Act regulate firearms, including silencers, as defined by those Acts. The term silencer is defined in 18 U.S.C. § 921(a)(24) and 26 U.S.C. § 5845(a)(7) to mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or muffler, and any part intended only for use in such assembly or fabrication. Thus, a silencer kit, whether partial or complete, and any individual silencer part is subject to all controls placed on firearms by the GCA and the NFA. NFA controls include, e.g., the registration and marking requirements. A manufacturer and distributor of silencer kits may place the serial number and other required markings on a single component of the kit, provided that the markings are conspicuous and not susceptible of being readily obliterated as required by regulations. (A manufacturer distributing a single part which meets the silencer definition must place all requisite markings on that part.) Under the GCA, a manufacturer or dealer in silencers as defined must be licensed.

QUESTION: Can the owner of a registered silencer have the silencer repaired without the transaction incurring further registration or payment of additional transfer taxes?

ANSWER: The registered owner may deliver his registered silencer to a qualified manufacturer for purposes of repair, including necessary replacement of component parts, and receive the repaired silencer without the transactions necessitating further registration or payment of transfer taxes. For the protection of the parties involved, Forms 5 should be filed by the transferors with ATF prior to the delivery and return. On the other hand, the transfer of silencer kits or parts by a qualified

§ 179.93 Certain government entities.

(a) A firearm may be transferred without payment of the transfer tax to or from any State, possession of the United States, any political subdivision thereof, or any official police organization or such a governmental entity engaged in criminal investigations.

(b) The exemption provided in paragraph (a) of this section shall be obtained by the transferor of the firearm filing with the Director an application, Form 5 (Firearms), Application for Tax-exempt Transfer and Registration of Firearms, in duplicate, executed under the penalties of perjury. The application shall:

(1) show the name and address of the transferor and of the transferee, (2) identify the Federal firearms license and special (occupational) tax stamp, if any, of the transferor and of the transferee, (3) show the name and address of the manufacturer and the importer of the firearm, if known, (4) show the type, model, overall length (if applicable), length of barrel, caliber, gauge or size, serial number, and other marks of identification of the firearm, and (5) contain a statement by the transferor that the transferor is entitled to the exemption because either the transferor or the transferee is a governmental entity coming within the purview of paragraph (a) of this section. In the case of a transfer of a firearm by a governmental entity to a transferee who is a natural person not qualified as a manufacturer, importer, or dealer under this part, the transferee shall be further identified in the manner prescribed in § 179.45. If the Director approves an application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the approval noted thereon. Approval of an application, Form 5 (Firearms), by the Director shall effectuate the registration of that firearm to the transferee. Upon receipt of the approved Form 5 (Firearms), the transferor shall deliver same with the firearm to the transferee. The transferor shall not transfer the firearm to the transferee until the application, Form 5 (Firearms), has been approved by the Director and the original thereof has been returned to the transferor. If the Director disapproves the application, Form 5 (Firearms), the original Form 5 (Firearms) shall be returned to the transferor with the reasons for the disapproval stated thereon. An application by a governmental entity to transfer a firearm shall be denied if the transfer, receipt, or possession of a firearm would place the transferee in violation of law.

Par. 82. Section 179.92 is revised to read as follows:

§ 179.92 Transportation of firearms to effect transfer.

Notwithstanding any provision of § 178.25 of this chapter, it shall not be required that authorization be obtained from the Director for the transportation in interstate or foreign commerce of a firearm in order to effect the transfer of a firearm authorized under the provisions of this subpart.

Par. 83. Section 179.102 is amended by revising the last sentence of the section and adding a new sentence to the end to read as follows:

§ 179.102 Identification of firearms.

A firearm frame or receiver or any other part defined as a machine gun or a muffler or silencer for the purposes of this part which is not a component part of a complete firearm at the time it is sold, shipped, or otherwise disposed of by a manufacturer, importer, or maker shall be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

Par. 84. Section 179.104 is amended by revising the last sentence to read as follows:

§ 179.104 Registration of firearms by certain governmental entities.

The registration of any firearm under this section is for official use only and a subsequent transfer will be approved only to other governmental entities for official use.

Par. 85. Section 179.105 and the undesignated center heading preceding it are revised to read as follows:

Machine Guns

§ 179.105 Transfer and possession of machine guns.

(a) General. As provided by 26 U.S.C. 5812 and 26 U.S.C. 5822, an application to make or transfer a firearm shall be denied if the making, transfer, receipt, or possession of the firearm would place the maker or transferee in violation of law. Section 822(a), Title 18, U.S.C., makes it unlawful for any person to transfer or possess a machine gun, except a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof, or any lawful transfer or lawful

possession of a machine gun that was lawfully possessed before May 19, 1986. Therefore notwithstanding any other provision of this part, no application to make, transfer, or import a machine gun will be approved except as provided by this section.

(b) Machine guns lawfully possessed prior to May 19, 1986. A machine gun possessed in compliance with the provisions of this part prior to May 19, 1986, may continue to be lawfully possessed by a person to whom the machine gun is registered and may, upon compliance with the provisions of this part, be lawfully transferred to and possessed by the transferee.

(c) Importation and manufacture. Subject to compliance with the provisions of this part, importers and manufacturers qualified under this part may import, or manufacture machine guns on or after May 19, 1986, for sale or distribution to any department or agency of the United States or any State or political subdivision thereof, or for use by dealers qualified under this part as sales samples as provided in paragraph (d) of this section. The registration of such machine guns under this part and their subsequent transfer shall be conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State, or local governmental entities.

Subject to compliance with the provisions of this part, manufacturers qualified under this part may manufacture machine guns on or after May 19, 1986, for exportation in compliance with the Arms Export Control Act (22 U.S.C. 2778) and regulations prescribed thereunder by the Department of State.

(d) Dealer sales samples. Subject to compliance with the provisions of this part, applications to transfer and register a machine gun manufactured or imported on or after May 19, 1986, to dealers qualified under this part will be approved if it is established by specific information the expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon. Applications to transfer more than one machine gun of a particular model to a dealer must also establish the dealer's need for the quantity of samples sought to be transferred.

(e) The making of machine guns on or after May 19, 1986. Subject to compliance with the provisions of this

ORIGINAL

ROLL CALL TRAINING

10-95

TOM BUSEY

P R O C E E D I N G S

MR. BUSEY: Good morning, my name is Tom Busey. I'm chief of the NFA branch, National Firearms Act Branch.

A lot of the information that Larry gave you relative to chain of command organization, that applies to us too. What I thought I'd get into this morning is the probably three major things that the branch does.

Our first and main responsibility is to make accurate entries and to maintain accuracy of the NFRT, the National Firearms Registry and Transfer Record.

Our second main responsibility is to do look ups for agents in the field who need to find out if an individual has Title 2 weapon.

Our third major responsibility, and not quite co-equal, because the sensitivity and criticalness of it is not there, but we also do record inventories for inspectors who are inspecting various firearms dealers. We verify the inventory that we have. We send it to them, they double check

(4)

1 it, and we try to get it straight.

2 I thought I'd start off by showing you some
3 figures because, like imports branch, we also process
4 multitudines of paper. My staffing is very similar to
5 Larry's, although you can double the examiners. I
6 have 12 examiners, imports has 6, and that's
7 basically because of the volume.

8 The first chart you see up there is the
9 amount of Title 2 weapons that are registered right
10 now. There's approximately 728,000 Title 2 weapons.
11 This first graph shows it by state. As you can see,
12 the largest state for Title 2 weapons is California,
13 and then you move right on down to, I believe that's
14 Vermont, isn't it? Yes.

15 VOICE: Virgin Islands.

16 MR. BUSEY: Virgin Islands. I'm sorry.
17 Virgin Islands, 29.

18 Of that 728,000, we estimate, because we
19 don't have the time nor the inclination to do it on a
20 monthly basis, anywhere between 150 to 155,000 is the
21 flash grenades. They come in and out of the
22 inventory so quickly, and probably the accuracy of

(1.5)

1 those is not very good, basically because when police
2 departments and other law enforcement agencies use
3 these flash grenades, they're supposed to report to
4 us. We remove them from the inventory. But it's
5 such a continual turnover. The Kansas City Police
6 Department may report to us accurately, but the
7 Sheriff's Department up in Utha, we may not hear from
8 them.

9 Some day when we have the manpower and we
10 have the time, we need to go through and separate
11 these out.

12 In fact, we've discussed within the branch
13 setting up possibly two different registries, just so
14 the system doesn't become overburdened to separate
15 these out into an equal category but a separate
16 category.

17 The second graph shows the amount of
18 processing that we do on a fiscal year basis for both
19 '94 and '95. '95, there was a slight decrease
20 between the Form 1s, Form 2s, all the way up to the
21 Form 10s that we process. We processed 214,000
22 pieces of paper in fiscal year '95 on the

(2)

1 registration of manufactured weapons and transferred
2 weapons.

3 The second graph breaks this down into the
4 type of weapon that we have in the registry for both
5 '94 and '95.

6 Destructive devices, the second category,
7 is the largest. Machine guns, silencers, any other
8 weapon, short-barrel shotguns, sawed-off shotguns and
9 short-barrel rifles.

10 I hope that page isn't for a critical
11 lookup.

12 The next graph is the record searches that
13 were completed in 1995. As you can see, our total
14 record searches by our specialists, of which there
15 are six, was 5,368. Of that, 78.5 percent were
16 record searches for special agents in the field who
17 needed either urgent information or routine, and I'll
18 get into that.

19 We did 880 court certifications for trials
20 that came after the work cases, and we did 586
21 inventories for our inspectors in the field and
22 verifying dealers inventories.

(7)

1 The next graph, it probably wouldn't
2 interest you too much. It gets into the special
3 occupational tax and the population of special
4 occupational taxpayers, the number of manufacturers,
5 importers, and Class III dealers that are out there
6 because we also are, obviously, concerned about this
7 data base also.

8 What I thought I'd move into right away is,
9 like I say, probably either first or second, because
10 they're both probably co-equa, is the search that our
11 specialists do, our look-up specialists do, of the
12 NFRTR for special agents when they're working a case,
13 when they're trying to find out if an individual who
14 they had information on has a Title 2 weapon, do we
15 have that Title 2 weapon registered in our data base.

16 These procedures are in effect right now.
17 There's some changes in here that you probably
18 already have heard about relative to the involvement
19 of management and overseeing the results that
20 specialists come up with when they do a record
21 search.

22 The record search can be made either by a

1 call in by special agents with a dedicated number.
2 We just recently have constructed in our work area a
3 separate four-walled office that has the two look-up
4 specialists in it. They're isolated from the other
5 activity of the branch and the division, and their
6 only responsibilities are to take these phone calls
7 from special agents who are doing either weapons
8 searches or individual searches.

9 They can either do that by the telephone
10 number by telephone or by fax machine, which we've
11 recently had installed a separate fax machine,
12 separate from the rest of the division, in that room
13 by itself. That takes nothing but look ups. The
14 search can be requested by name, by the firearms
15 serial number, or both.

16 The specialist that's sitting in there that
17 takes the request enters the information on the NFA
18 record search form, and there's a lot of information
19 that we put on there relative to the name of the
20 agent, the badge number, the address/telephone
21 number, and of course all of the information that we
22 can possibly get from the agent.

(7)

1 The more information that we receive,
2 relative to the individual that they're doing the
3 search on, the better. If we have a birth date,
4 current address, anything. And of course, a lot of
5 times we don't. All we get is just a first and last
6 name. Middle initials even help us.

7 Because as we go through the search, the
8 further we have to go to make sure it's right, all
9 the way back to the actual microfilm records and the
10 actual hard copy of the transfer registration
11 document, even middle initials can help us eliminate
12 erroneous individuals.

13 For a name search, the specialist will
14 search the data base, using the first three letters
15 of the last name. The example given here is Smith,
16 S-M-I. What happens is, they run the S-M-I. They'll
17 get, let's say, 10,000 hits on S-M-I. Then they'll
18 run the state and the S-M-I, and maybe they'll get
19 400. In this case, they probably would. With some
20 more uncommon names, you may only get 3 or 15 or 20
21 names.

22 Then they'll run the fourth letter, to even

(/)

1 break it down further. It's S-M-I, and then it'll be
2 T.

3 Let me say that when we testify in court,
4 we testify that the data base is 100 percent
5 accurate. That's what we testify to, and we will
6 always testify to that. As you probably well know,
7 that may not be 100 percent true. If our data base
8 was absolutely error free, we could simply run the
9 name of the individual and his first name, and if it
10 didn't come up, we could guarantee everyone that that
11 individual doesn't have a Title 2 weapon registered
12 to him.

13 But since sometimes in the entry part of
14 this game people invert letters and vowels, you could
15 put the name in, it won't come up that way.

16 So we run multiple methods of running it.
17 If the last name and first name, if the guy's first
18 name or the lady's first name, looks like a last
19 name, we'll run that first. We'll invert it, just to
20 see what we come up with.


21 So this way, we try to eliminate the
22 possibility of have somebody in there who has a Title

1 2 that we come up with a report that says they do
2 not. We are going to a new data base whose
3 capabilities will allow us to do more varied kind of
4 queries and hopefully better queries, phonetics,
5 Sound, Soundex (ph). Soundex will help us.

6 For a serial number, we'll just search the
7 exact serial number. We have come up with a couple
8 of incidences, and this shows the skill of the
9 specialists that are in there, where a Z has looked
10 like a 2 and a 2 has looked like a Z. If you run the
11 wrong one, you come up with no registration. If you
12 run them both, you find out that it is registered
13 that way. There was a mistake in the printing on the
14 form, or it was a mistake in the call in.

15 So we do the exact serial numbers, but we
16 do look for idiosyncracies in the serial number that
17 might make it more apt that some kind of inversion
18 could have taken place.

19 The specialists will analyze the results of
20 the search. Like I say, since the serial number is
21 exact, the only records where the serial number is
22 identified, will be provided.



1 The specialists will eliminate records
2 based on the type and description of the firearm.
3 For the name search, we do the name, we run the FFL,
4 the licensee data base, and the SOT data base with
5 the name to see if there's any trade names.

