

## **Bureau of Alcohol, Tobacco, Firearms, and Explosives**

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ATF Framework for determining whether )  
Certain projectiles are “Primarily Intended )  
For Sporting Purposes” within the meaning )  
Of 18 U.S.C. 921(a)(17)(C) )

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### **Firearms Industry Consulting Group's Comments in Opposition to ATF’s Proposed Framework for Determining Whether Certain Projectiles Are “Primarily Intended for Sporting Purposes” Within the Meaning of 18 U.S.C. 921(a)(17)(C)**

On February 13, 2015, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF" or the "Agency") published a document called “ATF Framework for Determining Whether Certain Projectiles are ‘Primarily Intended for Sporting Purposes’ Within the Meaning of 18 U.S.C. 921(a)(17)(C)” ("Framework") on its website’s Firearms Industry page underneath the “News” tab, to institute this comment period with respect to the ATF’s proposed change in interpretation of “Primarily Intended for Sporting Purposes” pursuant to the Gun Control Act (“GCA”), 18 U.S.C. § 921(a)(17)(C).

The Firearms Industry Consulting Group ("FICG"), a division of Prince Law Offices, P.C., represents numerous individuals, gun clubs, and Federal Firearms Licensees ("FFLs") in Pennsylvania with regard to State law issues. Furthermore, in relation to federal issues, FICG represents numerous FFLs across the United States in all matters relating to firearms. FICG actively works to defend, preserve, and protect constitutional and statutory rights of firearms owners, including through Article I, Section 21 of the Pennsylvania Constitution and the Second Amendment to the United States Constitution. In this comment, FICG represents the interests of its respective clients.

FICG's purpose is:

To provide legal representation in the protection and defense of the Constitutions of Pennsylvania and the United States, especially with reference to the inalienable right of the individual citizen guaranteed by such Constitutions to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people may always be in a position to exercise their legitimate individual rights of self-preservation and defense of family, person, and property, as well as to serve effectively in the appropriate militia for the common defense of the Republic and the individual liberty of its citizens.

FICG's interest in this matter stems from its representation of numerous Pennsylvania citizens and FFLs nationwide, who would be harmed in their ability to lawfully pursue sporting activities and defend themselves, as well as possess certain kinds of projectiles and ammunition utilized for those purposes by the enactment of this proposal. Although the statute clearly speaks to a “sporting purpose,” this proposed Framework would also violate the right to self-defense, which the Supreme Court found in *Heller* falls within the protection of the Second Amendment. In response to the Framework, FICG offers this public comment for consideration.

FICG opposes the proposed Framework and specific classification of SS109/M855 as “armor piercing” for the reasons set forth below and in the Exhibits to this Comment incorporated herein by reference.

**I. ATF’S DISTORTS THE APPLICABLE STANDARD OF “PRIMARILY INTENDED...FOR USE” IN APPLYING IT TO THE SPORTING PURPOSES EXEMPTION**

ATF, in defining the phrase “primarily intended,” turns to the United States Supreme Court’s decision in Posters ‘N’ Things v. U.S., 511 U.S. 513 (1994). In *Posters ‘N’ Things v. U.S.*, the Court found that a federal statute defining “drug paraphernalia” as products “primarily intended...for use” in the consumption of controlled substances established an objective standard

for determining when a product constituted paraphernalia.<sup>1</sup> The Court stated that the objective construction of the phrase “primarily intended” is consistent with the natural reading of similar language in the definitional provisions of other federal criminal statutes.<sup>2</sup> The Court concluded that the phrase “primarily intended...for use” was to be understood objectively and refers generally to the item’s *likely* use.<sup>3</sup>

In the Framework, ATF claims that the “likely use” in the general community of any type of ammunition requires an examination of those cartridges in which armor piercing projectiles can be loaded and the handguns which can readily accept those cartridges.<sup>4</sup> ATF goes on to state that when the only readily available handgun that can accept a cartridge containing the projectile is objectively and primarily sporting, it may reasonably infer that the likely use of the projectile will follow suit.<sup>5</sup> Conversely, ATF states that if the objective design is not limited to primarily sporting purposes,<sup>6</sup> it may be reasonably inferred that the ammunition capable of use in such handguns is unlikely to be used primarily for sporting purposes.<sup>7</sup>

By limiting the first definition of armor piercing to ammunition that may be used in handguns, Congress recognized that the threat to officer safety generally corresponds to the type of firearm police officers are most likely to encounter on the streets.<sup>8</sup>

i. ATF’s definition of Sporting Purposes is Antiquated and Incorrect

In order to adequately provide feedback in relation to the Framework, the “sporting purposes” needs to be examined. The Framework states that in “administering these provisions

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<sup>1</sup> *Id.* at 521-522.

<sup>2</sup> *Id.* at 521.

<sup>3</sup> *Id.*

<sup>4</sup> Framework at 11.

<sup>5</sup> *Id.*

<sup>6</sup> ATF fails to consider self-defense purposes in its analysis, which the Supreme Court in *Heller* found to be at the core of the Second Amendment to the United States Constitution and which is discussed *infra*.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

of the GCA, ATF has consistently interpreted “sporting purposes” to include the traditional sports of hunting, competitive target shooting, and skeet and trap shooting.”<sup>9</sup>

While ATF does not specifically cite to any documents in which there were relevant discussions of “sporting purposes” in relation to ammunition, the Framework does point to several reports in relation to the importation of semiautomatic rifles.<sup>10</sup> The reports are titled: (1) “Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles”<sup>11</sup> (herein “Report A”), (2) “Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles”<sup>12</sup> (herein “Report B”), and “ATF Study on the Importability of Certain Shotguns”<sup>13</sup> (herein “Report C”).

a. “Sporting Purposes” as related to the importation of firearms reviewed under Report A

In the Report A, Section B discusses the “Scope of ‘Sporting Purposes’”.<sup>14</sup> The report indicates that ATF examined the statute, the legislative history surrounding the statute, applicable case law, the work of the original Firearms Evaluation Panel and prior interpretations by ATF.<sup>15</sup> There are three particular areas of concern with ATF’s interpretation of “sporting purposes” under Report A.

First, ATF refers to the 1968 Firearms Evaluation Panel’s determination<sup>16</sup> that one informal shooting activity, “plinking”, was not determined to be a legitimate sporting activity under the statute.<sup>17</sup> While the panel agreed that many persons participated in the activity and

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<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.*

<sup>11</sup> Attached as Exhibit A

<sup>12</sup> Attached as Exhibit B

<sup>13</sup> Attached as Exhibit C

<sup>14</sup> Report A at 8-9.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> Attached as Exhibit D

<sup>17</sup> *Id.* at 9.



much ammunition was expended in such endeavors, that it was primarily a pastime and could not be considered a sport for the purposes of importation.<sup>18</sup>

Second, ATF refers to the District Court case from Alabama, Gilbert Equipment Company, Inc. v. Higgins, 709 F.Supp. 1071 (S.D. Ala. 1989), to support ATF's definition of "sporting purposes". In *Higgins* the court reviewed the "sporting purpose" exemption for the importation of firearms. The decision notes that ATF determined "that bulls-eye or animal-like targets and shooting ball-shot or slugs are of a kind of "police combat" game and is not a "sport."<sup>19</sup> Yet, in 1982 ATF flipped its interpretation for a period of two years, finding that "police combat" games did constitute a sport, before reverting back to its previous interpretation in 1984.<sup>20</sup> Perhaps the most damning language to come from the opinion is:

According to the bureau, "police combat" competitions have only recently generated interest outside the military/law enforcement area, and had not by 1984—and still have not—gained general recognition as sports.<sup>21</sup>

Third, as the report was issued several decades prior to the decision in *Heller*, it fails to consider self-defense purposes, which are at the core of the Second Amendment and discussed *infra*.

b. "Sporting Purposes" as related to the importation of firearms reviewed under Report B

In Report B, ATF examines the same standards as noted in Report A.<sup>22</sup> However, ATF does note that there were comments received which urged them to find "practical shooting" as a sport for the purposes of 18 U.S.C. § 925(d)(3), in addition to material which showed that practical shooting was gaining popularity and had been governed by an organization sponsoring

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<sup>18</sup> See Exhibit D at 1-2.

<sup>19</sup> *Id.* at 1077.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Report B at 16-17.

national events since 1989.<sup>23</sup> The report notes that there is also an international organization for practical shooting.<sup>24</sup> ATF also notes that “While some may consider practical shooting a sport, *by its very nature it is closer to police/combat-style competition and is not comparable to the more traditional types of sports*, such as hunting and organized competitive target shooting. Therefore, we are not convinced that practical shooting does, in fact, constitute a sporting purpose”<sup>25</sup> (Emphasis added).

Further, this report was issued over a decade before the decision in *Heller* and lacks any analysis under self-defense purposes, as discussed *infra*.

c. “Sporting Purposes” as related to the importation of firearms reviewed under Report C

Report C echoes the “sporting purposes” analysis found in the previous two reports. It does contain an interesting notation that the working group did consider the popularity of United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC) to determine whether these events were “sporting purposes”.<sup>26</sup> The report concluded that since the study was on the importability of shotguns using it to determine whether practical shooting was “sporting” was inappropriate.<sup>27</sup>

Although this report was issued two years after the decision in *Heller*, the report lacks any analysis under self-defense purposes, as discussed *infra*.

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<sup>23</sup> *Id.* at 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Report C at Pg. iii

<sup>27</sup> *Id.*

ii. The Congressional Record Doesn't Agree as to Sporting Purpose

ATF cites the congressional record in Report A. It's apparent in the debate that there was a disagreement among the Senators as to the definition of "sporting purpose". The following exchange occurred between Senator Hansen and Senator Dodd:<sup>28</sup>

Mr. Hansen: If I understand the Senator correctly, he said that despite the fact a military weapon may be used in a sporting event, it did not, by that action, become a sporting rifle. Is that correct?

Mr. Dodd: That would seem right to me.

Mr. Hansen: With the Senator's own definition, I come back to my original question: What good reason is there for excluding foreign-produced firearms used for "sporting purpose"?

Mr. Dodd: We do not. We specifically make that exception. If a gun, a rifle, a shotgun, or a handgun is useful for a "sporting purpose" there is no prohibition against its importation.

Mr. Hansen: Does not the import section of this bill draw a distinction between foreign made and domestically produced firearms with regard to "sporting purpose"?

Mr. Dodd: Is the Senator talking about rifles and shotguns or handguns?

Mr. Hansen: Whatever kind of gun comes under the classification.

Mr. Dodd: As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.

Mr. Hansen: My question, then, to the distinguished Senator is this: What rationale is tenable or is reasonable to prohibit or restrict or in any way limit the importation of a gun, a copy or a very similar facsimile of which can be made, produced, and sold in this country?

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<sup>28</sup> 114 *Cong. Rec.* 27461-62 [1968]

It would appear that Senator Dodd “knew” what a sporting purpose was, yet was unable to define it. As the term “sporting purpose” is not defined in the statute, ATF has taken to interpreting the term how it, or the current administration, sees fit. Yet, ATF has failed in its duty to modify the definition of “sporting purpose” to comport with activities that are actually and generally recognized to be sporting activities.

iii. “Sporting Purposes” encompasses more activities than ATF would care to admit

In determining “sporting purposes” ATF has relied on interpretations stemming from 18 U.S.C. § 925(d)(3) which provides in the pertinent part:

**(d)** The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition----  
**(3)** is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and *is generally recognized as particularly suitable for or readily adaptable to sporting purposes...*

18 U.S.C. § 925(d)(3). (Emphasis added). There is no question that the traditional sporting activities mention (hunting, competitive target shooting, and skeet and trap shooting) fall into a “sporting purpose” analysis. However, ATF’s interpretation is far narrower than what a “generally recognized” sporting purpose is. As recently as 1998 (the last time ATF actually looked at the issue), ATF *still* has not recognized USPSA or IPSC as a sporting event and has neglected to even consider other shooting sports.

a. United States Practical Shooting Association (USPSA)

According to USPSA’s website, IPSC started in 1976 with USPSA following in 1984.<sup>29</sup> The website also notes that USPSA matches occur every week by nearly 400 affiliated clubs all over the United States.<sup>30</sup> It also touts that “For most people, practical shooting is pure sport

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<sup>29</sup> <http://www.uspsa.org/uspsa-about-history.php>

<sup>30</sup> *Id.*

conducted with little or no thought of the self-defense aspect of firearms use.”<sup>31</sup> USPSA, as of March 5, 2015, boasts over 24,000 members.<sup>32</sup> This figure is approximately 5,000 more members than the number of members ATF reported in Footnote 6 of Report C and shows that USPSA as a sport is growing. Non-members are also allowed to compete on a walk-in basis at local club matches.

USPSA has six divisions in which an individual may compete. They are Open Division, Limited Division, Limited-10 Division, Production Division, Single Stack Division, and Revolver Division.<sup>33</sup> USPSA also has a lengthy list of approved production division handguns on their website. The general requirement for a production division gun is that over 2000 units of that model were made.<sup>34</sup>

b. International Defensive Pistol Association (IDPA)

According to its website, IDPA was started in 1996 as a response to the desire of shooters worldwide.<sup>35</sup> It boasts a membership of over 22,000.<sup>36</sup> IDPA also allows non-members to walk on at local club matches. IDPA has over 300 affiliated local clubs that run matches on a weekly or monthly basis.<sup>37</sup>

IDPA has six regular divisions in which an individual may compete. They are Stock Service Pistol (SSP), Enhanced Service Pistol (ESP), Custom Defensive Pistol (CDP), Compact Carry Pistol (CCP), Revolver (REV) and Back Up Gun (BUG).<sup>38</sup> Rule 8.1.1.2 states:

Double action, double action only and striker fired semi-automatic firearms compete in SSP, CCP, or BUG. Any firearm that can be used

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<sup>31</sup> *Id.*

<sup>32</sup> FICG Attorney Adam Kraut called USPSA on March 5, 2015 at 2:59 PM and spoke to Karri who relayed the figure.

<sup>33</sup> USPSA Handgun Competition Rules February 2014 Appendix D1-D6

<sup>34</sup> <http://www.uspsa.org/uspsa-NROI-production-gunlist.php>

<sup>35</sup> <http://www.idpa.com/about/introduction>

<sup>36</sup> *Id.*

<sup>37</sup> <http://www.idpa.com/about/competitors>

<sup>38</sup> IDPA Rule 8.1.1.1

in SSP can be used in ESP or CDP, depending upon the cartridge used. Single action semi-automatic firearms compete in ESP, CCP, CDP, or BUG, depending upon physical size and cartridge used. Revolvers are classified by loading method and ammunition power and also compete in BUG depending upon physical size and cartridge used.<sup>39</sup>

c. 3-Gun

3-Gun's official governing and sanctioning body is the National 3-Gun Association (DBA "3-Gun Nation"). 3-Gun boasts over 100 affiliated clubs nationwide. The club series features over 4,000 active members and is growing, including youth competitors.<sup>40</sup> The regional series features 250-300 shooters over 2 days of competition and is sponsored by Remington Outdoor Company. 3-Gun Nation holds the regional series six times a year. Lastly, 3-Gun Nation operates the Pro Series which features the top competitive shooters in the world which is aired on Sportsman Channel and is sponsored by Armalite, NRA Sports, Leupold Optics and others. The Pro Series underlying mission is to shine a spotlight on *competitive* 3-Gun shooting in the goal to drive participation in the local and regional programs.

3-Guns club series rules include a minimum caliber of 9mm for handgun, .223 for rifle and a shotgun, which is chambered in 20 gauge or greater.<sup>41</sup> The Heavy Division requires a minimum caliber of .45 ACP for a handgun, .308 for a rifle and a 12 gauge shotgun.<sup>42</sup>

Brownell's Lady 3-Gun began in 2014 and was attended by 200 women from across the United States.<sup>43</sup> This year, the Lady 3-Gun Pro-Am Challenge West is open to 250 women to

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<sup>39</sup> IDPA Rule 8.1.1.2

<sup>40</sup> <http://shyanneroberts.com/>

<sup>41</sup> [http://3gunnation.com/club\\_series/rules](http://3gunnation.com/club_series/rules)

<sup>42</sup> *Id.*

<sup>43</sup> <http://www.lady3gun.com/>

compete in.<sup>44</sup> The Lady 3-Gun uses the 3-Gun Nation Regional Rules which have the same caliber requirements as listed above.<sup>45 46</sup>

3-Gun is the culmination of different competitive shooting sports being combined to create an all-encompassing league in which individuals are able to shoot utilizing a handgun, rifle and shotgun during one event.

- iv. Any “sporting purpose” analysis should consider a broader scope of activities to account for ATF’s failure to consider what the population considers “sporting”

In order to determine whether a projectile is “primarily intended for sporting purposes”, ATF needs to apply a correct analysis, including sports that have not been previously considered due to ATF’s failure in its duty to correctly review, investigate and categorize certain activities as “sporting”.

“Interestingly, combat-relevant shooting competitions using military- and combat suitable firearms are the historical progenitors of (and therefore enjoy a longer tradition than) “pure” target shooting in both Europe and the United States.”<sup>47</sup> The analysis of 18 U.S.C. § 925(d)(3) would indicate there are three factors when determining the “sporting purpose” of an item. That it is (1) generally recognized as (2) particularly suitable for (3) sporting purposes.<sup>48</sup>

ATF is once again urged to accept that practical shooting *is* generally recognized as a sporting event. ATF has arbitrarily determined over the course of the past 30 plus years that some organized shooting sports are legitimate (those which utilize bolt action rifles) but not others (those which utilize semi-automatic handguns), without any current review, analysis or investigation.

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<sup>44</sup> <http://www.lady3gun.com/match-info/>

<sup>45</sup> *Id.*

<sup>46</sup> [http://3gunnation.com/regionals/rules\\_awards](http://3gunnation.com/regionals/rules_awards)

<sup>47</sup> Guns in American Society: An Encyclopedia of History, Politics, Culture, and the Law, Second Edition. Gregg Lee Carter, Editor. Pg. 769

<sup>48</sup> *Id.*

What justifies privileging firearms particularly suitable for certain sports while discriminating against others?

Training or competition in combat weaponry (by oneself or with others) is a sport in any common sense of the term in which any other martial art—or fishing, hunting, and target shooting (pursued by oneself or with others)—are sports. It is a “legitimate” sport, as legitimate as hunting or pure target shooting, insofar as it is well institutionalized and pursued safely and lawfully. Purposes served by hunting include the pleasures it affords, its bounty, and sometimes basic sustenance. Purposes served by pure target shooting include the pleasures it affords and enhancements of marksmanship skills, sometimes for their own sake, sometimes for the further purpose of hunting. The purposes served by combat-weaponry training and competition include the pleasures they afford and the enhancement of a panoply of skills requisite to the safe, effective, and lawful defense of innocent life.<sup>49</sup>

Applying the proper analysis relating to “sporting purposes” it can only be concluded that the *likely* use of any projectile will be sporting in nature as there is a wide variety of *legitimate* shooting activities in which an individual can participate. ATF, through constraining the “sporting purposes” analysis, takes the position that the likely use of any ammunition would be that of a criminal nature.

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As the Congress did not include a definition of “sporting purpose”, perhaps because even the Congress couldn’t define it, ATF is responsible for modifying the definition to comport with a general understanding of the term. As outlined *supra*, it is clear that ATF has failed in its duty to do so.

If ATF were to appropriately apply the “primarily intended...for use” (likely use) standard to the “sporting purposes” definition, the result would be a much less restrictive analysis as to what would be granted an exemption in conformity with generally accepted shooting sports.

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<sup>49</sup> *Id.* at 772.



## II. ATF'S PROPOSED FRAMEWORK FOR CLASSIFYING .22 CALIBER PROJECTILES IS ILL CONCEIVED

ATF's proposed Framework to determine whether a .22 caliber projectile should be exempt under the "primarily intended for sporting purposes" exception is ill conceived. ATF's Framework states:

A .22 caliber projectile that otherwise would be classified as armor piercing ammunition under 18 U.S.C. 921(a)(17)(B) will be considered to be "primarily intended to be used for sporting purposes" under section 921(a)(17)(C) if the projectile weights 40 grains or less AND is loaded into a rimfire cartridge.<sup>50</sup>

ATF contends that .22 rimfire firearms and ammunition have been long recognized as primarily intended for sporting use and that .22 rimfire projectiles are usually 40 grains or lighter, with general suitability only for use against small game and at short distances.<sup>51</sup> What ATF fails to consider is that there are numerous sporting purposes for .22 caliber projectiles that weigh MORE than 40 grains and are *not* loaded into a rimfire cartridge.

ATF has not cited to any studies, reports or other sources which show that .22 caliber centerfire cartridges classified as armor piercing pose a significant threat to law enforcement officers. Nor has ATF demonstrated that there is a particular *firearm* that utilizes a .22 caliber centerfire cartridge that demonstrates a significant or likely threat to law enforcement officers. In fact, ATF has not provided or pointed to *any* statistics in this rulemaking that show .22 caliber projectiles pose a significant or even likely threat to law enforcement officers. In limiting .22 caliber projectiles that would otherwise be classified as armor piercing to those which are under 40 grains AND loaded into a rimfire cartridge, ATF has accomplished none of what it set out to do; thereby, making this entire rule making arbitrary and based upon a misleading and faulty premise.

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<sup>50</sup> Framework at 12.

<sup>51</sup> *Id.*

While ATF cites to Report A in support of this proposed method of determining whether a .22 caliber projectile is “primarily intended for sporting purposes,”<sup>52</sup> it is important to note, that in this context, the “sporting purposes” exemption was related to the importability of certain rifles AND was implemented into the law over fifteen (15) years prior to the passage of the Law Enforcement Officers Protection Act (LEOPA). In fact, 1984 was the first instance in which ATF claims to have taken any meaningful analysis under the “sporting purposes” test.<sup>53</sup>

ATF also concedes that one of the primary factors in the industry looking to alternative materials for projectiles is pressure for suitable hunting alternatives to lead ammunition.<sup>54</sup> Yet, in its proposed Framework, ATF does not take into consideration the many legitimate sporting purposes for .22 caliber projectiles which are heavier than 40 grains and loaded into centerfire cartridges.

If one were to employ the test that ATF asserts is controlling of “primarily intended...for use”, the objective analysis of these projectiles is quite the opposite of what ATF suggests it is. The EPA and many states are placing pressure on hunters and even target shooters to utilize ammunition which does not cause (what they claim to be) environmental contamination that is associated with a lead core. Additionally, there are a number of centerfire .22 caliber cartridges that different hunters and target shooters choose to employ for different purposes. Those include but are not limited to:

.220 Swift, .221 Fireball, .222 Remington, .222 Remington  
Magnum, .223 Remington, .223 WSSM, 5.56 Nato, .224  
Weatherby Magnum, .22-250 Remington and .22 Hornet.

Companies have developed projectiles which utilize a material that is arguably armor piercing by definition but have been shown to be used for varmint hunting and competitive

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.* at 6.

shooting while not having been shown to be a threat to law enforcement. Brass, one of the named materials in § 921(a)(17)(B), is an inexpensive metal (significantly cheaper than copper) that is environmentally friendly and a useful material in manufacturing ammunition used for hunting.<sup>55</sup> In fact, all of the above mentioned calibers are designed to be utilized in a rifle. Any pistol that a law enforcement officer *may* encounter is unlikely to be of the size or nature that Congress was concerned about when passing the LEOPA. And even more compelling is the common knowledge that the body armor law enforcement wears *is not* designed to stop a rifle round.<sup>56</sup>

For ATF to determine that any .22 caliber projectile made of one of the materials listed in § 921(a)(17)(B) that is not 40 grains or less AND loaded in a rimfire cartridge should be classified as armor piercing is a disingenuous look at the “primarily intended for sporting purposes” analysis. Utilizing the objective analysis the Court put forth in *Posters ‘N’ Things*, the projectile’s likely use would be that of sporting purposes. While ATF implies the likely use would be criminal in nature, ATF has failed to cite *ANY* instance .22 caliber centerfire projectile was utilized in crime, let alone a significant number to be of concern to law enforcement officers and their safety.

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As discussed *supra*, ATF employs a “sporting purpose” analysis based on historically held beliefs as to what constitutes a “sporting purpose.” In doing so, ATF fails in its duty to account for the explosion in popularity of firearms and shooting related activities.

To say that the “traditional sports” are the only ones which can be found to be a “sporting purpose” would be akin to saying that the First Amendment only applies to printing presses. As

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<sup>55</sup> See Exhibit E

<sup>56</sup> <http://www.nij.gov/topics/technology/body-armor/pages/welcome.aspx#types>

time passes activities and their definitions change and evolve. Accordingly, ATF is *urged* to adopt a more modern view of “sporting purposes” to include activities such as practical and recreational shooting.

## **II. ATF’S PROPOSED FRAMEWORK FOR CLASSIFYING ALL OTHER CALIBER PROJECTILES IS UNNECESSARILY RESTRICTIVE**

The Framework proposes the following should be used to categorize all other caliber projectiles:

Except as provided in Category I (.22 caliber rimfire), projectiles that otherwise would be classified as armor piercing ammunition will be presumed to be “primarily intended to be used for sporting purposes” under section 921(a)(17)(C) if the projectile is loaded into a cartridge for which the only handgun that is readily available in the ordinary channels of commercial trade is a single shot handgun. ATF nevertheless retains the discretion to deny any application for a “sporting purposes” exemption if substantial evidence exists that the ammunition is not primarily intended for such purposes. The term “single shot handgun” means a break-open or bolt action handgun that can accept only a single cartridge manually, and does not accept or use a magazine or other ammunition feeding device. The term does not include a pocket pistol or derringer-type firearm.<sup>57</sup>

Once again, ATF’s proposed framework misses the mark. There are numerous individuals who hunt, shoot competitively or engage in other, commonly understood to be, “sporting purposes” utilizing handguns, which are not single shot handguns or rifles and which utilize projectiles that are usable in handgun cartridges.

Sportsmen around the country employ revolvers and semiautomatic handguns for “sporting purposes” in order to take big game *or* to defend themselves against an animal threat while hunting. The calibers these firearms are chambered in produce enough muzzle velocity and energy that the soft body armor law enforcement employs would not stop such a round *regardless* of whether or not the material used to make the bullet was one of the enumerated ones

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<sup>57</sup> Framework at 12-13

in the statute. To suggest that the only handguns that use calibers larger than .22, which are suitable for sporting purposes, are single shot handguns is either an ill-informed opinion or disingenuous representation.

As ATF admits, some cartridges currently manufactured using non-restricted materials are lawful but the same cartridge with the same lethality, if manufactured from the listed materials, would not be entitled to an exemption under the Framework.<sup>58</sup> Given that the EPA and many states are pushing more and more for lead regulation in ammunition, this acknowledgement is troubling to say the least. If these non-restricted materials become regulated by the EPA and/or states, manufacturers will be forced to look for alternative materials, such as brass, which are regulated by Section 921(a)(17)(B). It would appear that ATF has already made up its mind in limiting the availability of cheaper materials to manufacturers who are looking to lead alternatives.

Applying the framework from *Posters 'N' Things* that ATF purports is controlling as to the “primarily intended...for use” language, it would seem that ATF takes the position that the “likely” use of any projectile which would be classified as armor piercing would be for criminal purposes. In taking such a position, ATF ignores the millions of law abiding gun owners who wish to outfit themselves in the most appropriate way to engage in sporting activities and instead chooses to classify the “likely” use of a projectile based on a small subset of individuals who are *not representative of firearms owners in any capacity*.

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The danger of ATF’s proposed framework is readily apparent. There are numerous individuals who employ a variety of handguns which are not single-shot for sporting purposes. ATF’s proposed framework would jeopardize projectiles designed and intended for rifles

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<sup>58</sup> Framework at 14.

because that same projectile could be loaded into a handgun cartridge. Furthermore, with the pressure from the EPA and states to regulate lead, manufacturers looking to alternative materials are restricted in development of new projectiles with a constrained framework like ATF proposes.

### **III. ATF HAS IMPROPERLY CLASSIFIED SS109 AND M855 CARTRIDGES AS ARMOR PIERCING SINCE 1986**

ATF has improperly classified SS109 and M855 cartridges as armor piercing since 1986.

ATF in its own solicitation of comments for this proposed framework states:

It is important to note that only projectiles that meet the statutory definition of ‘armor piercing’ – *i.e.*, those made out of the *specific* listed materials that may be used in a handgun – are subject to the statutory restrictions.” (Emphasis added).<sup>59</sup>

18 U.S.C. § 921(a)(17)(B) reads:

The term “armor piercing ammunition” means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

It is clear that as the statute was written, SS109 and M855 never and have never been regulated by § 921(a)(17)(B).

At the time § 921 was written and as ATF asserts in their proposal, AR-15 style pistols were not sold on the commercial market. However, there was at least one example of a pistol which utilized the .223/5.56 cartridge – the Gwinn Firearms Company (later sold as the

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<sup>59</sup> *Id.* at 1

Bushmaster Firearms International) Arm Pistol.<sup>60</sup> Even though there was at least one example of a handgun which utilized the .223/5.56 cartridge, neither statutory subsection applies.

Section 921(a)(17)(B)(i) does not control because SS109 and M855 do NOT satisfy the statutory definition as the bullet is not constructed “*entirely*...from one or a combination of....steel...”<sup>61</sup> (Emphasis added). The SS109 bullet is a Belgian design that uses as “closed-nose, copper-jacketed lead core.”<sup>62</sup> It has a steel penetrator which is “incorporated into the core during the manufacturing process”.<sup>63</sup> The penetrator is more of a “cup” rather than a steel rod.<sup>64</sup> <sup>65</sup> The lead core weighs approximately 32 grains, the steel penetrator weighing approximately 10 grains and the jacket accounting for the rest of the projectile weight weighing approximately 20 grains.<sup>66</sup>

The following subsection, § 921(a)(17)(B)(ii), creates even more requirements than the preceding sub section. It requires a projectile larger than .22 caliber which was *designed* and *intended* for use in a handgun.<sup>67</sup> Furthermore, the jacket of the bullet must weigh more than 25% of the total weight of the projectile.<sup>68</sup>

Neither SS109 nor M855 fall into either of those categories outlined above.

i. The Life and Times of the AR-15 Rifle, a brief history of America’s Rifle

The AR-15 was developed by Eugene Stoner, Robert Fremont and L. James Sullivan of the Armalite Division of Fairchild Engine and Airplane Corporation.<sup>69</sup> The rifle was designed

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<sup>60</sup> John Walter (25 March 2006). *Rifles of the World*. Krause Publications. Pg. 76

<sup>61</sup> 18 U.S.C. § 921(a)(17)(B)(i)

<sup>62</sup> <http://www.shootingillustrated.com/index.php/26153/green-tip-accuracy-test/>

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See Exhibit F

<sup>66</sup> FICG Attorney Adam Kraut called Jeff Eric (attorney for Vista Outdoor which owns Federal Premium Ammunition) on March 6, 2015 at 6:26 PM and was given these values during the phone call.