6 If there's any trade names, then we go back
7 to the registry to run the trade name to see if that
8 trade name has any Title 2 weapons registered to it,
9 because in many cases the agents call in with a name.
10 That individual turns out to be a licensee, turns out
11 to be a special occupational taxpayer.

12 Although there was nothing registered under
13 his name, there were weapons registered under his
14 trade name, his company name. In many cases, they
15 may have two or three different trade names.

16 Again, as I emphasized a minute ago, to
17 ensure the thoroughness of the search, the requesting
18 agent should supply as much information as he
19 possibly can. A lot of times that information is
20 only first name/last name, and that's all he has,
21 based on an informant or tip or whatever, and that's
22 what we run with, is that.

(15)

1 I mentioned before we'll run the SOT data
2 base and we'll run the FFL data base, licensee data
3 base, to see if we come up with anything there, and
4 then we'll go back to the NPRTR to find out if they
5 have any weapons registered to them.

6 Depending on what we come up with, when we
7 come up with similar names, and we don't have a date
8 of birth, if we come up with Allison Stevens or Tom
9 Buseey, and we come up he's in a different state,
10 we'll get the hard copy or the microfilm copy of the
11 actual transfer record to see if the date of birth is
12 the same as the agent has.

13 Depending on the volume that we're dealing
14 with, a lot of times what we're doing now is we are
15 sending -- I have been there a year now, and before I
16 got there, we were sending basically either hit or no
17 hit, and we'd send the hit. We would send possibles
18 if they were real close, but due to some difficulties
19 that we've had and to make sure that we don't -- we
20 try not to send the wrong information, we have been
21 sending probably more information than the agent
22 needs.

(17)

1 If we come up with, if there's 22
2 Tom Smiths in the State of Arkansas that have
3 registered weapons, we send all 22 Tom Smiths, even
4 if the date of birth is different, just to give the
5 agent the opportunity to do the investigative work,
6 rather than just telling, here's the one that we
7 think might be it, the other 19 we don't think are
8 it. We'll let the agent decide whether that other 19
9 might possibly be the individual they're looking for.

10 That's why we can go all the way back to
11 the hard copy. We can go all the way back to the
12 microfilm to really pin down if the individual we
13 have is the one you're looking for.

14 What we've started, since there was a
15 problem in Baltimore with a look up and there was a
16 problem up in Minnesota, I think it was, about six
17 months ago, from now on, before negative information
18 is sent to an agent -- if the agent indicates that
19 it's a routine, he's not in a big rush for it, we
20 used to get it back to him on the same business day.
21 Now if an agent says it's routine, he may not get it
22 back until the next business day. If it's an urgent.

(15)

1 he will get it back that day.

2 We'll call the information back to him and
3 the hard copy of the information will be mailed to
4 him. If he needs it real fast, we FedEx it.

5 The reason why the routine may not get back
6 the same day anymore is all the negative
7 information -- by negative, I mean, if the specialist
8 does a look up on a name and comes up with zero,
9 can't find that name anywhere, before that
10 information goes back to the field agent, it comes to
11 the branch chief's office. The branch chief sits
12 down and basically doesn't do anymore than what the
13 specialist did in the look up, but goes over all the
14 information on the printouts to see if all the
15 procedures have been followed right to the very end.

16 Did they look at the FPL data base. Did
17 they look at the SOT data base. Did they have names
18 that were similar to the name that was requested.
19 Did they check out the actual hard copy of the
20 microfilm to see if this was the individual and
21 someone had just misspelled it when it went into the
22 data base.

(16)

1 Once the branch chief reviews this
2 completely, then he'll return the information to the
3 look-up specialist, who will communicate, transmit
4 this information to the field agent.

5 What we're doing is, we're hoping that by
6 this second level of review, and it really doesn't
7 say anything negative about the look-up specialist at
8 all, because the people we have right now have been
9 doing it for a long time and they're excellent in
10 their searches; but you do these searches and you run
11 these printoffs on the screen and you track down
12 these printoffs hour after hour for a full day.

13 I remember during the Oklahoma City bombing
14 we were running it 24 hours a day. I think we ran it
15 for about two weeks straight. Sometimes things are
16 missed because there's only so many minutes in an
17 hour and so many hours in a day. So this gives the
18 branch chief time to just sit there and say, geez, I
19 wonder if this Ivan Smith might be the Evan Smith
20 that the agent wants. It's the same state. Then we
21 check to see maybe if it's in the same city that the
22 agent's looking for this guy at.

(17)

1 So it gives a little more opportunity to
2 scope out different possibilities. The specialists
3 are, like I say, they're turning these things out all
4 day long for eight hours.

5 So we're hoping that eliminates the
6 possibility that anything goes out erroneous because
7 we know you're basing your warrants on it, you're
8 basing your entries on it, and you certainly don't
9 want a Form 4 waved in your face when you go in there
10 to show that the guy does have a legally-registered
11 Title 2 weapon. I've heard that's happened. I'm not
12 sure.

13 Like I say, we'll give the information back
14 by telephone and then we'll send hard copies back to
15 you.

16 At that point, the log entry is closed out,
17 and we maintain these files for future reference in
18 case one or the other of us has to CYA for one reason
19 or another.

20 The important factors, again, are: If it's
21 communicated to the field agents, and I believe that
22 my boss, Terry Cates, who's down -- well, he's back

(18)

1 now, but he was down at the conference in South
2 Florida with the district directors and SACs -- one
3 of the topics he was talking about, again, is look
4 up, the look ups that we do for agents.

5 The more information that we can get over
6 the phone on the individual that you're looking for,
7 the better it is for us and the better the
8 information comes back.

9 I mean, if you have a middle initial, give
10 it to us. If he has a "junior" or a "senior" on the
11 end, give it to us.

12 The second part of the information, the
13 routine and urgent, we've already gone over.

14 So, again, I kind of consider this probably
15 the most important support function that we have.
16 Equal to it, of course, is maintaining the accuracy
17 of the data base to begin with.

18 If the information that's in the data base
19 is not accurate, it doesn't make any difference how
20 good of a search we do, it'll come out wrong.

21 So the information on the 728,000 weapons
22 that are in the data base has to be 100 percent

(19)

1 accurate. Like I told you before, we testify in
2 court and, of course, our certifications testify to
3 that, too, when we're not physically there to
4 testify, that we are 100 percent accurate.

5 But we have found instances in our records
6 where names have been misspelled, they've been
7 inverted; vowels i-e have been changed; and, of
8 course, computer programs only pull up what you put
9 in.

10 We've made monumental strides in correcting
11 this. A major correction event took place in 1986.
12 About a year ago, we instituted a quality review team
13 in the division. That's three individuals who review
14 every transfer record that goes through an examiner
15 to register a Title 2 weapon, or to transfer a Title
16 2 weapon.

17 Before it actually gets entered into the
18 data base and stays there permanently, it goes from
19 that examiner to a specialist, who reviews it and the
20 screen to see if the name was spelled correctly when
21 it was put in, because obviously that's the most
22 important thing, is the name and the spelling and the

1 order that it's put in. And, of course, the serial
2 number of the weapon, type of weapons and the
3 description of the weapon.

4 This quality review team, when I first came
5 in a year ago, our error rate was between 49 and 50
6 percent, so you can imagine what the accuracy of the
7 NFRTR could be, if your error rate's 49 to 50
8 percent. The error rate now is down to below 8
9 percent, and that's total. That's common errors and
10 critical errors.

11 We do a little finagling upstairs on
12 what -- you know, we consider a common error is an
13 error in the data base entry, but it doesn't affect a
14 look up. It wouldn't hurt an agent who doesn't
15 really have any damage.

16 A critical error is one where the
17 gentleman's name is spelled wrong. Those error rates
18 are probably below 3 percent. The total error rate's
19 about 8 percent.

20 We hope the QRT team has made sure that,
21 since a year ago, all the entries that go in are
22 absolutely 100 percent accurate.

(21)

1 The only way we can go back, we have a
2 project -- we established a project, we established a
3 task force. We haven't begun yet because we haven't
4 converted to the new data base. As soon as the new
5 data base comes into effect, we'll begin the task
6 force assignment.

7 What we're going to do is we're going to go
8 back, starting with the latest entry and working back
9 to the oldest entry and review every hard copy of
10 every document with its entry into the data base to
11 see if it's correct. I think originally we figured
12 this would take 781 man days to do this with five
13 people sitting at a computer eight hours a day.

14 But it's the only way that we can feel that
15 we can ever get it completely accurate. It was fine
16 to begin putting everything in accurate a year ago or
17 at least be guaranteed a year ago it was accurate,
18 but what are you going to do with the entries that go
19 back to the early '80s and the '70s and the '60s?

20 This is the only way we feel we could
21 correct it. No one in ISD or no one that I've known
22 has come up with a program that we can use. This new

(22)

1 data base will help us. And the reason why we're
2 waiting is because the new data base will put fields
3 and menus in there. I believe it comes from
4 Ed Owens' shop, or maybe it's Jerry out at Tracing
5 Center, has ownership of the data base dealing with
6 the weapons data base.

7 Once that goes in, if we have an MP5 in
8 there that's listed as an MPS, this will correct that
9 to bring it -- to correct it as an MP5. But you
10 can't do anything -- there's no data base, that I
11 know of, or no program, to correct misspellings of
12 names.

13 We will have an address. We were supposed
14 to have an address correction, zip code in the data
15 base, but we'll see when it finally gets converted
16 over. I'm not sure.

17 And the third thing we do is for field
18 inspectors who do regulatory compliance inspections.
19 They call into us to get an inventory from us of
20 Title 2 weapons. We send the inventory out. They do
21 the physical inventory, and we make adjustments to
22 settle any problems between the physical inventory

(23)

1 and the written inventory.

2 That's really the end of my presentation.

3 I wanted to concentrate on those three areas. I
4 wanted to leave time for Q and As, because I figured
5 there might be some Q and As on the look up.

6 (Pause.)

7 No questions. Okay. Thank you very much.

8 (End of requested excerpt.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 NEWPORT NEWS DIVISION
4 -----

5 UNITED STATES OF AMERICA : Criminal No. 4:95cr54
6 VS. : Newport News, Virginia
7 JOHN DANIEL LEASURE, : May 21, 1996
8 -----

9 TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE JOHN A. MACKENZIE

11 UNITED STATES DISTRICT JUDGE
12

13 APPEARANCES:

14 For the United States: United States Attorney's Office
15 World Trade Center
16 101 W. Main Street, Suite 8000
17 Norfolk, Virginia 23510
18 By: ARENDA WRIGHT ALLEN,
19 ASSISTANT U.S. ATTORNEY

20 For the Defendant: DAVID N. MONTAGUE, ESQUIRE
21 One East Queen's Way, 2nd Fl.
22 Hampton, Virginia 23669

23 Court Reporter: Diane Poulin
24 550 East Main St., Suite 100
25 Norfolk, Virginia 23510

Proceedings recorded by mechanical stenography,
transcript produced by computer.

COPY

I N D E XGOVERNMENT'S EVIDENCEGARY SCHAIBLE

Direct Examination by Ms. Allen 23

Cross-Examination by Mr. Montague 32

DEFENDANT'S EVIDENCELEWIS JONES, III

Direct Examination by Mr. Montague 48

JOHN D. LEASURE

Direct Examination by Mr. Montague 53

CHERYL LEASURE

Direct Examination by Mr. Montague 59

1 THE COURT: All right.

2 MADAM CLERK: Criminal Number 95-54-NN United
3 States of America versus John Daniel Leasure.

4 Is the government ready to proceed, Ms. Allen?

5 MS. ALLEN: Yes, Your Honor.

6 MADAM CLERK: Defense ready, Mr. Montague?

7 MR. MONTAGUE: Yes, ma'am.

8 THE COURT: Let me make some notes and I'll be
9 right with you. Let the record reflect that the
10 defendant, John Daniel Leasure, is present in person and
11 with his attorney, Mr. David Montague. And the file
12 would reflect that pursuant to an indictment returned in
13 the fall of 1995, this matter came on early in January,
14 as I recall, for trial on the defendant's pleas of not
15 guilty.

16 He was arraigned on January the 18th and, let me
17 get the date straight, he was indicted on November the
18 14th. It came on for trial on the 18th and 19th of
19 January, and on January the 19th, the Court found --
20 continued the matter to look over the record, and on
21 February the 6th, the Court announced it's verdict that
22 he was guilty of Count 1, Count 2, Count 3, Count 6 and
23 not guilty of Counts 4 and 5.

24 Thereafter, Mr. Leasure through his attorney filed
25 several motions. The matter was then continued for

1 sentencing and for the receipt of a presentence report.
2 In the meantime the defendant has filed a motion for a
3 new trial and the matter is here on that motion as
4 supplemented and also for a review of the presentence
5 report at the sentencing. I haven't really set motions
6 as to the proceeding but, Mr. Montague, I assume that
7 your motion for a new trial would be foremost, and I'll
8 be glad to hear you with regard to that. Of course, I
9 have your brief and matters filed in connection with
10 that and have reviewed them in detail.

11 MR. MONTAGUE: I'm not going to read them to you,
12 Your Honor. I'm sure that you're well familiar with
13 them. One of the fundamental requirements on the
14 Government in any criminal prosecution is to make known
15 any exculpatory evidence of which the Government
16 reasonably knows.

17 In this case -- let me go back to the beginning.
18 The thing that has troubled me about this case all along
19 is that this is in that set of Federal statutes - and I
20 say Federal because I don't know of any state statutes
21 like this - where there is no requirement of scienter or
22 mens rea or moral turpitude in order to hold a person
23 guilty of a felony even though he be an honorable and
24 law abiding citizen like this defendant simply making
25 good faith mistakes that the law requires or having rule

1 changes that he doesn't know about convert him --
2 criminalize what is otherwise innocuous and nondangerous
3 conduct, serious criminal acts.

4 These felonies all carry ten-year sentences
5 potentially and \$250,000 fines. The Court relied in its
6 conviction on the case of U.S. v. Freed, which is at 401
7 U.S. 601, a 1971 case but the holding of that case that
8 no specific intent need be proved has been called into
9 very serious question and I think overruled by the case
10 of Staples against U.S. and that was decided by the
11 Supreme Court in 1994 in a decision by Justice Thomas.
12 We've recited that decision to Your Honor in our
13 materials that we filed.

14 Freed involved a gentleman who was in possession of
15 hand grenades, and his defense essentially was that he
16 didn't know that there was anything wrong with that.
17 And the Court believed that inherently there was
18 something wrong with that and that there was no way he
19 would have been surprised if he had learned that, in
20 fact, a private citizen is not supposed to possess hand
21 grenades.

22 The Staples case involved a man who owned an AK-15
23 which is a gun that can be converted. It is normally a
24 semi-automatic weapon that requires the pull of a
25 trigger to fire each round but can be converted into an

1 automatic firearm and, hence, be a machine-gun within
2 the meaning of the NFA. And he contended that he did
3 not know that was a capability of the weapon.

4 The Court refused to so instruct the jury that he
5 didn't -- that they could consider that and so the
6 Supreme Court reversed and did so specifically saying
7 that the reasoning U.S. v. Freed provided little support
8 for dispensing with mens rea in this case, that case
9 involving the gentleman with the AK-15.

10 This case is not like that. In this case we have a
11 highly sophisticated gun person, a federal licensee
12 licensed as a manufacturer who, as the Court knows from
13 material previously submitted, is highly regarded in his
14 field, holds one of the top patents in the development
15 of silencer or suppressor technology. Early on at the
16 arraignment, which I think the Court didn't mention the
17 date, I believe it was January the 5th -- I think it was
18 in December actually. Yes, it was December 5th.

19 THE COURT: My records indicate it was --

20 MS. ALLEN: It was December 1st.

21 THE COURT: December 1st, okay.

22 MR. MONTAGUE: This defendant was arraigned before
23 Judge Bradberry, and at that time Miss Allen was not
24 available but there was somebody there from the BATF and
25 there was somebody there from the U.S. Attorney's

1 Office. I turned over to them copies of all of the
2 documents that became the evidence in this case of
3 Mr. Leasure's attempts to reverse certain transfers of
4 the weapons for which he was indicted.

5 And I, frankly, thought that that was going to be
6 the end of the case. And I think Miss Allen thought it
7 might be as well but she said that -- she said when I
8 talked to her on the phone she said she sent everything
9 up to Washington to be analyzed and she'd let me know.
10 So not too long before Christmas she called me and said
11 that, in fact, the ATF decided they still had a case. I
12 asked her what it could possibly be but she said, well,
13 she wasn't going to tell me or she said she wasn't going
14 to discuss her case over the phone. There was no
15 invitation to come and discuss it in person either.

16 What she knew and what the ATF knew was that -- as
17 we did not learn until we heard it on the stand -- was
18 that Mr. Schaible of the ATF would inform us that they
19 had changed their rules on how one went about reversing
20 a transfer or voiding under the commission of the NFA
21 and that the procedure followed by Mr. Leasure was the
22 procedure that had existed as far as he knew forever.
23 And Mr. Schaible said that had they gotten the transfer
24 request or the voiding request from him. The new
25 procedure involved sending back a form which he had to

1 fill out and it had to go back to Washington to be
2 approved.

3 And Mr. Schaible also said there's no way that
4 Mr. Leasure could have known that because they didn't
5 notify anybody in the field, it was just something to be
6 learned on a case by case basis as you tried the old
7 technique, I suppose, they would tell you what the new
8 procedure was.

9 Well, not knowing that, we were not prepared to
10 prove to the Court that, in fact, all of these transfer
11 voidings had been faxed to the Government in the usual
12 manner. We would have and have subsequently found all
13 of the forgotten phone records that show without a doubt
14 that for 24 minutes on the 16th day of March,
15 Mr. Leasure faxed from his fax machine in Saluda to the
16 fax machine of the ATF at their weapons registry 24
17 minutes worth of documents that were these very
18 transfers submitted in court.

19 It wouldn't show up on the phone bill if they had
20 not actually been received just like an incomplete phone
21 call doesn't show up on a phone bill, so there's no
22 question that he sent them. There's no question that
23 they got them. We don't know what they did with them
24 after they got them if they put them in the shredder or
25 in the trash can or if the building burned down.

1 We don't know what happened but all we do know is
2 that when Mr. Schaible showed up here to testify, he
3 said we have no record of having received them, which is
4 not the equivalent of not having received them just that
5 he was unable to tell us what had happened. We
6 certainly did our part or at least what Mr. Leasure
7 thought was his part in following what he then knew to
8 be the procedure.

9 The Court's decision turned not only on the Freed
10 case but also on the exhibits put in evidence by the
11 Government, these things in blue bags with the little
12 ribbons on them that said that the weapons in the
13 various counts of the indictment were not properly
14 registered with the NFA. The Court treated that as
15 true, as anybody would a government agent's testimony
16 and exhibits, obviously, is going to be taken as true
17 without some kind of very powerful evidence to the
18 contrary.

19 But what the ATF also then knew and didn't tell
20 anybody was that at the time in question of this case,
21 which is February of '94, the Court will recall that
22 this -- the actual bust of Mr. Leasure's place of
23 business and trial were about two years apart and in
24 that two-year period, the firearms registry was taken
25 over by a gentleman by the name of Thomas Busey or Busey

1 - I'm not sure how you pronounce his name - and
2 Mr. Busey held a briefing in October of '95 saying that
3 when he took over a year before, which would have been
4 October of '94 and times prior to that, the agency was
5 suffering from a 50 percent error rate in its
6 determination of what firearms were registered properly.

7 He said on Page 19 of the transcript that we gave
8 the Court, "When I first came in a year ago, our error
9 rate was between 49 and 50 percent." This particular
10 briefing was conducted on a tape and the gentleman who
11 I've become acquainted with since the trial through the
12 Freedom of Information Act has also tried to get the
13 tape, so far has not been able to do that. But in any
14 event, at the very time when these undoubtable documents
15 were being produced in February '94, they were subject
16 to a 50 percent error rate.

17 Now, I don't know when knowledge like that becomes
18 reasonable doubt as a matter of law, but it seems to me
19 that with 50 percent, you've got an equal chance of the
20 Government being wrong. I would think you're there at
21 an error rate of 50 percent.

22 Again, we were not told that. As a matter of fact,
23 I'm informed that the ATF tried to suppress that
24 particular briefing, tried to have the transcript and
25 the tape destroyed. It was not until March that they

1 were produced under the Freedom of Information Act. Of
2 course, our trial was long over by the time that
3 information would have done us any good.

4 It certainly seems to me something for the Court to
5 consider in deciding whether or not this case needs to
6 be retried, that kind of what I would consider dynamite
7 evidence should have been made available to us.
8 Certainly, the ATF knew about it and whether Miss Allen
9 did or not I don't know.

10 But when I filed my letter -- when I supplemented
11 my pleadings in the new trial part of this case on March
12 the 25th, we sent that to Miss Allen by certified mail.
13 She received it on the 26th, and on the 26th she filed
14 part of the same transcript by Mr. Busey but her filing
15 left off the important pages for some reason. Whether
16 she knew that or whether that's what the ATF gave her, I
17 don't know but I believe her transmission quit on Page
18 15 and all of the important stuff is after that.

19 And her pleadings says that we're not conceding
20 that we had to give that to us but they did anyway. So
21 I'm not going to say there's anything monstrous or
22 wicked going on here but it certainly appears to me that
23 this defendant was entitled to better treatment by his
24 Government than he has gotten in the prosecution of this
25 case. Essentially, I believe that covers it, Your

1 Honor.

2 THE COURT: All right, sir.

3 MS. ALLEN: Your Honor, if I can I'd like to go in
4 the order that the motions are filed just for the record
5 since I suspect this will go for appeal. The first
6 motion that the defendant filed was a motion for a new
7 trial, and he filed that motion right after the Court
8 found his client guilty. I would just like to argue in
9 the first motion, Your Honor, that counsel is correct
10 that on the day of the arraignment, the Jencks material
11 and the discovery materials were provided to the
12 defendant on December 1st of 1995. The discovery
13 materials included Government Exhibits 7-1 through 7-5.

14 Now, those are all the certified copies of
15 nonregistration. And the Court will recall 7-1 went to
16 Count 2 of the indictment; 7-2 went to Count 3 of the
17 indictment; 7-3 went to Count 4 of the indictment; 7-4
18 went to Count 5 of the indictment; 7-5 went to Count 6
19 of the indictment.

20 I was not present at that arraignment. Bob
21 Bradenham was present with ATF Agent Joe Perkins. The
22 evidence was turned over by the Government. It is true
23 that I did subsequently receive a packet from
24 Mr. Leasure's attorney regarding documentation.

25 I had previously spoken to Mr. Montague prior to

1 the December 1st arraignment. Once the indictment had
2 been filed by the Grand Jury, Mr. Montague did tell me
3 that he had paperwork that would cause the Government to
4 dismiss its case. I told Mr. Montague that I would not
5 be present at the December 1st arraignment but that I
6 would have all of the evidence there for him. I asked
7 him to bring the documentation to the arraignment, that
8 I was unfamiliar with the documents that he was
9 describing to me over the telephone but that I would
10 take it and send it to my expert in D.C. and get back to
11 him on that.

12 The documentation that I did receive after the
13 December 1st, 1995, arraignment was, in fact, what is
14 now Defense Exhibit 1-8 through Defense Exhibit -- I
15 mean, Defense Exhibit 1-8 through Defense Exhibit 10-18.
16 I received those materials probably in mid December
17 right before Christmas.

18 I forwarded those materials to Mr. Schaible. I
19 asked him to review those materials in their entirety
20 and compare it with all of the certificates that he had
21 previously provided as listed in 7-1 through 7-5 and to
22 let me know if that changed his opinion.

23 It was in early January right after New Years that
24 I spoke with Mr. Schaible and my question to him was
25 solely, does this change your opinion. His response to

1 me was no. I said thank you very much, called
2 Mr. Montague and told Mr. Montague that it did not
3 change the opinion of our expert and we were not
4 dismissing the indictment, but I did say I was not
5 trying the case on file. I had no further discussions
6 with Mr. Schaible regarding why it did not change his
7 opinion.

8 If we look at -- if the Court looks at the
9 defendant's first motion for a new trial, I think the
10 case law that they've cited and the case law that the
11 Government's filed shows that on the first motion alone,
12 which the defendant has titled motion for a new trial,
13 should be denied.

14 The Court is well aware that the defendant has to
15 show that the evidence that he is seeking is favorable
16 to him, that it's material, and that the prosecution
17 failed to disclose that. Based on the evidence
18 presented before the Court right now, all that the Court
19 has is the fact that documents were exchanged by the
20 parties and the Government decided based upon
21 Mr. Schaible's opinion that the indictment would not be
22 dismissed.

23 The case law that the Government is relying upon,
24 number one, is that the Government feels that the
25 defendant can't meet its burden and is relying on the

1 first motion to show that the evidence was favorable.
2 There's been no evidence presented by the defendant that
3 shows there was any discussion by Mr. Schaible or myself
4 regarding any favorable evidence that the defendant had
5 requested.

6 As I'm proffering to the Court as an officer of
7 this Court, my contact with Mr. Schaible was very short.
8 I wanted to know if it changed his opinion. He's the
9 expert. He said no. I didn't need to know at that time
10 why it didn't change his opinion.

11 Additionally, the defendant must show that its
12 material, that being the evidence that he's requested.
13 And the Fourth Circuit has defined material as being a
14 reasonable probability that had the evidence been
15 disclosed to the defense, the result of the proceeding
16 would be different. That's a Kelly decision, Fourth
17 Circuit 1994 decision, which is at 35 F.3d 929.

18 Additionally, Your Honor, the defendant not only
19 has to show that its material but that it's related to
20 guilt or innocence, and I don't think that the defendant
21 has done that. There's three cases that the Government
22 cited in its brief all of which deal with exculpatory
23 matters versus inculpatory matters.

24 To be quite candid with you, I thought that the
25 documents were a forgery or false. Mr. Schaible did not

1 tell me that. I asked someone who's been with the ATF
2 for 25 years who's in a high leadership position within
3 the ATF and very well respected within the bureau, he
4 told me it didn't change his opinion. That's all I
5 needed to know. I cited the Adverse case --

6 THE COURT: Well, tell me -- I don't have the
7 exhibits right here before me. What was it that
8 Mr. Montague produced that you sent to Mr. Schaible,
9 just so I won't be off on the wrong fork in the road?

10 MS. ALLEN: It was Defense Exhibit 1 -- Defense
11 Exhibit 1-8 --

12 - THE COURT: Young lady, do you have the exhibits?

13 MADAM CLERK: No, sir. Did they not go with you to
14 the file? I'll get them.

15 THE COURT: We didn't have any exhibits, did we?

16 LAW CLERK: We did at one point. I don't know.

17 THE COURT: Well, tell me was it Exhibit 18, is
18 that --

19 MS. ALLEN: There's a whole bunch of exhibits and
20 they're listed Defense Exhibit 1, Defense Exhibit 2,
21 Defense Exhibit 3, Defense Exhibit 4, Defense Exhibit 5,
22 Defense Exhibit 6, Defense Exhibit 7, Defense Exhibit 8,
23 and then the additional documents were Defense Exhibits
24 10 through 18.

25 MADAM CLERK: I have the clerk checking on it,

1 Judge.

2 MS. ALLEN: Some of those documents have void
3 written on them. Some of them are --

4 THE COURT: I remember now what you're talking
5 about.

6 MS. ALLEN: Not all of them had void written on
7 them. Some of them had void written on them, some of
8 them Agent -- I mean, Mr. Schaible testified that --

9 THE COURT: These were all of the transfers to
10 Mr. O'Quinn then it became unnecessary for Mr. Leasure's
11 purposes and were marked void across the front and the
12 question is whether these were ever sent, one, whether
13 they were marked void, two, and, three, did they ever
14 arrive at the -- were they ever received by ATF.