<sup>67</sup> 18 U.S.C. § 921(a)(17)(B)(ii)

<sup>68</sup> *Id.*

<sup>69</sup> <http://www.ar15.com/content/articles/history/birth.html>

around a slightly enlarged version of the .222 case, firing a 55gr projectile at 3300 FPS while deriving features from some rifles such as the Johnson Automatic Rifle, FN-FAL, British EM2 and MP44.<sup>70</sup> The gun was adopted by the military as the M16 and was noted for its accuracy.<sup>71</sup>

In December of 1959, Colt acquired the rights to the AR-15.<sup>72</sup> In 1963 Colt began to market the AR-15 to the civilian market.<sup>73</sup> To this day, the AR-15 is sold to civilians by a number of different companies. After the Assault Weapons Ban of 1994 expired, the industry saw an explosion of growth and interest in the AR-15 platform. By 2007, the New York Times published an article that stated AR-15s and similar guns were “the guns of choice for many hunters, target shooters and would-be home defenders.”<sup>74</sup> Production of AR-15s in the United States in 2000 was over 1.5 million units and in 2007-2010 was over 1.6 million units with 2009 having the highest production of 2.2 million units.<sup>75</sup> The popularity of the AR-15 Rifle is so immense that even Walmart sell them in select locations.<sup>76</sup>

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The AR-15 was designed as a rifle and has enjoyed a long history of civilian ownership in the United States as a “sporting” platform. At the time the statute was written, the cartridge was neither designed, nor intended to be used in a handgun. Simply put, SS109/M855 is not armor piercing by definition.

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> <http://www.ar15.com/content/articles/history/evolution.html>

<sup>73</sup> [http://www.militaryfactory.com/smallarms/detail.asp?smallarms\\_id=383](http://www.militaryfactory.com/smallarms/detail.asp?smallarms_id=383)

<sup>74</sup> <http://www.nrapublications.org/index.php/12717/the-ar-15-and-the-second-amendment-no-respect/>

<sup>75</sup> See Exhibit G

<sup>76</sup> <http://www.thefirearmblog.com/blog/2011/10/17/wal-mart-selling-ar-15s/>



**IV. ATF HAS IMPROPERLY EXEMPTED SS109 AND M855 AMMUNITION FROM BEING CLASSIFIED AS ARMOR PEIRCING UNDER THE “PRIMARYLY INTENDED FOR SPORTING PURPOSES” EXEMPTION SINCE 1986 BECAUSE SS109 AND M855 DO NOT MEET THE STATUTORY CRITERIA TO BE ARMOR PIERCING**

Even though ATF erroneously granted SS109 and M855 an exemption under the “primarily intended for sporting purposes”, it is not an exemption ATF had the power to make as SS109 and M855 are not controlled by § 921(a)(17)(B). In ATF’s original determination letter (“Determination Letter”) bearing the date “OCT 31 1986” and markings “LE:F:TE:EMO” addressed to Mr. John R. Hansen, Jr. ATF stated:

Examination of the SS109 (M855 Ball) ammunition indicates that the projectile is constructed using a full metal jacket and projectile cores constructed of a steel penetrator located forward of a lead core. Based on its construction, the SS109/M855 projectile meets the above definition of armor piercing ammunition.<sup>77</sup>

As shown in the preceding section, SS109 and M855 do not fit within either statutory criteria of armor piercing ammunition. As such, it was beyond the power of ATF to *grant* an exemption and is still beyond the power to now regulate SS109 and M855 as armor piercing ammunition as defined by § 921(a)(17)(B). IF, ATF is revoking the exemption because ATF recognizes it lacked the authority to grant such an exception as SS109 and M855 are not armor piercing, then ATF should release a statement to that effect as to not incite panic into the market place.

As the United States Supreme Court stated in Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 476 (1992)

The controlling principle in this case is the basic and unexceptional rule that courts must *give effect to the clear meaning of statutes as written*. The principle can at times come into some tension with another fundamental principle of our law, one requiring judicial deference to a reasonable statutory interpretation by an administering agency. Of course, a

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<sup>77</sup> See Exhibit H

reviewing court *should not* defer to an agency position which is contrary to an intent of Congress expressed in *unambiguous terms*. (Citations omitted).

As the LEOPA did not define the term “core” and ATF now has an affinity for utilizing dictionaries, perhaps the best way to examine whether or not ATF took a position which was contrary to an intent of Congress, is to examine the definition of “core”.

Dictionary.com defines “core” as a noun meaning “the central, innermost, or *most essential part of anything*.”<sup>78</sup> Google.com defines “core” as a noun meaning “the central or *most important part of something*.”<sup>79</sup> Merriam-Webster.com defines “core” as a noun meaning “a central and *often foundational part usually distinct* from the enveloping part by a difference in nature.”<sup>80</sup>

Looking at the dictionary definitions of “core” it can only be inferred that when Congress looked to define the projectile’s “core” it meant the *most essential part*. In the case of SS109/M855 that would most certainly *have* to be the lead core. As describe *supra* the steel penetrator is just that, a penetrator and not the most essential part of the projectile. Examining the component makeup of the projectile, the steel penetrator accounts for approximately 16% of the projectiles components while the lead core about 52%. To characterize the steel penetrator as a “core” is as humorous of a notion as declaring that the shouldering of an item causes it to be redesigned, even though no physical changes were made.

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As the statutory language is clear and unambiguous, ATF was precluded by Congress from being able to regulate SS109/M855 as it does not fit into the criteria provided by Congress to be classified as armor piercing.

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<sup>78</sup> <http://dictionary.reference.com/browse/core?s=t>

<sup>79</sup> <https://www.google.com/search?q=core&ie=utf-8&oe=utf-8#q=definition+of+core>

<sup>80</sup> <http://www.merriam-webster.com/dictionary/core>

**V. LEGISLATIVE HISTORY SHOWS THAT MEMBERS OF CONGRESS WERE CONCERNED ABOUT ARMOR PIERCING AMMUNITION BEING AVAILABLE TO CRIMINALS TO UTILIZE IN HANDGUNS**

In its solicitation for feedback, ATF states:

The primary goal of the LEOPA provisions regarding armor piercing ammunition was the protection of police officers from death or injury as the result of the *criminal use of handgun* ammunition capable of penetrating protective vests (soft body armor). (Emphasis added).<sup>81</sup>

Through the course of the legislative debate on the passage of the LEOPA there was a common theme that ran throughout the House and Senate debates – the advent of the bullet proof or bullet resistant vest and armor piercing ammunition.

The greatest threat of death in the line of duty comes from criminals armed with handguns. Fifty-three of the police officers already killed this year were killed with handguns. In recent years, principally to protect against the threat of handguns, we have equipped law enforcement officers with lightweight garments that can resist penetration by many types of ammunition fired from a handgun.<sup>82</sup>

and

No kevlar vest designed for continuous wear will reliably stop high-powered handgun bullets, and they will not stop any modern center-fire rifle bullet.<sup>83</sup>

ATF's own proposal states that:

In adopting a definition of armor piercing ammunition that included ammunition that “may” be used in a handgun...Congress expressly sought to protect law enforcement officers from the effects of a projectile that, although originally intended for a rifle, could be fired from a handgun.<sup>84</sup>

ATF continues that in determining whether ammunition is “primarily intended” for sporting purposes, the analysis should remain cognizant of the officer safety concern that the

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<sup>81</sup> Framework at 2.

<sup>82</sup> 131 Cong. Rec. H12221-01, 1985 WL 206265

<sup>83</sup> *Id.*

<sup>84</sup> Framework at 4.

LEOPA was designed to address – ammunition containing armor-defeating metals which could be fired from a relatively small and concealable firearm.<sup>85</sup>

ATF explains in its proposal that the SS109 and M855 cartridges are no longer exempt after applying its newly drafted framework for determining exemptions. In part ATF states that: “...SS109 and M855 cartridges may be used in a handgun other than a single-shot handgun,” and that “...AR-type handguns were not commercially available when the armor piercing ammunition exemption was granted in 1986.”<sup>86</sup>

What ATF fails to reconcile is by definition, as described in the two preceding sections, NEITHER SS109 nor M855 falls into either definition proscribed by the statute. Further, there was at least one handgun in the commercial marketplace that utilized the .223/5.56 round – the Gwinn Arms Company/Bushmaster Firearms, Inc. Arm Pistol.

In fact, the only references to handguns were that of handguns/pistol generally, “Saturday Night Special low-powered handguns”<sup>87</sup> and a variety of calibers from a proposed amendment which listed cartridges that were intended to be used in a handgun:

.25 (6.35mm) ACP, .256 Winchester Magnum, .30 (7.62mm) Luger, .32 Smith & Wesson, .32 Short Colt, .32 Long Colt, .32 ACP, .32 Automatic (7.65 mm), .32 Smith & Wesson Long, .32-20 Winchester, .357 Magnum, 9mm Luger, 9mm Winchester Magnum, .38 Smith & Wesson, .38 Special, .38 Short Colt, .38 Long Colt, .38 Automatic, .38 Super Auto, .38-40 Winchester, .41 Remington Magnum, .44 Smith & Wesson Special, .44 Russian, .44 Remington Magnum, .44-40 Winchester, .45 Colt, .45 ACP, .45 Auto Rim and .45 Winchester Magnum<sup>88</sup>

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<sup>85</sup> *Id.* at 7.

<sup>86</sup> *Id.* at 14-15.

<sup>87</sup> 131 Cong. Rec. H12221-01, 1985 WL 206265

<sup>88</sup> 132 Cong. Rec. S2135-02, 1986 WL 769762

The congressional record even speaks to testing performed against the new bullet proof or bullet resistant vests and mentions .38 Special, .357 Magnum and .45.<sup>89</sup> Yet, the only mention of .223 or 5.56 was in reference to a 55 grain hollow point penetrating a quarter inch thick piece of steel<sup>90</sup> and the Civilian Marksmanship Program (CMP)<sup>91</sup>.

Yet, in ATF's Determination Letter, even ATF recognized there were few handguns produced for the 5.56mm cartridge, and that the majority were specialized long range competition weapons.<sup>92</sup> Perhaps the most troubling aspect of ATF's position is that ATF states that the "application of the 'sporting purposes' exemption must be consistent with the goals of the statute: *to protect law enforcement officers.*"<sup>93</sup> Yet, ATF has not provided any information, reports, studies or other sources which indicate (1) criminals are utilizing AR-type pistols in crime, (2) SS109/M855 ammunition in crime, (3) AR-15 type pistols being used against law enforcement officers, or (4) SS109/M855 ammunition being used against law enforcement officers.

Further, after examining the congressional record, Congress was concerned with criminals utilizing small, concealable handguns which could be easily hidden on their person. Congress was concerned about Saturday Night Specials, cheap, small, handguns which could be stuck in one's pocket and easily hidden, not bulky, non-concealable, AR-15 type pistols.

In point of fact, based on the absence of any mention in the record, the Congress was not concerned with the Gwinn Arms Company/Bushmaster Firearms, Inc. Arm Pistol. Further, it appears clear based on the record that even if AR-15 type pistols were commercially available and extremely popular, the Congress would not have included them, as they did not fit the

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> 131 Cong. Rec. H12221-01, 1985 WL 206265

<sup>92</sup> Exhibit H at 2.

<sup>93</sup> Framework at 7.

criteria the Congress was seeking to prohibit, as AR-15 type pistols are not of the size for which Congress expressed concern. With a typical barrel length of 7.5” or greater and an overall length of at least 23” due to the buffer system *required* to function, the AR-15 type pistol is not the kind of handgun that an individual could easily conceal on his/her person. Even in the unlikely event that Congress would have intended to include an AR-15 type pistol, it was admitted in the record that “No kevlar vest designed for continuous wear ... will not stop any modern center-fire rifle bullet,”<sup>94</sup> which is what an AR-type pistol uses.

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ATF claims that in formulating the Framework, it was cognizant of the legislative intent of Congress. Given the congressional record shows that members of Congress were concerned about officer safety, but in relation to the type of threat they were *likely* to face, *e.g.* small, concealable handguns, ATF failed in its analysis of the Congress’ intent. There is nothing in the congressional record, which would indicate Congress was concerned about AR-15 style pistols or firearms of similar nature being employed against law enforcement in any regular fashion.

**VI. ATF HAS PROVIDED NO STATISTICAL EVIDENCE THAT AR-TYPE PISTOLS OR SS109/M855 AMMUNITION POSE A SIGNIFICANT THREAT TO LAW ENFORCEMENT OFFICERS**

ATF states in its proposal that:

...the Attorney General must determine that a specific type of armor piercing projectile does not pose a *significant* threat to law enforcement officers because the projectile at issue is “primarily intended” for use in shooting sports, and is therefore unlikely to be encountered by law enforcement officers on the streets. (Emphasis added).<sup>95</sup>

Yet, in revoking the unwarranted exemption for SS109 and M855, ATF does not point to any statistical data showing that SS109 or M855 poses ANY significant threat to law

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<sup>94</sup> *Id.*

<sup>95</sup> Framework at 7-8.

enforcement. It was conceded in 1985 that a rifle round would not be stopped by the soft armor police were utilizing at the time.

From 2004-2013 there were a total of 474 officers who were *feloniously* killed with firearms.<sup>96</sup> The FBI's statistics include the type of firearm and size of ammunition. Of those 474 officers who were feloniously killed in the line of duty, 345 were killed with a handgun.<sup>97</sup> Out of those 345 fatalities which were a direct result of the use of a handgun, not one was chambered in .223 or 5.56.<sup>98</sup>

In only 308 of those 474 fatalities was the officer wearing body armor.<sup>99</sup> And of those 308 instances where the officer was wearing body armor, 212 instances involved a fatal wound delivered to the head or neck/throat area.<sup>100</sup> In 94 of those instances the officer was struck in the torso area.<sup>101</sup> But in only 18 of those 94 instances did the round penetrate through the officer's vest, including one instance where the vest failed.<sup>102</sup> The remaining 76 fatalities, which occurred due to a wound in the torso area, where the bullet entered between the side panels of the vest, through an armhole or should area of the vest, or above the vest or below the vest, in areas where the vest provides no protection *regardless* of the round.<sup>103</sup>

Most perplexing about the shift by ATF regarding the classification of SS109/M855 is that the statistics do not show a .223 or 5.56 round playing any significant threat to law

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<sup>96</sup> [http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table\\_35\\_leos\\_fk\\_with\\_firearms\\_type\\_of\\_firearm\\_and\\_size\\_of\\_ammunition\\_2004-2013.xls](http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table_35_leos_fk_with_firearms_type_of_firearm_and_size_of_ammunition_2004-2013.xls)

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> [http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table\\_38\\_leos\\_fk\\_with\\_fas\\_location\\_of\\_fatal\\_firearm\\_wound\\_and\\_number\\_of\\_vos\\_wearing\\_body\\_armor\\_2004-2013.xls](http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table_38_leos_fk_with_fas_location_of_fatal_firearm_wound_and_number_of_vos_wearing_body_armor_2004-2013.xls)

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> [http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table\\_40\\_leos\\_fk\\_with\\_fas\\_while\\_wearing\\_body\\_armor\\_point\\_of\\_entry\\_for\\_torso\\_wounds\\_2004-2013.xls](http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table_40_leos_fk_with_fas_while_wearing_body_armor_point_of_entry_for_torso_wounds_2004-2013.xls)

<sup>103</sup> *Id.*

enforcement, especially out of a handgun, which is what the LEOPA congressional debates revolved around. Out of the 18 officers who lost their lives in the line of duty because a bullet penetrated their vest between 2004 and 2013 only three instances were due to a .223 or 5.56 round, all of which were fired from rifles.<sup>104</sup>

Even the police disagree with ATF's assessment that SS109/M855 poses a risk to law enforcement officers. The director of the Washington office of the Fraternal Order of Police, the world's *largest* organization of sworn law enforcement officers consisting of more than 325,000 members, said "Any ammunition is of concern to police in the wrong hands, but this specific round has historically not posed a law enforcement problem."<sup>105</sup> Sheriff Youngblood of Kern County California has said that while there are numerous rounds that can penetrate an officer's vest, the mere existence of it, does not, in and of itself, justify a ban.<sup>106</sup>

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To say that SS109 or M855 poses a significant threat to law enforcement is at best misleading as there is no statistical data to back such a claim. Law enforcement officers and associations have also publically stated that SS109/M855 does not pose law enforcement a significant risk.

## **VII. THE SOFT BODY ARMOR EMPLOYED BY LAW ENFORCEMENT ON A DAILY BASIS IS NOT RATED TO PROTECT AGAINST RIFLE CALIBERS REGARDLESS OF WHETHER THE ROUND IS "ARMOR PIERCING"**

The soft body armor that law enforcement employs on a daily basis around the country is rated by the National Institute of Justice (NIJ) with a body armor classification of Type IIA, II or

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<sup>104</sup> [http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table\\_41\\_leos\\_fk\\_with\\_fas\\_while\\_wearing\\_body\\_armor\\_type\\_of\\_fa\\_and\\_size\\_of\\_ammo\\_penetrating\\_vo\\_armor\\_2004-2013.xls](http://www.fbi.gov/about-us/cjis/ucr/leoka/2013/tables/table_41_leos_fk_with_fas_while_wearing_body_armor_type_of_fa_and_size_of_ammo_penetrating_vo_armor_2004-2013.xls)

<sup>105</sup> <http://m.washingtonexaminer.com/police-say-ar-15-bullet-up-for-ban-is-not-a-threat-counter-att-white-house/article/2560964#.VPXltbmeEoA.twitter>

<sup>106</sup> <http://www.breitbart.com/california/2015/03/05/ca-sheriff-ar-15-ammo-ban-a-solution-to-a-non-existent-problem/>



IIIA. These armor classifications are designed to stop most handgun ammunition including ammunition that is used by law enforcement and higher-powered revolvers. However, these armors are NOT designed to protect against rifle rounds.<sup>107</sup>

Even though ATF erroneously believes that SS109 and M855 is “armor piercing,” by statutory definition it is not. Regardless, as pointed out in the congressional record, a standard 55gr .223 bullet could penetrate body armor officers were being issued. To this day, no soft armor has been developed which could stop a threat from a rifle round that could be employed by law enforcement.

Further, the argument that the prevalence of AR-15 type pistols in the marketplace poses an increased risk to law enforcement is disingenuous. As previously discussed, at the time of the passage of the LEOPA, there was already a pistol on the market which was capable of firing a .223/5.56 cartridge.

#### **VIII. AR-TYPE PISTOLS UTILIZE SHORT BARRELS WHICH ARE INEFFECTIVE FOR THE .223/5.56 CARTRIDGE M855 WAS DESIGNED FOR**

ATF also conveniently ignores that .223/5.56 quickly bleeds velocity as the barrel length is shortened making the round less effective. In a study published on sadefensejournal.com by Dr. Philip H. Dater & Jason Wong, it was found that decreased velocity of out barrels much shorter than 14.5 inches would have a variety of undesirable effects, including significantly decreased projectile kinetic energy, decreased ability to create a significant wound channel and would reach a point of diminishing returns where the lethality of the projectile comes into question.<sup>108</sup>

The authors of the study note that the maximum velocity for the M855 projectile (which was used for all of the testing) occurred in a 20 inch barrel, which to the authors was no surprise

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<sup>107</sup> See Exhibit I

<sup>108</sup> <http://www.sadefensejournal.com/wp/?p=1093&page=2>

since the cartridge was designed for that barrel length.<sup>109</sup> The authors also found that the velocity of the round dropped significantly as length decreased, especially in barrels shorter than 10 inches.<sup>110 111</sup> The authors concluded that when the M855 projectile travels below 2,500 feet per second it would not produce a lethal wound channel when impacting a target.<sup>112</sup>

#### **VIII. CRIMINAL CHARGING IMPLICATIONS FOR THE CHANGE IN CLASSIFICATION OF SS109 AND M855 BY INDIVIDUALS WHO POSSESS SS109 AND M855 IN JURISDICTIONS THAT HAVE OUTLAWED ARMOR PIERCING AMMUNITION**

The Framework states:

Because it is legally permissible to possess armor piercing ammunition under current law, withdrawing the exemption will not place individuals in criminal possession of armor piercing ammunition.<sup>113</sup>

If ATF mistakenly believes it has the authority to remove any sort of sporting purpose exemption that was not proper when first determined and is not taking the position that the ammunition never met the statutory criteria of armor piercing under the § 921(a)(17)(B), then ATF has put thousands of individuals at risk of prosecution at the state level even though ATF has stated that this reclassification will not place individuals in criminal possession of armor piercing ammunition.

i. Illinois Compiled Statutes Annotated 5/24-2.1 Unlawful Use of Firearm Projectiles

(a) A person commits the offense of unlawful use of firearm projectiles when he or she knowingly manufactures, sells, purchases, possesses, or carries any armor piercing bullet...

For the purposes of this Section:

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<sup>109</sup> <http://www.sadefensejournal.com/wp/?p=1093>

<sup>110</sup> *Id.*

<sup>111</sup> *See* Exhibit J

<sup>112</sup> *Id.*

<sup>113</sup> Framework at 15.

“Armor piercing bullet” means any handgun bullet or handgun ammunition with projectiles or projectile cores constructed entirely (excluding the presence of traces of other substances) from tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium, or fully jacketed bullets larger than 22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25% of the total weight of the projectile, and excluding those handgun projectiles whose cores are composed of soft materials such as lead or lead alloys, zinc or zinc alloys, frangible projectiles designed primarily for sporting purposes, and any other projectiles or projectile cores that the U. S. Secretary of the Treasury finds to be primarily intended to be used for sporting purposes or industrial purposes or that otherwise does not constitute “armor piercing ammunition” as that term is defined by federal law.

Illinois residents should be concerned about the reclassification of SS109 and M855. It would seem that the wording of their statute would implicate SS109 and M855 as handgun ammunition (it mentions nothing about being primarily intended for use in a rifle) and as such, since ATF is taking the position that SS109/M855 meets the definition of armor piercing and are planning to remove the sporting purposes exemption, it is very possible that anyone in possession of SS109 or M855 would find themselves being prosecuted under Illinois’ Criminal Offenses code. Being found guilty under this section, for each round of ammunition or projectile, would result in a Class 3 felony.<sup>114</sup> Class 3 felonies are punishable by two to five years imprisonment<sup>115</sup> and a fine of up to \$25,000.<sup>116</sup>

ii. Kentucky Revised Statutes Annotated KRS § 237.060 Definitions for KRS 237.060 to 237.090 and certain other sections

The following definitions apply in KRS 237.060 to 237.090  
...unless the context otherwise requires:

(7) “Armor-piercing ammunition” means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from

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<sup>114</sup> 720 ILCS 5/24-2.1(d)

<sup>115</sup> 730 ILCS 5/5-4.5-40

<sup>116</sup> 730 ILCS 5/5-4.5-50

one (1) or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. “Armor piercing ammunition” does not include shotgun shot required by federal or state environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary of the Treasury of the United States finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary of the Treasury of the United States finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

Kentucky’s definition of armor piercing ammunition follows that of federal law. Unless Kentucky’s courts were to determine that ATF has erroneously classified SS109/M855 as armor piercing, the removal of the sporting purposes exemption would open up Kentucky residents to liability, for each round of ammunition or projectile, if they were to manufacture, sell, deliver, transfer or import any more of it with the penalty being a Class D felony for the first offense and Class C felony for each subsequent offense.<sup>117</sup> Additionally, their definitions section does not define manufacture, which could lead to implications for those who have SS109 projectiles and reload their own ammunition. Class D felonies are punishable by one to five years imprisonment and Class C felonies are punishable by five to ten years imprisonment.<sup>118</sup>

iii. Maine Revised Statutes Annotated 17-A M.R.S.A. §1056 Possession of Armor-Piercing Ammunition

2. As used in this chapter, “armor-piercing ammunition” means a projectile or projectile core that may be used in a handgun and that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper or depleted uranium, including but not limited to ammunition commonly known as KTW ammunition. “Armor-piercing ammunition” does not include shotgun shot required by federal or state environmental or game laws, rules or regulations for hunting purposes, a frangible projectile designed for target shooting or any projectile or projectile core found by the United States Secretary of the Treasury or the secretary's delegate,

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<sup>117</sup> KRS § 237.080

<sup>118</sup> KRS § 532.060

pursuant to 27 Code of Federal Regulations, Section 178.148 or Section 178.149, to be:

A. Primarily intended to be used for sporting purposes; ...

Maine also borrows from the federal language to create its restriction on armor piercing ammunition. Once again, the reclassification of SS109/M855 puts residents at risk of violating a statute, especially if Maine takes the same position that ATF is taking regarding SS109/M855's core. Possession of armor piercing ammunition in Maine is a Class C crime.<sup>119</sup> The punishment in Maine for a Class C crime is up to five years imprisonment<sup>120</sup> and up to \$5,000 in fines,<sup>121</sup> for each round of ammunition or projectile.

iv. Michigan Compiled Laws Annotated 750.224c Armor Piercing Ammunition; Manufacture, distribution, sale or use prohibited

(1) Except as provided in subsection (2), a person shall not manufacture, distribute, sell, or use armor piercing ammunition in this state. A person who willfully violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$2,000.00, or both.

(2) This section does not apply to either of the following:

(a) A person who manufactures, distributes, sells, or uses armor piercing ammunition in this state, if that manufacture, distribution, sale, or use is not in violation of chapter 44 of title 18 of the United States Code.

(3) As used in this section:

(a) "Armor piercing ammunition" means a projectile or projectile core which may be used in a pistol and which is constructed entirely, excluding the presence of traces of other substances, of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or a combination of tungsten alloys, steel, iron, brass, bronze, or beryllium copper. Armor piercing ammunition does not include any of the following:

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<sup>119</sup> 17-A M.R.S.A § 1056(3)

<sup>120</sup> 17-A M.R.S.A § 1252(2)

<sup>121</sup> 17-A M.R.S.A § 1301(1-A)

(iii) A projectile that the director of the department of state police finds is primarily intended to be used for sporting purposes.

Michigan's statute mirrors that of federal law closely. It does allow for the State Police to grant a "primarily intended to be used for sporting purposes" exemption. However, the way the statute is written, if that exemption isn't granted and ATF reclassifies SS109/M855, individuals in Michigan will be at risk of violating this statute for using SS109/M855 and would be subjected to the possibility of being found guilty of a felony with a fine of up to \$2,000 and up to four years imprisonment or both, for each round of ammunition or projectile.

v. California Penal Code § 16660: Definitions

As used in this part, "handgun ammunition designed primarily to penetrate metal or armor" means any ammunition, except a shotgun shell or ammunition primarily designed for use in a rifle, that is designed primarily to penetrate a body vest or body shield, and has either of the following characteristics:

(a) Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness.

In California, it would not be a stretch for the State to argue that with the ever emerging popularity of the AR-15 type pistol platform the .223/5.56 cartridge is now no longer designed primarily for use in a rifle. These individuals may find themselves at risk of being prosecuted for possessing armor piercing ammunition if California takes the same approach ATF does to SS109/M855. The punishment in California for possession of handgun ammunition that is found

to be primarily intended to penetrate metal or armor is imprisonment of not more than one (1) year or a fine of \$5,000 or both,<sup>122</sup> for each round of ammunition or projectile.

Additionally, it is worth noting that ATF specifically cites to the California Condor in its Framework as an endangered species who is at risk from lead contamination of “gut piles”.<sup>123</sup> By exempting these new cartridges, which utilize projectiles from the enumerated materials list, an individual in California would have the opportunity to argue that the intended purpose was indeed for sporting purposes and would allow them the opportunity to have their choice of effective ammunition.

vi. West’s Annotated Mississippi Code § 97-37-31. Silencers and Armor Piercing Ammunition; Prohibition and Registration

It shall be unlawful for any person, persons, corporation or manufacturing establishment, not duly authorized under federal law, to make, manufacture, sell or possess any instrument or device which, if used on firearms of any kind, will arrest or muffle the report of said firearm when shot or fired or armor piercing ammunition as defined in federal law. Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in the penitentiary not more than thirty (30) days, or both. All such instruments or devices shall be registered with the Department of Public Safety and any law enforcement agency in possession of such instruments or devices shall submit an annual inventory of such instruments and devices to the Department of Public Safety. The Commissioner of Public Safety shall document the information required by this section.

Mississippi makes it illegal for its residents to make, manufacture, sell or possess any armor piercing ammunition as defined in federal law. By reclassifying SS109/M855 to armor piercing, Mississippi residents are now at risk of being prosecuted and found guilty of a misdemeanor which can be penalized by fines up to \$500 and imprisonment of 30 days in a penitentiary or both, for each round of ammunition or projectile.

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<sup>122</sup> California Penal Code § 30315

<sup>123</sup> Framework, Pg. 6

vii. West's General Laws of Rhode Island Annotated Gen.Laws 1956, § 11-47-20.1  
Armor-piercing Bullets

It shall be unlawful within this state for any person to import, manufacture, sell, purchase, or otherwise transfer any bullets which have steel inner cores or cores of equivalent hardness and truncated cones and which are designed for use in pistols as armor-piercing or metal-piercing bullets. Any person who violates the provisions of this section shall be punished by imprisonment for not more than three (3) years, or a fine of not more than five thousand dollars (\$5,000), or both. This section shall not apply to the purchase of those bullets by the Rhode Island State Police, by any city or town police department of the state of Rhode Island, or by the department of environmental management for display as a part of a firearms training course under its auspices.

The reclassification of SS109/M855 might cause some concerns in Rhode Island. Again, there is the risk of an unscrupulous prosecutor attempting to classify SS109/M855 as being designed for use in a pistol with the rising popularity of AR-type pistols. Having been classified as primarily intended for sporting purposes might have allowed residents to argue that SS109/M855 was not designed to be armor-piercing or metal-piercing. With the reclassification, that argument is weakened and potentially puts residents at risk of prosecution for each round of ammunition or projectile.