15 MS. ALLEN: That's correct, Your Honor.

16 THE COURT: What else?

17 MS. ALLEN: That's all that I forwarded to
18 Mr. Schaible.

19 THE COURT: All right. Go ahead.

20 MS. ALLEN: And what the Court also needs to know
21 is that all of those documents dealt with all of the
22 counts other than Count 1 of the indictment. Your
23 Honor, the Government's position is still that all of
24 those exhibits, Defense Exhibits 1 through 8 and Defense
25 Exhibits 10 through 18 are not exculpatory matters. I

1 think it was an attempt to perpetrate a fraud on the
2 Court, to be quite candid with you.

3 And in the three cases that I cited in my brief,
4 the Adverse case, the Jones v. Washington case and the
5 Barker case tells the Court that the Government is under
6 no duty to either disclose all they know about their
7 case or disclose the police investigation that's been
8 done on the case or to disclose anything that's not
9 exculpatory and that's what we did.

10 There was one case of Jones v. Washington case a
11 Seventh Circuit case that dealt with firearms and the
12 cite for that is 15 F.3d, 671. It was denied at 114
13 Supreme Court 2753 and the Court said that there was no
14 great violation in failing to disclose the firearms work
15 sheet because the evidence wasn't exculpatory.

16 That's one of the only three cases that deal with
17 firearms but, again, we didn't think the evidence that
18 the defense was providing to us was truthful evidence;
19 we thought it was an attempt to perpetrate a fraud on
20 the Court. For that reason on the first defendant's
21 motion for a new trial, we'd ask the Court to deny that
22 motion.

23 The defendant then filed a second motion to dismiss
24 only Count 6 of the indictment, and in that case, Your
25 Honor, the defendant's alleging basically that since the

1 word "firearm" was not used in the count as opposed to
2 "weapon" that that count should be dismissed. The
3 Government's relying on Federal Rule of Criminal
4 Procedure 7-C-1 that tells us what the indictment shall
5 state.

6 The Fourth Circuit law tells us that you're to look
7 at the elements of the offense as it's listed in the
8 statute. The Court is to look to see whether or not the
9 defendant can prepare a defense to the charge and
10 whether or not that defendant is protected against
11 double jeopardy if, in fact, that same defendant is
12 subsequently charged and that's the Daniels case, Fourth
13 Circuit 1992 case.

14 If you look at Count 6 of the indictment, it
15 charges that the defendant knowingly and unlawfully
16 possessed a weapon, number one, and, number two, that it
17 was not registered. Title 26 United States Code Section
18 5845-B defines weapon and Title 18 USC Code Section
19 92183 defines firearms. And if you look at both of
20 those definitions, definition number one is listed in
21 Count 6 and number two very similar. In Title 26 United
22 States Code 5861-D makes it unlawful to possess a
23 firearm which is not registered.

24 If you pulled the elements out of Count 6 and if
25 you look at the statute, the penal statute not the

1 definitional statute but the penal statute for which
2 he's charged, you will see that Count 6 is in compliance
3 with the penal statute in the Freed case, which lists
4 the three elements that the Government has to prove
5 beyond a reasonable doubt and, that is, possession, that
6 they are firearms, and that they were not registered.

7 The defendant also says that Count 6 does not use
8 the word "firearm" but instead uses the word "weapon."
9 The Government's position would be weapon and firearm
10 are words of similar import. Weapon is specific enough
11 in the count to allow the defendant to know what
12 specific firearm he was charged with possessing and not
13 having properly registered to him, that Count 6 allows
14 him to contest that charge properly, and that Count 6
15 will prevent him from being charged with possessing and
16 not having registered that same weapon that's charged in
17 Count 6 thereby protecting him from double jeopardy.

18 In Count 6 the Government refers to the definition
19 of both "weapon" and "firearm." Again, I said the
20 definitions are basically the same and then the
21 Government found some case law -- Supreme Court case law
22 and Fourth Circuit case law that says, plus, if the
23 defendant raises the issue to dismiss the count at the
24 return of the verdict that this Court as well as the
25 Fourth Circuit will look at the challenge to the count

1 under a more liberal standard, and that's the Fogle
2 decision which is at 901, F.2d 23, 1990 decision where a
3 cert was denied and the Court found the objection was
4 made at the return of the verdict. Any review for
5 alleged defect was to be reviewed if at all under a
6 liberal standard and there's the Sutton case and the
7 Hooker case here.

8 In conclusion, Your Honor, it's very clear that
9 Count 6 described a very specific weapon whether it's a
10 weapon or a firearm, I think that's immaterial. They're
11 words that are very similar as to import as the Court
12 said. The weapon in Count 6 was seized pursuant to a
13 lawful search warrant and that was Government Exhibit
14 6-1 during the trial, the actual weapon. Government
15 Exhibit 9-1 was the actual search warrant.

16 And Mr. Schaible testified that the weapon was not
17 properly registered to the defendant on February 8th,
18 1995, which was done by the certificate 7-4 and then in
19 Government Exhibit 8-1 which was the ATF report that we
20 introduced saying that the weapon functioned as
21 designed, and it's a firearm and a weapon, so we would
22 ask the Court to deny the defendant's motion to dismiss
23 Count 6 of the indictment for the reasons I've just
24 stated and the law.

25 THE COURT: Thank you, Miss Allen.

1 Mr. Montague, do you want to --

2 MS. ALLEN: And then, Your Honor, I'd like to
3 address the Brady issue based on --

4 THE COURT: What?

5 MS. ALLEN: I have one more issue I'd like to
6 address.

7 THE COURT: Now?

8 MS. ALLEN: Yes, sir. The last motion that
9 Mr. Montague filed was his supplemental motion for a new
10 trial. What I'd like to do for that, Your Honor, is to
11 put on evidence regarding that for the record to protect
12 the record and for that I'll be relying on Special Agent
13 Schaible. And the issue will be whether or not the
14 packet of material which I sent to the Court and sent to
15 Mr. Montague as soon as our office received it is, in
16 fact, Brady material and whether or not --

17 THE COURT: Well, that's a choice for me to make.

18 MS. ALLEN: That's a choice for you to make, Your
19 Honor, but I would like -- I know the Court's gone
20 through it but I don't think the record is clear as to
21 what the documents are and what impact, if any, it would
22 have had on Mr. Schaible's testimony regarding the
23 weapons that were before the Court.

24 THE COURT: Well, bring him on.

25 MS. ALLEN: Okay. Thank you, Your Honor.

1 GARY SCHAIBLE, a Witness, called on behalf of the
2 Government, having been first duly sworn, was examined
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ALLEN:

6 Q. Please state your full name for the record.

7 A. Gary Schaible.

8 Q. And are you the same Gary Schaible that
9 testified before Judge MacKenzie during Mr. Leasure's
10 trial?

11 A. Yes, I am.

12 THE COURT: How do you spell Schaible, I don't have
13 it right here in front of me?

14 THE WITNESS: S-c-h-a-i-b-l-e.

15 THE COURT: Go ahead.

16 BY MS. ALLEN:

17 Q. And, Mr. Schaible, I'm going to ask the court
18 security officer to give you what I've marked as
19 Government Exhibit 10-1 through 10-8 and also a copy for
20 the Court and a copy of these documents have already
21 been provided to Mr. Montague for Mr. Leasure's benefit.

22 Mr. Schaible, if you would, I'd ask you to first
23 look at Government Exhibit 10-1 and I believe that's
24 entitled The Role Call Training. Do you have that
25 document there?

1 A. Yes, I do.

2 Q. Okay. And are you familiar with that document?

3 A. Yes, I am.

4 Q. And have you seen it before?

5 A. Yes, I have.

6 Q. And have you read it from top to bottom?

7 A. Yes, I have.

8 Q. And if you could now look at Government Exhibit
9 10-2 and I believe that's entitled --

10 THE COURT: Well, let's label that. Is 10-1 the
11 Busey --

12 MS. ALLEN: That's correct, the Role Call Training
13 of Mr. Busey.

14 THE COURT: Busey's statement. All right. Go
15 ahead. 10 dash what?

16 MS. ALLEN: That was 10-1, Your Honor, the next one
17 is Government Exhibit --

18 THE COURT: All right. We've got that. Next.

19 BY MS. ALLEN:

20 Q. 10-2. And, Mr. Schaible, I believe that is
21 entitled Memorandum, dated December 1st, 1995.

22 A. 10-2 is the statement.

23 Q. Oh, I'm sorry. 10-2 -- you're right. 10-2 is
24 the handwritten sworn statement of Tom Busey dated
25 November 30th, 1995; is that correct?

1 A. Yes, it is.

2 Q. Okay. And if you could look at Government

3 Exhibit 10-3.

4 A. I have it.

5 Q. And I believe that you have there a memorandum

6 dated December 1st, 1995, and a memorandum dated

7 December 11th, 1995, and an incident report concerning

8 the ATF internal investigation of Mr. Busey's statement;

9 is that correct?

10 A. Yes, it is.

11 Q. And if you can look at Government Exhibit 10-4,

12 I believe that those are minutes of a meeting held on

13 November 9 through 10, 1994, to address firearms and

14 explosives date of integration; is that correct?

15 A. Yes.

16 Q. And if you could look at Government Exhibit

17 10-5, I believe that's a memo dated February 9th, 1996,

18 and supporting material constituting the report of the

19 recent audit of the NFA data base; is that correct?

20 A. Yes, it is.

21 Q. And if you can look at Government Exhibit 10-6,

22 I believe that's a memo dated April 30th, 1991,

23 concerning the accuracy of the NFRTR; is that correct?

24 A. Yes, it is.

25 Q. And Government Exhibit 10-7 is a memo -- a

1 correspondence, excuse me, between Senators McClure,
2 M-c-C-l-u-r-e, and Senator Bayh, B-a-y-h dated from
3 December 1979 through January 1980 relative to the
4 accuracy of the NFRTR, correct?

5 A. Okay. The first letter is October 15th, 1979,
6 actually.

7 Q. Okay.

8 A. And there's -- I can't read the date on the
9 last one, it says January 1980 but I can't read the
10 actual date.

11 Q. Okay. And then Government Exhibit 10-8, the
12 last exhibit that's there, it's a two-page affidavit of
13 Gary Schaible dated February 13th, 1996.

14 A. Correct, yes.

15 Q. And, Mr. Schaible, is it fair that you have
16 familiarized yourself with the total contents of
17 Government Exhibits 10-1 through 10-8?

18 A. Yes.

19 Q. The first question I have for you, sir, is this
20 the first time in preparation for this hearing today
21 that you have reviewed those materials that are before
22 you?

23 A. No.

24 Q. When did you first review that packet that's in
25 total there before you, what month and year?

1 A. It was in late February 1996 for the total
2 packet.

3 Q. And do you know the facts and circumstances as
4 to how you got possession of that packet generally?

5 A. Yes, I received a copy of what the U.S.
6 Attorneys's Office sent out, I mean, Justice sent out to
7 the U.S. Attorney's Office.

8 Q. Okay. And is it fair to say that that packet
9 of information specifically Government Exhibit 10-2
10 through 10-8, was the result of an internal audit that
11 was done after Mr. Busey made his statements which are
12 in Government Exhibit 10-1?

13 A. Yes.

14 Q. Is it also fair to say, sir, based upon your
15 knowledge of the exhibits here that Government Exhibit
16 10-1 through 10-8 once they were compiled by the
17 internal audit were subsequently sent by DOJ to the
18 respective U.S. Attorney's Offices across the country?

19 A. Yes.

20 Q. And is it also fair to say, sir, that in late
21 February or early March once I received this packet, I
22 called you and asked you if you knew about the packet?

23 A. Yes, you did.

24 THE COURT: Well, whether you knew about it or not,
25 obviously, the Department of Justice knew about all of

1 this material, Mr. Schaible.

2 THE WITNESS: At what time, sir?

3 THE COURT: Well, from -- the letter of the Role
4 Call Training Statement was 10-2 was a statement gotten
5 from Mr. Busey on December the 1st, 1995, so they knew
6 about it at that time, the problem had arisen by virtue
7 of his statement.

8 THE WITNESS: Yes.

9 THE COURT: All right.

10 BY MS. ALLEN:

11 Q. Agent Schaible, you are a part of this packet
12 that's been sent out across the country in Government
13 Exhibit 10-8. Why were you asked to submit that
14 affidavit and what, in essence, was the gist of your
15 affidavit?

16 A. I was asked to submit it because I was
17 basically the senior person in the NFA Branch, had been
18 around the longest, and was more familiar with the
19 procedures and operations of the branch. The gist of it
20 was that what Mr. Busey had said was, you know,
21 exaggerating the situation, you know, that the problems
22 that he said were there weren't there.

23 Q. And who was it that asked you to review these
24 materials and submit your affidavit?

25 A. Our office of chief counsel.

1 Q. So would it be your testimony that that packet
2 as has been provided to the Court and to Mr. Montague
3 was not in existence when you testified during
4 Mr. Leasure's trial?

5 A. No, it wasn't.

6 THE COURT: Say that again. Did you say that this
7 material wasn't available before Mr. Leasure's trial
8 which was in --

9 MS. ALLEN: January.

10 THE COURT: January 18th and 19th but the
11 Department of Justice had it, Mr. Schaible?

12 THE WITNESS: Well, yeah. The packet -- the total
13 packet wasn't in existence. There were bits and pieces,
14 yes, but it hadn't been put together. They were still
15 looking at -- seeing what exactly the import of this
16 was.

17 BY MS. ALLEN:

18 Q. Now, when you testified during the trial, your
19 testimony dealt with Counts 2 through 6 of the
20 indictment, is that true?

21 A. Yes.

22 Q. And when you testified regarding Count 2 of the
23 indictment, you also testified regarding Government
24 Exhibit 7-1 which is the certificate of nonregistration
25 regarding the weapons, is that true?

1 A. Yes.

2 Q. Is there anything based on your review of the
3 evidence that's in Government Exhibit 10-1 through 10-8
4 that would cause you to change your testimony regarding
5 the fact that the silencers listed in Count 2 were not
6 properly registered to Mr. Leasure?

7 A. No, it wouldn't change my opinion.

8 Q. Is there any -- I believe during the trial you
9 also testified regarding Count 3 of the indictment in
10 Government Exhibit 7-2 the certificate that goes with
11 that; is that correct?

12 A. Yes.

13 Q. Is there anything in your review of Government
14 Exhibit 10-1 through 10-8 that would cause you to change
15 anything that you testified to during Mr. Leasure's
16 trial regarding Count 3 in Government Exhibit 7-2?

17 A. No.

18 Q. And, lastly, Count 6 of the indictment and the
19 corresponding Government Exhibit 7-5, is there anything
20 in your review of the exhibits in the 10 series that
21 would change your testimony regarding Count 6 of
22 Government Exhibit 7-5?

23 A. No.

24 Q. Is there anything that you have seen either in
25 Mr. Busey's statements or in Government Exhibit 10-1 --

1 MR. MONTAGUE: That's leading, Your Honor, I
2 object.

3 THE COURT: Go on and ask the questions proper.

4 BY MS. ALLEN:

5 Q. Mr. Schaible, is there anything in the
6 Government's 10-1 through 10-8 series that you would
7 consider material, important information that you needed
8 in order to do your certificates that were in the
9 Government 7 series?

10 A. No.

11 Q. All right. Mr. Schaible, I'm now going to ask
12 you to look at Government Exhibit 11-1 which I'm handing
13 to the court security officer.

14 THE COURT: What is 11-1 in view of the fact that I
15 must have left that packet on my desk?

16 BY MS. ALLEN:

17 Q. Is that entitled telephone records of
18 Mr. Leasure, Sprint Services Account regarding activity
19 taking place on March 16, 1993?

20 A. Yes, well, it says DIW Advantage Quality
21 Account, which I guess is what I think you're saying
22 there.

23 Q. Okay. And have you seen that document before?

24 A. Yes, I have.

25 Q. And I believe that counsel referred to the fact

1 that that document shows that on March 16, 1993,
2 there are two faxed times totaling 24 minutes where
3 documents were sent to the BATF; is that correct?

4 A. Yes, it is.

5 Q. Okay. And based on that document there, is
6 there anything that that document tells you that would
7 cause you to change any of your testimony regarding
8 Counts 2, 3, or 6 of the indictment?

9 A. No.

10 Q. Does that document there tell you what
11 documents were faxed if at all to the BATF?

12 A. No, it doesn't.

13 MS. ALLEN: Your Honor, I'd move for the admission
14 of Government Exhibits 10-1 through 10-8 and Government
15 Exhibit 11-1.

16 THE COURT: To be received.

17 MS. ALLEN: Your Honor, that's all the questions I
18 have regarding this issue.

19 THE COURT: Cross-examine.

20 CROSS-EXAMINATION

21 BY MR. MONTAGUE:

22 Q. I said Busey, how does the man pronounce his
23 name? I hate people who mispronounce names. I've had
24 mine mispronounced all my life, you probably have too.

25 A. Yes. It's Busey.

1 Q. Busey with a long U, all right, thank you.
2 Now, at the time of this extraordinary Role Call
3 Statement by Mr. Busey, he was then the chief of the NFA
4 Branch?

5 A. Yes, he was.

6 Q. He was the top man in that part of your
7 organization?

8 A. Yes.

9 THE COURT: Chief of what, you say?

10 THE WITNESS: The NFA Branch, National Firearms
11 Branch.

12 THE COURT: The National -- NAF --

13 THE WITNESS: NFA.

14 THE COURT: Excuse me, National Firearms Branch,
15 what is that?

16 THE WITNESS: We're the ones who maintain the
17 registration records and transfers.

18 THE COURT: He was the chief of the National
19 Firearms --

20 THE WITNESS: Branch, yes, sir.

21 THE COURT: Registration branch.

22 THE WITNESS: Yes.

23 THE COURT: Go ahead.

24 BY MR. MONTAGUE:

25 Q. And after he made that statement, what happened

1 to Mr. Busey? Did he get fired or transferred?

2 A. He requested reassignment to another position
3 in January.

4 Q. Was that a coerced request as far as you know,
5 Mr. Schaible?

6 A. No, he went down and asked for it or I should
7 say up.

8 Q. Well, there was considerable hullabaloo around
9 the agency, was there not --

10 A. Yes.

11 Q. -- having the chief in charge of the
12 registration of firearms saying there was a 50 percent
13 error?

14 A. Yes.

15 Q. You say that that testimony is not correct?

16 A. Well, the 50 percent error rate I said that we
17 have no idea how it was determined.

18 Q. Weren't you working on it?

19 A. No.

20 Q. You were the senior man in the branch and you
21 weren't working on it?

22 A. No, I didn't.

23 Q. Did you check on how it was arrived at? Did
24 you talk to the people who were involved?

25 A. It was done at the request of our former

1 division chief. He said that he did not know exactly
2 what was done to come up with this although he had the
3 figures himself.

4 Q. But whether it was right or wrong, you
5 instituted a number of changes in the way you did that
6 part of your business, didn't you?

7 A. Yes.

8 Q. That also appears in your affidavit.

9 A. Yes.

10 Q. Now, when Ms. Allen sent me her copy of
11 Mr. Busey's statement, the Role Call transcript, do you
12 have any idea why she only sent the first 15 pages
13 instead of the whole 22 pages?

14 A. No, I don't.

15 Q. Did you have anything to do with furnishing her
16 with that transcript?

17 A. No, sir, I didn't.

18 Q. Do you know who did?

19 A. Came out of main Justice, that's my
20 understanding.

21 Q. Came out of the justice department?

22 A. Yes.

23 Q. I'm not sure about the organic structure; do
24 you have people in the Justice Department assigned to
25 the ATF as your lawyers or do you have your own lawyers?

1 A. We have our own lawyers.

2 Q. But they interact with the Justice Department?

3 A. Yes, sir.

4 Q. Now, all of these -- when was Mr. Busey's
5 transfer?

6 A. January of '96.

7 Q. And he had made this statement somewhere around
8 the end of October of '95, something like that, middle
9 of October?

10 A. I believe it was -- I think, October 18th, I'm
11 not quite sure of the exact date, certainly would have
12 been October.

13 Q. Where did he go?

14 A. He is a specialist in the Wine and Beer Branch
15 of ATF.

16 THE COURT: It says that the Role Call Training
17 Sessions were conducted by Busey, Chief of the National
18 Firearms Act Branch in the period between October 3, '95
19 to October 10, '95 at BATF headquarters and recorded and
20 transmitted through headquarters on closed circuit
21 television. That letter is correct, isn't it,
22 Mr. Schaible?

23 THE WITNESS: That's correct. There was only one
24 session.

25 THE COURT: Well, sometime between October 3 and

1 October 10 there was one session. It doesn't -- well,
2 go ahead.

3 BY MR. MONTAGUE:

4 Q. Was any intermediate administrative action
5 taken with regard to was Mr. Busey put on administrative
6 leave or anything like that?

7 A. No, sir, not that I know of.

8 Q. And the closed circuit television the Judge
9 referred to, did that result in a VCR tape of the
10 affair, Mr. Busey's statement?

11 A. The tape was being done irregardless of its
12 transmission throughout the building.

13 Q. That there was a tape?

14 A. Yes.

15 Q. But also a closed circuit transmission within
16 your offices?

17 A. Yes.

18 Q. Okay. And then were you aware of -- well,
19 excuse me. Let me ask a different question. After
20 Mr. Busey left, was he replaced? Is there now a new
21 chief of the NFA Division?

22 A. Yes, there is.

23 Q. NFA Branch.

24 THE COURT: That's you, isn't it?

25 THE WITNESS: No.

1 BY MR. MONTAGUE:

2 Q. Who is it?

3 A. A lady named Nerida Levine.

4 Q. Is she someone who has been with the ATF for a
5 long time?

6 A. I believe she started in '85 -- '86 somewhere
7 around there.

8 Q. Okay. Now, your testimony in response to Miss
9 Allen just now was that these exhibits 10-1 through 10-8
10 didn't exist at the time of this trial?

11 A. No, it was that the packet -- the entire packet

12 --

13 Q. What entire packet?

14 MS. ALLEN: Your Honor, I think counsel is
15 misstating the evidence. I asked him whether or not the
16 packet of material existed at the time of trial since
17 there's been an allegation that the Government and
18 Mr. Schaible knew about all of this during the trial.

19 THE COURT: The statement Mr. Busey made on
20 December 1st, 1995, that was certainly in existence.

21 MS. ALLEN: In existence, Your Honor, but I think
22 the allegation was that we knew that it was there during
23 the trial and we withheld favorable evidence and that
24 was not done.

25 MR. MONTAGUE: I didn't make that allegation

1 because I have no way of knowing.

2 THE COURT: You would want me to assume that,
3 wouldn't you, Mr. Montague?

4 MR. MONTAGUE: Well, I certainly believe it's
5 within the breast of the Government and I realize that's
6 a very large breast but it's the Justice Department and
7 the --

8 THE COURT: Well, let's move on.

9 BY MR. MONTAGUE:

10 Q. Now in fact, Mr. Schaible, there was a strong
11 effort within the ATF to cover up this whole affair, was
12 there not?

13 A. No.

14 Q. There was no effort to cover up this affair?

15 A. No.

16 Q. When was the statement by Mr. Busey made
17 public?

18 A. I believe in February.

19 Q. End of February or early March, right?

20 A. Not quite sure on that.

21 Q. But five months after the event?

22 A. Uh-huh.

23 Q. If that was not the result of a cover up, what
24 was it a result of?

25 A. Freedom of Information Act request.

1 Q. Okay. So the agency did nothing to put this
2 thing out voluntarily; it had to be taken away from you
3 by an FOI request?

4 A. Yes.

5 Q. And then all of this other stuff, your
6 affidavit, and all of these things about the changes
7 that have been made since then were done after that,
8 were they not?

9 A. Yes.

10 Q. So in answer to the Judge's question, did this
11 stuff exist at the time of trial, obviously it
12 potentially all existed?

13 A. Some of it.

14 Q. But simply was not being put together because
15 you, for whatever reason, had not put Mr. Busey's words
16 out publicly.

17 A. Certainly, some of it existed.

18 Q. What is the policy of the ATF regarding
19 statements by the top officials?

20 MS. ALLEN: Your Honor, I'm going to object based
21 on relevance. I think the focus of this hearing should
22 be whether or not there's any Brady material that if
23 released during the trial would tend to establish that
24 Mr. Leasure is guilty or innocent and now we're putting
25 BATF on trial.

1 THE COURT: I think it goes further than that, not
2 whether he would be found guilty or innocent but whether
3 there's an obligation for that material to have been
4 available to defense counsel to try to convince me that
5 BATF were rotten recordkeepers; I think that's the issue
6 not his guilt. Anyway, your objection is overruled.
7 Your exception is in the record. Let's move on.

8 BY MR. MONTAGUE:

9 Q. Let's drop down to the Exhibit that I
10 submitted. I think it's Government 11-1 which is the
11 telephone record of Mr. Leasure's Saluda office. The
12 record itself shows that the phone number used for his
13 fax machine obviously is the phone number of his fax
14 machine. Is the phone number for your fax machine
15 correct?

16 A. Yes.

17 Q. 202 number?

18 A. (Witness nods head.)

19 Q. Okay. So would you agree with me that when a
20 phone bill is produced that shows a completed fax
21 transmission, that faxes actually have arrived at their
22 destination?

23 A. I would certainly agree, yes.

24 Q. So the faxes got to your office and no one
25 knows what happened after that?

1 A. I wouldn't say that. Certainly faxes were
2 sent, what they were I can't know.

3 Q. Well, we can't prove what they were either but
4 it stands to reason they're what we said they were. But
5 whether they were or not, they disappeared into the 50
6 percent error plague of BATF's recordkeeping at that
7 time. And the 50 percent Mr. Busey was talking about
8 would have been in existence in February of 1994, would
9 it not?

10 A. I don't know what he based the 50 percent on.

11 Q. Mr. Schaible, there was a serious problem,
12 wasn't there, whether it was 50 percent or 35 percent or
13 80 percent, you-all took substantial action to correct
14 the serious defect in your recordkeeping system, didn't
15 you?

16 A. I believe that any problem is serious, yes.

17 Q. Yes, sir, particularly in a field like this.

18 A. Yes.

19 Q. Do you have -- have you had occasions that
20 you're aware of in the NFA branch of clerks throwing
21 away transmissions because they don't want to fool with
22 them?

23 A. Yes.

24 Q. And so that's one of the things that could
25 happen to you?

1 A. Certainly.

2 Q. A bunch of transmissions come through from
3 Saluda, Virginia, and the clerk says, this is going in
4 File 13?

5 A. Yes.

6 Q. And that has happened?

7 A. Yes.

8 Q. And people have been transferred and fired as a
9 result of that, haven't they?

10 A. No.

11 Q. No, which? I asked two questions. Have they
12 been transferred out of that work?

13 A. The only situation I can remember is, no, that
14 they weren't transferred. No, they weren't fired. They
15 eventually quit, yes, but, no, nothing like transferred
16 or fired.

17 Q. Did you ever continue anybody in that
18 particular job after you knew they threw something away,
19 threw an important transmission away or destroyed it or
20 put it in the shredder or whatever they did?

21 A. And when you say "you," you mean, the branch?

22 Q. I mean you the agency, I'm sorry.

23 A. Yes.

24 Q. You continued them doing that kind of work?

25 A. With monitoring, yes.

1 Q. Okay.

2 MR. MONTAGUE: I believe that's all I have, Your
3 Honor.

4 THE COURT: Anything further, Ms. Allen?

5 MS. ALLEN: No thank you, Your Honor.

6 THE COURT: All right. Step down, Mr. Schaible.

7 MS. ALLEN: Your Honor, that's all the evidence I
8 have to that last motion.

9 THE COURT: All right. All right. The evidence --
10 that record has been made. Anything you want to --

11 MR. MONTAGUE: I just have a couple of comments
12 with regard to the first part of Ms. Allen's comments.
13 In the first place, I don't know what the implication
14 was about fraud on the Court and fraudulent material but
15 I don't practice that kind of law and the documents were
16 genuine as far as I know and I have every reason to
17 think they were. I also think we have every reason to
18 think they were received by the ATF based on the
19 testimony we've just had.