\* \* \*

ATF needs to consider the possibility that numerous citizens who were able to use, possess, sell, transfer, buy, make and manufacture SS109/M855 might now be considered criminals in their respective states due to the reclassification and who have no opportunity or not *ample* opportunity to dispose of what may be considered contraband under state law.

Furthermore, this would likely constitute a taking under the Fifth Amendment to the United States Constitution, as ATF would be extinguishing a property interest that an individual currently has in their property, *e.g.* their ammunition and projectiles.



**X. ATF DID NOT MAKE AVAILABLE THE UNDERLYING CONGRESSIONAL RECORD, REPORTS AND DOCUMENTS UPON WHICH IT RELIED IN PURPORTEDLY FORMULATING A NEW FRAMEWORK**

If ATF wished for individuals to be able to give meaningful comments on its proposed framework, ATF would have made available the underlying Congressional Record, reports and other documents that it references in its Framework. By not doing so, ATF denied individuals the ability to make informed opinions as to the proposed Framework and the opportunity to draft meaningful comments. None of these records, reports or documents were or are available directly from ATF's website. When FICG inquired as to the availability of obtaining a copy of the Determination Letter, FICG was told to submit a Freedom of Information Request (FOIA).<sup>124</sup> Several FICG attorneys have FOIA requests outstanding over a year and had FICG submitted a FOIA request for the Determination Letter, it would not have been processed in time to provide with this Comment.

ATF also failed to include the Determination Letter on which it erroneously classified SS109/M855 for public viewing. At the time of the drafting of this section, it is readily apparent that a number of individuals have already spotted this issue. However, by denying those individuals the opportunity to see that ATF was *clearly in error* in its original determination, ATF has denied those individuals the ability to object to the reclassification in a *meaningful* manner.

The original documents for which ATF solicited responses from industry members, law enforcement, etc. were not made available for inspection or viewing during this comment period. ATF also did not provide any notes, minutes, etc. of any of the meetings which were held during

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<sup>124</sup> FICG Member Howard Wolfe contacted Denise Brown via phone on February 20, 2015 and received a voicemail from her on February 21, 2015.

the meetings it references in the Framework.<sup>125 126</sup> Denial of access to this material means that the *public* is unable to see who raised what concerns at these meetings and provide meaningful comments.

ATF's reliance on the Congressional history reflects the importance that ATF ascribes to the legislative intent; yet, it fails to provide the public with an opportunity to review the entire Congressional debate on this topic, instead of the snippets that it chooses to restate and which support its contention. An internet search for these debates yields a result from archive.org, which was the only site that readily made the debates available and would be accessible to the general public with internet access.<sup>127</sup>

In order for an individual to find the Congressional Record for the days on which debates or discussion were had, that person would have had to browse through hundreds of pages of digitalized micro fiches, a task which would be arduous, dissuading and time consuming. This task is hardly what an individual being asked to provide feedback on a proposed idea should be required to do, especially when ATF *relied* on that information and was required to *provide* such underlying information.

Therefore, the public is left questioning the quotes restated and the context in which they were provided.<sup>128</sup>

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<sup>125</sup> Missing from ATF's website was a document "dad-richardson-opening-statement-at-ap-ammunition-listening-meeting.pdf". It is possible that those remarks are the same which are noted in the following footnote but there is no way of knowing for sure. A Google.com search did not yield any positive results for the actual document. The document was located at: <http://www.atf.gov/firearms/industry/dad-richardson-opening-statement-at-ap-ammunition-listening-meeting.pdf>

<sup>126</sup> After searching over 80 pages from a thread posted on AR15.com relating to ATF's Framework, a poster provided a link to an article from Small Arms Review which contained the opening remarks from Marvin Richardson, the new ATF Deputy Assistant Director of the Office of Enforcement Programs and Services which were delivered to the firearms industry trade group portion of the meeting. The date is unlisted but it is believed to have been from the Fall 2012 time period. <http://smallarmsreview.com/display.article.cfm?idarticles=2003>

<sup>127</sup> <https://archive.org/details/congressionalrec13225unit>

<sup>128</sup> The veracity of the ATF is questionable given its past history of "Institutional Perjury" before the courts. *See infra*, Section II, Subsection C.

i. ATF Failed to Describe a Single Situation Illustrating the Problem it Purports to Address; The Entire Framework Seems to Rest on a False Premise

In the Framework, ATF did not identify a single instance where an armor piercing projectile was used against law enforcement officer in any context. More importantly, ATF did not identify a single instance where the proposed changes to determine whether a projectile is “primarily intended for sporting purposes” would have any implications as to officer safety. Indeed, such examples are completely absent from the Framework, likely because such incidents would be rare to non-existent.

As ATF has failed to provide any examples where the Framework and reclassification of SS109/M855 would have prevent a law enforcement officer from being killed, there is simply *no evidence of any problem* that exists with the way the exemption was granted prior to this proposed change. In fact, the only problem is that the “sporting purposes” definition needs to be expanded to comport with self-defense purposes and what individuals *commonly* understand to be sporting (to include practical and regular target shooting).

ii. ATF's Prior Lack of Candor Demonstrates a Heightened Need for Procedural Regularity

The procedural irregularities in this proceeding would undermine the efforts of an agency with a sterling reputation for fairness and candor. ATF has a well-documented record of "spinning" facts and engaging in outright deception of the courts, Congress, and the public. Examples of such conduct can be seen in its regulation of NFA firearms as detailed in the Motion in Limine filed in *United States v. Friesen*, CR-08-041-L (W.D. Okla. Mar. 19, 2009).<sup>129</sup> In light of that record, there is an even greater need for ATF to provide the underlying documents that would permit scrutiny of whether it has fairly characterized issues in the Framework.

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<sup>129</sup> See Exhibit K

a. ATF's "Institutional Perjury" Before the Courts

ATF's NFA Branch Chief, Thomas Busey, advised ATF employees in the course of a training program that the National Firearms Registration and Transfer Record ("NFRTR") database had an error rate "between 49 and 50 percent" in 1994.<sup>130</sup> Yet, despite acknowledging such a high error rate, he observed that "when we testify in court, we testify that the database is 100 percent accurate. That's what we testify to, and we will always testify to that."<sup>131</sup> Judges have overturned their own imposition of criminal convictions upon learning of this information,<sup>132</sup> information that should have routinely been provided to defense counsel in advance of trial as *Brady* material.<sup>133 134</sup> It is difficult to imagine a more powerful admission that an agency had knowingly, repeatedly misled courts.

This blatant "institutional perjury" took place not only in the context of criminal prosecutions but also in support of numerous probable cause showings for search warrants. Indeed, NFA Branch Chief Busey expressly addressed that situation. Despite acknowledging an NFRTR error rate of 49 to 50 percent, he told his ATF audience "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 [NFA firearm]. I've heard that happen."<sup>135</sup>

Using data obtained from ATF in response to FOIA requests, Eric M. Larson demonstrated that ATF apparently had added registrations to the NFRTR years after the fact,

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<sup>130</sup> See Exhibit L

<sup>131</sup> *Id.*

<sup>132</sup> See, e.g. *Id.* at 16-17

<sup>133</sup> In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court required that government investigators and prosecutors provide criminal defendants with potentially exculpatory information.

<sup>134</sup> See also Exhibit L at 6.

<sup>135</sup> *Id.* at 15.

reflecting the correction of errors apparently never counted as errors.<sup>136</sup> While reassuring courts as to the accuracy of the NFRTR, at the same time ATF seemed to be adding missing information to the database when confronted with approved forms that had not been recorded in the database.<sup>137</sup> As a result of the questions raised by Mr. Larson, both ATF and the Treasury Department Inspector General conducted investigations.<sup>138</sup>

In the course of the resulting investigations ATF's Gary Schaible recanted sworn testimony he had given years earlier in a criminal prosecution.<sup>139</sup> The Inspector General's October 1998 report rejected Mr. Schaible's effort to explain away his prior sworn testimony, concluding: "National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and number of records destroyed."<sup>140</sup> It is difficult to understand how ATF could routinely provide Certificates of Nonexistence of a Record ("CNRs") to courts without disclosing that an unknown number of records were destroyed rather than processed for the NFRTR.<sup>141</sup>

b. ATF's Deception in Congressional Oversight

In response to a Congressional inquiry, a DOJ Inspector General advised that a request for documents that reflected errors in the NFRTR had been "fully processed" when, in fact, the documents had merely been sent to another component -- ATF itself -- so as to delay disclosure.<sup>142</sup> Moreover, ATF changed the meaning of terms like "significant" errors thereby

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<sup>136</sup> *Id.* at 21-28.

<sup>137</sup> *Id.* at 26-28.

<sup>138</sup> *Id.* at 29-31.

<sup>139</sup> *Id.* at 30-33.

<sup>140</sup> *Id.* at 32-33.

<sup>141</sup> In *Friesen* itself, the prosecution introduced duplicate ATF records of the approved transfer of a NFA firearm (bearing the identical serial number), but differing in the date of approval. Exhibit L, pp. 48-49. ATF could not explain the situation. *Id.*, p. 49. Nor could ATF find the original documents underlying the computerized entries. *Id.*, p. 52.

<sup>142</sup> See Exhibit L at 12-14.

frustrating any attempt to ascertain the true error rate.<sup>143</sup> So too, when a congressionally-mandated audit found a "critical error" rate in the NFRTR of 18.4%, the Treasury Department Inspector General seemingly manipulated audit procedures at the instigation of the NFA Branch so as to produce a more acceptable figure.<sup>144</sup>

Congress remained sufficiently concerned about inaccuracies in the NFRTR to appropriate \$1 million (in Fiscal Years 2002 and 2003) for ATF to address remaining issues.<sup>145</sup> In 2007, however, Dr. Fritz Scheuren advised Congress that "serious material errors" continued to plague the NFRTR that ATF "has yet to acknowledge".<sup>146</sup>

As recently as June 2012, failure to answer questions about ATF's botched "Fast and Furious" gun-walking operation prompted the House of Representatives to find Attorney General Holder in both civil and criminal contempt.<sup>147</sup> Moreover, ATF apparently planned to publish a proposed rule in December that flagrantly disregarded the limitations on its appropriations. In the latest Semi-Annual Regulatory Agenda, ATF projects a December 2013 publication of a proposed rule (RIN 1140-AA41) addressed to FFLs. A recent press report indicates that ATF has already submitted the draft to OIRA for review.<sup>148</sup> That report quotes the White House as saying the proposed regulations "would target cases where guns go missing 'in transit.'"<sup>149</sup> Yet, it would seem that such a proposal flies in the face of a prohibition on spending any ATF

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<sup>143</sup> *Id.* at 19.

<sup>144</sup> *Id.* at 35-39.

<sup>145</sup> *Id.* at 39.

<sup>146</sup> *Id.* at 41.

<sup>147</sup> See John Bresnahan & Seung Min Kim, "Attorney General Eric Holder Held in Contempt of Congress," *Politico*, June 26, 2012 (Exhibit M).

<sup>148</sup> See Julian Hattem, "Feds Consider New Gun Regs," *The Hill*, Nov. 20, 2013 (Exhibit N).

<sup>149</sup> *Id.*

appropriations "to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code."<sup>150</sup>

c. ATF's Misleading of the Public

When, after a prolonged period of evasion, ATF finally produced a transcript of NFA Branch Chief Busey's remarks in the training session in response to FOIA requests, the transcript had been "corrected" by ATF's Gary Schaible to minimize damage to ATF.<sup>151</sup> Among those corrections, Mr. Schaible asserted that he was unaware that any ATF employee had ever testified that the NFRTR was 100% accurate.

In order to frustrate public inquiries into the Waco Raid, ATF participated in a game of "shifting the paperwork and related responsibilities" among DOJ components and other law enforcement agencies.<sup>152</sup>

Former Acting Chief of the NFA Branch, Mr. Schaible, testified that ATF repeatedly -- in 2000, 2001, 2002, 2003, 2005, 2008 -- approved NFA transfer forms without following procedures to update the information in the NFARTR.<sup>153</sup> The consequence of those failures was that members of the public received contraband machineguns accompanied by genuine ATF-approved forms indicating that the purchaser had acquired a legally-registered firearm, only to have ATF subsequently seize the machineguns from innocent purchasers.

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<sup>150</sup> ATF appropriations are continued through January 15, 2014 by virtue of § 1101(a)(2) of the Continuing Appropriations Act, 2014, H.R. 2775. Sections 103 and 104 make clear that prior restrictions on ATF use of funds remain in effect. The law referenced as the source of the continued appropriations is Public Law 113-6. That law, the Consolidated and Further Continuing Appropriations Act, Public Law 113-6 (2013), § 110, substitutes "2013" for "2012" in Public Law 112-55, Division B, § 113(b)(3), thereby continuing ATF appropriations subject to all the same limitations as the prior year. Public Law 113-6 then explicitly states: "That, in the current fiscal year and any fiscal year thereafter, no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code." The referenced licensed businesses are FFLs.

<sup>151</sup> See Exhibit L at 17.

<sup>152</sup> *Id.* at 13-14.

<sup>153</sup> See Exhibit 6 at 398-414.

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ATF's long record of shading the truth to mislead courts, Congress, and the public, underscores the serious nature of the procedural irregularities in this rulemaking. In order to permit meaningful public participation, ATF must set aside its secretive tendencies and provide access to the materials it has placed in issue.

**XI. The Second Amendment Protects the Right of Self Defense, Which Falls Outside the “Sporting Purposes” Exemption**

The Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), found that the Second Amendment guaranteed “the individual right to possess and carry weapons in case of confrontation.”<sup>154</sup> The Court went on to define bear arms as “wear, bear, or *carry* ... upon the person *or in the clothing or in a pocket*, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.”<sup>155</sup> The Court also found that the “American People have considered the handgun to be the quintessential self-defense weapon.”<sup>156</sup>

As is exactly clear from the Framework, ATF’s proposed “sporting purposes” exemption analysis fails to include self-defenses purposes and allows for it to arbitrarily classify ammunition. The Framework purports that only bolt action or break-open handguns are suitable for sporting purposes.<sup>157</sup> However, such handguns are not suitable for self-defense. Most individuals choose to carry repeating firearms, such as revolvers or semi-automatic pistols, for self-defense, as found by the Court in *Heller*. More importantly, as the Court specifically defined “bear arms” as including to “carry...in the clothing or pocket”, the enactment and enforcement

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<sup>154</sup> *Id.* at 592.

<sup>155</sup> *Id.* at 584. (Emphasis Added)

<sup>156</sup> *Id.* at 629.

<sup>157</sup> Framework at 13.



of LEOPA and Section 921(a)(17) appears clearly violative of the Second Amendment to the United States Constitution.

Contrary to the Court’s holding in *Heller*, under ATF’s proposed Framework, ammunition suitable for self-defense purposes, including M855 and SS109, will erroneously and in violation of the Second Amendment be found by ATF to fall outside of the Framework. The application of a sporting purposes exemption can only result in an infringement on the Second Amendment rights described in *Heller* in the absence of a self-defense exemption analysis.

\* \* \*

As individuals have the right to keep and bear arms in case of confrontation as described in *Heller* and Americans consider the handgun to be the ideal self-defense weapon, any “sporting purpose” analysis directly conflicts with an unalienable right protected by the Second Amendment.

## **CONCLUSION**

For the reasons set-forth above, ATF should not move forward with this proposed Framework and reclassification of SS109/M855.

ATF through the comment process has denied meaningful public participation, which raises concerns as to whether ATF ever truly desired public participation. ATF is *strongly* urged to review the Congressional Record as to the *type* of handguns, which Congress was concerned with being used against law enforcement officers, as it appears that ATF has a very *different* and incorrect interpretation of small and concealable than that of Congress and laypersons.

In reviewing the congressional record and statutes, ATF must address the fact that any regulation on SS109 and M855 is in direct violation of the statutory scheme written by Congress and that ATF is foreclosed from regulating inconsistently with the Congressional mandate.

Furthermore, although ATF has erroneously granted exemptions previously to SS109 and M855, it has failed to provide sufficient notice to those who obtained exemptions that their rights may be impacted by this rulemaking.

More importantly, ATF must consider whether the proposed Framework and LEOPA are an infringement on the Second Amendment rights of Americans to keep and bear arms in case of confrontation as described in *Heller*.

Additionally, the proposed Framework would deny individuals the ability to purchase projectiles, which would be used for sporting purposes because ATF has failed in its duty to revise the definition to comport with social standards of sporting purposes.

Lastly, this proposed Framework will undoubtedly harm law abiding citizens while doing little to nothing to reduce crime against law enforcement officers, which is the putative purpose that ATF proposed its Framework. If ATF desires to implement a new framework, it must consider all the issues specified in this Comment and provide evidence to support its authority and basis for implementing any such framework.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam Kraut', is written over a horizontal line.

Adam Kraut

*Counsel*

Joshua Prince

*Chief Counsel*

Firearms Industry Consulting Group,  
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March 12, 2015

# **EXHIBIT A**



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

JUL 06 1989

MEMORANDUM TO: Director

FROM: Associate Director (Compliance Operations)

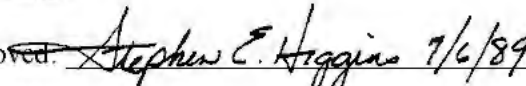
SUBJECT: Report and Recommendation on the  
Importability of Certain Semiautomatic Rifles

The working group has completed its evaluation of the semiautomatic rifles whose importation was suspended pending a determination as to whether these weapons are, as required by 18 U.S.C. § 925(d)(3), of a type "generally recognized as particularly suitable for or readily adaptable to sporting purposes".

Attached for your review and approval is the report and recommendation on the importability of these rifles.

  
Daniel Black

Attachment

Approved:  7/6/89

Disapprove: \_\_\_\_\_





## **REPORT AND RECOMMENDATION OF THE ATF WORKING GROUP ON THE IMPORTABILITY OF CERTAIN SEMIAUTOMATIC RIFLES**

### **SUSPENSION OF ASSAULT-TYPE RIFLE IMPORTATIONS**

On March 14, 1989, ATF announced that it was suspending, effective immediately, the importation of several makes of assault-type rifles, pending a decision as to whether these weapons meet the statutory test that they are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The announcement stated that ATF would not approve, until further notice, the importation of AKS-type weapons, Uzi carbines, FN/FAL-type weapons, FN/FNC-type weapons and Steyr Aug semiautomatic weapons. On April 5, 1989, the suspension was expanded to include all similar assault-type rifles.

For purposes of this suspension, assault-type rifles were rifles which generally met the following criteria:

- a. military appearance
- b. large magazine capacity
- c. semiautomatic version of a machinegun

Based on these criteria, ATF suspended action on pending applications and suspended outstanding permits covering certain firearms listed in Attachment 1. These included both centerfire and .22 rimfire caliber firearms. At that time, ATF indicated that the reexamination of these weapons would take approximately 90 days.

This ATF working group was established to conduct the reevaluation of the importability of these semiautomatic rifles. This report represents the findings and recommendations of the working group.

### **BACKGROUND**

Section 925(d)(3) of Title 18, United States Code, as amended, provides in pertinent part that:

The Secretary shall authorize a firearm. . .to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and is generally recognized as particularly suitable for or readily





adaptable to sporting purposes, excluding surplus  
military firearms. . .

This provision was originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, and was also contained in Title I of the Gun Control Act of 1968, which amended Title IV later that year. According to the Senate Report on Title IV, this provision was intended to “curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.

Moreover, there is legislative history which indicates that Congress intended the standard to allow the importation of traditional sporting rifles, while excluding military-type rifles. The Senate Report on the Gun Control Act observed that the importation standards “. . . are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms.” S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968). Significantly, the rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.<sup>1</sup>

An explanation of the effect of this section by one of the sponsors of the bill specifically stated that military firearms would not meet the “sporting purposes” test for importation. The mere fact that a military firearm may be used in a sporting event does not make it importable as a sporting firearm<sup>2</sup>.

There is a reference in the Senate Report on Title IV which notes that the importation prohibition “. . . would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes, or for personal protection.” S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167. However, this language is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting since firearms particularly suitable for those purposes can obviously be used for other purposes such as recreational shooting and personal protection.

The determination of a weapon’s suitability for sporting purposes “rest[s] directly with the Secretary of the Treasury.” 114 Cong. Rec. 27465 (1968) (Statement of Sen. Murphy). While the legislative history suggests that the term “sporting purposes” refers to the traditional sports of target shooting, trap and skeet shooting, and hunting, the statute itself provides no criteria beyond the “generally recognized” language of section 925(d)(3). S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2167. The Senate Report on the Gun Control Act stated:

The difficulty of defining weapons characteristics to meet this target [of eliminating importation of weapons used in crime] without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

Following enactment of the Gun Control Act in 1968, the Secretary established a Firearms Evaluation Panel to provide guidelines for implementation of the “sporting purposes” test of section 925(d)(3). This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. An evaluation sheet (ATF Form 4590) was developed thereafter by ATF and put into use for evaluating handguns pursuant to section 925(d)(3). Attachment 2.

The 1968 Firearms Evaluation Panel did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms which Congress addressed separately, long guns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Thus, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns. Until recently, all rifles and shotguns were approved for importation so long as they were not otherwise excluded by section 925(d)(3). Only rifles and shotguns covered by the National Firearms Act (NFA), 26 U.S.C. S 5845(a) (for example, machineguns and short-barreled rifles and short-barreled shotguns), and surplus military rifles and shotguns had been denied importation.

The Firearms Evaluation Panel did briefly comment on whether a model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was suitable for sporting purposes. Minutes of the Firearms Advisory Panel, December 10, 1968. Attachment 3. It was the consensus of the Panel that this rifle did have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of the Beretta BM59, together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle, be authorized for importation. (The Beretta BM59 and the Cetme, the predecessor to the HK91, are two of the rifles whose importation has been suspended. The SIG-AMT is no longer being produced.) However, the Panel recommended that importation of these weapons should include the restriction that they not possess combination flash suppressors/grenade launchers.

The working group found the Panel’s consideration of these rifles to be superficial and unpersuasive. The vast majority of the work of the 1968 Panel was devoted to handguns and the establishment of the factoring criteria for the importation of handguns. Indeed, we found compelling evidence that these rifles are not generally recognized as particularly suitable for sporting purposes.

The first time that ATF looked beyond the restrictions on NFA and surplus military rifles and shotguns and undertook a meaningful analysis under the “sporting purposes” test was in 1984. At that time, ATF was faced with a new breed of imported shotgun. It was clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to provide evidence of sporting purposes for the weapon, ATF was provided information that the weapon was suitable for police/combat style competitions. ATF determined that this type of competition did not constitute “sporting purposes” under the statute, and that this shotgun was not suitable for traditional sporting purposes, such as hunting, and trap and skeet shooting. Accordingly, importation was denied. Attachment 4.





Thereafter, in 1986, the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). After examination and testing of the weapon, ATF found that it was a semiautomatic version of a selective fire military-type assault shotgun. In this case, ATF determined that, due to its weight, size, bulk, designed magazine capacity, configuration, and other factors, the USAS-12 was not particularly suitable for or readily adaptable to sporting purposes. Again, ATF refused to recognize police/combat competitions as a sporting purpose under section 925(d)(3). The shotgun was reviewed on the basis of its suitability for traditional shotgun sports of hunting, and trap and skeet shooting and its importation was denied. Attachment 5. This decision was upheld by the United States District Court in Gilbert Equipment Company, Inc. v. Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989). The case is currently on appeal to the Eleventh Circuit.

These two cases involving shotguns represent ATF's first thorough examination of the suitability of certain combat-type weapons for sporting purposes. In these cases ATF adopted an interpretation of sporting as being limited to certain traditional sports and not simply any lawful activity in which the weapons might be employed.

### ANALYSIS

#### A. Defining the type of weapon under review.

As noted above, section 925(d)(3) expressly provides that the Secretary shall authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, in its explanation of section 925(d)(3), the Senate Report on the Gun Control Act stated:

This subsection gives the Secretary authority to permit the importation of ammunition and certain types of firearms--(1) those imported for scientific or research purposes or for use in competition or training under chapter 401 of title 10 of the United States Code; (2) an unserviceable firearm other than a machinegun; (3) those firearms not coming within the purview of the National Firearms Act (26 U.S.C. 5801, et seq.) and suitable for sporting purposes (in the case of surplus military weapons this type is limited to shotguns and rifles) and those taken out of the United States. (Emphasis added.)

S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

In light of the statutory mandate that types of firearms be scrutinized, the working group first attempted to determine whether the semiautomatic rifles suspended from importation fall within a type of firearm.

The working group determined that the semiautomatic rifles in question are generally semiautomatic versions of true selective fire military assault rifles.<sup>3</sup> As a class or type of firearm they are often referred to as "assault rifles," "assault-type rifles," "military style rifles," or "paramilitary rifles."<sup>4</sup> Since we are only concerned with semiautomatic rifles, it is somewhat of a misnomer to refer to these weapons as "assault rifles." True assault rifles are selective fire





weapons that will fire in a fully automatic mode.<sup>5</sup> For the purposes of this paper, it was necessary to settle on one term that best describes the weapons under consideration, and we will refer to these weapons as “semiautomatic assault rifles.” They represent a distinctive type of rifle distinguished by certain general characteristics which are common to the modern military assault rifle. The modern military assault rifle, such as the U.S. M16, German G3, Belgian FN/FAL, and Soviet AK47, is a weapon designed for killing or disabling the enemy and, as described below, has characteristics designed to accomplish this purpose.

We found that the modern military assault rifle contains a variety of physical features and characteristics designed for military applications which distinguishes it from traditional sporting rifles.<sup>6</sup> These military features and characteristics (other than selective fire) are carried over to the semiautomatic versions of the original military rifle. These features and characteristics are as follows:

### 1. Military Configuration.

- a. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines.<sup>7</sup> This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. In addition, some States have a limit on the magazine capacity allowed for hunting, usually 8 rounds or less.<sup>8</sup> That a firearm is designed and sold with a large capacity magazine, e.g., 20-30 rounds, is a factor to be considered in determining whether a firearm is a semiautomatic assault rifle.
- b. Folding/telescoping stocks. Many military firearms incorporate folding or telescoping stocks.<sup>9</sup> The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
- c. Pistol grips. The vast majority of military firearms employ a well-defined pistol grip that protrudes conspicuously beneath the action of the weapon.<sup>10</sup> In most cases, the “straight line design” of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or competitive target competitions.
- d. Ability to accept a bayonet. A bayonet has distinct military purposes.<sup>11</sup> First, it has a psychological affect on the enemy. Second, it enables soldiers to fight in close quarters

with a knife attached to their rifles. We know of no traditional sporting application for a bayonet.

- e. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired fully automatic.<sup>12</sup> From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Those flash suppressors which also serve to dampen "muzzle climb" have a limited benefit in sporting uses by allowing the shooter to reacquire the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.
  - f. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached.<sup>13</sup> The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired fully automatic. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "sling swivel mount" or simply clamp onto the firearm.
  - g. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades.<sup>14</sup> Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle either by screws or clamps. We are not aware of any particular sporting use for grenade launchers.
  - h. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness.<sup>15</sup> Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally illegal to hunt at night.
2. Whether the weapon is a semiautomatic version of a machinegun.
- The vast majority of modern military firearms are selective fire, i.e., they can shoot either fully automatic or semiautomatic. Since machineguns are prohibited from importation (except for law enforcement use) the manufacturers of such weapons have developed semiautomatic versions of these firearms.<sup>16</sup>
3. Whether the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.



Modern military assault rifles and submachineguns are generally chambered to accept a centerfire cartridge case of 2.25 inches or less.<sup>17</sup> On the other hand, while many traditional sporting rifles will fire a cartridge of 2.25 inches or less, such firearms usually do not have the other military features outlined in Items 1a-h.

These features and characteristics are not usually found on traditional sporting firearms.<sup>18</sup> This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. Indeed, many traditional sporting firearms are semiautomatic or have detachable magazines. Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.

Using these criteria, we determined that, on balance, all of the firearms on the original suspension list are properly included in the semiautomatic assault rifle category, with the exception of the .22 rimfire caliber rifles and the Valmet Hunter. While the .22 rimfire caliber rifles bear a striking resemblance to the true assault rifle, these rifles employ, by and large, conventional .22 rimfire caliber semiautomatic mechanisms.<sup>19</sup> Moreover, they are not semiautomatic versions of a machinegun and contain only a few of the other relevant characteristics. Further, the working group determined that, in general, .22 caliber rifles are generally recognized as suitable for small game hunting. The Valmet Hunter, while based on the operating mechanism of the AK47 assault rifle, has been substantially changed so that it is now akin to a traditional sporting rifle and does not properly fall within the semiautomatic assault rifle category. More specifically, its receiver has been modified and its pistol grips, bayonet, and flash suppressor have been removed. The trigger mechanism has been moved to the rear of the modified receiver to facilitate its use with a traditional sporting stock. Also, its military-style sights have been replaced with traditional sporting-style sights. See Attachment 6.

#### B. Scope of "Sporting Purposes".

The second step of our process was to determine the scope of "sporting purposes" as used in the statute. This is a critical aspect of the process. The broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the "sporting purposes" test. A narrower interpretation which focuses on the traditional sports of hunting and organized marksmanship competition would result in a more selective importation process.<sup>20</sup>

To determine the proper interpretation, we consulted the statute itself, its legislative history, applicable case law, the work of the original Firearms Evaluation Panel, and prior interpretations by ATF. In terms of the statute itself, the structure of the importation provisions would suggest a somewhat narrow interpretation. In this regard, firearms are prohibited from importation (section 922(1)) with certain specific exceptions (section 925(d)(3)). A broad interpretation which permits virtually any firearm to be imported because someone may wish to use it in some lawful shooting activity would render the statute meaningless.

As discussed earlier, the legislative history suggests a narrow meaning and indicates that the term "sporting purposes" refers to the traditional sports of target shooting, skeet and trap shooting, and hunting. Moreover, the history discussed earlier strongly suggests that Congress intended the provision to allow the importation of traditional sporting type rifles while excluding military type rifles. There is nothing in its history to indicate that it was intended to recognize every conceivable

type of activity or competition which might employ a firearm. To the contrary, the history indicates that mere use in some competition would not make the rifle a sporting rifle.

Finally, the 1968 Firearms Evaluation Panel specifically addressed at least one informal shooting activity and determined that it was not a legitimate sporting purpose under the statute. The panel addressed what is commonly referred to as “plinking” (shooting at randomly selected targets such as bottles and cans). It was the Panel’s view that “while many persons participated in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . .”  
See Attachment 3.