20 THE COURT: I don't think there's any evidence of
21 that, Mr. Montague, that these particular things marked
22 void or received are because you point out Carl O'Quinn
23 or Mr. Leasure called this telephone number on a certain
24 date. But I don't think it's going to make any
25 difference in this case.

1 I'm going to throw out the convictions that have to
2 do with registrations. I'm going to throw out Count 2,
3 3, and 6 so that the only count left is Count 1, that's
4 the one I want to hear addressed at this time. That's
5 got nothing to do with registrations, we're talking
6 about silencers.

7 MR. MONTAGUE: Yes, sir. All right, thank you for
8 that.

9 THE COURT: The motion for a new trial is denied
10 because it was addressed only to Counts 2, 3, and 6.
11 I have thrown out Count 2, 3, and 6, so the motion for a
12 new trial is denied. We're here for sentencing as to
13 Count 1. And now, if you want to sit down and talk to
14 your client about how you want to proceed on Count 1 and
15 I'll take a five-minute recess.

16 MR. MONTAGUE: Thank you, Your Honor.

17 THE COURT: Ms. Allen, this isn't to impune
18 anything dishonest from you. I think you sent to them
19 whatever you've received, but Mr. Schaible has testified
20 that they knew all about Mr. Busey's statement in the
21 National Firearms people. It's on television all over
22 the building, it was in the files of the Department of
23 Justice, and it throws a disagreeable proposition on my
24 finding somebody guilty on records when their chief man
25 says they were 49 percent wrong. That's not your fault.

1 Five minutes and we'll take up sentencing on Count
2 1. And I'll have something more to say for the record
3 so you-all can have it for appellate purposes but right
4 now that's where we are.

5 (Recess.)

6 THE COURT: Hold up a minute. Let me make some
7 notes. It seems to me that the Court having thrown out
8 Counts 2, 3, 4, 5 and 6 the only thing left is Count 1
9 of which I found that's the silencers count which has
10 nothing to do with registration. In fact, it's
11 nonregistration that's the essence of the case. There
12 was no motion, I don't believe, made with reference to
13 Count 1, Mr. Montague, but in the wealth of paper
14 you-all have provided me with I may have overlooked
15 something. We're here only on sentencing of Count 1 at
16 this point; is that correct?

17 MR. MONTAGUE: Well, I intended to include -- it's
18 certainly an entirely different animal.

19 THE COURT: All right. We're here for sentencing
20 now. Bring Mr. Leasure up to the lectern with you.

21 MR. MONTAGUE: All right, sir.

22 THE COURT: Mr. Leasure, the matter ended in a
23 conviction of you on Count 1 on, I think it was January
24 the 19th, but so that the record won't have any errors
25 in it, let me be sure. On January the 19th the matter

1 was taken under advisement.

2 On February 6th an order was entered in which I
3 brought all parties back to court and filed a written
4 order of the Court finding you guilty as to Count 1 and
5 as to some other counts which are now made moot by
6 virtue of the rulings of the Court. I at that time
7 ordered a presentence report and ordered you to return
8 here for sentencing for 9:30 on May 21, which is today.

9 I have a presentence report prepared by my
10 probation officer Miss Thayer over here and I ask you
11 first, Mr. Montague, have you been over this report in
12 detail with your client, Mr. John Leasure?

13 MR. MONTAGUE: Yes, sir, I have.

14 THE COURT: And, Mr. Leasure, have you been over
15 this report in detail with your attorney, Mr. Montague?

16 THE DEFENDANT: Yes, sir, I have.

17 THE COURT: And we're here only on Count 1.
18 Mr. Montague, is there any evidence you want to present
19 with reference to this count?

20 MR. MONTAGUE: Not with reference to the count as
21 such but I'd like to put on some character evidence, if
22 I may.

23 THE COURT: All right, sir. Have a seat.

24 I'll be glad to hear the first witness, if you'll
25 call your first witness.

1 MR. MONTAGUE: I'm going to call Sheriff Lewis
2 Jones.

3 THE COURT: Have a seat. All right, sir, go right
4 ahead.

5 LEWIS JONES, III, a Witness, called on behalf of
6 the Defendant, having been first duly sworn, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MONTAGUE:

10 Q. Would you state your -- let me let you get
11 seated. Will you state your full name, please.

12 A. Lewis Jones, III.

13 THE COURT: Lewis spelled L-e- or L-o-?

14 THE WITNESS: L-e-.

15 THE COURT: L-e-w-i-s Jones, III. Go ahead,
16 Mr. Montague.

17 BY MR. MONTAGUE:

18 Q. How are you currently employed, Mr. Jones?

19 A. I'm the sheriff of Middlesex County, Virginia.

20 Q. How long have you held that office?

21 A. I'm in my ninth year.

22 Q. And prior to being -- that's an elective
23 office, is it not?

24 A. Yes, sir, it is.

25 Q. Prior to being elected sheriff of Middlesex,

1 did you have any other background in law enforcement?

2 A. Yes, sir. I was a Virginia state trooper for
3 six and a half years and also with the City of
4 Charlottesville, Virginia Police Department
5 three-and-a-half years.

6 Q. During your time as a state trooper, were you
7 stationed in the Middlesex County area?

8 A. Yes, sir, I was stationed there in December of
9 1980.

10 Q. All right, sir. Now, would it be fair to
11 describe your position of sheriff of Middlesex as the
12 chief local law enforcement officer in that area?

13 A. Yes, sir, that's correct, I am.

14 Q. Would it be fair to say that as sheriff -- as
15 the chief local law enforcement officer, it's important
16 for you to know - to be blunt - who the good guys and
17 the bad guys are that frequent your county?

18 THE COURT: Mr. Montague, you've practiced law as
19 long as I have and we're talking about character
20 evidence; we're not talking about anything else. So
21 let's get into it; let's don't get into anything else.

22 MR. MONTAGUE: All right, sir.

23 BY MR. MONTAGUE:

24 Q. But it is necessary for you to evaluate people
25 that may run afoul of the law?

1 A. Yes, sir.

2 Q. And in your office as sheriff, did you become
3 acquainted with a gentleman named, John Leasure?

4 A. Yes, sir, I did.

5 Q. And is he in the courtroom today?

6 A. Yes, sir, he is.

7 Q. Would you point him out?

8 A. (Indicating.)

9 Q. You're indicating Mr. Leasure at the Defense
10 table. And what was Mr. Leasure's business in Middlesex
11 County?

12 A. My first encounter with him in a business was
13 with a parts store with his brother and then later as a
14 retail gun dealer and then with his current business
15 status.

16 Q. Did he operate a business called John's Gun
17 Shop in Saluda?

18 A. Yes, sir, he did.

19 Q. All right. Did you come to develop a
20 relationship or friendship with Mr. Leasure?

21 A. Yes, sir, I did.

22 THE COURT: What we're interested in, Mr. Jones, is
23 do you know his reputation for truth and voracity in the
24 community?

25 THE WITNESS: Yes, sir, I do.

1 THE COURT: And what is it?

2 THE WITNESS: John enjoys a very good character and
3 standing in the community.

4 THE COURT: All right. That's about as far as you
5 can go, Mr. Montague.

6 MR. MONTAGUE: Well, let me try one other step,
7 Your Honor.

8 THE COURT: I'll be glad to stop you if you're
9 wrong. Let's go.

10 MR. MONTAGUE: I know that.

11 BY MR. MONTAGUE:

12 Q. In connection with that reputation, did you
13 have occasion to appoint him as anything in your
14 department?

15 A. Yes, sir. February of 1988 I appointed
16 Mr. Leasure a deputy sheriff of Middlesex County
17 Sheriff's Office.

18 Q. And what were his duties, if any, with your
19 department?

20 THE COURT: That's of no importance to me. He said
21 he has a good reputation for truth and veracity and I
22 let you show that he appointed him as deputy sheriff in
23 1988. How long did he act?

24 THE WITNESS: Through March of 1990.

25 THE COURT: For a couple of years?

1 THE WITNESS: Yes, sir.

2 THE COURT: A year and a half?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right now.

5 BY MR. MONTAGUE:

6 Q. Sheriff Jones, you're here by your own
7 volition, you're not here by reason of a subpoena; is
8 that correct?

9 A. That is correct.

10 MR. MONTAGUE: Answer Miss Allen.

11 THE COURT: Any questions, Ms. Allen?

12 MS. ALLEN: No questions, Your Honor.

13 THE COURT: Thank you, Sheriff, step down. Any
14 reason why Sheriff Jones can't be excused?

15 MR. MONTAGUE: He can return to his duties as far
16 as we're concerned with our thanks.

17 THE COURT: Call your next witness.

18 MR. MONTAGUE: I'm going to call Mr. Leasure.

19 THE COURT: Mr. Leasure.

20 MR. MONTAGUE: He's not been sworn yet.

21 THE COURT: Go ahead, sir

22 JOHN D. LEASURE, the Defendant, called on behalf of
23 the Defense, having been first duly sworn, was examined
24 and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MONTAGUE:

2 Q. State your name please, sir.

3 A. John Daniel Leasure.

4 Q. And you are the defendant in this case?

5 A. Yes.

6 Q. Mr. Leasure, during your trial in this case, I
7 showed one of the Government witnesses, I think it was
8 Mr. Schaible, a copy of this book. It's a red cover
9 entitled Federal Firearms Regulation 1988-89. My
10 question, sir, is, was this book provided to you by the
11 ATF as your guide to the law affecting your work as a
12 firearms manufacturer?

13 A. Yes, it was.

14 Q. And the answer given to me by whoever it was
15 that testified from the ATF was that you were told that
16 by following this book you would stay out of trouble,
17 this was your bible, what you had to do as a firearms --
18 in relation to federal firearms purchases?

19 A. (Witness nods head.)

20 Q. Now, in connection with that, did you have an
21 understanding as to what your obligation based on the
22 material appearing in this manual -- what your
23 obligation was with regard to placing serial numbers and
24 manufacturer's names on silencers?

25 A. Yes, I did.

1 MS. ALLEN: Your Honor, I'm going to object. We
2 went through --

3 THE COURT: It's already in the record one time and
4 that's all.

5 MR. MONTAGUE: Count 1 involves 19 unserialized
6 silencers.

7 THE COURT: Was one withdrawn? Are there 18 or 19?

8 MS. ALLEN: There are 19, Your Honor, one was
9 withdrawn from Count 2.

10 THE COURT: 19, all right.

11 MR. MONTAGUE: I think 19 is correct.

12 BY MR. MONTAGUE:

13 Q. Of the 19 none had a serial number on it nor
14 the identification of your manufacturing name which was
15 Precision Arms International or PAI?

16 A. That's correct.

17 Q. And each of those being unmarked, did that
18 result from the same misconception of the law by you?

19 MS. ALLEN: Your Honor, I have a continuing
20 objection to this whole --

21 THE COURT: All right. I'll let him testify one
22 time. He's already testified to this.

23 THE WITNESS: Yes, it did.

24 BY MR. MONTAGUE:

25 Q. Not only based upon the regulations but was

1 that misconception also based upon industry practices as
2 you understood them?

3 A. Yes, it is.

4 Q. And is it fair to say, sir, that your intention
5 at all times with regard to these silencers as well as
6 all other armaments and weapons within your shop and
7 within your control was to attempt to obey the law?

8 A. Yes, it is.

9 Q. Mr. Leasure, as based upon the Court's action
10 this morning, you stand convicted of one felony count.
11 And what do you understand will be the impact, leaving
12 aside the question of whether you go to jail or not --
13 what do you understand the impact of that conviction to
14 be upon your life as it's been lived up to now?

15 A. Well, it -- from then on I'll be treated as a
16 second class citizen I feel like. It is what I feel
17 like about the worst thing that could happen to me.

18 But I will state and I don't know whether I can do
19 this now or not but I will say sitting here today right
20 here and right now, if I still had -- if I was still
21 asked whether or not I would plead guilty or not to
22 Count 1, I would still plead not guilty. I read and
23 understood the law. I tried to interpret from the law
24 what I understood to be the law, and I've given you the
25 code section and I still feel it's very vague. I still

1 feel it's very vague. In one sentence it says by the
2 ATF's own admission that any firearm silencer part is a
3 silencer, even a rubber disk that goes in the end of it.

4 Q. Even a Coke bottle?

5 A. Yeah, absolutely. So I don't understand how I
6 can manufacture, own, and I'm the one who assigns the
7 serial number but under the Code Section 179.102 that I
8 provided you out of that book that you have, not out of
9 the new book that was published in October of 1995 it's
10 much more explicit, it's very clear, out of the old book
11 it's not.

12 Q. Let me ask you one question about that if we
13 may, Your Honor. The new book, which I think has a
14 yellow cover, came out in, what, November of '95?

15 A. Yes.

16 Q. And what is different bearing on this
17 particular point between that book and the one that you
18 had to go by?

19 A. It says in the yellow book under that code
20 section that the form has to be done by closing the next
21 business day, the Form 2.

22 Q. That does not appear in the red book?

23 A. Not under that code section marked 179.102
24 Identification of Firearms.

25 Q. So it is your testimony that nowhere in the red

1 book are you told when you're supposed to mark these
2 silencers?

3 A. Not that I could find, no. Under 179.102 it
4 states that it is to be marked when it is sold,
5 transferred, or otherwise disposed of and that's what I
6 got from it.

7 Q. These particular silencers were never going to
8 be sold or transferred, were they?

9 A. They were totally separate, separate from
10 everything else in a locked cabinet, and at various
11 times I would cannibalize them and get parts off of
12 them. I had enough parts in my shop to assemble five
13 hundred silencers.