Based on the above, the working group determined that the term “sporting purpose” should properly be given a narrow reading. It was determined that while hunting has been a recognized rifle sport for centuries, and competitive target shooting is a recognized rifle sport, the so-called activity of plinking is not a recognized sport. Moreover, we believe that reference to sporting purposes was intended also to stand in contrast to military and law enforcement applications. Consequently, the working group does not

believe that police/combat-type competitions should be treated as sporting activities. This position is supported by the court’s decision in Gilbert Equipment Company, Inc., v Higgins, 709 F. Supp. 1071 (S.D. Ala. 1989) and is consistent with prior interpretations of ATF as noted on pages 4 and 5 in discussing the Striker-12 shotgun and USAS-12 shotgun.

### C. Suitability.

The final step in our review involved an evaluation of whether semiautomatic assault rifles are a type of rifle generally recognized as particularly suitable for or readily adaptable to the traditional sporting applications discussed above.

The criminal misuse of semiautomatic assault rifles is a matter of significant public concern and was an important factor in the decision to suspend their importation. Nevertheless, the working group did not consider criminal misuse as a factor in its analysis of the importability of this type of rifle. Instead, the working group confined its analysis to the question of whether this type of rifle meets the test provided in section 925(d)(3).

Rather than criminal misuse, our comprehensive examination of this issue focused on the legal analysis and technical assessment of these firearms discussed earlier. In addition, the working group used the information gathered under Items 1-7 outlined in the next section in determining whether this type of firearm is generally recognized as particularly suitable for sporting purposes. These items take into account technical and marketing data, expert opinions, the recommended uses of the firearms, and data on the actual uses for which the weapons are employed in this country.

In evaluating these firearms, we believe that all rifles which are fairly typed as semiautomatic assault rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability.<sup>21</sup> Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type.



This is consistent with the approach taken with respect to handguns since 1968. Although certain handguns may be used or recommended for sporting purposes, they may fall within the type of easily concealable handguns barred from importation by the administrative factoring criteria used by ATF to determine the importability of handguns. Furthermore, a pistol specifically designed for target shooting, but lacking a safety as required by the factoring criteria, would be a type of handgun prohibited from importation as not particularly suitable for sporting purposes for this reason. Finally, just as ATF allows handguns to be modified so as to meet the factoring criteria, a semiautomatic assault rifle could be modified into a sporting configuration and be importable, as was done in the case of the Valmet Hunter referred to earlier.

#### D. Evaluation of Information from Outside Sources

As part of our comprehensive analysis as to whether semiautomatic assault rifles meet the statutory criteria for importation, the following sources of information were also considered:

1. How has the weapon been advertised, marketed and categorized by the manufacturer and/or importer?
2. How has the use of the rifle been described by firearms technical writers?
3. What is the rifle's reported use by importers?
4. Do hunting guides recommend the rifle?
5. Do editors of hunting magazines recommend the rifle?
6. Is the rifle used in target shooting competitions?
7. Do State game commissions allow the use of the rifle to hunt?

Items 1-6 focus upon how the rifles are marketed, advertised, and recommended for use. Item 7 addresses the legal restrictions pertaining to the use of the weapons for sporting purposes.

The working group reviewed the advertising and marketing literature concerning each of the weapons (Item 1) and reviewed evaluations of the firearms by technical writers (Item 2). In addition, the working group solicited information from the importers of the weapons and other knowledgeable sources (Items 3-6).

Questionnaires were drafted and sent out to licensed hunting guides, State game and fish commissions, local hunting associations, competitive shooting groups, and hunting/shooting magazine editors to determine the extent to which the weapons are used for sporting purposes or recommended for such use. The working group believed that the actual uses of the weapons for sporting purposes would be a factor to be considered in determining whether this type of rifle meets the sporting purposes test.

The review of advertising and marketing literature indicates that these rifles are not generally marketed for hunting or competitive shooting. The review of the technical evaluations revealed that these rifles are not regarded as suitable for these sporting activities.<sup>22</sup>

To the extent that the technical evaluations made recommendations with respect to the use of the rifles suspended from importation, the majority recommended them for law enforcement or military use or for activities such as collecting, plinking, home and self-defense, and combat target shooting. Only 5 of over 50 evaluations reviewed contained recommendations for the use of these firearms for hunting purposes.

The importers were asked to submit information concerning the sporting uses of the semiautomatic rifles they import. Thirty-nine importers were asked to submit this information and 19 responded. In general, their comments were conclusory and stated that their weapons could be used for sporting purposes. A small number of importers, e.g., Gun South, Inc., and Heckler & Koch, Inc., provided more specific data showing the sporting uses made of their firearms by their customers.

Of 3 hunting associations to whom questionnaires were sent, 2 responded. They stated that they place no restrictions on the use of semiautomatic rifles by their members, on the minimum caliber of ammunition used to hunt large game, or on the number of rounds allowed in semiautomatic rifle magazines. However, over 1,800 hunting guides were sent questionnaires and, of these, 706 responded. Over 73 percent of those responding indicated that their patrons used either bolt or lever action rifles for hunting. Only 10 of the 706 guides indicated that their patrons had used any of the rifles whose importation had been temporarily suspended.

Of the 20 hunting/shooting editors to whom questionnaires were sent, 14 responded. Nine of the fourteen editors recommended semiautomatic rifles for use in hunting large game, including 5 who recommended use of any of the rifles subject to the temporary suspension. Eleven of the fourteen editors recommended semiautomatic rifles for target competitions, including 7 who recommended semiautomatic assault rifles for such use.

The recommendations of editors were contradictory. One editor pointed out that what made the assault rifle successful as a military weapon made the semiautomatic version totally unfit for any other use. On the other hand, another editor stated that semiautomatic rifles had certain advantages over conventional sporting rifles especially for the physically disabled and left-handed shooters. While this may be true, there appears to be no advantage to using a semiautomatic assault rifle as opposed to a semiautomatic sporting rifle.

A total of 54 competitive shooting groups were sent a questionnaire and 53 groups responded (some of the responses were from unsolicited groups). Fifty of these groups indicated that they sponsor high power rifle competition events. While none of the groups prohibited the use of the semiautomatic assault rifles in their competitions, none stated that any of the rifles covered by the temporary suspension were used in a specific event.

Finally, the information gathered under Item 7 reveals that most of these weapons could legally be used in most States for most hunting purposes.





The working group reviewed all of the information gathered under Items 1-6 and determined that while these weapons may legally be used for sporting purposes in most States, the evidence was compelling that, as a type of firearm, the semiautomatic assault rifle is not generally recognized as particularly suitable for sporting purposes. The working group found persuasive the technical and expert evaluations of these firearms which generally did not recommend them as particularly suitable for sporting purposes. The group was also impressed by the comments of the hunting guides which showed that these rifles were not widely used for hunting purposes. The comments of the hunting guides are consistent with the opinion of the technical experts who generally do not recommend the rifles for hunting purposes.

The opinions of the editors were fairly divided with respect to the sporting uses of these rifles. The importers generally recommended their own weapons for such uses. The competitive shooting groups indicated that the rifles could be used in certain shooting events. Thus, while there was some evidence that these rifles could be used for hunting and target shooting, there was no evidence of any widespread use for such purposes. The mere fact that they are not generally prohibited from use for sporting purposes does not mean that the rifles meet the test for importation.

### CONCLUSIONS

The working group has dealt with a complex issue, the resolution of which has required the group to take into account interpretations of law, technical assessments of firearms and their physical characteristics, marketing data, the assessment of data compiled from responses to questionnaires and, finally, Bureau expertise with respect to firearms. We fully recognize that particular findings as well as the results will be controversial.

From the cross section of representation within ATF, we have brought to bear our technical, legal, and administrative expertise to resolve the issues in what we believe to be a fair manner, taking into consideration all points of view. While some of the issues were difficult to resolve, in the end we believe that the ultimate conclusion is clear and compelling. These semiautomatic assault rifles were designed and intended to be particularly suitable for combat rather than sporting applications. While these weapons can be used, and indeed may be used by some, for hunting and target shooting, we believe it is clear that they are not generally recognized as particularly suitable for these purposes.

The purpose of section 925(d)(3) was to make a limited exception to the general prohibition on the importation of firearms, to preserve the sportsman's right to sporting firearms. This decision will in no way preclude the importation of true sporting firearms. It will only prevent the importation of military-style firearms which, although popular among some gun owners for collection, self-defense, combat competitions, or plinking, simply cannot be fairly characterized as sporting rifles.

Therefore, it is the finding of the working group that the semiautomatic assault rifle is not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes and that importation of these rifles should not be authorized under 18 U.S.C. § 925(d)(3).



Based on our evaluation, we recommend that the firearms listed on Attachment 7 not be authorized for importation. For the reasons discussed in this report, we recommend that the firearms listed on Attachment 8 be authorized for importation. These are the .22 rimfire caliber rifles and the Valmet Hunter which we do not believe are properly included in the category of semiautomatic assault rifles. Attachment 9 is a compilation of the responses from the questionnaires. Attachment 10 combines the criteria for identifying semiautomatic assault rifles and the items considered in assessing suitability. Attachments 11 and 12 contain the data compiled for each of the criteria listed in Attachment 10. Finally, Attachment 13 contains the source materials used in locating persons and organizations who were sent questionnaires.

### NOTES

1. Paul Wahl, ed., Gun Trader's Guide, 13th Edition, (South Hackensack, NJ. 1987), 155-162.
2. Although a firearm might be recognized as "suitable" for use in traditional sports, it would not meet the statutory criteria unless it were recognized as particularly suitable for such use. Indeed, Senator Dodd made clear that the intent of the legislation was to" [regulate] the importation of firearms by excluding surplus military handguns; and rifles and shotguns that are not truly suitable for sporting purposes." 114 Cong. Rec. 13325 (1968) (Statement of Sen. Dodd) [emphasis added].

Similarly, it is apparent that the drafters of the legislation did not intend for "sports" to include every conceivable type of activity or competition which might employ a firearm; otherwise a "sporting purpose" could be advanced for every firearm sought to be imported. For example, in response to Sen. Hansen's question concerning the meaning of "sporting purposes" in the bill which became section 925(d), Senators Dodd and Hansen engaged in the following colloquy:

Mr. HANSEN. Would the Olympic shooting competition be a "sporting purpose?"

Mr. DODD. I would think so.

Mr. HANSEN. What about trap and skeet shooting?

Mr. DODD. I would think so. I would think trap and skeet shooting would certainly be a sporting activity.

Mr. HANSEN. Would the Camp Perry national matches be considered a "sporting purpose?"

Mr. DODD. Yes; that would not [sic] fall in that arena. It should be described as a sporting purpose.

Mr. HANSEN. I understand the only difference is in the type of firearms used at Camp Perry which includes a wide variety of military types as well as commercial.





Would all of these firearms be classified as weapons constituting a “sporting purpose?”

Mr. DODD. No. I would not say so. I think when we get into that, we definitely get into military type of weapon for use in matches like these at Camp Perry; but I do not think it is generally described as a sporting weapon. It is a military weapon. I assume they have certain types of competition in which they use these military weapons as they would in an otherwise completely sporting event. I do not think that fact would change the nature of the weapon from a military to a sporting one.

Mr. HANSEN. Is it not true that military weapons are used in Olympic competition also?

Mr. DODD. I do not know. Perhaps the Senator can tell me. I am not well informed on that.

Mr. HANSEN. It is my understanding that they are. Would the Senator be inclined to modify his response if I say that is true? (27461)

Mr. DODD. It is not that I doubt the Senator’s word. Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event. I think the Senator would agree with that. I do not know how else we could describe it.

Mr. HANSEN. If I understand the Senator correctly, he said that despite the fact that a military weapon may be used in a sporting event it did not, by that action become a sporting rifle Is that correct?

Mr. DODD. That would seem right to me ..... As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons..... I think the Senator and I know what a genuine sporting gun is.

114 Cong. Rec. 27461-62 (1968).(Emphasis added.)

3. Ken Warner, ed., Gun Digest 1989, (Northbrook, IL 1988), pp. 293-300; William S. Jarrett, ed., Shooter’s Bible, No. 80, (Hackensack, NJ. 1988), pp. 345-363; Edward Clinton Ezell, Small Arms of the World, (Harrisburg, Pa. 1983), p. 844; Pete Dickey, “The Military Look-Alikes,” American Rifleman, (April 1980), p. 31. Also, see generally, Ian V. Hogg, ed., Jane’s Infantry Weapons, 1987-88, (New York 1987); Jack Lewis, ed., The Gun Digest Book of Assault Weapons, (Northbrook, IL. 1986).
4. Art Blatt, “Tomorrow’s State-of-the-Art Sporting Rifle,” Guns & Ammo, (July 1981), p. 48; Jarrett, pp. 345-363; Warner, pp. 293-300.
5. Daniel D. Musgrave and Thomas B. Nelson, The World’s Assault Rifles, (Virginia, 1967), p. 1.
6. See generally, Angus Laidlaw, ed., Paul Wahl’s Big Gun Catalog/1, (Bogota, NJ. 1988); Musgrave and Nelson; Hogg; Jarrett; and Warner.



7. Ibid.
8. Arizona, 5 rounds; Colorado, 6 rounds; Michigan 6 rounds; New Hampshire, 5 rounds; New York, 6 rounds; North Carolina, 6 rounds; North Dakota, 8 rounds; Oregon, 5 rounds; Pennsylvania, semiautomatic rifles prohibited; Vermont, 6 rounds.
9. See generally, Hogg; Musgrave and Nelson; Ezell; Warner; Jarrett; Laidlaw; and Lewis.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ezell, p. 844; Dickey, p. 31.
17. Musgrave and Nelson, pp. 11-29; and, see generally, Hogg; and Ezell.
18. Ezell, pp.844-866; and, see generally, Warner; Jarrett; and Laidlaw.
19. See, for example, Walter Rickell, "The Plinker's AK Guns Magazine, (July 1986) p. 21; John Lachuk, "Bantam Battle Rifles," Guns & Ammo, (January 1987), p. 37; John Lachuk, ".22 Erma Carbine," Guns & Ammo, (May 1968), p. 58; Jack Lewis, "Something New: The AK in Twenty-Two," Gun World, (July 1985), p. 32; Roger Combs, "A Most Unique Carbine," Gun World, (December 1985), p. 28; Garry James, "Mitchell Arms AK-22," Guns & Ammo, (November 1985), p. 72.
20. See note 2, colloquy between Senators Dodd and Hansen.
21. Ibid.
22. See generally, bibliography.



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**NOTE:** This information was extracted from the document titled, “**Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles**”, published in a memorandum to the Director, Stephen E. Higgins from the Associate Director, Daniel R. Black and approved on July 6, 1989.

# **EXHIBIT B**



DEPARTMENT OF  
THE TREASURY  
STUDY ON  
THE SPORTING  
SUITABILITY  
OF MODIFIED  
SEMI-AUTOMATIC  
ASSAULT RIFLES

APRIL 1998



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## EXECUTIVE SUMMARY

On November 14, 1997, the President and the Secretary of the Treasury ordered a review of the importation of certain modified versions of semiautomatic assault rifles into the United States.<sup>1</sup> The decision to conduct this review stemmed in part from concerns expressed by members of Congress and others that the rifles being imported were essentially the same as semiautomatic assault rifles previously determined to be nonimportable in a 1989 decision by the Bureau of Alcohol, Tobacco and Firearms (ATF). The decision also stemmed from the fact that nearly 10 years had passed since the last comprehensive review of the importation of rifles, and many new rifles had been developed during this time.

Under 18 U.S.C. section 925(d)(3), the Secretary shall approve applications for importation only when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”). In 1989, ATF denied applications to import a series of semiautomatic versions of automatic-fire military assault rifles. When ATF examined these semiautomatic assault rifles, it found that the rifles, while no longer machineguns, still had a military configuration that was designed for killing and disabling the enemy and that distinguished the rifles from traditional sporting rifles. This distinctively military configuration served as the basis for ATF’s finding that the rifles were not considered sporting rifles under the statute.

The military configuration identified by ATF incorporated eight physical features: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF took the position that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic rifle not importable.

Subsequent to the 1989 decision, certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features other than the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still had the ability to accept a detachable magazine but, more specifically, still had the ability to accept a detachable large capacity magazine that

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<sup>1</sup> The President and the Secretary directed that all pending and future applications for importation of these rifles not be acted upon until completion of the review. They also ordered that outstanding permits for importation of the rifles be suspended for the duration of the review period. The existence of applications to import 1 million new rifles and outstanding permits for nearly 600,000 other rifles threatened to defeat the purpose of the expedited review unless the Department of the Treasury deferred action on additional applications and temporarily suspended the outstanding permits. (See exhibit 1 for a copy of the November 14, 1997, memorandum directing this review.)

The rifles that are the subject of this review are referred to in this report as “study rifles.”

was originally designed and produced for the military assault rifles from which they were derived. These magazines are referred to in this report as “large capacity military magazines.” Study rifles with the ability to accept such magazines are referred to in this report as “large capacity military magazine rifles,” or “LCMM rifles.” It appears that only one study rifle, the VEPR caliber .308 (an AK47 variant), is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found to meet the sporting purposes test. Accordingly, the study rifles were approved for import into the United States.

These modified rifles are the subject of the present review. Like the rifles banned in 1989, the study rifles are semiautomatic rifles based on AK47, FN-FAL, HK91 and 93, Uzi, and SIG SG550 military assault rifles. While there are at least 59 specific model designations of the study rifles, they all fall within the basic designs listed above. There are at least 39 models based on the AK47 design, 8 on the FN-FAL design, 7 on the HK91 and 93 designs, 3 on the Uzi design, and 2 on the SIG SG550 design (see exhibit 2 for a list of the models). Illustrations of some of the study rifles are included in exhibit 3 of this report.

This review takes another look at the entire matter to determine whether the modified rifles approved for importation since 1989 are generally recognized as particularly suitable for or readily adaptable to sporting purposes.<sup>2</sup> We have explored the statutory history of the sporting purposes test and prior administrative and judicial interpretations; reexamined the basic tenets of the 1989 decision; analyzed the physical features of the study rifles, as well as information from a wide variety of sources relating to the rifles’ use and suitability for sporting purposes; and assessed changes in law that might have bearing on the treatment of the rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding

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<sup>2</sup> The study was carried out by a working group composed of ATF and Treasury representatives. The working group’s activities and findings were overseen by a steering committee composed of ATF and Treasury officials.

devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. Specifically, Congress found that these magazines served “combat-functional ends” and were attractive to criminals because they “make it possible to fire a large number of rounds without reloading, then to reload quickly when those rounds are spent.”<sup>3</sup> Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. Accordingly, we found that the ability to accept such a magazine is a critical factor in the sporting purposes test, which must be given the same weight as the other military configuration features identified in 1989.

In addition, the information we collected on the use and suitability of LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our review of this information indicated that, with certain exceptions, the LCMM rifles sometimes are used for hunting, their actual use in hunting is limited. There are even some general restrictions and prohibitions on the use of semiautomatic rifles for hunting game. Similarly, although the LCMM rifles usually may be used, with certain exceptions, and sometimes are used for organized competitive target shooting, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use.

Furthermore, the information we gathered demonstrated that the LCMM rifles are attractive to certain criminals. We identified specific examples of the LCMM rifles’ being used in violent crime and gun trafficking. In addition, we found some disturbing trends involving the LCMM rifles, including a rapid and continuing increase in crime gun trace requests after 1991 and a rapid “time to crime.” Their ability to accept large capacity military magazines likely plays a role in their appeal to these criminals.

After weighing all the information collected, we found that the LCMM rifles are not generally recognized as particularly suitable for or readily adaptable to sporting purposes and are therefore not importable. However, this decision will in no way preclude the importation of true sporting firearms.

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<sup>3</sup> H. Rep. No. 103-489, at 18-19.

## BACKGROUND

### Importation of Firearms Under the Gun Control Act

The Gun Control Act of 1968 (GCA)<sup>4</sup> generally prohibits the importation of firearms into the United States.<sup>5</sup> However, the GCA creates four narrow categories of firearms that the Secretary of the Treasury shall authorize for importation. The category that is relevant to this study is found at 18 U.S.C. section 925(d)(3).

The Secretary shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . .

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and **is generally recognized as particularly suitable for or readily adaptable to sporting purposes**, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled. (Emphasis added)

This provision originally was enacted, in a slightly different form, by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968<sup>6</sup> and also was contained in Title I of the GCA, which amended Title IV later that year.

The GCA was enacted in large part "to assist law enforcement authorities in the States and their subdivisions in combating the increasing prevalence of crime in the United States." However, the Senate Report to the act also made clear that Congress did not intend the GCA to place any undue or unnecessary restrictions or burdens on responsible, law-abiding citizens with respect to acquiring, possessing, transporting, or using firearms for lawful activities.<sup>7</sup>

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<sup>4</sup> Pub. L. No. 90-618.

<sup>5</sup> 18 U.S.C. section 922(l).

<sup>6</sup> Pub. L. No. 90-351.

<sup>7</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d Sess. 22 (1968).

Consistent with this general approach, legislative history indicates that Congress intended the importation standard provided in section 925(d)(3) to exclude military-type weapons from importation to prevent such weapons from being used in crime, while allowing the importation of high-quality sporting rifles. According to the Senate Report, section 925(d)(3) was intended to "curb the flow of surplus military weapons and other firearms being brought into the United States which are not particularly suitable for target shooting or hunting."<sup>8</sup> The report goes on to explain that "[t]he importation of certain foreign-made and military surplus nonsporting firearms has an important bearing on the problem which this title is designed to alleviate [crime]. Thus, the import provisions of this title seem entirely justified."<sup>9</sup> Indeed, during debate on the bill, Senator Dodd, the sponsor of the legislation, stated that "Title IV prohibits importation of arms which the Secretary determines are not suitable for . . . sport . . . . The entire intent of the importation section is to get those kinds of weapons that are used by criminals and have no sporting purpose."<sup>10</sup>

The Senate Report, however, also makes it clear that the importation standards "are designed and intended to provide for the importation of quality made, sporting firearms, including . . . rifles such as those manufactured and imported by Browning and other such manufacturers and importers of firearms."<sup>11</sup> (The rifles being imported by Browning at that time were semiautomatic and manually operated traditional sporting rifles of high quality.) Similarly, the report states that the importation prohibition "would not interfere with the bringing in of currently produced firearms, such as rifles . . . of recognized quality which are used for hunting and for recreational purposes."<sup>12</sup> The reference to recreational purposes is not inconsistent with the expressed purpose of restricting importation to firearms particularly suitable for target shooting or hunting, because firearms particularly suitable for these purposes also can be used for other purposes such as recreational shooting.

During debate on the bill, there was discussion about the meaning of the term "sporting purposes." Senator Dodd stated:

[h]ere again I would have to say that if a military weapon is used in a

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<sup>8</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d Sess. 22 (1968).

<sup>9</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d Sess. 24 (1968).

<sup>10</sup> 114 Cong. Rec. S 5556, 5582, 5585 (1968).

<sup>11</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d. Sess. 38 (1968).

<sup>12</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d. Sess. 22 (1968).

special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event . . . . As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.<sup>13</sup>

Legislative history also shows that the determination of a weapon's suitability for sporting purposes is the direct responsibility of the Secretary of the Treasury. The Secretary was given this discretion largely because Congress recognized that section 925(d)(3) was a difficult provision to implement. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated:

[t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.<sup>14</sup>

Indeed, Congress granted this discretion to the Secretary even though some expressed concern with its breadth:

[t]he proposed import restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. If this authority means anything, it permits Federal officials to differ with the judgment of sportsmen expressed through consumer preference in the marketplace . . . .<sup>15</sup>

Section 925(d)(3) provides that the Secretary shall authorize the importation of a firearm if it is of a "type" that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The legislative history also makes it clear that the Secretary shall scrutinize types of firearms in exercising his authority under section 925(d). Specifically, the Senate Report to the GCA states that section 925(d) "gives the

Secretary authority to permit the importation of ammunition and certain types of firearms."<sup>16</sup>

<sup>13</sup> 114 Cong. Rec. 27461-462 (1968).

<sup>14</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d Sess. 38 (1968).

<sup>15</sup> S. Rep. No. 1097, 90<sup>th</sup> Cong. 2d. Sess. 2155 (1968) (views of Senators Dirksen, Hruska, Thurmond, and Burdick). In *Gun South, Inc. v. Brady*, F.2d 858, 863 (11<sup>th</sup> Cir. 1989), the court, based on legislative history, found that the GCA gives the Secretary "unusually broad discretion in applying section 925(d)(3)."

<sup>16</sup> S. Rep. No. 1501, 90<sup>th</sup> Cong. 2d. Sess. 38 (1968).

The Senate Report to the GCA also recommended that the Secretary establish a council that would provide him with guidance and assistance in determining which firearms meet the criteria for importation into the United States.<sup>17</sup> Accordingly, following the enactment of the GCA, the Secretary established the Firearms Evaluation Panel (FEP) (also known as the Firearms Advisory Panel) to provide guidelines for implementation of the "sporting purposes" test. This panel was composed of representatives from the military, the law enforcement community, and the firearms industry. At the initial meeting of the FEP, it was understood that the panel's role would be advisory only.<sup>18</sup> The panel focused its attention on handguns and recommended the adoption of factoring criteria to evaluate the various types of handguns. These factoring criteria are based upon such considerations as overall length of the firearm, caliber, safety features, and frame construction. ATF thereafter developed an evaluation sheet (ATF Form 4590) that was put into use for evaluating handguns pursuant to section 925(d)(3). (See exhibit 4.)

The FEP did not propose criteria for evaluating rifles and shotguns under section 925(d)(3). Other than surplus military firearms, which Congress addressed separately, the rifles and shotguns being imported prior to 1968 were generally conventional rifles and shotguns specifically intended for sporting purposes. Therefore, in 1968, there was no cause to develop criteria for evaluating the sporting purposes of rifles and shotguns.

#### 1984 Application of the Sporting Purposes Test

The first time that ATF undertook a meaningful analysis of rifles or shotguns under the sporting purposes test was in 1984. At that time, ATF was faced with a new breed of imported shotgun, and it became clear that the historical assumption that all shotguns were sporting was no longer viable. Specifically, ATF was asked to determine whether the Striker-12 shotgun was suitable for sporting purposes. This shotgun is a military/law enforcement weapon initially designed and manufactured in South Africa for riot control. When the importer was asked to submit evidence of the weapon's sporting purposes, it provided information that the weapon was suitable for police/combat-style competitions. ATF determined that this type of competition did not constitute a sporting purpose

under the statute, and that the shotgun was not suitable for the traditional shotgun sports of hunting, and trap and skeet shooting.

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<sup>17</sup> S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

<sup>18</sup> Gilbert Equipment Co. v. Higgins, 709 F. Supp. 1071, 1083, n. 7 (S.D. Ala. 1989), aff'd without op., 894 F.2d 412 (11<sup>th</sup> Cir. 1990).



### 1986 Firearms Owners Protection Act

On May 19, 1986, Congress passed the Firearms Owners Protection Act,<sup>19</sup> which amended section 925(d)(3) to provide that the Secretary "shall" (instead of "may") authorize the importation of a firearm that is of a type that is generally recognized as particularly suitable for or readily adaptable to sporting purposes. The Senate Report to the law stated "it is anticipated that in the vast majority of cases, [the substitution of 'shall' for 'may' in the authorization section] will not result in any change in current practices."<sup>20</sup> As the courts have found, "[r]egardless of the changes made [by the 1986 law], the firearm must meet the sporting purposes test and it remains the Secretary's obligation to determine whether specific firearms satisfy this test."<sup>21</sup>

### 1986 Application of the Sporting Purposes Test

In 1986, ATF again had to determine whether a shotgun met the sporting purposes test, when the Gilbert Equipment Company requested that the USAS-12 shotgun be classified as a sporting firearm under section 925(d)(3). Again, ATF refused to recognize police/combat-style competitions as a sporting purpose. After examining and testing the weapon, ATF determined its weight, size, bulk, designed magazine capacity, configuration, and other factors prevented it from being classified as particularly suitable for or readily adaptable to the traditional shotgun sports of hunting, and trap and skeet shooting. Accordingly, its importation was denied.

When this decision was challenged in Federal court, ATF argued, in part, that large magazine capacity and rapid reloading ability are military features. The court accepted this argument, finding "the overall appearance and design of the weapon (especially the detachable box magazine . . . ) is that of a combat weapon and not a sporting weapon."<sup>22</sup> In reaching this decision, the court was not persuaded by the importer's argument that box magazines can be lengthened or shortened depending on desired shell capacity.<sup>23</sup> The court also agreed with ATF's conclusion that police/combat-style competitions were not considered sporting purposes.

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<sup>19</sup> Pub. L. No. 99-308.

<sup>20</sup> S. Rep. No. 98-583, 98<sup>th</sup> Cong. 1<sup>st</sup> Sess. 27 (1984).

<sup>21</sup> Gilbert Equipment Co., 709 F. Supp. at 1083.

<sup>22</sup> Id. at 1089.

<sup>23</sup> Id. at 1087, n. 20 and 1089.

### 1989 Report on the Importability of Semiautomatic Assault Rifles

In 1989, after five children were killed in a California schoolyard by a gunman with a semiautomatic copy of an AK47, ATF decided to reexamine whether certain semiautomatic assault-type rifles met the sporting purposes test. This decision was reached after consultation with the Director of the Office of National Drug Control Policy.

In March and April 1989, ATF announced that it was suspending the importation of certain "assault-type rifles." For the purposes of this suspension, assault-type rifles were those rifles that generally met the following criteria: (1) military appearance; (2) large magazine capacity; and (3) semiautomatic version of a machinegun. An ATF working group was established to reevaluate the importability of these assault-type rifles. On July 6, 1989, the group issued its Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles (hereinafter 1989 report).

In the 1989 report, the working group first discussed whether the assault-type rifles under review fell within a "type" of firearm for the purposes of section 925(d)(3). The working group concluded that most of the assault-type rifles under review represented "a distinctive type of rifle [which it called the "semiautomatic assault rifle"] distinguished by certain general characteristics which are common to the modern military assault rifle."<sup>24</sup> The working group explained that the modern military assault rifle is a weapon designed for killing or disabling the enemy and has characteristics designed to accomplish this purpose. Moreover, it found that these characteristics distinguish modern military assault rifles from traditional sporting rifles.

The characteristics of the modern military assault rifle that the working group identified were as follows: (1) military configuration (which included: ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights) (see exhibit 5 for a thorough discussion of each of these features); (2) ability to fire automatically (i.e., as a machinegun); and (3) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.<sup>25</sup> In regards to the ability to accept a detachable magazine, the working group explained that:

[v]irtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable

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<sup>24</sup> 1989 report at 6.

<sup>25</sup> 1989 report at 6.

magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.<sup>26</sup>

The working group emphasized that these characteristics had to be looked at as a whole to determine whether the overall configuration of each of the assault-type rifles under review placed the rifle fairly within the semiautomatic assault rifle type. The semiautomatic assault rifles shared all the above military assault rifle characteristics other than being machineguns.<sup>27</sup>

The working group also addressed the scope of the term "sporting purposes." It concluded that the term should be given a narrow interpretation that focuses on the traditional sports of hunting and organized competitive target shooting. The working group made this determination by looking to the statute, its legislative history, applicable case law, the work of the FEP, and prior interpretations by ATF. In addition, the working group found that the reference to sporting purposes was intended to stand in contrast to military and law enforcement applications. Consequently, it determined that police/combat-type competitions should not be treated as sporting activities.<sup>28</sup>

The working group then evaluated whether the semiautomatic assault rifle type of firearm is generally recognized as particularly suitable for or readily adaptable to traditional sporting applications. This examination took into account technical and marketing data, expert opinions, the recommended uses of the firearms, and information on the actual uses for which the weapons are employed in this country. The working group, however, did not consider criminal use as a factor in its analysis of the importability of this type of firearm.

After analyzing this information, the working group concluded that semiautomatic assault rifles are not a type of firearm generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, the working group concluded that semiautomatic assault rifles should not be authorized for importation under section 925(d)(3). However, the working group found that some of the assault-type rifles under review (the Valmet Hunter and .22 rimfire caliber rifles), did not fall within the semiautomatic assault rifle type. In the case of the Valmet Hunter, the working group found that although it was based on the operating mechanism of the AK47 assault rifle, it had been substantially

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<sup>26</sup> 1989 report at 6 (footnote omitted).

<sup>27</sup> The semiautomatic assault rifles were semiautomatic versions of machineguns.

<sup>28</sup> 1989 report at 9-11.

changed so that it was similar to a traditional sporting rifle.<sup>29</sup> Specifically, it did not have any of the military configuration features identified by the working group, except for the ability to accept a detachable magazine.

Following the 1989 study, ATF took the position that a semiautomatic rifle with any of the eight military configuration features identified in the 1989 report, other than the ability to accept a detachable magazine, failed the sporting purposes test and, therefore, was not importable.

### Gun South, Inc. v. Brady

Concurrent with its work on the 1989 report, ATF was involved in litigation with Gun South, Inc. (GSI). In October 1988 and February 1989, ATF had granted GSI permits to import AUG-SA rifles. As mentioned previously, in March and April of 1989, ATF imposed a temporary suspension on the importation of rifles being reviewed in the 1989 study, which included the AUG-SA rifle. GSI filed suit in Federal court, seeking to prohibit the Government from interfering with the delivery of firearms imported under permits issued prior to the temporary suspension.

The court of appeals found that the Government had the authority to suspend temporarily the importation of GSI's AUG-SA rifles because the GCA "impliedly authorizes" such action.<sup>30</sup> In addition, the court rejected GSI's contention that the suspension was arbitrary and capricious because the AUG-SA rifle had not physically changed, explaining the argument "places too much emphasis on the rifle's structure for determining whether a firearm falls within the sporting purpose exception. While the Bureau must consider the rifle's physical structure, the [GCA] requires the Bureau to equally consider the rifle's use."<sup>31</sup> In addition, the court found that ATF adequately had considered sufficient evidence before imposing the temporary suspension, citing evidence ATF had considered

demonstrating that semiautomatic assault-type rifles were being used with increasing frequency in crime.<sup>32</sup>

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<sup>29</sup> This finding reflects the fact that the operating mechanism of the AK47 assault rifle is similar to the operating mechanism used in many traditional sporting rifles.

<sup>30</sup> Gun South, Inc. v. Brady, 877 F.2d 858 (11th Cir. 1989). The court of appeals issued its ruling just days before the 1989 report was issued. However, the report was complete before the ruling was issued.

<sup>31</sup> Id.

<sup>32</sup> Id.

Although GSI sued ATF on the temporary suspension of its import permits, once the 1989 report was issued, no one pursued a lawsuit challenging ATF's determination that the semiautomatic assault rifles banned from importation did not meet the sporting purposes test.<sup>33</sup>

### Violent Crime Control and Law Enforcement Act of 1994

On September 13, 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994,<sup>34</sup> which made it unlawful, with certain exceptions, to manufacture, transfer, or possess semiautomatic assault weapons as defined by the statute.<sup>35</sup> The statute defined semiautomatic assault weapons to include 19 named models of firearms (or copies or duplicates of the firearms in any caliber);<sup>36</sup> semiauto-matic rifles that have the ability to accept detachable magazines and have at least two of five features specified in the law; semiautomatic pistols that have the ability to accept detachable magazines and have at least two of five features specified in the law; and semiautomatic shotguns that have at least two of four features specified in the law.<sup>37</sup> However, Congress

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<sup>33</sup> After the 1989 report was issued, Mitchell Arms, Inc. asserted takings claims against the Government based upon the suspension and revocation of four permits allowing for the importation of semiautomatic assault rifles and ATF's temporary moratorium on import permits for other rifles. The court found for the Government, holding the injury complained of was not redressable as a taking because Mitchell Arms did not hold a property interest within the meaning of the Just Compensation Clause of the Fifth Amendment. Mitchell Arms v. United States, 26 Cl. Ct. 1 (1992), aff'd, 7 F.3d 212 (Fed. Cir. 1993), cert. denied, 511 U.S. 1106 (1994).

<sup>34</sup> Pub. L. No. 103-22. Title XI, Subtitle A of this act may be cited as the "Public Safety and Recreational Firearms Use Protection Act."

<sup>35</sup> 18 U.S.C. section 922(v).

<sup>36</sup> Chapter 18 U.S.C. section 921(a)(30)(A) states that the term "semiautomatic assault weapon" means "any of the firearms, or copies or duplicates of the firearms in any caliber, known as -, " followed by a list of named firearms. Even though section 921(a)(3) defines "firearm" as used in chapter 18 to mean, in part, "the frame or receiver of any such weapon," the use of "firearm" in section 921(a)(30)(A) has not been interpreted to mean a frame or receiver of any of the named weapons, except when the frame or receiver actually is incorporated in one of the named weapons.

Any other interpretation would be contrary to Congress' intent in enacting the assault weapon ban. In the House Report to the assault weapon ban, Congress emphasized that the ban was to be interpreted narrowly. For example, the report explained that the present bill was more tightly focused than earlier drafts which gave ATF authority to ban any weapon which "embodies the same configuration" as the named list of guns in section 921(a)(30)(A); instead, the present bill "contains a set of specific characteristics that must be present in order to ban any additional semiautomatic assault weapons [beyond the listed weapons]." H. Rep. 103-489 at 21.

<sup>37</sup> 18 U.S.C. section 921(a)(30).

exempted from the assault weapon ban any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition and any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.<sup>38</sup>

Although the 1994 law was not directly addressing the sporting purposes test in section 925(d)(3), section 925(d)(3) had a strong influence on the law's content. The technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law. The House Report to the 1994 law explained that although the legal question of whether semiautomatic assault weapons met section 925(d)(3)'s sporting purposes test "is not directly posed by [the 1994 law], the working group's research and analysis on assault weapons is relevant on the questions of the purposes underlying the design of assault weapons, the characteristics that distinguish them from sporting guns, and the reasons underlying each of the distinguishing features."<sup>39</sup> As in the 1989 study, Congress focused on the external features of firearms, rather than on their semiautomatic operating mechanism.

The 1994 law also made it unlawful to possess and transfer large capacity ammunition feeding devices manufactured after September 13, 1994.<sup>40</sup> A large capacity ammunition feeding device was generally defined as a magazine, belt, drum, feed strip, or similar device that has the capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.<sup>41</sup>

Congress passed these provisions of the 1994 law in response to the use of semiautomatic assault weapons and large capacity ammunition feeding devices in crime. Congress had been presented with much evidence demonstrating that these weapons were "the weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder."<sup>42</sup> The House Report to the 1994 law recounts numerous crimes that had occurred involving semiautomatic assault weapons and large capacity magazines that were originally designed and produced for military assault rifles.<sup>43</sup>

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<sup>38</sup> 18 U.S.C. sections 922(v)(3)(C)&(D).

<sup>39</sup> H. Rep. No. 103-489, at 17, n. 19.

<sup>40</sup> 18 U.S.C. section 922(w).

<sup>41</sup> 18 U.S.C. section 921(a)(31).

<sup>42</sup> H. Rep. No. 103-489, at 13.

<sup>43</sup> H. Rep. No. 103-489, at 14-15.

In enacting the semiautomatic assault weapon and large capacity ammunition feeding device bans, Congress emphasized that it was not preventing the possession of sporting firearms. The House Report, for example, stated that the bill differed from earlier bills in that "it is designed to be more tightly focused and more carefully crafted to clearly exempt legitimate sporting guns."<sup>44</sup> In addition, Congress specifically exempted 661 long guns from the assault weapon ban which are "most commonly used in hunting and recreational sports."<sup>45</sup>

Both the 1994 law and its legislative history demonstrate that Congress recognized that ammunition capacity is a factor in determining whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. Moreover, the House Report specifically states that the ability to accept a large capacity magazine was a military configuration feature which was not "merely cosmetic," but "serve[d] specific, combat-functional ends."<sup>46</sup> The House Report also explains that, while "[m]ost of the weapons covered by the [ban] come equipped with magazines that hold 30 rounds [and can be replaced with magazines that hold 50 or even 100 rounds], . . . [i]n contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5."<sup>47</sup>

Finally, it must be emphasized that the semiautomatic assault weapon ban of section 922(v) is distinct from the sporting purposes test governing imports of section 925(d)(3). Clearly, any weapon banned under section 922(v) cannot be imported into the United States because its possession in the United States would be illegal. However, it is possible that a weapon not defined as a semiautomatic assault weapon under section 922(v) still would not be importable under section 925(d)(3). In order to be importable, the firearm must be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes regardless of its categorization under section 922(v). The

Secretary's discretion under section 925(d)(3) remains intact for all weapons not banned by the 1994 statute.

### The Present Review

Prior to the November 14, 1997, decision to conduct this review, certain members of

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<sup>44</sup> H. Rep. No. 103-489, at 21.

<sup>45</sup> H. Rep. No. 103-489, at 20. None of these 661 guns are study rifles.

<sup>46</sup> H. Rep. No. 103-489, at 18.

<sup>47</sup> H. Rep. No. 103-489, at 19 (footnote omitted).

Congress strongly urged that it was necessary to review the manner in which the Treasury Department is applying the sporting purposes test to the study rifles, in order to ensure that the present practice is consistent with section 925(d)(3) and current patterns of gun use. The fact that it had been nearly 10 years since the last comprehensive review of the importation of rifles (with many new rifles being developed during this time) also contributed to the decision to conduct this review.



### DEFINING THE TYPE OF WEAPON UNDER REVIEW

Section 925 (d) (3) provides that the Secretary shall authorize the importation of a firearm if it is of a “type” that meets the sporting purposes test. Given this statutory mandate, we had to determine whether the study rifles suspended from importation fell within one type of firearm. Our review of the study rifles demonstrated that all were derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found to be importable when certain military features were removed.

Within this group, we determined that virtually all of the study rifles shared another important feature: The ability to accept a detachable large capacity magazine (e.g., more than 10 rounds) that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi. (This is the only military configuration feature cited in the 1989 study that remains with any of the study rifles).

We determined that all of the study rifles that shared both of these characteristics fell within a type of firearm which, for the purposes of this report, we call “large capacity military magazine rifles” or “LCMM rifles.” It appears that only one study rifle, the VEPR caliber .308--which is based on the AK47 design--does not fall within this type because it does not have the ability to accept a large capacity military magazine.

### SCOPE OF "SPORTING PURPOSES"

As in the 1989 study, we had to determine the scope of "sporting purposes" as used in section 925(d)(3). Looking to the statute, its legislative history, the work of the Firearms Evaluation Panel (see exhibit 6), and prior ATF interpretations, we determined sporting purposes should be given a narrow reading, incorporating only the traditional sports of hunting and organized competitive target shooting (rather than a broader interpretation that could include virtually any lawful activity or competition.)

In terms of the statute itself, the structure of the importation provisions suggests a somewhat narrow interpretation. Firearms are prohibited from importation (section 922(l)), with four specific exceptions (section 925(d)). A broad interpretation permitting a firearm to be imported because someone may wish to use it in some lawful shooting activity would render the general prohibition of section 922(l) meaningless.

Similarly, as discussed in the "Background" section, the legislative history of the GCA indicates that the term sporting purposes narrowly refers to the traditional sports of hunting and organized competitive target shooting. There is nothing in the history to indicate that it was intended to recognize every conceivable type of activity or competition that might employ a firearm.

In addition, the FEP specifically addressed the informal shooting activity of "plinking" (shooting at randomly selected targets such as bottles and cans) and determined that it was not a legitimate sporting purpose under the statute. The panel found that, "while many persons participate in this type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation. . . ." (See exhibit 6.)

Finally, the 1989 report determined that the term sporting purposes should be given a narrow reading incorporating the traditional rifle sports of hunting and organized competitive target shooting. In addition, the report determined that the statute's reference to sporting purposes was intended to stand in contrast with military and law enforcement applications. This is consistent with ATF's interpretation in the context of the Striker-12 shotgun and the USAS-12 shotgun. It is also supported by the court's decision in Gilbert Equipment Co. v. Higgins.

We received some comments urging us to find "practical shooting" is a sport for the purposes of section 925(d)(3).<sup>48</sup> Further, we received information showing that practical shooting is gaining in popularity in the United States and is governed by an organization that has sponsored national events since 1989. It also has an international organization.

While some may consider practical shooting a sport, by its very nature it is closer to police/combat-style competition and is not comparable to the more traditional types of sports, such as hunting and organized competitive target shooting. Therefore, we are not convinced that practical shooting does, in fact, constitute a sporting purpose under section 925(d)(3).<sup>49</sup> However, even if we were to assume for the sake of argument that practical shooting is a sport for the purposes of the statute, we still would have to decide whether a firearm that could be used in practical shooting meets the sporting purposes test. In other words, it still would need to be determined whether the firearm is of a type that is generally recognized as particularly suitable for or readily adaptable to practical shooting and other sporting purposes.<sup>50</sup> Moreover, the legislative history makes clear that the use of a military weapon in a practical shooting competition would not make that weapon

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<sup>48</sup> Practical shooting involves moving, identifying, and engaging multiple targets and delivering a number of shots rapidly. In doing this, practical shooting participants test their defensive skills as they encounter props, including walls and barricades, with full or partial targets, "no-shoots," steel reaction targets, movers, and others to challenge them.

<sup>49</sup> As noted earlier, ATF has taken the position that police/combat-style competitions do not constitute a "sporting purpose." This position was upheld in Gilbert Equipment Co., 709 F. Supp. at 1077.

<sup>50</sup> Our findings on the use and suitability of the LCMM rifles in practical shooting competitions are contained in the "Suitability for Sporting Purposes" section of this report.

sporting: “if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event.”<sup>51</sup> While none of the LCMM rifles are military weapons, they still retain the military feature of the ability to accept a large capacity military magazine.

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<sup>51</sup> 114 Cong. Rec. 27461-462 (1968) (Sen. Dodd).

## METHOD OF STUDY

As explained in the “Executive Summary” section of this report, the purpose of this study is to review whether modified semiautomatic assault rifles are properly importable under 18 U.S.C. section 925(d)(3). More specifically, we reexamined the conclusions of the 1989 report as applied today to determine whether we are correct to allow importation of the study rifles that have been modified by having certain military features removed. To determine whether such rifles are generally recognized as particularly suitable for or readily adaptable to sporting purposes, the Secretary must consider both the physical features of the rifles and the actual uses of the rifles.<sup>52</sup> Because it appears that all of the study rifles that have been imported to date have the ability to accept a large capacity military magazine,<sup>53</sup> all of the information collected on the study rifles’ physical features and actual uses applies only to the LCMM rifles.

### **Physical features:**

The discussion of the LCMM rifles’ physical features are contained in the “Suitability for Sporting Purposes” section of this report.

### **Use:**

We collected relevant information on the use of the LCMM rifles. Although the 1989 study did not consider the criminal use of firearms in its importability analysis, legislative history demonstrates and the courts have found that criminal use is a factor that can be considered in determining whether a firearm meets the requirements of section 925(d)(3).<sup>54</sup> Accordingly, we decided to consider the criminal use of the LCMM rifles in the present analysis.

The term “generally recognized” in section 925(d)(3) indicates that the Secretary should base his evaluation of whether a firearm is of a type that is particularly suitable for or readily adaptable to sporting purposes, in part, on a “community standard” of the firearm’s use.<sup>55</sup> The community standard “may change over time even though the firearm remains the same. Thus, a changing pattern of use may significantly affect whether a firearm is generally recognized as particularly suitable for or readily adaptable to a sporting purpose.”<sup>56</sup> Therefore, to assist the Secretary in determining whether the LCMM rifles presently are of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes, we gathered information from the relevant “community.” The relevant community was defined as persons and groups who are

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<sup>52</sup> Gun South, Inc., 877 F.2d at 866.

<sup>53</sup> The VEPR caliber .308 discussed on page 16 has not yet been imported.

<sup>54</sup> 114 Cong. Rec. S 5556, 5582, 5585 (1968)(“[t]he entire intent of the importation section [of the sporting purposes test] is to get those kinds of weapons that are used by criminals and have no sporting purposes”) (Sen. Dodd); Gun South, Inc., 877 F.2d at 866.

<sup>55</sup> Gun South, Inc., 877 F.2d at 866.

<sup>56</sup> Id.

knowledgeable about the uses of these firearms or have relevant information about whether these firearms are particularly suitable for sporting purposes. We identified more than 2,000 persons or groups we believed would be able to provide relevant, factual information on these issues. The individuals and groups were selected to obtain a broad range of perspectives on the issues. We conducted surveys to obtain specific information from hunting guides, editors of hunting and shooting magazines, organized competitive shooting groups, State game commissions, and law enforcement agencies and organizations. Additionally, we asked industry members, trade associations, and various interest and information groups to provide relevant information.<sup>57</sup> A detailed presentation of the surveys and responses is included as an appendix to this report.

We also reviewed numerous advertisements and publications, both those submitted by the editors of hunting and shooting magazines and those collected internally, in our search for material discussing the uses of the LCMM rifles. Further, we collected importation data, tracing data, and case studies.<sup>58</sup>

Our findings on use are contained in the “Suitability for Sporting Purposes” section of this report.

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<sup>57</sup> **Hunting guides:** Guides were asked about specific types of firearms used by their clients. The guides were an easily definable group, versus the entire universe of hunters. We obtained the names of the hunting guides surveyed from the States.

**Editors of hunting and shooting magazines:** Editors were surveyed to determine whether they recommended the LCMM rifles for hunting or organized competitive target shooting and whether they had written any articles on the subject. The list of editors we surveyed was obtained from a directory of firearms-related organizations.

**Organized competitive shooting groups:** Organized groups were asked whether they sponsored competitive events with high-power semiautomatic rifles and whether the LCMM rifles were allowed in those competitions. We felt it was significant to query those who are involved with organized events rather than unofficial activities with no specific rules or guidelines. As with the editors above, the list of groups was obtained from a directory of firearms-related organizations.

**State game commissions:** State officials were surveyed to determine whether the use of the LCMM rifles was prohibited or restricted for hunting in each State.

**Law enforcement agencies and organizations:** Specific national organizations and a sampling of 26 police departments across the country were contacted about their knowledge of the LCMM rifles’ use in crime. The national organizations were surveyed with the intent that they would gather input from the wide range of law enforcement agencies that they represent or that they would have access to national studies on the subject.

**Industry members and trade associations:** These groups were included because of their knowledge on the issue.

**Interest and information groups:** These organizations were included because of their wide range of perspectives on the issue.

<sup>58</sup> To assist us with our review of the crime-related information we collected, we obtained the services of Garen J. Wintemute, MD, M.P.H. Director of the Violence Prevention Research Program, University of California, Davis, and Anthony A. Braga, Ph.D., J.F.K. School of Government, Harvard University.

### SUITABILITY FOR SPORTING PURPOSES

The next step in our review was to evaluate whether the LCMM rifles, as a type, are generally recognized as particularly suitable for or readily adaptable to hunting and organized competitive target shooting.<sup>59</sup> The standard applied in making this determination is high. It requires more than a showing that the LCMM rifles may be used or even are sometimes used for hunting and organized competitive target shooting; if this were the standard, the statute would be meaningless. Rather, the standard requires a showing that the LCMM rifles are especially suitable for use in hunting and organized competitive target shooting.

As discussed in the “Method of Study” section, we considered both the physical features of the LCMM rifles and the actual uses of the LCMM rifles in making this determination.

#### Physical Features

**The ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 or 93, SIG SG550, or Uzi.**

Although the LCMM rifles have been stripped of many of their military features, they all still have the ability to accept a detachable large capacity magazine that was originally designed and produced for one of the following military assault rifles: AK47, FN-FAL, HK91 and 93, SIG SG550, or Uzi; in other words, they still have a feature that was designed for killing or disabling an enemy. As the 1989 report explains:

Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional

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<sup>59</sup> One commenter suggests that the Secretary has been improperly applying the “readily adaptable to sporting purposes” provision of the statute. Historically, the Secretary has considered the “particularly suitable for or readily adaptable to” provisions as one standard. The broader interpretation urged by the commenter would make the standard virtually unenforceable. If the Secretary allowed the importation of a firearm which is readily adaptable to sporting purposes, without requiring it actually to be adapted prior to importation, the Secretary would have no control over whether the adaptation actually would occur following the importation.

semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity.<sup>60</sup>

Thus, the 1989 report found the ability to accept a detachable large capacity magazine originally designed and produced for a military assault rifle was a military, not a sporting, feature. Nevertheless, in 1989 it was decided that the ability to accept such a large capacity magazine, in the absence of other military configuration features, would not be viewed as disqualifying for the purposes of the sporting purposes test. However, several important developments, which are discussed below, have led us to reevaluate the weight that should be given to the ability to accept a detachable large capacity military magazine in the sporting purposes test.

Most significantly, we must reevaluate the significance of this military feature because of a major amendment that was made to the GCA since the 1989 report was issued. In 1994, as discussed in the “Background” section of this report, Congress passed a ban on large capacity ammunition feeding devices and semiautomatic assault weapons.<sup>61</sup> In enacting these bans, Congress made it clear that it was not preventing the possession of sporting firearms.<sup>62</sup> Although the 1994 law was not directly addressing the sporting purposes test, section 925(d)(3) had a strong influence on the law's content. As discussed previously, the technical work of ATF's 1989 report was, to a large extent, incorporated into the 1994 law.

Both the 1994 law and its legislative history demonstrate that Congress found that ammunition capacity is a factor in whether a firearm is a sporting firearm. For example, large capacity ammunition feeding devices were banned, while rifles and shotguns with small ammunition capacities were exempted from the assault weapon ban. In other words, Congress found magazine capacity to be such an important factor that a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition will not be banned, even if it contains all five of the assault

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<sup>60</sup> 1989 report at 6 (footnote omitted). This was not the first time that ATF considered magazine capacity to be a relevant factor in deciding whether a firearm met the sporting purposes test. See Gilbert Equipment Co., 709 F. Supp. at 1089 (“the overall appearance and design of the weapon (especially the detachable box magazine . . . ) is that of a combat weapon and not a sporting weapon.”)

<sup>61</sup> The ban on large capacity ammunition feeding devices does not include any such device manufactured on or before September 13, 1994. Accordingly, there are vast numbers of large capacity magazines originally designed and produced for military assault weapons that are legal to transfer and possess (“grandfathered” large capacity military magazines). Presently these grandfathered large capacity military magazines fit the LCMM rifles.

<sup>62</sup> See, for example, H. Rep. No. 103-489, at 21.

weapon features listed in the law. Moreover, unlike the assault weapon ban in which a detachable magazine and at least two physical features are required to ban a rifle, a large capacity magazine in and of itself is banned.

In addition, the House Report specifically states that the ability to accept a large capacity magazine is a military configuration characteristic that is not "merely cosmetic," but "serve[s] specific, combat-functional ends."<sup>63</sup> The House Report also explains that large capacity magazines

make it possible to fire a large number of rounds without re-loading, then to reload quickly when those rounds are spent. Most of the weapons covered by the proposed legislation come equipped with magazines that hold 30 rounds. Even these magazines, however, can be replaced with magazines that hold 50 or even 100 rounds. Furthermore, expended magazines can be quickly replaced, so that a single person with a single assault weapon can easily fire literally hundreds of rounds within minutes. . . . In contrast, hunting rifles and shotguns typically have much smaller magazine capabilities--from 3-5.<sup>64</sup>

Congress specifically exempted 661 long guns from the assault weapon ban that are "most commonly used in hunting and recreational sports."<sup>65</sup> The vast majority of these long guns do not use large capacity magazines. Although a small number of the exempted long guns have the ability to accept large capacity magazines, only four of these exempted long guns were designed to accept large capacity military magazines.<sup>66</sup>

The 1994 law also demonstrates Congress' concern about the role large capacity magazines and firearms with the ability to accept these large capacity magazines play in

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<sup>63</sup> H. Rep. No. 103-489, at 18.

<sup>64</sup> H. Rep. No. 103-489, at 19 (footnote omitted). The fact that 12 States place a limit on the magazine capacity allowed for hunting, usually 5 or 6 rounds, is consistent with this analysis. (See exhibit 7).

<sup>65</sup> H. Rep. 103-489, at 20.

<sup>66</sup> These four firearms are the Iver Johnson M-1 carbine, the Iver Johnson 50<sup>th</sup> Anniversary M-1 carbine, the Ruger Mini-14 autoloading rifle (without folding stock), and the Ruger Mini Thirty rifle. All of these weapons are manufactured in the United States and are not the subject of this study. In this regard, it should also be noted that Congress can distinguish between domestic firearms and foreign firearms and impose different requirements on the importation of firearms. For example, Congress may ban the importation of certain firearms although similar firearms may be produced domestically. See, for example, B-West Imports v. United States, 75 F.3d 633 (Fed. Cir. 1996).



crime. The House Report for the bill makes reference to numerous crimes involving these magazines and weapons, including the following:<sup>67</sup>

The 1989 Stockton, California, schoolyard shooting in which a gunman with a semiautomatic copy of an AK47 and 75-round magazines fired 106 rounds in less than 2 minutes. Five children were killed and twenty-nine adults and children were injured.

The 1993 shooting in a San Francisco, California, office building in which a gunman using 2 TEC DC9 assault pistols with 50-round magazines killed 8 people and wounded 6 others.

A 1993 shooting on the Long Island Railroad that killed 6 people and wounded 19 others. The gunman had a Ruger semiautomatic pistol, which he reloaded several times with 15-round magazines, firing between 30 to 50 rounds before he was overpowered.

The House Report also includes testimony from a representative of a national police officers' organization, which reflects the congressional concern with criminals' access to firearms that can quickly expel large amounts of ammunition:

In the past, we used to face criminals armed with a cheap Saturday Night Special that could fire off six rounds before [re]loading. Now it is not at all unusual for a cop to look down the barrel of a TEC-9 with a 32 round clip. The ready availability of and easy access to assault weapons by criminals has increased so dramatically that police forces across the country are being required to upgrade their service weapons merely as a matter of self-defense and preservation. The six-shot .38 caliber service revolver, standard law enforcement issue for years, is just no match against a criminal armed with a semiautomatic assault weapon.<sup>68</sup>

Accordingly, by passing the 1994 law, Congress signaled that firearms with the ability to accept detachable large capacity magazines are not particularly suitable for sporting purposes. Although in 1989 we found the ability to accept a detachable large capacity military magazine was a military configuration feature, we must give it more weight, given this clear signal from Congress.

The passage of the 1994 ban on large capacity magazines has had another effect. Under the 1994 ban, it generally is unlawful to transfer or possess a large capacity magazine

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<sup>67</sup> H. Rep. No. 103-489, at 15 (two of these examples involve handguns).

<sup>68</sup> H. Rep. 103-489, at 13-14 (footnote omitted).

manufactured after September 13, 1994. Therefore, if we require the LCMM rifles to be modified so that they do not accept a large capacity military magazine in order to be importable, a person will not be able to acquire a newly manufactured large capacity magazine to fit the modified rifle. Thus, the modified rifle neither will be able to accept a grandfathered large capacity military magazine, nor can a new large capacity magazine be manufactured to fit it. Accordingly, today, making the ability to accept a large capacity military magazine disqualifying for importation will prevent the importation of firearms which have the ability to expel large amounts of ammunition quickly without reloading.

This was not the case in 1989 or prior to the 1994 ban.

It is important to note that even though Congress reduced the supply of large capacity military magazines by passing the 1994 ban, there are still vast numbers of grandfathered large capacity military magazines available that can be legally possessed and transferred. These magazines currently fit in the LCMM rifles. Therefore, the 1994 law did not eliminate the need to take further measures to prevent firearms imported into the United States from having the ability to accept large capacity military magazines, a nonsporting factor.

Another impetus for reevaluating the existing standard is the development of modified weapons. The 1989 report caused 43 different models of semiautomatic assault rifles to be banned from being imported into the United States. The effect of that determination was that nearly all semiautomatic rifles with the ability to accept detachable large capacity military magazines were denied importation. Accordingly, at the time, there was no need for the ability to accept such a magazine to be a determining factor in the sporting purposes test. This is no longer the case. As discussed earlier, manufacturers have modified the semiautomatic assault rifles disallowed from importation in 1989 by removing all of their military configuration features, except for the ability to accept a detachable magazine. As a result, semiautomatic rifles with the ability to accept detachable large capacity military magazines (and therefore quickly expel large amounts of ammunition) legally have been entering the United States in significant numbers. Accordingly, the development of these modified weapons necessitates reevaluating our existing standards.