14 Q. And, as a matter of fact, you had hundreds of
15 parts, tubes, and the like that were intended to be used
16 as parts of silencers?

17 A. Hundred and hundreds and hundreds.

18 Q. And the way the law is written you could have
19 been charged on all of them, you could have a thousand
20 counts or a thousand items under the count?

21 A. I guess so.

22 Q. And I guess they'd want to electrocute you at
23 that point, I don't know.

24 THE COURT: I'm the only one entitled to humor in
25 this courtroom.

1 MR. MONTAGUE: I withdraw the attempt at humor,
2 Your Honor. There isn't anything funny about this
3 situation.

4 BY MR. MONTAGUE:

5 Q. Is there anything else you'd like to tell us,
6 Mr. Leasure?

7 A. Just that I feel like I have tried to -- it has
8 been my intention to abide by the law. I had no
9 intention of breaking the law. I -- certainly from the
10 time the ATF came into the raid, I had three days. They
11 left their own printout there. They'd never even been
12 in the back and seen my inventory. I could have taken
13 that inventory and made sure everything matched and then
14 I probably wouldn't be sitting here, but I wanted -- I
15 wanted to get it straight. If there was a problem, I
16 wanted it to be straight. And, I'm sorry, I still
17 wouldn't do it any differently.

18 Q. And you didn't attempt to hide anything, you
19 cooperated fully in that investigation?

20 A. Absolutely.

21 Q. Because you didn't think you'd done anything
22 wrong; is that correct?

23 A. No, I did not.

24 MR. MONTAGUE: Answer Miss Allen.

25 THE COURT: Cross, Ms. Allen?

1 MS. ALLEN: No questions, Your Honor.

2 THE COURT: Step down. Thank you, Mr. Leasure.

3 Any other witness, Mr. Montague?

4 MR. MONTAGUE. Yes, sir. I'd like to call
5 Mrs. Leasure.

6 THE COURT: All right.

7 CHERYL LEASURE, a Witness, called on behalf of the
8 Defendant, having been first duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MONTAGUE:

12 Q. Would state your name, please, ma'am.

13 A. Cheryl Leasure.

14 Q. Would you spell Cheryl for the Court.

15 A. C-h-e-r-y-l.

16 THE COURT: C-h-e-r-y-l, go ahead.

17 BY MR. MONTAGUE:

18 Q. And you're married to Mr. Leasure?

19 A. That's correct.

20 Q. How long have you-all been married?

21 A. We have been married almost a year.

22 Q. And you're -- actually, your first anniversary
23 is going to be next week; isn't it?

24 A. That's right, Monday.

25 Q. Okay. And do you have any children by a prior

1 marriage?

2 A. Yes, I do.

3 Q. And describe the child.

4 A. He's six years old. His name is Drew.

5 Q. And has Drew in your observation as his mother
6 formed a relationship with Mr. Leasure?

7 A. Yes, sir, a very close one.

8 Q. Would it be fair to say that you think
9 Mr. Leasure has become a father figure to your son?

10 A. Very much so, more than his own father; I
11 should say biological father.

12 Q. And how do you regard your husband in terms of
13 hard workingness, good citizenship, and that sort of
14 thing?

15 A. He's very hardworking, he's very honest. I've
16 never seen anything where he's tried to hide or do
17 anything wrong.

18 Q. And you're involved -- have been involved in
19 the business at the gun shop, have you not?

20 A. Right, I've come up there and helped out a
21 little bit there.

22 Q. Have you helped improve the recordkeeping?

23 A. Yes.

24 MR. MONTAGUE: I think that's all.

25 THE COURT: Any questions?

1 MS. ALLEN: No, thank you, Your Honor.

2 THE COURT: Thank you, Ms. Leasure. Step down.

3 Call your next witness.

4 MR. MONTAGUE: That's all, Your Honor.

5 THE COURT: All right. I'll be glad to hear from

6 you, Mr. Montague, and at the proper time I'll ask

7 Mr. Leasure if there's anything further he wants to say.

8 MR. MONTAGUE: All right. Excuse me one second,

9 Your Honor.

10 THE COURT: Surely.

11 (Pause.)

12 THE COURT: Hold up for just a minute.

13 MR. MONTAGUE: Yes, sir.

14 THE COURT: Mr. Montague, there were objections and

15 I overlooked these beginning on Page 16, 17, and 18 and

16 they looked like you objected to paragraph 16. You

17 object to the finding made by Miss Thayer that

18 Mr. Leasure was not entitled to any acceptance of

19 responsibility under the law. Because of his pleas of

20 not guilty in the defense of the case, he isn't entitled

21 to any so if you have any objection to his not getting

22 the three points, that objection is overruled.

23 MR. MONTAGUE: Well --

24 THE COURT: Now, to Paragraph 19 an objection is

25 raised. The probation officer's report that defendant

Biggs & Fleet Court Reporters
Norfolk - (804) 625-6695

1 failed to pay fines and court costs for a reckless
2 driving conviction and that would have no effect on any
3 penalty that I would be involved with to start with, so
4 that objection is irrelevant so far as I'm concerned.

5 MS. ALLEN: And, Your Honor, just for the record,
6 the probation officer informed me this morning that upon
7 further investigation she found out on February 10th,
8 1987, that Mr. Leasure had, in fact, paid those court
9 costs, and we would withdraw that and note that for the
10 record.

11 THE COURT: The fine has been paid?

12 MS. ALLEN: February 10th, 1987, that's correct,
13 Your Honor.

14 MR. MONTAGUE: The only reason I made that
15 objection, Your Honor, is because it created a sort of
16 scuff or a different type of appearance and I didn't
17 think that was deserving.

18 THE COURT: Paragraph 20 reflects the date of the
19 arrest. The probation officer relies on a copy of the
20 warrant executed June 1, 1993. I find that to be of no
21 consequence to this.

22 MS. ALLEN: Just for the record, Your Honor, we
23 have a certified copy of the paperwork the probation
24 officer was relying upon which is marked as Government's
25 Exhibit 12-1 which we'd offer to the Court.

1 THE COURT: All right. Show it to Mr. Montague.
2 Put it with the papers in the suit.

3 Paragraph 47 an objection is raised that the
4 probation officer reported the defendant didn't file
5 Federal taxes for the years '90, '91, '92, and '93
6 according to the Internal Revenue Service's Taxpayer
7 Services Division; they have no record of a return being
8 filed for those four years and, therefore, no change was
9 made to that. Do you have any response to that?

10 MS. ALLEN: Your Honor, we have a certified copy of
11 the probation officer's request for the information as
12 well as the IRS's response that reflects that Government
13 Exhibit 12-2 has also been shown to Mr. Montague.

14 THE COURT: Mr. Montague, apparently he hadn't
15 filed a return at least according to the evidence
16 available to me. I don't know that it's going to make a
17 lot of difference but do you have anything to the
18 contrary?

19 MR. MONTAGUE: The only thing I have is that
20 Mr. Leasure has assured me that he has filed all the
21 returns and has paid all of the taxes. He is constantly
22 in this case a victim of Government records that don't
23 exist.

24 THE COURT: Well, wait a minute. We're not going
25 to start with that. Are you going to indict the

1 Internal Revenue Service for reporting that he didn't
2 file any taxes for those years?

3 MR. MONTAGUE: No, sir. I'm sure they --

4 THE COURT: Turn to your client, I'm not going to
5 take that as a charge against the Government. Talk to
6 your client. Ask him has he got any evidence that he
7 paid taxes, filed returns for those years when they say
8 he did not.

9 MR. MONTAGUE: I don't need to ask him that, Your
10 Honor, he would have given it to me if he had. No, he
11 does not, and I'm sure the IRS is acting in good faith.
12 I don't question that.

13 The only thing I do know and will add this to the
14 Court if I may is that after the demise of his company,
15 Precision Arms International, there were some unpaid
16 payroll taxes and the IRS procedure in that case is to
17 impose a hundred percent penalty on the person in charge
18 of the company that's gone belly up. In the case of
19 Mr. Leasure, they imposed that penalty and then after
20 meeting with him, they waived it because of his
21 financial condition and the only thing that happened was
22 they did take an assignment on all of the guns that the
23 government now holds. They're supposed to get those
24 when they're turned loose.

25 THE COURT: The last objection is the computations

1 based on the number of weapons and that's an amount that
2 we'll have to discuss after your argument, so now go on
3 with the argument.

4 MR. MONTAGUE: All right, sir. I'm getting a
5 little discombobulated here, Your Honor. I think that
6 -- let me see if I can find the language. This language
7 came up, the language of the regulations under 179 of
8 the regs. affecting firearm manufacturers, registration,
9 identification of firearms.

10 Mr. Leasure has testified that the regulation has
11 been amended at a time after this case was already in
12 process to require anyone manufacturing silencers as he
13 did to mark them with a serial number which he makes up
14 and puts on himself and the name showing the
15 manufacturer's identification. It says that that must
16 be done in accordance with these regulations and the
17 only positive time that it gives him to do it is where
18 the silencer is not an integral part of a complete
19 firearm. It must be done at the time of sale or of
20 transfer.

21 THE COURT: I've ruled on that and ruled against
22 you. You take that up with the Fourth Circuit.

23 MR. MONTAGUE: Well, the issue today I think is of
24 the element of time. I think that is important and
25 should be important to the Court. I understand what the

1 Court's ruling was and I think the interpretation
2 probably is wrong but on the other hand nowhere in the
3 regulation does it tell him when he is to do it other
4 than when he sells it.

5 THE COURT: I've already ruled on that,
6 Mr. Montague. I've found him guilty. I don't have any
7 problem with that. If you've got anything to add to
8 that, you'll get your opportunity in Richmond.

9 MR. MONTAGUE: I have already flagged for the Court
10 the case of Staples against the United States. It's
11 important in this case because it does involve a mental
12 element in what appeared in the way Congress drew these
13 laws to be an absolute offense, a strict liability type
14 of offense. These are what have been called public
15 welfare crimes. They're instrumentalities that are so
16 inherently dangerous such as drugs, high explosives,
17 things of that nature that a person would be deemed to
18 know that there must be some regulation whether he says
19 with all the innocence of a lamb that he did not know,
20 there's many reasons he should know whatever it may be,
21 a nuclear device or hand grenade or something of that
22 kind.

23 The Staples opinion was passed after -- long after
24 the Freed opinion on which this court relied and decided
25 in 1994. Justice Thomas wrote the opinion for the

1 majority and he discussed it at great length. The
2 tradition of Anglo-Saxon courtroom jurisprudence
3 requires that there be some knowledge of evil in conduct
4 that a person elects to pursue. He says it is as
5 universal and persistent in mature systems of law as
6 belief in the freedom of the human will and,
7 consequently, the ability and duty of a normal
8 individual to choose between good and evil.

9 This case at least the last time I looked had not
10 come out of the U.S. Reports but it's in the 128
11 Lawyer's Edition, 2nd, beginning at Page 608. In that
12 edition he says on Page 618 that the Government seeks
13 support for its position which was basically a no-intent
14 position from our decision in U.S. v. Freed, 401, U.S.
15 and so forth, 1971, A case involving unregistered hand
16 grenades. That's the case the Court relied on in making
17 it's ruling in this case.

18 That reasoning provides little support for
19 dispensing with mens rea in this case. In this case
20 what I think has happened is the defendant has made a
21 conclusive showing of a lack of anything other than a
22 law abiding spirit. He's an honorable man; his record
23 supports that. He didn't mean to break the law, and I
24 do not think that the instrumentalities, these locked up
25 silencers that didn't work properly --

1 THE COURT: There was no showing that these
2 silencers didn't work properly. He fired every one,
3 kept a minute record of the decibels. They were
4 completely done, Mr. Montague, so don't put anything
5 false in the record.

6 MR. MONTAGUE: I'm not putting anything false in
7 the record, Your Honor. That was a mistake in
8 recollection that the Court drew from the testimony of
9 one of the BATF agents.

10 THE COURT: I'll live with it.

11 MR. MONTAGUE: Well, it was the BATF agent that
12 fired the silencers. I'm sure Mr. Leasure had fired
13 them at some time too but he didn't -- the record of
14 decibel reduction was done by --

15 THE COURT: He testified, Mr. Montague, that many
16 of these silencers the reason they were in the cabinet
17 was because they didn't meet -- when he tested them,
18 they didn't meet the reduction in decibels that he would
19 require of an instrument. You can argue with me but
20 that as a fine workman he found something wrong with
21 them, but he tested them and found that they didn't suit
22 what he wanted. He knew that they would work. Don't
23 tell me otherwise.

24 MR. MONTAGUE: I'm not telling you otherwise. I'm
25 saying your finding in your order in this case that

1 somebody fired them and kept a record was the Government
2 agent not Mr. Leasure.

3 THE COURT: We can check the record but I'm going
4 on what he testified.

5 MR. MONTAGUE: Yes, there's no question that he
6 knew that they did not meet his standards, and he was
7 not going to sell them for that reason, and he kept them
8 for parts.

9 THE COURT: That's your argument and that's the one
10 you ought to make but don't tell me that they were not
11 fireable or couldn't be used, that's not in the record.

12 MR. MONTAGUE: I didn't tell you that, and I'm not
13 trying to mislead the Court in any way. I think I've
14 been very open in all aspects of this thing.

15 Certainly, he isn't going to throw away the
16 silencer but he wasn't going to market it because it
17 didn't work right, didn't meet his higher standards and
18 he saw nothing wrong in the way he understood the
19 regulation and the industry practices to keep them
20 simply as a source of spare parts. The metals involved
21 in those devices are very expensive and why throw them
22 away.

23 Based upon everything that's before the Court, I
24 would ask the Court to take into account this man's
25 lifelong good record and the fact that this particular

1 case, the incidents that arose to bring this case into
2 this court were the product of a completely innocent
3 mind, a man who is a lifelong law abiding citizen.