Thus, in order to address Congress' concern with firearms that have the ability to expel large amounts of ammunition quickly, particularly in light of the resumption of these weapons coming into the United States, the ability to accept a detachable large capacity military magazine must be given greater weight in the sporting purposes analysis of the LCMM rifles than it presently receives.<sup>69</sup>

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<sup>69</sup> A firearm that can be easily modified to accept a detachable large capacity military magazine with only minor adjustments to the firearm or the magazine is considered to be a firearm with the ability to accept these magazines. The ROMAK4 is an example of such a firearm: With minor modifications to either the

**Derived from semiautomatic assault rifles that failed to meet the sporting purposes test in 1989 but were later found importable when certain military features were removed.**

All rifles that failed to meet the sporting purposes test in 1989 were found to represent a distinctive type of rifle distinguished by certain general characteristics that are common to the modern military assault rifle. Although the LCMM rifles are based on rifle designs excluded from importation under the 1989 standard, they all were approved for import when certain military features were removed. However, the LCMM rifles all still maintain some characteristics common to the modern military assault rifle. Because the outward appearance of most of the LCMM rifles continues to resemble the military assault rifles from which they are derived, we have examined the issue of outward appearance carefully. Some might prefer the rugged, utilitarian look of these rifles to more traditional sporting guns. Others might recoil from using these rifles for sport because of their nontraditional appearance. In the end, we concluded that appearance alone does not affect the LCMM rifles' suitability for sporting purposes. Available information leads us to believe that the determining factor for their use in crime is the ability to accept a detachable large capacity military magazine.

### Use

In the 1989 study, ATF found that all rifles fairly typed as semiautomatic assault rifles should be treated the same. Accordingly, the report stated "[t]he fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of these rifles as a whole should govern each rifle within this type."<sup>70</sup> We adopt the same approach for the present study.

### **Use for hunting:**

The information we collected on the actual use of the LCMM rifles for hunting medium or larger game suggests that, with certain exceptions, the LCMM rifles sometimes are used for hunting; however, their actual use in hunting is limited.<sup>71</sup> In fact, there are some

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firearm or a large capacity magazine that was originally designed and produced for a semiautomatic assault rifle based on the AK47 design, the ROMAK4 has the ability to accept the magazine.

<sup>70</sup> 1989 report at 11.

<sup>71</sup> We targeted the surveys toward the hunting of medium and larger game (e.g., turkey and deer) because the LCMM rifles chamber centerfire cartridges and therefore likely would be most suitable for hunting this type of game. We also learned that the LCMM rifles were used to shoot certain varmints (e.g., coyotes and groundhogs), which are generally considered to be pests, not game. Many commented that the LCMM

general restrictions and prohibitions on the use of any semiautomatic rifle for hunting game. Almost half of the States place restrictions on the use of semiautomatic rifles in hunting, mostly involving magazine capacity (5-6 rounds) and what can be hunted with the rifles (see exhibit 7).

Of the 198 hunting guides who responded to our survey, only 26 stated that they had clients who used the LCMM rifles on hunting trips during the past 2 hunting seasons and only 10 indicated that they recommend the LCMM rifles for hunting. In contrast, the vast majority of the guides (152) indicated that none of their clients used the LCMM rifles on hunting trips during the past 2 hunting seasons. In addition, the hunting guides indicated that the most common semiautomatic rifles used by their clients were those made by Browning and Remington.<sup>72</sup> We found significant the comments of the hunting guides indicating that the LCMM rifles were not widely used for hunting.

Of the 13 editors of hunting and shooting magazines who responded to our survey, only 2 stated that their publications recommend specific types of centerfire semiautomatic rifles for use in hunting medium or larger game. These two respondents stated that they recommend all rifles that are safe and of appropriate caliber for hunting, including the LCMM rifles. However, they did not recommend the LCMM rifles based on the Uzi design for hunting big game; these rifles use a 9mm cartridge, which is not an appropriate caliber for this type of game, according to the editors. It is important to note that the LCMM rifles use different cartridges. The LCMM rifles based on the FN-FAL, SIG SG550, and HK91 and 93 designs are chambered for either the .308 Winchester cartridge or the .223 Remington cartridge, depending on the specific model; the LCMM rifles based on the Uzi design are chambered for the 9mm Parabellum cartridge; and the majority of the LCMM rifles based on the AK47 design are chambered for the 7.62 x 39mm cartridge (some are chambered for the .223 Remington cartridge).

Of the five interest and information groups that responded to our survey, three supported the use of the LCMM rifles for hunting. However, one of these groups stated that the

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rifles were particularly useful on farms and ranches because of their ruggedness, utilitarian design, and reliability.

<sup>72</sup> According to a 1996 study conducted for the Fish and Wildlife Service, only 2 percent of big game hunters surveyed used licensed hunting guides. Therefore, it should be noted that the information provided by the guides we surveyed may not be representative of all hunters. However, we believe that the hunting guides' information is reliable and instructive because of their high degree of experience with and knowledge of hunting.

ammunition used by the LCMM rifle models based on the Uzi design were inadequate for shooting at long distances (i.e., more than 100 yards).

Out of the 70 published articles reviewed from various shooting magazines, only 5 contained relevant information. One of these five articles stated that, in the appropriate calibers, the LCMM rifles could make “excellent” hunting rifles. Two of the articles stated that the 7.62 x 39mm cartridge (used in LCMM rifles based on the AK47 design) could be an effective hunting cartridge. One of the articles that recommended the rifles also recommended modifications needed to improve their performance in hunting. None of the articles suggested that LCMM rifles based on the Uzi design were good hunting rifles. Thus, although the LCMM rifles could be used in hunting, the articles provided limited recommendations for their use as hunting weapons.

In their usage guides, ammunition manufacturers recommend the .308 and the 7.62 x 39mm cartridges (used in LCMM rifles based on the FN-FAL and HK 91 designs, and the AK47 design respectively) for medium game hunting. However, the usage guides do not identify the 9mm cartridge (used in the Uzi design rifles) as being suitable for hunting.

A majority of the importers who provided information said that the LCMM rifles they import are used for hunting deer and similar animals. However, they provided little evidence that the rifles were especially suitable for hunting these animals. Two of the importers who responded also provided input from citizens in the form of letters supporting this position. The letters show a wide variety of uses for the LCMM rifles, including deer hunting, plinking, target shooting, home defense, and competitive shooting.

Our review of all of this information indicates that while these rifles are used for hunting medium and larger game, as well as for shooting varmints, the evidence was not persuasive that there was widespread use for hunting. We did not find any evidence that the ability to accept a large capacity military magazine serves any hunting purpose. Traditional hunting rifles have much smaller magazine capabilities. Furthermore, the mere fact that the LCMM rifles are used for hunting does not mean that they are particularly suitable for hunting or meet the test for importation.

#### **Use for organized competitive target shooting:**

Of the 31 competitive shooting groups we surveyed that stated they have events using high-power semiautomatic rifles, 18 groups stated that they permit the use of the LCMM rifles for all competitions. However, 13 respondents stated that they restrict or prohibit the LCMM rifles for some competitions, and one group stated that it prohibits the LCMM

rifles for all competitions. These restrictions and prohibitions generally were enacted for the following reasons:

1. High-power rifle competitions generally require accuracy at ranges beyond the capabilities of the 9mm cartridge, which is used by the LCMM rifles based on the Uzi design.
2. The models based on the AK47 design are limited to competitions of 200 yards or less because the 7.62 x 39mm cartridge, which is used by these models, generally has an effective range only between 300 and 500 yards.
3. Certain matches require U.S. military service rifles, and none of the LCMM rifles fall into this category.

The LCMM rifles are permitted in all United States Practical Shooting Association (USPSA) rifle competitions. The USPSA Practical Shooting Handbook, Glossary of Terms, states that “[y]ou can use any safe firearm meeting the minimum caliber (9mm/.38) and power factor (125PF) requirements.” The USPSA has stated that “rifles with designs based on the AR15, AK47, FN-FAL, HK91, HK93, and others are allowed and must be used to be competitive.” Moreover, we received some information indicating that the LCMM rifles actually are used in practical shooting competitions.<sup>73</sup> However, we did not receive any information demonstrating that an LCMM rifle’s ability to accept large capacity military magazines was necessary for its use in practical shooting competitions.

A couple of the interest groups recommended the LCMM rifles for organized competitive target shooting.

None of the 70 published articles read mentioned the use of the LCMM rifles in organized competitive target shooting.

All of the major ammunition manufacturers produce .308 Winchester ammunition (which is used in the LCMM rifle models based on the HK 91 and FN-FAL designs) and .223 Remington ammunition (which is used in the HK 93, the SIG SG550, and some of the study rifle models based on the AK47 design) specifically for competitive shooting for rifles. The major manufacturers and advertisers of 9mm ammunition (which is used in the LCMM rifles based on the Uzi design) identify it as being suitable for pistol target shooting and self-defense.

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<sup>73</sup> Merely because a rifle is used in a sporting competition, the rifle does not become a sporting rifle. 114 Cong. Rec. 27461-462 (1968).

A majority of the importers who provided information stated that the LCMM rifles they import are permitted in and suitable for organized competitive target shooting. Two of the importers who responded also provided input from citizens in the form of letters and petitions supporting this position. However, the importers provided little evidence that the rifles were especially suitable for organized competitive target shooting.

The information collected on the actual use of the LCMM rifles for organized competitive target shooting suggests that, with certain exceptions, the LCMM rifles usually may be used and sometimes are used for organized competitive target shooting; however, their suitability for this activity is limited. In fact, there are some restrictions and prohibitions on their use. The use of the rifles in competitive target shooting appears more widespread than for hunting and their use for practical shooting was the most significant. Although we are not convinced that practical shooting does in fact constitute a sporting purpose under section 925(d), we note that there was no information demonstrating that rifles with the ability to accept detachable large capacity military magazines were necessary for use in practical shooting. Once again, the presence of this military feature on LCMM rifles suggests that they are not generally recognized as particularly suitable for or readily adaptable to sporting purposes.

### **Use in crime:**

To fully understand how the LCMM rifles are used, we also examined information available to us on their use in crime. Some disturbing trends can be identified, and it is clear the LCMM rifles are attractive to criminals.

The use of LCMM rifles in violent crime and firearms trafficking is reflected in the cases cited below. It should be noted that the vast majority of LCMM rifles imported during the period 1991-1997 were AK47 variants, which explains their prevalence in the cited cases.

#### **North Philadelphia, Pennsylvania**

From April 1995 to November 1996, a convicted felon used a straw purchaser to acquire at least 55 rifles, including a number of MAK90s. The rifles were then trafficked by the prohibited subject to individuals in areas known for their high crime rates. In one case, the rifles were sold from the parking lot of a local elementary school.

#### **Oakland, California**

On July 8, 1995, a 32-year-old Oakland police officer assisted a fellow officer with a vehicle stop in a residential area. As the first officer searched the rear compartment of the stopped vehicle, a subject from a nearby residence used a Norinco model NMH 90 to shoot the 32-year old officer in the back. The officer later died from the wound.



#### El Paso, Texas

On April 15, 1996, after receiving information from the National Tracing Center, ATF initiated an undercover investigation of a suspected firearms trafficker who had purchased 326 MAK90 semiautomatic rifles during a 6-month period. The individual was found to be responsible for illegally diverting more than 1,000 firearms over the past several years. One of the MAK90 rifles that the subject had purchased was recovered from the scene of a 1996 shootout in Guadalajara, Mexico, between suspected drug traffickers and Mexican authorities. Another MAK90 was recovered in 1997 from the residence of a former Mexican drug kingpin following his arrest for drug-related activities.

#### Charlotte, North Carolina

On May 24, 1996, four armed subjects—one with a MAK90 rifle—carried out a home invasion robbery during which they killed the resident with a 9mm pistol. All four suspects were arrested.

#### Dallas, Texas

In September 1997, an investigation was initiated on individuals distributing crack cocaine from a federally subsidized housing community. During repeated undercover purchases of the narcotics, law enforcement officials noticed that the suspects had firearms in their possession. A search warrant resulted in the seizure of crack cocaine, a shotgun, and a North China Industries model 320 rifle.

#### Chesterfield, Virginia

In November 1997, a MAK90 rifle was used to kill two individuals and wound three others at a party in Chesterfield, Virginia.

#### Orange, California

In December 1997, a man armed with an AKS 762 rifle and two other guns drove to where he was previously employed and opened fire on former coworkers, killing four and injuring three, including a police officer.

#### Baltimore, Maryland

In December 1997, a search warrant was served on a homicide suspect who was armed at the time with three pistols and a MAK90 rifle.

We also studied import and trace information to learn whether the LCMM rifles are used in crime.

Between 1991 and 1997, there were 425,114 LCMM rifles imported into the United States. This represents 7.6 percent of the approximately 5 million rifles imported during this period. The breakdown of the specific variants of LCMM rifles imported follows:

AK-47 variants:	377,934
FN-FAL variants:	37,534
HK variants:	6,495
Uzi variants:	3,141
SIG SG550 variants:	10

During this same time period, ATF traced 632,802 firearms.<sup>74</sup> This included 81,842 rifles of which approximately 3,176 were LCMM rifles.<sup>75</sup> While this number is relatively low compared to the number of total traces, it must be viewed in light of the small number of LCMM rifles imported during this time period and the total number of rifles, both imported domestic, that were available in the United States. A more significant trend is reflected in figure 1.

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<sup>74</sup> ATF traces crime guns recovered and submitted by law enforcement officials. A crime gun is defined, for purposes of firearms tracing, as any firearm that is illegally possessed, used in a crime, or suspected by law enforcement of being used in a crime. Trace information is used to establish links between criminals and firearms, to investigate illegal firearm trafficking, and to identify patterns of crime gun traces by jurisdiction. A substantial number of firearms used in crime are not recovered by law enforcement agencies and therefore not traced. In addition, not all recovered crime guns are traced. Therefore, trace requests substantially underestimate the number of firearms involved in crimes, and trace numbers contain unknown statistical biases. These problems are being reduced as more law enforcement agencies institute policies of comprehensive crime gun tracing.

<sup>75</sup> The vast majority of LCMM rifles traced during this time period were AK47 variants. Specifically, AK47 variants comprised 95.6 percent of the LCMM rifles traced. This must be viewed within the context that 88 percent of the LCMM rifles imported during this period were AK47 variants.

## Firearms Traces 1991-1997

Year	Total Firearms Traced	Total Rifles Traced	Total Assault <sup>76</sup> Rifles Traced	Total LCMM Rifles Traced
1991	42,442	6,196	656	7
1992	45,134	6,659	663	39
1993	54,945	7,690	852	182
1994	83,137	9,201	735	596
1995	76,847	9,988	717	528
1996	136,062	17,475	1,075	800
1997	194,235	24,633	1,518	1,024
Cumulative Total	632,802	81,842	6,216	3,176

Figure 1

The figures in this table show that between 1991 and 1994, trace requests involving LCMM rifles increased rapidly, from 7 to 596. During the same period, trace requests for assault rifles increased at a slower rate, from 656 to 735. The years 1991 to 1994 are significant because they cover a period between when the ban on the importation of semiautomatic assault rifles was imposed and before the September 13, 1994, ban on semiautomatic assault weapons was enacted. Thus, during the years leading up to the 1994 ban, traces of LCMM rifles were increasing much more rapidly than the traces of the rifles that had been the focus of the 1989 ban, as well as the rifles that were the focus of the 1994 congressional action.

We also compared patterns of importation with trace requests to assess the association of LCMM rifles with criminal involvement. The comparison shows that importation of LCMM rifles in the early 1990s was followed immediately by a rapid rise in the number of trace requests involving LCMM rifles. This is shown in figures 2 and 3.

<sup>76</sup> For purposes of this table, assault rifles include (1) semiautomatic assault rifles banned from importation in 1989 but still available domestically because they had been imported into the United States prior to the ban, (2) domestically produced rifles that would not have qualified for importation after 1989, and (3) semiautomatic assault rifles that were banned in 1994.

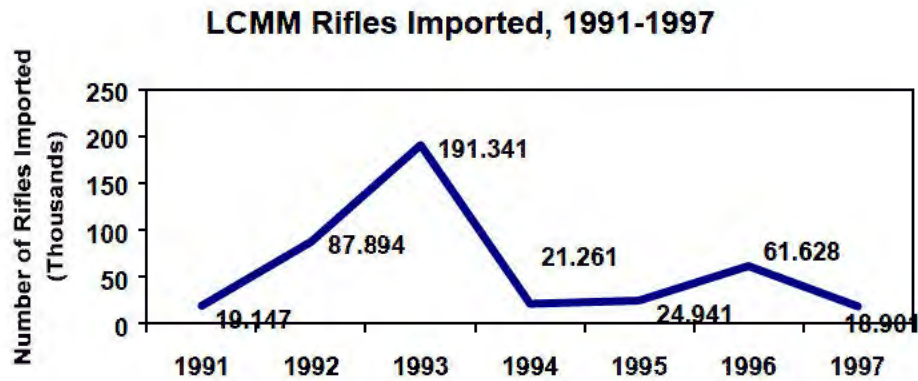


Figure 2

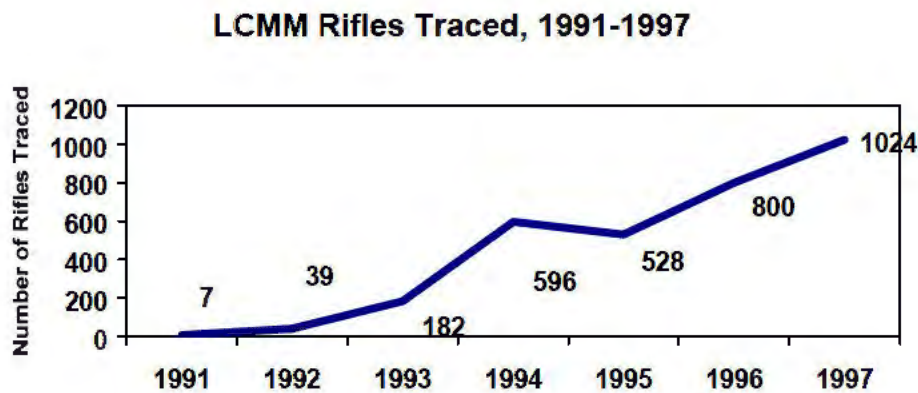


Figure 3

Two aspects of the relationship between importation and trace request patterns are significant. First, the rapid rise in traces following importation indicates that, at least in some cases, very little time elapsed between a particular LCMM rifle's importation and its recovery by law enforcement. This time lapse is known as "time to crime." A short time to crime can be an indicator of illegal trafficking. Therefore, trace patterns suggest what the case examples show: LCMM rifles have been associated with illegal trafficking. Second, while LCMM rifles have not been imported in large numbers since 1994,<sup>77</sup> the number of trace requests for LCMM rifles continues to rise. This reflects a sustained and

<sup>77</sup> One reason is that there has been an embargo on the importation of firearms from China since May 1994.

continuing pattern of criminal association for LCMM rifles despite the fact that there were fewer new LCMM rifles available.<sup>78</sup> Moreover, it is reasonable to conclude that if the importation of LCMM rifles resumes, the new rifles would contribute to the continuing rise in trace requests for them.<sup>79</sup>

All of the LCMM rifles have the ability to accept a detachable large capacity military magazine. Thus, they all have the ability to expend large amounts of ammunition quickly. In passing the 1994 ban on semiautomatic assault rifles and large capacity ammunition feeding devices, Congress found that weapons with this ability are attractive to criminals.<sup>80</sup> Thus, we can infer that the LCMM rifles may be attractive to criminals because in some ways they remain akin to military assault rifles, particularly in their ability to accept a detachable large capacity military magazine.

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<sup>78</sup> The increase in trace requests also reflects the fact that law enforcement officials were making trace requests for all types of firearms much more frequently beginning in 1996. There were 76,847 trace requests in 1995, 136,062 trace requests in 1996, and 194,235 trace requests in 1997. Traces for assault rifles were increasing by approximately the same percentage as traces for LCMM rifles during these years.

<sup>79</sup> In addition to looking at case studies and tracing and import information, we attempted to get information on the use of the LCMM rifles in crime by surveying national law enforcement agencies and organizations, as well as metropolitan police departments. Twenty-three national law enforcement agencies and organizations were surveyed and five responded. Three of the respondents stated they had no information. The other two provided information that was either outdated or not specific enough to identify the LCMM rifles.

The 26 metropolitan police departments surveyed provided the following information:

- 17 departments had no information to provide.
- 5 departments stated that the LCMM rifles were viewed as crime guns.
- 1 department stated that the LCMM rifles were non sporting.
- 2 departments stated that the LCMM rifles were used to hunt coyotes in their areas.
- 1 department stated that the LCMM rifles were used for silhouette target shooting.

<sup>80</sup> H. Rep. No. 103-489, at 13, 18, 19.

### DETERMINATION

In 1989, ATF determined that the type of rifle defined as a semiautomatic assault rifle was not generally recognized as particularly suitable for or readily adaptable to sporting purposes. Accordingly, ATF found that semiautomatic assault rifles were not importable into the United States. This finding was based, in large part, on ATF's determination that semiautomatic assault rifles contain certain general characteristics that are common to the modern military assault rifle. These characteristics were designed for killing and disabling the enemy and distinguish the rifles from traditional sporting rifles. One of these characteristics is a military configuration, which incorporates eight physical features: Ability to accept a detachable magazine, folding/telescoping stocks, separate pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1989, ATF decided that any of these military configuration features, other than the ability to accept a detachable magazine, would make a semiautomatic assault rifle not importable.

Certain semiautomatic assault rifles that failed the 1989 sporting purposes test were modified to remove all of the military configuration features, except for the ability to accept a detachable magazine. Significantly, most of these modified rifles not only still have the ability to accept a detachable magazine but, more specifically, still have the ability to accept a large capacity military magazine. It appears that only one of the current study rifles, the VEPR caliber .308 (an AK47 variant), does not have the ability to accept a large capacity military magazine and, therefore, is not an LCMM rifle. Based on the standard developed in 1989, these modified rifles were found not to fall within the semiautomatic assault rifle type and were found to meet the sporting purposes test. Accordingly, these rifles were approved for import into the United States.

Members of Congress and others have expressed concerns that these modified semiautomatic assault rifles are essentially the same as the semiautomatic assault rifles determined to be not importable in 1989. In response to such concerns, the present study reviewed the current application of the sporting purposes test to the study rifles to determine whether the statute is being applied correctly and to ensure that the current use of the study rifles is consistent with the statute's criteria for importability.

Our review took another look at the entire matter. We reexamined the basic tenets of the 1989 study, conducted a new analysis of the physical features of the rifles, surveyed a wide variety of sources to acquire updated information relating to use and suitability, and assessed changes in law that might have bearing on the treatment of the study rifles.

This review has led us to conclude that the basic finding of the 1989 decision remains valid and that military-style semiautomatic rifles are not importable under the sporting purposes standard. Accordingly, we believe that the Department of the Treasury correctly has been denying the importation of rifles that had any of the distinctly military

configuration features identified in 1989, other than the ability to accept a detachable magazine. Our review, however, did result in a finding that the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.

Several important changes have occurred since 1989 that have led us to reevaluate the importance of this feature in the sporting purposes test. Most significantly, by passing the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting; rather, firearms with this ability have military purposes and are a crime problem. The House Report to the 1994 law emphasizes that the ability to accept a large capacity magazine “serve[s] specific, combat-functional ends.”<sup>81</sup> Moreover, this ability plays a role in increasing a firearm’s “capability for lethality,” creating “more wounds, more serious, in more victims.”<sup>82</sup> Furthermore, the House Report noted semiautomatic assault weapons with this ability are the “weapons of choice among drug dealers, criminal gangs, hate groups, and mentally deranged persons bent on mass murder.”<sup>83</sup>

Moreover, we did not find any evidence that the ability to accept a detachable large capacity military magazine serves any sporting purpose. The House Report to the 1994 law notes that, while most of the weapons covered by the assault weapon ban come equipped with detachable large capacity magazines, hunting rifles and shotguns typically have much smaller magazine capabilities, from 3 to 5 rounds.<sup>84</sup> Similarly, we found that a number of States limit magazine capacity for hunting to 5 to 6 rounds. We simply found no information showing that the ability to accept a detachable large capacity military magazine has any purpose in hunting or organized competitive target shooting.

Accordingly, we find that the ability to accept a detachable large capacity military magazine is a critical factor in the sporting purposes test that must be given the same weight as the other military configuration features identified in 1989.

The information we collected on the use and suitability of the LCMM rifles for hunting and organized competitive target shooting demonstrated that the rifles are not especially suitable for sporting purposes. Although our study found that the LCMM rifles, as a type, may sometimes be used for hunting, we found no evidence that they are commonly used for hunting. In fact, some of the rifles are unsuitable for certain types of hunting.

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<sup>81</sup> H. Rep. No. 103-489, at 18.

<sup>82</sup> H. Rep. No. 103-489, at 19.

<sup>83</sup> H. Rep. No. 103-489, at 13.

<sup>84</sup> H. Rep. No. 103-489, at 19 (footnote omitted).

The information we collected also demonstrated that although the LCMM rifles, as a type, may be used for organized competitive target shooting, their suitability for these competitions is limited. There are even some restrictions or prohibitions on their use for certain types of competitions. In addition, we believe that all rifles which are fairly typed as LCMM rifles should be treated the same. Therefore, the fact that there may be some evidence that a particular rifle of this type is used or recommended for sporting purposes should not control its importability. Rather, all findings as to suitability of LCMM rifles as a whole should govern each rifle within this type. The findings as a whole simply did not satisfy the standard set forth in section 925(d)(3).

Finally, the information we gathered demonstrates that the LCMM rifles are attractive to certain criminals. We find that the LCMM rifles' ability to accept a detachable large capacity military magazine likely plays a role in their appeal to these criminals. In enacting the 1994 bans on semiautomatic assault weapons and large capacity ammunition feeding devices, Congress recognized the appeal large magazine capacity has to the criminal element.

Weighing all this information, the LCMM rifles, as a type, are not generally recognized as particularly suitable for or readily adaptable to sporting purposes. As ATF found in conducting its 1989 study, although some of the issues we confronted were difficult to resolve, in the end we believe the ultimate conclusion is clear and compelling. The ability of all of the LCMM rifles to accept a detachable large capacity military magazine gives them the capability to expel large amounts of ammunition quickly; this serves a function in combat and crime, but serves no sporting purpose. Given the high standard set forth in section 925(d)(3) and the Secretary's discretion in applying the sporting purposes test, this conclusion was clear.

This decision will in no way preclude the importation of true sporting firearms. It will prevent only the importation of firearms that cannot fairly be characterized as sporting rifles.

Individual importers with existing permits for, and applications to import involving, the LCMM rifles will be notified of this determination in writing. Each of these importers will be given an opportunity to respond and present additional information and arguments. Final action will be taken on permits and applications only after an affected importer has an opportunity to make its case.



THE WHITE HOUSE  
WASHINGTON

November 14, 1997

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT:           Importation of Modified Semiautomatic  
                  Assault-Type Rifles

The Gun Control Act of 1968 restricts the importation of firearms unless they are determined to be particularly suitable for or readily adaptable to sporting purposes. In 1989, the Department of the Treasury (the Department) conducted a review of existing criteria for applying the statutory test based on changing patterns of gun use. As a result of that review, 43 assault-type rifles were specifically banned from importation. However, manufacturers have modified many of those weapons banned in 1989 to remove certain military features without changing their essential operational mechanism. Examples of such weapons are the Galil and the Uzi.

In recent weeks, Members of Congress have strongly urged that it is again necessary to review the manner in which the Department is applying the sporting purposes test, in order to ensure that the agency's practice is consistent with the statute and current patterns of gun use. A letter signed by 30 Senators strongly urged that modified assault-type weapons are not properly importable under the statute and that I should use my authority to suspend temporarily their importation while the Department conducts an intensive, expedited review. A recent letter from Senator Dianne Feinstein emphasized again that weapons of this type are designed not for sporting purposes but for the commission of crime. In addition, 34 Members of the House of Representatives signed a letter to Israeli Prime Minister Binyamin Netanyahu requesting that he intervene to stop all sales of Galils and Uzis into the United States. These concerns have caused the Government of Israel to announce a temporary moratorium on the exportation of Galils and Uzis so that the United States can review the importability of these weapons under the Gun Control Act.

The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action. Firearms importers have obtained permits to import nearly 600,000 modified assault-type rifles. In addition, there are pending before the Department applications to import more than 1 million additional such weapons. The number of rifles covered by outstanding permits is comparable to that which existed in 1989 when the Bush Administration temporarily suspended import permits for assault-type rifles. The number of weapons for which permits for importation are being sought through pending applications is approximately 10 times greater than in 1989. The number of such firearms for which import applications have been filed has skyrocketed from 10,000 on October 9, 1997, to more than 1 million today.

My Administration is committed to enforcing the statutory restrictions on importation of firearms that do not meet the sporting purposes test. It is necessary that we ensure that the statute is being correctly applied and that the current use of these modified weapons is consistent with the statute's criteria for importability. This review should be conducted at once on an expedited basis. The review is directed to weapons such as the Uzi and Galil that failed to meet the sporting purposes test in 1989, but were later found importable when certain military features were removed. The results of this review should be applied to all pending and future applications.

The existence of outstanding permits for nearly 600,000 modified assault-type rifles threatens to defeat the purpose of the expedited review unless, as in 1989, the Department temporarily suspends such permits. Importers typically obtain authorization to import firearms in far greater numbers than are actually imported into the United States. However, gun importers could effectively negate the impact of any Department determination by simply importing weapons to the maximum amount allowed by their permits. The public health and safety require that the only firearms allowed into the United States are those that meet the criteria of the statute.

Accordingly, as we discussed, you will:

- 1) Conduct an immediate expedited review not to exceed 120 days in length to determine whether modified semiautomatic assault-type rifles are properly importable under the statutory sporting purposes test. The results of this review will govern action on pending and future applications for import permits, which shall not be acted upon until the completion of this review.

2) Suspend outstanding permits for importation of modified semiautomatic assault-type rifles for the duration of the 120-day review period. The temporary suspension does not constitute a permanent revocation of any license. Permits will be revoked only if and to the extent that you determine that a particular weapon does not satisfy the statutory test for importation, and only after an affected importer has an opportunity to make its case to the Department.

William J. Clinton

STUDY RIFLE MODELS

AK47 Variants:

MAK90*	SA2000
314*	ARM
56V*	MISR
89*	MISTR
EXP56A*	SA85M
SLG74	Mini PSL
NHM90*	ROMAK 1
NHM90-2*	ROMAK 2
NHM91*	ROMAK 4
SA85M	Hunter rifle
SA93	386S
A93	PS/K
AKS 762	VEPR caliber
VEPR	7.62 x 39mm
caliber .308	

FN-FAL Variants:

L1A1 Sporter  
 FAL Sporter  
 FZSA  
 SAR4800  
 X FAL  
 C3  
 C3A  
 LAR Sporter

Saiga rifle  
 Galil Sporter  
 Haddar  
 Haddar II  
 WUM 1  
 WUM 2  
 SLR95  
 SLR96  
 SLR97  
 SLG94  
 SLG95  
 SLG96

HK Variants:

BT96  
 Centurian 2000  
 SR9  
 PSG1  
 MSG90  
 G3SA  
 SAR8

Uzi Variants:

Officers 9\*  
 320 carbine\*  
 Uzi Sporter

SIG SG550 Variants:

SG550-1  
 SG550-2

- These models were manufactured in China and have not been imported since the 1994 embargo on the importation of firearms from China.

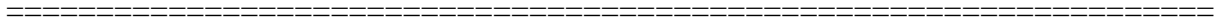
### STUDY RIFLES

The study rifles are semiautomatic firearms based on the AK47, FN-FAL, HK 91 and 93, Uzi, and SIG SG550 designs. Each of the study rifles is derived from a semiautomatic assault rifle. The following are some examples of specific study rifle models grouped by design type. In each instance, a semiautomatic assault rifle is shown above the study rifles for comparison.

#### AK47 Variants



AK47 semiautomatic assault rifle



MISR



ARM



MAK90



WUM 1

FN-FAL Variants



FN-FAL semiautomatic assault rifle

---



L1A1 Sporter



SAR 4800

HK 91 and 93 Variants



HK91 semiautomatic assault rifle

---



SR9



SAR 8

Uzi Variants



Uzi semiautomatic assault rifle



320 carbine

SIG SG550 Variants

The following illustration depicts the configuration of a semiautomatic assault rifle based on the SIG SG550 design. No illustrations of modified semiautomatic versions are available.



SIG SG550 semiautomatic assault rifle

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FACTORING CRITERIA FOR WEAPONS

NOTE: The Bureau of Alcohol, Tobacco and Firearms reserves the right to preclude importation of any revolver or pistol which achieves an apparent qualifying score but does not adhere to the provisions of section 925(d)(3) of Amended Chapter 44, Title 18, U.S.C.

PISTOL			REVOLVER		
MODEL:			MODEL:		
<b>PREREQUISITES</b> 1. The pistol must have a positive manually operated safety device. 2. The combined length and height must not be less than 10" with the height (right angle measurement to barrel without magazine or extension) being at least 4" and the length being at least 6"			<b>PREREQUISITES</b> 1. Must pass safety test. 2. Must have overall frame (with conventional grips) length (not diagonal) of 4½" minimum. 3. Must have a barrel length of at least 3".		
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL	INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB-TOTAL
OVERALL LENGTH	1		BARREL LENGTH (Muzzle to Cylinder Face)	0	
FOR EACH 1/4" OVER 6"			LESS THAN 4"		
FRAME CONSTRUCTION	15		FOR EACH 1/4" OVER 4"	1/2	
INVESTMENT CAST OR FORGED STEEL			FRAME CONSTRUCTION		
INVESTMENT CAST OR FORGED HTS ALLOY	20		INVESTMENT CAST OR FORGED STEEL	15	
WEAPON WEIGHT W/MAGAZINE (Unloaded)	1		INVESTMENT CAST OR FORGED HTS ALLOY	20	
PER OUNCE			WEAPON WEIGHT (Unloaded)	1	
CALIBER	0		PER OUNCE		
.22 SHORT AND .25 AUTO			CALIBER	0	
.22 LR AND 7.65mm TO .380 AUTO	3		.22 SHORT TO .25 ACP		
9mm PARABELLUM AND OVER	10		.22 LR AND .30 TO .38 S&W	3	
SAFETY FEATURES	5		.38 SPECIAL	4	
LOCKED BREECH MECHANISM			.357 MAG AND OVER	5	
LOADED CHAMBER INDICATOR	5		MISCELLANEOUS EQUIPMENT	5	
GRIP SAFETY	3		ADJUSTABLE TARGET SIGHTS (Drift or Click)		
MAGAZINE SAFETY	5		TARGET GRIPS	5	
FIRING PIN BLOCK OR LOCK	10		TARGET HAMMER AND TARGET TRIGGER	5	
MISCELLANEOUS EQUIPMENT	2		<b>SAFETY TEST</b> A Double Action Revolver must have a safety feature which automatically (or in a Single Action Revolver by manual operation) causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge. The safety device must withstand the impact of a weight equal to the weight of the revolver dropping from a distance of 36" in a line parallel to the barrel upon the rear of the hammer spur, a total of 5 times.		
EXTERNAL HAMMER					
DOUBLE ACTION	10				
DRIFT ADJUSTABLE TARGET SIGHT	5				
CLICK ADJUSTABLE TARGET SIGHT	10				
TARGET GRIPS	5				
TARGET TRIGGER	2				
SCORE ACHIEVED (Qualifying score is 75 points)			SCORE ACHIEVED (Qualifying score is 45 points)		



### MILITARY CONFIGURATION

1. Ability to accept a detachable magazine. Virtually all modern military firearms are designed to accept large, detachable magazines. This provides the soldier with a fairly large ammunition supply and the ability to rapidly reload. Thus, large capacity magazines are indicative of military firearms. While detachable magazines are not limited to military firearms, most traditional semiautomatic sporting firearms, designed to accommodate a detachable magazine, have a relatively small magazine capacity. Additionally, some States have a limit on the magazine capacity allowed for hunting, usually five or six rounds.
2. Folding/telescoping stock. Many military firearms incorporate folding or telescoping stocks. The main advantage of this item is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded position, yet it cannot be fired nearly as accurately as with an open stock. With respect to possible sporting uses of this feature, the folding stock makes it easier to carry the firearm when hiking or backpacking. However, its predominant advantage is for military purposes, and it is normally not found on the traditional sporting rifle.
3. Pistol grips. The vast majority of military firearms employ a well-defined separate pistol grip that protrudes conspicuously beneath the action of the weapon. In most cases, the "straight line design" of the military weapon dictates a grip of this type so that the shooter can hold and fire the weapon. Further, a pistol grip can be an aid in one-handed firing of the weapon in a combat situation. Further, such grips were designed to assist in controlling machineguns during automatic fire. On the other hand, the vast majority of sporting firearms employ a more traditional pistol grip built into the wrist of the stock of the firearm since one-handed shooting is not usually employed in hunting or organized competitive target competitions.
4. Ability to accept a bayonet. A bayonet has distinct military purposes. First, it has a psychological effect on the enemy. Second, it enables soldiers to fight in close quarters with a knife attached to their rifles. No traditional sporting use could be identified for a bayonet.
5. Flash suppressor. A flash suppressor generally serves one or two functions. First, in military firearms it disperses the muzzle flash when the firearm is fired to help conceal the shooter's position, especially at night. A second purpose of some flash suppressors is to assist in controlling the "muzzle climb" of the rifle, particularly when fired as a fully automatic weapon. From the standpoint of a traditional sporting firearm, there is no particular benefit in suppressing muzzle flash. Flash suppressors that also serve to dampen muzzle climb have a limited benefit in sporting uses by allowing the shooter to reacquire

the target for a second shot. However, the barrel of a sporting rifle can be modified by "magna-porting" to achieve the same result. There are also muzzle attachments for sporting firearms to assist in the reduction of muzzle climb. In the case of military-style weapons that have flash suppressors incorporated in their design, the mere removal of the flash suppressor may have an adverse impact on the accuracy of the firearm.

6. Bipods. The majority of military firearms have bipods as an integral part of the firearm or contain specific mounting points to which bipods may be attached. The military utility of the bipod is primarily to provide stability and support for the weapon when fired from the prone position, especially when fired as a fully automatic weapon. Bipods are available accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability. However, traditional sporting rifles generally do not come equipped with bipods, nor are they specifically designed to accommodate them. Instead, bipods for sporting firearms are generally designed to attach to a detachable "slingswivel mount" or simply clamp onto the firearm.
7. Grenade launcher. Grenade launchers are incorporated in the majority of military firearms as a device to facilitate the launching of explosive grenades. Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the rifle by either screws or clamps. No traditional sporting application could be identified for a grenade launcher.
8. Night sights. Many military firearms are equipped with luminous sights to facilitate sight alignment and target acquisition in poor light or darkness. Their uses are generally for military and law enforcement purposes and are not usually found on sporting firearms since it is generally not legal to hunt at night.

**[This document has been retyped for clarity.]**

MEMORANDUM TO FILE

FIREARMS ADVISORY PANEL

The initial meeting of the Firearms Advisory Panel was held in Room 3313, Internal Revenue Building, on December 10, 1968, with all panel members present. Internal Revenue Service personnel in attendance at the meeting were the Director, Alcohol and Tobacco Tax Division, Harold Serr; Chief, Enforcement Branch, Thomas Casey; Chief, Operations Coordination Section, Cecil M. Wolfe, and Firearms Enforcement Officer, Paul Westenberger. Deputy Assistant Commissioner Compliance, Leon Green, visited the meeting several times during the day.

The Director convened the meeting at 10:00 a.m. by welcoming the members and outlining the need for such an advisory body. He then introduced the Commissioner of Internal Revenue, Mr. Sheldon Cohen, to each panel member.

Mr. Cohen spoke to the panel for approximately fifteen minutes. He thanked the members for their willingness to serve on the panel, explained the role of the panel and some of the background which led to the enactment of the Gun Control Act of 1968. Commissioner Cohen explained to the panel members the conflict of interest provisions of regulations pertaining to persons employed by the Federal Government and requested that if any member had any personal interest in any matter that came under discussion or consideration, he should make such interest known and request to be excused during consideration of the matter.

Mr. Seer then explained to the panel the areas in which the Division would seek the advice of the panel and emphasized that the role of the panel would be advisory only, and that it was the responsibility of the Service to make final decisions. He then turned the meeting over to the moderator, Mr. Wolfe.

Mr. Wolfe explained the responsibility of the Service under the import provisions of the Gun Control Act and under the Mutual Security Act. The import provisions were read and discussed.

The panel was asked to assist in defining Asporting purposes≡ as used in the Act. It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purpose category. A discussion was held on the so-called sport of Apling≡. It was the consensus that, while many persons

participated in the type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation since any firearm that could expel a projectile could be used for this purpose without having any characteristics generally associated with target guns.

The point system that had been developed by the Division and another point system formula suggested and furnished by the Southern Gun Distributors through Attorney Michael Desalle, was explained and demonstrated to the panel by Paul Westenberg. Each panel member was given copies of the formulas and requested to study them and endeavor to develop a formula he believed would be equitable and could be applied to all firearms sought to be imported.

A model BM59 Beretta, 7.62 mm, NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle be authorized for importation. Importation, however, should include the restriction that these weapons must not possess combination flash suppressors/grenade adaptors with outside diameters greater than 20mm (.22 mm is the universal grade adaptor size).

The subject of ammunition was next discussed. Panel members agreed that incendiary and tracer small arms ammunition have no use for sporting purposes. Accordingly, the Internal Revenue Service will not authorize these types of small arms ammunition importation. All other conventional small arms ammunition for pistols, revolvers, rifles and shotguns will be authorized.

The meeting was adjourned at 4:00 p.m.

C.M. Wolfe

# STATE FISH AND GAME COMMISSION REVIEW

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Alabama	Not for turkey	
Alaska		
Arizona		Not more than five rounds
Arkansas	Not for turkey	
California		
Colorado		Not more than six rounds
Connecticut*	No rifles on public land	
Delaware	No rifles	
Florida		Not more than five rounds
Georgia	Not for turkey	
Hawaii		
Idaho	Not for turkey	
Illinois	Not for deer or turkey	
Indiana*	Not for deer or turkey	
Iowa	Not for deer or turkey No restrictions on coyote or fox	
Kansas		
Kentucky		
Louisiana	Not for turkey	
Maine*	Not for turkey	
Maryland*		

Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Massachusetts	Not for deer or turkey	
Michigan	Not for turkey	Not more than six rounds
Minnesota		
Mississippi	Not for turkey	
Missouri	Not for turkey	Chamber and magazine not more than 11 rounds
Montana		
Nebraska		Not more than six rounds
Nevada	Not for turkey	
New Hampshire*	Not for turkey	Not more than five rounds
New Jersey	No rifles	
New Mexico	Not for turkey	
New York*		Not more than six rounds
North Carolina	Not for turkey	
North Dakota	Not for turkey	
Ohio	Not for deer or turkey	
Oklahoma		Not more than seven rounds for .22 caliber
Oregon*		Not more than five rounds
Pennsylvania*	No semiautomatics	

## Exhibit 7

STATE RESTRICTION	RIFLE RESTRICTION	MAGAZINE RESTRICTION
Rhode Island	Prohibited except for woodchuck in summer	
South Carolina	Not for turkey	
South Dakota		Not more than five rounds
Tennessee	Not for turkey	
Texas		
Utah	Not for turkey	
Vermont		Not more than six rounds
Virginia*		
Washington	Not for turkey	
West Virginia		
Wisconsin		
Wyoming		

\* Limited restrictions (e.g., specified areas, county restrictions, populated areas, time of day).



DIRECTOR

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

O:F:S:DMS  
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that you voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than January 9, 1998; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

*John W. Magaw*  
John W. Magaw  
Director

Enclosure



# ATF SURVEY OF HUNTING GUIDES FOR RIFLE USAGE

Page 1 of 2

*Please report only on those clients who **hunted medium game (for example, turkey) or larger game (for example, deer) with a rifle.***

*For the purposes of this survey, please count only individual clients and NOT the number of trips taken by a client. For example, if you took the same client on more than one trip, count the client only once.*

1. What is the approximate number of your clients who have ever used **manually operated rifles** during the past two hunting seasons of 1995 and 1996?

\_\_\_\_\_ number of clients.

2. What is the approximate number of your clients who have ever used **semiautomatic rifles** during the past two hunting seasons of 1995 and 1996?

\_\_\_\_\_ number of clients.

3. What is the approximate number of your clients who have ever used semiautomatic rifles whose design is based on the **AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi** during the past two hunting seasons of 1995 and 1996?

\_\_\_\_\_ number of clients.

4. From your knowledge, for your clients who use **semiautomatic rifles**, please list the three most commonly used rifles.

Make

Model

Caliber


5. Do you **recommend** the use of any specific rifles by your clients?

\_\_\_\_\_ Yes (Continue to #6)

\_\_\_\_\_ No (You are finished with the survey. Thank you.)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

ATF SURVEY OF HUNTING GUIDES  
FOR RIFLE USAGE

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific rifles you **recommend**.

MakeModelCaliber

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7. Do you **recommend** the use of any semiautomatic rifles whose design is based on the **AK 47**, **FN-FAL**, **HK91**, **HK93**, **SIG 550-1**, or **Uzi**?

☐ Yes (*Continue to #8*)☐ No (*You are finished with the survey. Thank you.*)

8. If your answer to item 7 is "Yes", please identify the specific rifles whose design is based on the **AK 47**, **FN-FAL**, **HK91**, **HK93**, **SIG 550-1**, or **Uzi** that you recommend.

MakeModelCaliber

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# Hunting Guides

case		Number of clients Using			Recommend	
		Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A	1	28	0	0	No	
A	2	100	10	0	Yes	No
A	3	18	0	0	No	
A	4	120	40	0	Yes	No
A	5	12	0	0	Yes	No
A	6	80	40	0	No	
A	7	275	25	0	No	
A	8					
A	9	0	0	0		
A	10	0				
A	11	2	5	0	Yes	Yes
A	12	12	0	0	Yes	No
A	13	10	6	0	No	No
A	14	5	7	0	No	
A	15	0	0	0		
A	16	20	0	0	No	No
A	17					
A	18	0	0	0	No	
A	19	17	6	0	No	
A	20	30	8	0	No	
A	21	117	7	0	Yes	No
A	22	160	0	0	Yes	No
A	23	23	1	0	Yes	No
A	24	100	5	0	Yes	No
A	25	210	10	0	Yes	No
A	26	12	4	1	Yes	Yes
A	27	24	3	0	Yes	No
A	28	20	15	0	Yes	No
A	29	4	0	0	No	No
A	30	4	0	0	Yes	No
A	31	100	5	0	No	No
A	32	1	0	0	No	No
A	33			0	No	No
A	34	142	1	0	No	
A	35	78	2	0	Yes	No
A	36	600	200		No	
A	37	20	13	1	No	
A	38	45	15	0	No	
A	39	100	10	0	No	
A	40	80	6	2	Yes	No
A	41	250	25	0	Yes	No
A	42	4	0	0	No	
A	43	14	2	0	No	No
A	44	171	15	0	Yes	No
A	45	54	6	0	Yes	No
A	46	10	6	0	No	
A	47	0	0	0	No	No
A	48	24	0	0	No	
A	49	180	2	0	Yes	No
A	50					
A	51					

# Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 52	24	16	0	No	
A 53	600	100	12	No	
A 54	18	6	0	No	
A 55	0	0	0	No	
A 56	0	0	0	No	
A 57	40	4	0	No	
A 58					
A 59	40	10	0	No	No
A 60	60	2	0	No	No
A 61	63	4	0	Yes	No
A 62	40	4	0	No	
A 63	8	0	0	Yes	No
A 64	27	1	0	Yes	No
A 65	50	9	0	Yes	No
A 66	35	2	0	No	
A 67	6	0	0	Yes	No
A 68	6	3		No	
A 69	50	20	0	No	
A 70		0	0	Yes	No
A 71	27	1	0	Yes	
A 72	85	0	0	Yes	No
A 73	56	24	0	Yes	No
A 74	25	25	0	Yes	No
A 75	100	20	0	No	
A 76	50	15	3	No	
A 77	15	4	0	No	
A 78	12	0	0	Yes	No
A 79	75	0	0	No	
A 80					
A 81	0	0	0	No	
A 82	0	0	0	No	
A 83	12	4	0	No	No
A 84	40	0	0	Yes	No
A 85	24	0	0	No	
A 86	17	0	0	No	No
A 87	16	3	0	Yes	No
A 88	45	10	0	No	
A 89	11	7	7	Yes	Yes
A 90	35	1	0	Yes	No
A 91	25	2	0	Yes	No
A 92	0	0	0		
A 93	75	40	0	Yes	No
A 94	60	2	0	Yes	No
A 95	26	0	0	No	
A 96	20	0		No	No
A 97	65	11	0	Yes	No
A 98	40	5	0	Yes	No
A 99	26	5	0	No	
A 100	13	2	0	No	
A 101					
A 102	45	6	0	No	No

Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 103	120	4	0	No	
A 104				Yes	
A 105	150	50	0	No	No
A 106	80	20	0	Yes	No
A 107	40	0	0	No	No
A 108	10	0	0	No	
A 109	160	40	0	Yes	No
A 110	10	10	0	No	No
A 111	6	0	0	No	
A 112					
A 113	150	150	100	Yes	Yes
A 114	50	25	0	No	No
A 115	19	0	0	Yes	No
A 116	80	3	0	No	
A 117	40	10	0	Yes	No
A 118					
A 119	50	0	0	Yes	No
A 120	0	0	0	No	
A 121	0	0	0		
A 122	120	15	0	Yes	No
A 123	10	0	0	Yes	No
A 124	22	0	0	Yes	No
A 125	40	40	20	No	
A 126	50	10	0	Yes	No
A 127	60	20	0	Yes	No
A 128	14	0	0	No	No
A 129	13	16	4	No	
A 130	80	4	0	Yes	No
A 131	12	2	0	Yes	No
A 132		4	0	Yes	No
A 133	50	26	7	No	No
A 134	12	0	0	No	
A 135	2	10	3	No	
A 136	2	1	1	Yes	No
A 137	28	0	0	Yes	No
A 138	45	10		No	
A 139	46	59	0	Yes	No
A 140			0	Yes	No
A 141	40	10	0	No	No
A 142	70	20	0	Yes	No
A 143	50	3	0	No	No
A 144	60	6	0	Yes	No
A 145	140	0	0	Yes	No
A 146	20	4	1	Yes	No
A 147	10	1	0	Yes	No
A 148	0	0	0	No	No
A 149	37	0	0	Yes	No
A 150			0	Yes	No
A 151	6	10	0	No	No
A 152	110	5	0	No	
A 153	15	17		Yes	No

# Hunting Guides

case	Number of clients Using			Recommend	
	Manual	Semiauto	AK47 et.al.	Any	AK47 et.al.
A 154	18	4	0	No	
A 155	25	3	0	Yes	No
A 156	60	6	3	No	
A 157	20	0	0	No	
A 158	88	46	0	No	No
A 159	68	19	3	Yes	Yes
A 160	25	5	0	No	
A 161	15	0	0	No	
A 162	75	10	0	No	
B 1				No	
C 1	25	0	0	Yes	No
C 2	55	10	6	Yes	Yes
C 3	60	30	0	No	
C 4	80	20	0	No	
C 5	10	0	0	No	No
C 6	25	6	0	No	
C 7	66	10	1	No	
C 8	24	0	0	Yes	No
C 9	10	15	15	No	
C 10	35	15	9	Yes	Yes
C 11			0	No	
C 12					No
C 13	25	10	0	No	
C 14	60	20	0	Yes	No
C 15	20	0	0	Yes	No
C 16	14	0	0	No	
C 17		0	0	Yes	No
C 18	18	25	5	Yes	Yes
C 19	125	50	5	Yes	No
C 20	20	5	2	No	
C 21		0	0	Yes	No
C 22	30	0	0	No	No
C 23	150	20	0	Yes	No
C 24	60	0	0	No	
C 25	16	7	6	Yes	Yes
C 26	300	650	400	No	
C 27	20	15	8	Yes	Yes
C 28	3	5	2	No	
C 29	45	6	0	Yes	No
C 30				No	
C 31	30	0	0	Yes	No
C 32			0	Yes	No
C 33	35	4	0	Yes	No
C 34	25	5	0	Yes	No
C 35				Yes	No

# Hunting Guides

Q4. Three most commonly used rifles				
case	Make	Other Make	Model	Caliber
A 1				
A 2				
A 3				
A 4	Browning		BAR	300
A 5				
A 6	Remington		742	30.06
A 7	Browning		BAR	30.06, .270, 7MM, 300 Mag
A 8				
A 9				
A 10				
A 11	Remington		740-7400	20, 30
A 12				
A 13	Remington		700	7 mm mag
A 14	Remington		7400	270
A 15				
A 16				
A 17				
A 18				
A 19	Browning			30.06
A 20	Remington		742	30.06
A 21				
A 22				
A 23	Browning		?	300 mag
A 24	Remington			30.06
A 25	Remington			30.06
A 26	Browning		BAR	30.06
A 27	Remington			30.06
A 28		?	?	06
A 29				
A 30				
A 31	Browning		automatics	
A 32				
A 33				
A 34	Remington			.3006
A 35	Browning			7 mm
A 36	Browning			30.06
A 37	Browning		BAR	30.06
A 38	Browning		br	7 mm, 300win, 30.06
A 39	Remington		7600	.270 win, .30-06, .280 rem
A 40	Browning		Bar mark II	300 win mag
A 41	Remington			
A 42				
A 43	Remington		7600	243 - 7 mm mag
A 44				30.06, 300 winmag, .338, 270
A 45	Browning		BAR Automatic	30.06

# Hunting Guides

Q4. Three most commonly used rifles				
A 46	Browning		BAR	7 mm, 30.06
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Browning		BAR	7 mm mag/30.06
A 53	Browning		BAR	30.06, 300 wm
A 54	Browning		BAR	30.06
A 55				
A 56				
A 57	Browning		semi-auto	300 mag
A 58				
A 59				
A 60				
A 61	Browning			30.06
A 62	Browning			7 mm
A 63	Browning		BAR	.270 - 300 win mag
A 64	Browning		BAR	30.06
A 65	Browning		semi-auto	.308
A 66	Browning			
A 67				
A 68	Remington		7400	30.06
A 69	Browning			
A 70				
A 71	Browning		Not sure	
A 72				
A 73	Browning		BARR	30.06
A 74	Browning		BAR	300
A 75	Remington		7400 old 752	270 and 30.06
A 76	Browning		BAR	308, 30.06, 300win, 338 win
A 77	Remington			308
A 78	Browning			300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				30 caliber or bigger for elk
A 84				
A 85				
A 86				
A 87	Browning			30.06 and 7 mm
A 88	Browning		BAR	7 mm, .300, .270
A 89	Other	Russian	SKS	7.62
A 90	Browning			1 or 2 in over 50 years
A 91	Browning			300 win mag



# Hunting Guides

Q4. Three most commonly used rifles				
A 92				
A 93				
A 94	Browning		BAR	
A 95				
A 96				
A 97	Browning		BAR	300-06-270
A 98	Browning			300, 30.06
A 99	Other	Savage		7 mm
A 100	Browning		?	7 mm mag
A 101				
A 102	Browning	Only 1 I recall	BAR	30.06
A 103				
A 104				
A 105				
A 106	Browning		BAR	300 win mag
A 107				
A 108				
A 109	Browning			30.06
A 110	Remington		700	30.06, 270, 7 mm
A 111				
A 112				
A 113	Other	Weatherby		300 mag
A 114	Browning			7 m mag
A 115				
A 116				
A 117	Browning			
A 118				
A 119				
A 120				
A 121				
A 122	Browning		U/K	.338 mag
A 123				
A 124				
A 125				
A 126	Remington		742	243, 30.06
A 127	Winchester		?	30.06
A 128	Winchester			270, 306
A 129	Browning		BAR	7 mm and 243
A 130	Browning			30.06
A 131	Browning		BAR	.7 mm mag
A 132	Remington			30.06
A 133			AK 47	223
A 134				
A 135	Remington			270
A 136	Browning		BAR	
A 137				

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Q4. Three most commonly used rifles				
A 138	Winchester			30.06
A 139	Browning		BAR	270, 7 mm
A 140	Browning			7 mm
A 141				
A 142	Browning			7 mm mag
A 143				
A 144	Browning			30.06
A 145				
A 146	Browning		BDL	7mg
A 147	Browning		BAR	308
A 148				
A 149				
A 150	Remington			
A 151	Browning		BAR	308
A 152	Remington			various 270 - 338
A 153	Browning			30
A 154	Browning		BAR	7 mm mag
A 155				30.06
A 156	Other	BAR		
A 157				
A 158	Remington		280	280
A 159	Browning			7 mm mag
A 160	Remington		Semiauto	30.06
A 161				
A 162	Browning			30.06
B 1				.308, 30-06, .270
C 1				
C 2	Other	AK-47	Antelope Hunter	30
C 3	Browning		Auto	30.06
C 4	Browning		Bar	7mm
C 5				
C 6				
C 7	Browning			30.06
C 8				
C 9	Other	FN-FAL		308
C 10	Remington		742	30.06
C 11	Browning			306
C 12				
C 13	Remington			.06 - 7mm
C 14	Browning		BAR	7mm
C 15				
C 16				
C 17				
C 18	Ruger		Ranch Rifle	223
C 19	Other	AK47		
C 20	Browning		BAR	300 win mag

# Hunting Guides

Q4. Three most commonly used rifles				
C 21	Other	Bolt-action or pump		
C 22				
C 23	Browning			30.06
C 24				
C 25	Other	AK47		7.62-39
C 26	Other	HK	93	.308
C 27	Browning		BAR	7mm
C 28	Other	Norinco	SKS Type 56	7.62X39
C 29	Browning		BAR	30.06 -.300
C 30				
C 31				
C 32	Browning			3.06 - 7mm
C 33	Remington			30.06
C 34	Remington		741	.270 - 30.06
C 35	Remington			.270
A 1				
A 2				
A 3				
A 4	Remington		7400	30.06
A 5				
A 6	Browning			30.06
A 7	Remington		700	30.03, 270, 7 mm
A 8				
A 9				
A 10				
A 11	Winchester		100	30
A 12				
A 13	Winchester		70	300 mag
A 14	Remington		7400	30.06
A 15				
A 16				
A 17				
A 18				
A 19	Remington		7400	30.06
A 20	Browning			7 mm mag
A 21				
A 22				
A 23				
A 24	Browning			30.06
A 25	Browning			30.03 to 300 mag
A 26	Remington		Fieldmaster	30.06
A 27				
A 28				
A 29				
A 30				
A 31	Remington		automatics	

# Hunting Guides

Q4. Three most commonly used rifles				
A 32				
A 33				
A 34				
A 35				
A 36	Remington			270 - 30.06
A 37	Remington		7400	30.06
A 38				
A 39	Browning		BAR	.270 win, 7 mm mag
A 40	Remington		7400	30.06
A 41	Browning			
A 42				
A 43	Browning		BAR	243 - 7 mm mag
A 44				
A 45				
A 46	Remington		1100	12 gauge
A 47				
A 48				
A 49				
A 50				
A 51				
A 52	Remington		7400	30.06
A 53	Remington		7400/742	30.06
A 54				
A 55				
A 56				
A 57	Remington		semi-auto	30.06
A 58				
A 59				
A 60				
A 61	Other	Savage		7 mm mag
A 62	Remington			30.06
A 63	Remington		742	.270 - 30.06
A 64				
A 65	Winchester		semi-auto	.308
A 66	Remington			
A 67				
A 68	Remington		7400	.308
A 69	Remington			
A 70				
A 71	Remington		742	30.06
A 72				
A 73	Remington			30.06
A 74	Remington		7600	30.06
A 75	Browning		BAR	270/338 and 30.06
A 76	Other	AK-47		30
A 77	Remington			30.06

# Hunting Guides

Q4. Three most commonly used rifles				
A 78	Remington		?	300, 270, 30.06
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington			30.06
A 88	Remington		742, 7400	30.06, .270
A 89	Other	Heckler-Koch	HK91	308
A 90	Remington			
A 91	Remington			30.06
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98	Remington		760	.300, 30.06, 270
A 99	Browning			7 mm
A 100	Remington		742	30.06
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109	Winchester			308
A 110				
A 111				
A 112				
A 113	Remington		700	7 mm mag
A 114	Remington		742 Wingmaster	30.06
A 115				
A 116				
A 117	Remington			
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				