4 THE COURT: Thank you. Miss Allen.

5 MS. ALLEN: Your Honor, I believe that the
6 presentence report shows the base offense level to be 18
7 plus a 6 for 60 weapons, which the probation officer
8 relies upon Paragraph 11 of the presentence report. The
9 probation officer's calculations are in accordance with
10 the Fourth Circuit law, particularly, the Bowman case
11 which was 926 F.2d, 380, 1991 Fourth Circuit decision
12 approving the Court's sentence based upon the convicted
13 counts and uncharged counts.

14 I think the probation officer has figured 60
15 firearms based on the guns that were in the indictment
16 as well as other guns that were seized with the search
17 warrant. If her calculations are right, the guidelines
18 would be 51 to 63 months. If the Court decides not to
19 consider 60 --

20 THE COURT: I'm not going to count any of the guns
21 that have been thrown out because of the registration
22 period, so it will reach nowhere near 20. It will be 19
23 at the most.

24 MS. ALLEN: Based on the Court's statement there,
25 the Government sees the base level of 18 plus 4 since

1 the guns in Count 1 are 19 and the 4 point enhancement
2 is for 13 to 24 firearms and if that's true, the total
3 for that level will be 22 giving the Court a guideline
4 range of 41 to 51 months. If that's what the Court
5 finds, the Government has no further argument other than
6 that.

7 THE COURT: All right. Mr. Montague, you have a
8 right to answer that. She says that the unlawful
9 possession of firearms in Level 18 -- this doesn't state
10 what I'm going to do but that number of firearms are
11 more than 12 and less than 25, add 4 and you come up
12 with 22 and the incarceration period is 31 to some other
13 months so you better answer that, and I'll make my
14 findings in the matter.

15 MR. MONTAGUE: My answer to it would be this, Your
16 Honor, would be the retention of the unmarked silencers
17 - the 19 unmarked silencers - resulted from a single
18 misinterpretation of law and should be treated as one.
19 Mr. Leasure testified it could have been 500 or 1,000
20 devices under the same category entirely innocently
21 retained as were the hundreds that he was not charged
22 under. Why he wasn't I don't know but the retention of
23 the firearms, of these silencers, these non-properly
24 working silencers should be treated as one weapon and
25 there be no enhancement.

1 And, of course, I think beyond that, the Court
2 should exercise its discretion. I suggested in one of
3 my pleadings that the Court consider a lesser included
4 offense which is failure to properly record firearms,
5 which is under 18 USC 912M, which is a misdemeanor at
6 offense Level 6 which is much more appropriate to this
7 case. I'm not going to say there was nothing wrong
8 here. I do think the Government has a right to regulate
9 these things; they are dangerous.

10 Certainly, we associate silencers with many
11 criminal activities, assassinations and things of that
12 kind that this Government certainly has a right to
13 control but here the appearance of heavy evil is just
14 not there.

15 THE COURT: I'm not going to file a written order
16 in the matter, so I will record for the record my
17 findings as they apply to this case. Upon the
18 conclusion of the evidence and the information set forth
19 in the trial order the Court dated something like
20 February 6th, the Court found the defendant guilty then
21 as to Count 1 which was the silencer count, 19 silencers
22 that were not registered at all and not in compliance
23 with the statute which requires them to be registered
24 with the firearms people by the close of business of the
25 second day after their manufacture. That's perfectly

1 clear to me. And while I understand Mr. Leasure may
2 have some trouble with that, I don't. He's found guilty
3 of a violation of Count 1.

4 I also had some -- as to Counts 2 and 3, the deal
5 with registration and the debate that surfaced between
6 Mr. Leasure and the firearms people as to whether or not
7 he was using a method of cancelling certain transfers
8 that he made to his accountant apparently over some
9 bankruptcy difficulty that he -- but that's -- they were
10 transferred to somebody named O'Quinn and when the --
11 whatever the problem -- the matter that had prompted
12 that transfer seemed not to have transpired, then the
13 effort was made to cancel those transfers by writing
14 void across the front of the transfer agreement that had
15 been acceded to by the firearms people.

16 And then the same thing would apply to Count 3 and
17 to the registration of a 22 pen pistol gun which is set
18 forth in Count 6. The argument made in Count 6 that the
19 pistol was not called a firearm it was called a weapon
20 is of no importance to me and I think that's a facetious
21 argument and I would overrule it on that basis.

22 But having heard the indictment of the
23 recordkeeping of the National Firearm Services that was
24 expressed in February of 1993 and having heard something
25 that was not brought up at trial that the head of the

1 registration division made a speech to all of his people
2 and said that the recordkeeping was 49 to 50 percent in
3 error and feeling as I do that from the testimony of
4 Mr. Schaible today that that information was fully
5 knowledgeable within the National Firearms Bureau at the
6 time it was made - it seems it was on closed circuit
7 television and then a transcription was made - and
8 hearing from him that at the time, whether it was in
9 October or November 1994, that this raised such a furor
10 within the bureau that Mr. Busey if was not fired but
11 that he "voluntarily" retired from his position so that
12 statement -- which nobody seems to know where he got his
13 figures from -- but that was not furnished to the
14 defendants in this case. And they would have had a
15 right to have brought that up to me as showing the
16 correctness of the firearms registration for their being
17 questioned by the top man in the registration bureau.

18 I don't say this to Miss Allen. I've known her for
19 a long time and she's said in court and it's in the
20 record that she knew nothing about this until she
21 received a packet from some place from the Department of
22 Justice, I believe, which indicated Busey's statement,
23 then an investigation was immediately ordered, and the
24 consequences of it. That statement and the question of
25 whether or not Mr. Busey's information was correct or

1 not should have been furnished to the defendant's
2 counsel, and its not being furnished seems to me to have
3 violated a precept under which we proceed.

4 For that reason I've thrown out all of those counts
5 of the indictment which deal in any manner upon the
6 active and registered numbers assigned to weapons and
7 that leaves us with the silencers. I have absolutely no
8 problem with the law in the case that when you make a
9 silencer, you've got to register it by five o'clock on
10 the end of the day following its manufacture. And so
11 the matter is before me for sentencing now on only Count
12 1 of the indictment that affects Mr. Leasure.

13 Mr. Montague, have Mr. Leasure step with you to the
14 lectern.

15 Mr. Leasure, the law requires that a judge of this
16 court give you an opportunity to make any statements
17 you'd like to make before I proceed to sentencing. It
18 does not require that you say anything. You have, in
19 fact, already testified both at the trial in chief and
20 at this sentencing hearing, but if there's anything
21 further you want to say, I'll be glad to hear from you.
22 Anything further?

23 THE DEFENDANT: I would like to say something, Your
24 Honor, and not take up too much of the Court's time. I
25 have it over here.

1 THE COURT: Go ahead. I'm not tired, Mr. Leasure.
2 To give you full benefit of the law, you have a right to
3 make any statement you'd like to make.

4 THE DEFENDANT: Thank you, sir.

5 MR. LEASURE: Your Honor, I had no criminal intent.
6 If I had, when the ATF came to my shop three days prior
7 to the raid and left the National Firearms printout of
8 the weapons that were supposed to be in my inventory, I
9 would have made up paperwork or whatever to get my
10 inventory to match theirs. But I knew that I had
11 completed my paperwork properly, and I knew in my heart
12 I had committed no crime. I felt any discrepancies with
13 BATF-could be worked out.

14 I cooperated fully. I left everything just the way
15 it was even though they had never stepped foot in the
16 manufacturing portion of my shop at that point in time.
17 I contacted them on two separate occasions to find out
18 what the status was on the case and on the things that
19 they seized from me. I was told they were waiting on
20 word from Washington, and during that time frame, I
21 basically went out of business.

22 As to Count 1, I truly interpreted the ATF
23 regulations book - the only book that I had in my
24 possession of 1980 and 1989 - to mean a serial number
25 was not required until it was sold, shipped, or

1 otherwise disposed of. This was the only regulation
2 book in print and the only one that I had in my
3 possession.

4 I, of course, now know it crystal clear that that's
5 not the way that it is and that I'm supposed to do it by
6 closing of the next business day. The next update that
7 was printed by ATF was in October of 1995. I was never
8 furnished with one of these updates. I had to receive
9 one from someone else; a friend of mine gave me one.

10 The Code Section 179.102 is what is practiced in
11 the industry, although no one was willing to testify to
12 that fact for fear of retaliation and prosecution. In
13 regard to the -- briefly, just the transfers to Carl
14 O'Quinn. There were transfers that were done to Carl
15 O'Quinn, who was my accountant at that time and the
16 person that I transferred these things to that were
17 voided and approved, that I was not indicted on that
18 were done in exactly the same way the others that I
19 furnished to the Court were done.

20 In closing, Your Honor, whenever I thought of
21 someone who was a convicted felon, I thought of a person
22 who committed a terrible crime, certainly not one that I
23 considered to be paperwork and a misinterpretation of
24 the law. I did not and have not knowingly committed a
25 crime and I did not have any criminal intent, and that's

1 all I have to say.

2 THE COURT: All right. Thank you, Mr. Leasure.
3 Normally, going strictly by the guidelines in the case
4 we would come up with the possession of silencers and it
5 being a violation of the statute would come into the
6 guidelines with a basic 18 points under 2K2.1(a)(5).
7 The unlawful possession of a firearm has a entry level
8 of 18.

9 And if I took into account the whole 19 of the
10 silencers, there would be added at least -- we would be
11 between 13 and 24 and you would add 4 points and that
12 would come up with a total of 22 for which the guideline
13 sentencing table would reach 41 to 51 months. But I'm
14 satisfied in the case not that there hasn't been a
15 violation, there has been so far as I'm concerned
16 clearly shown, but that the impact of the bundle of
17 silencers which were introduced as evidence in this
18 court range from little small implements to something of
19 considerable size and the finding of those in a cabinet,
20 as Mr. Leasure suggests, in a locked cabinet, and, of
21 course, at that point the violation had already
22 occurred.

23 But it seems to me that this matter falls under 5K2
24 of the guidelines and I quote it. It says that the
25 judge may depart from the guidelines and impose a

1 sentence outside of the guidelines, "if there exists an
2 aggravating or mitigating circumstance of a kind or to a
3 degree not adequately taken into consideration by the
4 sentencing commission in formulating the guidelines,
5 that should result in a sentence different from that
6 described." I think that's the case here.

7 I'd add one thing further in Mr. Leasure's favor,
8 the record wasn't written up totally in the case but as
9 I recall it, the sales that had been made by him had
10 been made to other Governments under prohibitions
11 granted by the United States or to the agencies of the
12 United States so that generally speaking there was a
13 great deal of scrutiny being applied to silencers and
14 their manufacture as indeed there should be because it's
15 certainly an implement that is used in covertness of the
16 most advanced sort.

I, therefore, will depart down by 5
17 points and come to -- well, depart by 9 points, that
18 comes to 13 which carries under the Sentencing Tables of
19 Criminal History Category 1, 12 to 18 months and
20 sentence him at the bottom of that to 12 months, \$50 for
21 the conviction of a felony, waive fine, three years
22 supervised release.

23 So to review that that would be that pursuant to
24 this order of the Court, John Daniel Leasure is hereby
25 committed to the custody of the United States Bureau of

1 Prison to be by them incarcerated for a period of 12
2 months. That he shall serve a term of supervised
3 release of three years upon his release from
4 incarceration. That if requested by the probation
5 people upon his release on supervised release, he would
6 take such tests for the use of any controlled substance
7 within a reasonable time period thereafter that should
8 be required of him.

9 You have a right of appeal, Mr. Leasure. If you
10 wish to appeal, you must notify the clerk of this court
11 in writing within ten days. If you do not have the
12 money to hire an attorney to prosecute an appeal and if
13 you fall within the statutes being provided, an attorney
14 would be appointed by the United States and paid by the
15 United States.

16 If you don't have the money to pay the cost of such
17 an appeal and if you fall within the statute they've
18 provided, that cost will be paid by the United States.
19 Where you would be incarcerated for this period of 12
20 months would be a matter that would have to be
21 determined by the Marshall's office, and I'll leave you
22 free on bond under the present orders of the Court to
23 report before 2 p.m. on June the 21st. I don't have a
24 calendar. Is that not on a Friday, Saturday, or Sunday?

25 MS. ALLEN: That's on a Friday, Your Honor.

1 MADAM CLERK: It is a Friday, Judge.

2 THE COURT: All right. The 20th, Thursday, to the
3 U.S. Marshall at Norfolk by two o'clock, June 20, 1996.
4 If a point of designation has been indicated by the
5 Department of Prisons and Bureau of Prisons at that
6 time, you would report to the warden of the prison so
7 designated before two o'clock of June 20th, 1996.

8 Now, I assume if he appeals -- I assume he's going
9 to appeal. What sort of bond is he presently on,
10 Mr. Montague?

11 MR. MONTAGUE: It is a monetary amount, Your Honor.
12 I don't recall.

13 THE COURT: Well, let me look. I'll find it.

14 MR. MONTAGUE: It's not a surety bond.

15 THE COURT: He's on an unsecured appearance bond in
16 the amount of \$10,000. If he appeals, I would require
17 that he have a secured bond for the \$10,000, but I would
18 leave him on bond pending that appeal, but I won't leave
19 him on a \$10,000 personal recognizance bond. He'll have
20 to come up with security if he wants to take advantage
21 of that.

22 MR. MONTAGUE: Understood.

23 THE COURT: All right. Have a seat. Hand this to
24 the probation officer. Miss Clerk, let me give you
25 these papers.

1 MS. ALLEN: Your Honor, just for the record, the
2 Government needs to object to the Court's ruling
3 regarding the downward departure.

4 THE COURT: I couldn't hear you.

5 MS. ALLEN: Just for the record, we're going to
6 object to your downward departure with respect to the --

7 THE COURT: Be my guest.

8 MS. ALLEN: Thank you.

9 THE COURT: This goes back. All right. Miss
10 Clerk, recess the court.

11
12 CERTIFICATION

13 I certify that the foregoing is a correct
14 transcript from the record of proceedings in the above-
15 entitled matter.

16 Diane Poulin
17 Diane Poulin, Court Reporter

6-29-96
Date