# Hunting Guides

Q4. Three most commonly used rifles				
A 124				
A 125				
A 126	Ruger		22	
A 127	Marlin		?	.308
A 128	Remington			7 m
A 129				
A 130				
A 131	Browning		BAR	30.06
A 132				
A 133	Ruger		Mini 14	223
A 134				
A 135	Remington			243
A 136	Other	HK 91		
A 137				
A 138	Browning			308
A 139	Remington		742	30.06 - 6 mm
A 140	Remington			30.06
A 141				
A 142	Browning			300 win mag
A 143				
A 144	Browning			7 mm mag
A 145				
A 146	Browning		BDL	300
A 147				
A 148				
A 149				
A 150	Winchester			
A 151	Remington		742	30.06
A 152	Ruger			various 270 - 338
A 153	Winchester			30
A 154	Browning		BAR	30.06
A 155				
A 156	Other	AK-47		
A 157				
A 158	Winchester			338
A 159	Remington			30.06
A 160				
A 161				
A 162	Remington		742	30.06, 270
B 1				
C 1				
C 2				
C 3	Winchester		Auto	30.06
C 4	Browning		Bar	338
C 5				
C 6				

# Hunting Guides

Q4. Three most commonly used rifles				
C 7	Remington			30.06
C 8				
C 9	Other	Uzi		9mm
C 10	Other	AK-47	Hunter	7.62x39
C 11	Other	Weatherby		300
C 12				
C 13	Winchester			.06 - 7mm
C 14	Browning			300
C 15				
C 16				
C 17				
C 18	Other	AK-47		
C 19	SigArms		550-1	
C 20	Ruger		Mini 14	.223
C 21				
C 22				
C 23	Remington		742	30.06
C 24				
C 25	Other	MAK-90		7.62-39
C 26	Other	HK	91	0.223
C 27	Remington		7400 Series	30.06
C 28	Remington		7600	30.06
C 29	Remington		742	.308 - 3.06
C 30				
C 31				
C 32	Remington			30.06 - 7mm
C 33	Browning			300 win
C 34	Browning			.270 - 30.06
C 35	Browning			300
A 1				
A 2				
A 3				
A 4	Ruger		Mini 14	223
A 5				
A 6	Other	Savage		270
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13	Browning		A-bolt	270
A 14				
A 15				
A 16				
A 17				

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Q4. Three most commonly used rifles				
A 18				
A 19				
A 20				
A 21				
A 22				
A 23				
A 24				
A 25				
A 26	Other	China	SKS	7.62x37
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36	Winchester			270 - 30.06
A 37				
A 38				
A 39				
A 40	Ruger			44 mag
A 41				
A 42				
A 43	Ruger			223 - 30.06
A 44				
A 45				
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53	Ruger		Mini-14	.223
A 54				
A 55				
A 56				
A 57	Ruger		semi-auto	35 cal
A 58				
A 59				
A 60				
A 61				
A 62	Ruger		Mini 14	223
A 63				



# Hunting Guides

Q4. Three most commonly used rifles				
A 64				
A 65				
A 66				
A 67				
A 68				
A 69				
A 70				
A 71				
A 72				
A 73				
A 74	Browning		BAR	30.06
A 75				
A 76	Remington			30.06, 270
A 77	Browning			300
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87				
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91				
A 92				
A 93				
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106				
A 107				
A 108				
A 109				

# Hunting Guides

Q4. Three most commonly used rifles				
A 110				
A 111				
A 112				
A 113	Other	All		30.06
A 114	Remington		721	270
A 115				
A 116				
A 117				
A 118				
A 119				
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126	Browning	Remington	Shotguns	12 gauge
A 127	Remington			.308 or 30.06
A 128	Other	Savage		308
A 129				
A 130				
A 131				
A 132				
A 133	Browning		BAR	7 mm
A 134				
A 135	Browning		742	30.06
A 136	Other	AK 47		
A 137				
A 138				
A 139	Other	Weatherby		300 m
A 140				
A 141				
A 142				
A 143				
A 144				
A 145				
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150	Browning			
A 151				
A 152	Browning			various 270 - 338
A 153				
A 154	Browning		BAR	8 mm mag
A 155				

# Hunting Guides

Q4. Three most commonly used rifles				
A 156	Other	Uzi		
A 157				
A 158	Browning			300
A 159				
A 160				
A 161				
A 162				
B 1				
C 1				
C 2				
C 3	Browning		Auto	270
C 4	Browning		Bar	300
C 5				
C 6				
C 7				
C 8				
C 9	Other	HK91		
C 10	Browning		BAR	30.06
C 11				
C 12				
C 13	Browning			300
C 14				
C 15				
C 16				
C 17				
C 18				
C 19				
C 20	Other	AK47		7.62 x 39
C 21				
C 22				
C 23	Remington		742	308, 270
C 24				
C 25		M1-A1		.223
C 26				
C 27	Winchester	Various	M1 Garand	30.06
C 28				
C 29			M1A1	30.06
C 30				
C 31				
C 32				
C 33				
C 34				
C 35				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 1				
A 2	Ruger			30.06
A 3				
A 4	Other	Weatherby	Mark V	300
A 5				30.06
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Winchester			30.06, .270
A 22	Remington		700	7 mm or larger
A 23	Winchester		70	25 to 30
A 24	Remington		710	30.06
A 25		Any make	Bolt action	Does not recommend
A 26	Winchester		70	30.06 or larger
A 27	Other	Weatherby		300
A 28	Other	bolt action		270 and up
A 29				
A 30		hunter's choice		.270
A 31				
A 32				
A 33				
A 34				
A 35	Winchester		70	300 win mag
A 36				
A 37				
A 38				
A 39				
A 40	Remington			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				30.06, 300winmag, 338, 270
A 45	Browning		Bolt Action	25.06 - 328

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 46				
A 47				
A 48				
A 49	Other	Weatherby		300 mag
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Remington		Bolt Action	300 mag
A 62				
A 63	Other	bolt action repeating rifles		30.06 to .338 winmag
A 64	Winchester		70	338
A 65	Remington		bolt action	308,25-06,243,7 mm mag,30.06,22-250,300 mag all
A 66				
A 67	Ruger		#1	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70	Other		Bolt Action	30.06
A 71				300 mag
A 72	Other	Any make	Any model	7 mm, 270, 30.06, 25.06
A 73				
A 74	Browning		BAR	300 win mag
A 75				
A 76				
A 77				
A 78	Browning		Bolt action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Remington		700	30.06, 7 mm, 270
A 88				
A 89	Other	Russian	SKS	7.62
A 90	Other	Weatherby		7 mm mag

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 91	Remington		700	7 mag
A 92				
A 93	Winchester		70	300 mag
A 94	Other	Any bolt action		270 or larger
A 95				
A 96				
A 97	Other	Any bolt action		30 or larger, on semiauto same
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Other	Weatherby		300 magnum
A 107				
A 108				
A 109	Remington		70	7 mm
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				magnum
A 118				
A 119	Remington		700	7 mm
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				300 mag, 338 mag, 30.06
A 127				
A 128				
A 129				
A 130	Remington		700	7 mm magnum
A 131				
A 132	Other	Weatherby		300 mag
A 133				
A 134				
A 135				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 136				
A 137	Remington		700	7 mm
A 138				
A 139	Browning		BAR	7 m or 270
A 140				
A 141				
A 142				30.06
A 143				
A 144	Browning			from 7 mm mag to 338 mag for deer and elk
A 145	Winchester			30.06
A 146	Browning		BDL	7 mag
A 147	Remington		700 BDL	7 mm
A 148				
A 149				
A 150	Browning		Bolt action	
A 151				
A 152				
A 153	Remington		700	30
A 154				
A 155	Other	Weatherby		300
A 156				
A 157				
A 158				
A 159	Browning	Ruger		243, 30.06, 7 mm mag, 340 weather, .338
A 160				
A 161				
A 162				
B 1				7.62 x 39
C 1	Other	Manually operated		
C 2	Ruger		77	300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	270
C 9				
C 10	Other	HK	91	.308
C 11				
C 12				
C 13				
C 14	Other	Bolt-action w/ belted mag		Calibers, make and model mean nothing
C 15	Other	Bolt-action		30.06-7mm
C 16				
C 17	Other	Bolt-action		

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 18	Ruger		Ranch Rifle	223
C 19				.243 and larger
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		7mm mag
C 24				
C 25	Other	Savage		7mm mag
C 26				
C 27	Winchester		70	30.06
C 28				
C 29	Winchester		70	30.06 - .338
C 30				
C 31	Winchester		Manual, bolt	300
C 32	Remington		All	270 - 7mm
C 33	Winchester		70	30.06 - .300 win
C 34	Other	Bolt-action		270 or larger for elk and deer
C 35	Other	Bolt-action or semiautos		.270 or larger
A 1				
A 2	Remington			7 mm
A 3				
A 4	Winchester		70	300
A 5				
A 6				
A 7				
A 8				
A 9				
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	30.06
A 22	Winchester		70	7 mm or larger
A 23	Remington		700	25 to 30
A 24	Remington			300 Mag
A 25				
A 26	Browning		A bolt	30.06 or larger
A 27				300 win mag, 30.06 or 270



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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 28				
A 29				
A 30		hunter's choice		.308
A 31				
A 32				
A 33				
A 34				
A 35	Remington		700 BDL	7 mm
A 36				
A 37				
A 38				
A 39				
A 40	Winchester			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Remington		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Savage	Bolt Action	7 mm mag
A 62				
A 63				
A 64	Remington		700	300 win mag
A 65	Other	Weatherby		
A 66				
A 67	Remington		Bolt Action	7 mm, 30.06, 7 mm mag
A 68				
A 69				
A 70			Pump	30.06
A 71				7 mm mag
A 72				

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Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 73				
A 74	Winchester		7C	300 win mag
A 75				
A 76				
A 77				
A 78	Remington		Bolt Action	
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Browning			308, 7 mm, 30.06
A 88				
A 89	Other	Heckler-Koch	HK-91	308
A 90				
A 91	Winchester		70	300 mag
A 92				
A 93	Browning		Mark II	300 mag, 280-270-25.06
A 94				
A 95				
A 96				
A 97	Other	Semi-auto		30 cal or larger
A 98				
A 99				
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Remington		700	300 win mag
A 107				
A 108				
A 109	Winchester			300 mag, 30.06
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				

# Hunting Guides

## Q 6. Rifles recommended for clients

case	Make	Other Make	Model	Caliber
A 118				
A 119	Other	Weatherby		300
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132	Other	Weatherby		700 mag
A 133				
A 134				
A 135				
A 136				
A 137	Other	Weatherby		300
A 138				
A 139	Remington		742	30.06 or 6 mm
A 140				
A 141				
A 142				7 mm recommended for deer and elk
A 143				
A 144	Other	Weatherby		from 7 mm mag to 338 for deer
A 145	Other	Weatherby		300
A 146	Browning		BDC	300
A 147				
A 148				
A 149				
A 150	Winchester		Bolt Action	
A 151				
A 152				
A 153	Remington		700	7 mm
A 154				
A 155	Other	Weatherby		7 mm
A 156				
A 157				
A 158				
A 159	Winchester	Remington		340 Weather - .338 mag
A 160				
A 161				
A 162				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
B 1				
C 1				
C 2	Browning			300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8	Remington		700	280
C 9				
C 10	Winchester		70	.270
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Pump		
C 18	Other	AK-47		
C 19				6mm
C 20				
C 21				
C 22				
C 23	Other	Bolt-action		.30
C 24				
C 25	Other	Bolt-action		30.06
C 26				
C 27	Ruger		77	.300 win mag
C 28				
C 29	Remington		700	30.06-.338
C 30				
C 31	Remington		Manual bolt	300
C 32	Browning		All	.270 - 7mm
C 33	Ruger		77	30.06 - .300 win
C 34				
C 35				
A 1				
A 2	Winchester			375
A 3				
A 4	Winchester		70	270
A 5				
A 6				
A 7				
A 8				
A 9				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 10				
A 11				
A 12				
A 13				
A 14				
A 15				
A 16				
A 17				
A 18				
A 19				
A 20				
A 21	Remington		70	.270
A 22				
A 23	Other	Any bolt action	1-5 shotmag	25 to 30
A 24	Other	Weatherby		300 mag
A 25				
A 26				
A 27				
A 28				
A 29				
A 30				
A 31				
A 32				
A 33				
A 34				
A 35				
A 36				
A 37				
A 38				
A 39				
A 40	Ruger			30.06 - 300 win mag
A 41				
A 42				
A 43				
A 44				
A 45	Winchester		Bolt Action	25.06 - 328
A 46				
A 47				
A 48				
A 49				
A 50				
A 51				
A 52				
A 53				
A 54				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 55				
A 56				
A 57				
A 58				
A 59				
A 60				
A 61	Other	Weatherby	Bolt Action	338 mag
A 62				
A 63				
A 64	Other	Weatherby Mark V		300 Wea Mag
A 65	Winchester	Browning		
A 66				
A 67	Winchester	Bolt Action		
A 68				
A 69				
A 70			Bolt Action	7 mm
A 71				
A 72				
A 73				
A 74	Browning		A Bolt	300 win mag
A 75				
A 76				
A 77				
A 78				
A 79				
A 80				
A 81				
A 82				
A 83				
A 84				
A 85				
A 86				
A 87	Other	Weatherby		300, 7 mm, 338
A 88				
A 89	Other	Springfield Armory	FNG	308
A 90				
A 91	Ruger		77	300 mag
A 92				
A 93	Ruger		M77	270, 26-06, 300 mag
A 94				
A 95				
A 96				
A 97				
A 98				
A 99				

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 100				
A 101				
A 102				
A 103				
A 104				
A 105				
A 106	Browning		1895	45-70 govt
A 107				
A 108				
A 109				
A 110				
A 111				
A 112				
A 113				
A 114				
A 115				
A 116				
A 117				
A 118				
A 119	Other	Savage		270 or 30.06
A 120				
A 121				
A 122				
A 123				
A 124				
A 125				
A 126				
A 127				
A 128				
A 129				
A 130				
A 131				
A 132				
A 133				
A 134				
A 135				
A 136				
A 137				
A 138				
A 139				
A 140				
A 141				
A 142				300 winmag recommended
A 143				
A 144	Remington	Weatherby		from 270 to 338 for deer and elk

# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
A 145	Remington			270
A 146	Ruger		#1	7 mag
A 147				
A 148				
A 149				
A 150				All bolt action with a round nose point
A 151				
A 152				
A 153				
A 154				
A 155				
A 156				
A 157				
A 158				
A 159				300mag,416Rigby,375mag,270 mag,500 nitroexpress
A 160				
A 161				
A 162				
B 1				
C 1				
C 2	Other	Sako		300
C 3				
C 4				
C 5				
C 6				
C 7				
C 8				
C 9				
C 10	Winchester		100	.308
C 11				
C 12				
C 13				
C 14				
C 15				
C 16				
C 17	Other	Weatherby		243 to 300
C 18				
C 19				
C 20				
C 21				
C 22				
C 23				
C 24				
C 25				
C 26				



# Hunting Guides

Q 6. Rifles recommended for clients				
case	Make	Other Make	Model	Caliber
C 27	Springfield		M Garard	30.06 - 308
C 28				
C 29	Browning		A bolt	30.06 - .338
C 30				
C 31				
C 32	Ruger		All	.270 - 7 mm
C 33	Browning		A bolt	30.06 - 300 win
C 34				
C 35				

# Hunting Guides

Q 8. Recommended rifles based on AK47 et.al.					
case	Make	Other Make	Model	Caliber	
A	26	AK47		7.62x37	
A	89	Other	Russian	SKS	
A	113	FN-FAL			
A	159	AK47			
C	2	AK47		Antelope and Varmints and Target Shooters	
C	10	AK47		30	
C	18	AK47		7.62x39	
C	25	AK47			
C	27	FN-FAL		7.62	
A	26		SKS	308	
A	89	HK91		7.62x37	
A	113		HK 99	308	
C	2	AK47		Antelope and Varmints and Target Shooters	
C	10	HK91		243	
C	25		MAK 90	308	
C	27		Century	L1A1	
A	89	Other	Springfield Armory	FNG	
A	113	HK93		308	
C	10	HK93			
C	25		M-15	223	
C	27	HK91	And clones	223	
				308	

### Additional Comments by Hunting Guides

#### Additional comments:

- (8) The respondent answered questions 1, 2, 3, and 5 with "None of your business." He then stated in question 4: "It's none of your business what kind, make, model or how many guns law abiding citizens of the U.S. own, prefer to shoot."
- (9) The respondent wrote that he was no longer in business but that he had owned a waterfowl operation and upland bird operation (shotguns only). He added that assault rifles were not true sporting rifles and that they should be limited to use by the military and law enforcement agencies. However, he felt that true sporting weapons that can be modified into some "quasi-assault weapons" should not be restricted. He stated that he supported the effort to get military weapons off the streets but did not want the rights of true sportsmen to be affected.
- (10) Although licensed, the respondent did not guide anyone during the past year.
- (11) The respondent stated in question 6 that he recommends any legal caliber rifle that client is comfortable with and that is capable of killing the desired game.
- (12) For question 6, the respondent replied that he didn't recommend any specific make or model, other than whatever his clients are most comfortable using so long as the weapons are legal for the particular game.
- (15) The respondent stated that his organization was solely recreational wildlife watching and photography.
- (17) The respondent did not answer the questions but informed us that it is illegal in Hawaii to hunt turkey with a rifle.
- (23) The respondent stated that the study rifles were more suitable for militants than sportsmen. He added, "If they want to use these weapons let them go back to the service and use them to defend our country, not against it."
- (25) The respondent stated that, in his 35 years of conducting big game hunts, he had never seen any of the study rifles used for hunting. He suggested that the rifles are made to kill people, not big game.
- (26) The respondent recommended bolt-action rifles for his clients but stated that he doesn't demand that they use such rifles. The respondent recommended the study rifles in close-range situations in which there are multiple targets that may pose a danger to the hunter (e.g., coyotes, foxes, mountain lions, and bears).
- (27) The respondent stated that he recommended the study rifles for hunting but not any specific make.

- (32) The respondent said that most of his clients are bow or pistol hunters. He said that there is little if any use for the study rifles in his outfitting service because it focuses on hunts of mountain lions and bighorn sheep. However, he did recommend the study rifles on target ranges and in competitive shooting situations and cited his right to bear arms.
- (35) The respondent recommended bolt-action rifles for his clients.
- (40) The respondent stated that semiautomatic rifles (such as the AK47) and others are useful for predator hunting.
- (41) The respondent said that he recommended only ranges of calibers deemed suitable but not makes and models of specific rifles.
- (44) The respondent recommended the following calibers for hunting without any specific makes or models: 30.06, 300 Win mag, 338, and 270.
- (47) The respondent stated: "You are asking questions about certain makes of assault rifles, but you are going to end up going after ALL semiautomatic guns. I've spent about 21 years HUNTING with shotguns and I've used semiautomatic models. If you go down the list of times that one new law didn't end up being a whole sloo [sic] of other laws I would be surprised. Maybe some face-to-face with these weapons would be a good thing for politicians. If they see how they are used in 'the Real World' then they may make better amendments."
- (49) The respondent specifically recommended the study rifles only for grizzly bears or moose.
- (50) The respondent stated that his business involved waterfowl hunting, which uses only shotguns.
- (51) The respondent replied: "It is my opinion this is a one sided survey, and does not tell the real meaning and purpose of the survey. And that is to ban all sporting arms in the future. The way this survey is presented is out of line."
- (53) The respondent stated: "I recommend to all my hunters that they join the NRA, vote Republican, and buy a good semi-auto for personal defense."
- (57) The respondent stated that most of his clients use bolt-action rifles. He suggested that semiautomatics are not as accurate as bolt-action rifles.
- (58) The respondent stated that the survey did not pertain to his waterfowl hunting business since only shotguns are used. He added that he did not believe semiautomatics in general present any more threat to the public than other weapons or firearms. However, he suggested that cheaply made assault-type rifles imported from China and other countries are inaccurate and not suitable for hunting.
- (59) The respondent stated that he had no knowledge of the semiautomatic rifles beyond 30.06 or similar calibers for hunting. He added that he did not have a use for "automatic" weapons.

- (64) The respondent stated: "We need to look at weapons and determine what the designer's intent was for the weapon. We really don't need combat weapons in the hunting environment. I personally would refuse to guide for anyone carrying such a weapon."
- (65) The respondent recommended the following calibers for hunting: 7mm, 30.06, .308, .708, 25.06, .243, 22.250, and 300 mag. However, he stated that the study rifles are of no use to the sporting or hunting community whatsoever.
- (71) The respondent stated that he mainly hunts elk but did not recommend any additional information about specific firearms except for using 300 mag and 7 mm mag calibers.
- (73) The respondent recommended any bolt-action or semiautomatic in the 30 or 7mm calibers. However, he stated that he doesn't allow his clients to use any models based on assault rifles: "They are not needed for hunting. A good hunter does not have these."
- (78) The respondent recommended bolt-action rifles for hunting, particularly Browning and Remington.
- (80) Although the respondent stated that he does not conduct guides, he did not see a reason to allow any rifles other those manufactured specifically for hunting and sport shooting: "All assault rifles are for fighting war and killing humans."
- (82) The respondent stated that he used shotguns only.
- (84) The respondent said that he did not allow semiautomatic or automatic rifles in his business. He specifically recommended manually operated rifles.
- (90) The respondent stated that all the semiautomatics like AK47s are absolutely worthless and that he found no redeeming hunting value in any AK47 type of rifle. He further explained that the purpose of hunting is to use the minimum number of shells, not the maximum: "I have only known 1 [person] in 50 years to use an AK47. He shot the deer about 30 times. That wasn't hunting, it was murder." He suggested that he would be willing to testify in Congress against such weapons.
- (92) The respondent stated that he had been contacted in error, as he was not in the hunting guide business.
- (98) The respondent recommended any rifle that a client can shoot the best.
- (101) The respondent wrote a letter saying that his business was too new to provide us with useful information about client use; however, he stated that the Chinese AK47 does a proficient job on deer and similar sizes of game and may be the only rifle that some poor people could afford. He said that he is willing to testify to Congress about the outrageous price of certain weapons.
- (102) The respondent did not recommend rifles but recommended calibers .270, 30.06, .300, and 7mm.

- (103) The respondent stated that he had clients who used semiautomatic rifles, but he didn't know which makes or models.
- (104) The respondent recommended any legal weapons capable of killing game, "including the types mentioned under the 2nd amendment."
- (105) The respondent stated that the semiautomatic rifles used by his clients were Remingtons.
- (112) The respondent stated that he could not provide any useful information because his business was too new.
- (113) The respondent recommended whatever is available to knock down an elk. He recommended specific calibers: 30.06, 300, or 338.
- (115) The respondent questioned why anyone would use a semiautomatic firearm to hunt game: "Anyone using such horrible arms should be shot with one themselves. Any big game animal does not have a chance with a rifle and now you say people can use semiautomatic rifles."
- (116) The respondent had had three clients who used semiautomatics with 30.06 and 270-caliber ammunition; however, he didn't know the makes or models.
- (118) The survey questions were not answered, but the respondent wrote: "This is a stupid survey. No one contends they hunt much for big game with an AK47. The debate is over the right to own one, which the 2nd amendment says we can."
- (119) The respondent recommended bolt-action rifles for hunting.
- (121) The respondent stated that he uses only shotguns in his operation.
- (122) The respondent recommended rifles with the calibers of .270 - 30.06 or larger to the .300 mag or .338 mag. However, he said that anything other than a standard semiautomatic sporting rifle is illegal in Colorado, where his business is conducted.
- (123) The respondent, who is a bighorn sheep outfitter, stated that the semiautomatic rifles have no place in big game hunting. He recommended basic hunting rifles with calibers of 270 or 30.06.
- (124) The respondent, who hunts mainly deer and elk, recommended calibers 270, 30.06, 300 mag, 7mm, 8mm, or 338.
- (125) The respondent said that his clients did use semiautomatics, but he didn't have any specific information about which ones.
- (126) The respondent stated that the study rifles should remain in one's home or on private property. He would like to have some for personal use but would not recommend them for hunting. He further expressed his displeasure with the Brady bill and stated that criminals need to be held accountable for their actions.
- (127) The respondent, who hunts mostly elk and deer, said that the AK47 is not powerful enough to hunt elk; however, it may be ideal for smaller game, like deer or antelope. He recommended any rifles of 30.06 caliber or larger for hunting.

- (131) The respondent recommended bolt-action rifles for his clients with calibers .24, .25, 7 mm, or .30. He cited his preference because of fewer moving parts, their ease to fix, and their lack of sensitivity to weather conditions in the field. He added, however, that he had seen the study rifles used with good success.
- (132) The respondent stated that the study rifles are not worth anything in cold weather.
- (133) The respondent recommended handguns for hunting in calibers 41 or 44 mag.
- (136) The respondent did not recommend any rifles by make, but he did recommend a caliber of .308 or larger for elk.
- (140) The respondent recommended any good bolt or semiautomatic in 270 caliber and up. He added: "I feel the government is too involved in our lives and seek too much control over the people of our country. I am 65 yrs old and see more of our freedom lost every day. I believe in our country but I have little faith in [organizations] like the A.T.F."
- (145) The respondent stated: "Don't send these guns out west. Thanks!"
- (148) The respondent did not hunt turkey or deer and had no additional information to provide.
- (149) The respondent said that he recommends specific rifles to his clients if they ask, usually 270 to 7mm caliber big game rifles.
- (150) The respondent recommended Winchester, Remington, or any other autoloading hunting rifle.
- (152) The respondent said that he recommended caliber sizes but not specific rifles.
- (159) The respondent recommended any gun with which a client can hit a target. He stated that the AK47 could be used for hunting and target shooting.
- (174) The respondent recommended bolt-action rifles to his clients.
- (175) The respondent said that most of his deer-hunting clients use bolt-action rifles, such as Rugers and Remingtons, in calibers of 30.06, 270, or 243. In his duck guide service, only shotguns are used.
- (180) The respondent wrote: "We agree people should not be allowed to have semiautomatics and automatics. This does not mean that you silly bastards in Washington need to push complete or all gun control."
- (182) The respondent felt that the survey is biased because it didn't ask about hunting varmints. He stated that many of the study rifles are suitable for such activity.
- (184) The respondent did not recommend single shots or automatics and only allows bolt action or pumps for use by his clients.

- (188) The respondent wrote that the study guns are good for small game hunting: "I have very good luck with them as they are small, easy to handle, fast-shooting and flat firing guns."
- (192) The respondent submitted a letter with the survey: "I do not recommend the use of semiautomatic weapons for hunting in my area. Most of these weapons are prone to be unreliable because the owner does not know how to properly care for them in adverse weather. The FN-FAL, HK91, HK93, and SIG SG550-1 are excellent and expensive weapons very much suited to competition shooting.
- "Have you surveyed the criminal element on their choice of weapons? I suspect the criminal use of the six weapons you mentioned do law-abiding citizens compare a very small percentage to the same weapon used. I realize that even one wrongful death is too many but now can you justify the over 300,000 deaths per year from government supported tobacco?
- "Gun control does not work - it never has and it never will. What we need are police that capture criminals and a court system with the fortitude to punish them for their crimes."
- (198) The respondent stated that this was his first year in and that it was mainly a bow-hunting business.





DIRECTOR

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

DEC 10 1997

O:F:S:DMS  
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department HSE, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

  
John W. Magaw  
Director

Enclosure

# ATF SURVEY OF HUNTING/SHOOTING EDITORS FOR RIFLE USAGE

Page 1 of 2

1. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

\_\_\_\_\_ Yes (*Continue*) \_\_\_\_\_ No (*Skip to #3*)

2. If your answer to item 1 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

Make

Model

Caliber

---



---



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3. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in **hunting medium game (for example, turkey) or larger game (for example, deer)?**

\_\_\_\_\_ Yes (*Continue*) \_\_\_\_\_ No (*Skip to #5*)

\_\_\_\_\_ Yes, in certain circumstances. Please explain \_\_\_\_\_

(Continue)

4. If your answer to item 3 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles that you recommend **against** using for **hunting medium game ( for example, turkey) or larger game (for example, deer)?**

Make

Model

Caliber

---



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5. Does your publication recommend specific types of centerfire semiautomatic rifles for use in **high-power rifle competition?**

\_\_\_\_\_ Yes (*Continue*) \_\_\_\_\_ No (*Skip to #7*)

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

# ATF SURVEY OF HUNTING/SHOOTING EDITORS FOR RIFLE USAGE

Page 2 of 2

6. If your answer to item 5 is "Yes", please identify the specific centerfire semiautomatic rifles you recommend.

Make

Model

Caliber

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7. Does your publication recommend **against** the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in **high-power rifle competition**?

\_\_\_\_\_ Yes (*Continue*) \_\_\_\_\_ No (*Skip to #9*)

\_\_\_\_\_ Yes, in certain circumstances. Please explain \_\_\_\_\_

\_\_\_\_\_ (*Continue*)

8. If your answer to item 7 is "Yes" or "Yes, in certain circumstances", please identify the specific rifles your publication recommends **against** using for **high-power rifle competition**.

Make

Model

Caliber

---



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9. Have you or any other author who contributes to your publication written any articles since 1989 concerning the use of semiautomatic rifles and their suitability for use in hunting or organized competitive shooting? (*Exclude Letters to the Editor.*)

\_\_\_\_\_ Yes (*Continue*) \_\_\_\_\_ No (*You are finished with the survey. Thank you.*)

10. If your answer to item 9 is "Yes", please submit a copy of the applicable article(s). Any material you are able to provide will be very beneficial to our study. Please indicate the publication, issue date and page for each article.

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

## Editors

### Comments:

2. If your answer to item 1 is "Yes," please identify the specific centerfire rifles you recommend:
  - (8) Anything except Uzis.
  - (9) All study rifles except Uzi.
  - (12) See attached articles.
3. Please explain circumstances to question 3: Does your publication recommend against the use of any semiautomatic rifles whose design is based on the AK 47, FN-FAL, HK91, HK93, SIG 550-1, or Uzi for use in hunting medium game (for example, turkey) or larger game (for example, deer)?
  - (12) When the caliber is inappropriate or illegal for the specific game species.
4. Other rifle make recommendations in response to question 4: If your answer to item 3 is "Yes" or "Yes, in certain circumstances," please identify the specific rifles that you recommend against using for hunting medium game (for example, turkey) or larger game (for example, deer)?
  - (12) See attached articles.

The following two items are for the responses to question 6: If your answer to item 5 is "Yes," please identify the specific centerfire semiautomatic rifles you recommend:

#### Model

- (5) Springfield M1A and Colt AR-15.

#### Caliber

- (5) 7.62m (M1A) and .223 (Colt).

The following items are for questions 9 and 10 on articles written and the submission of these articles with the survey.

#### Article 1

- (8) No articles enclosed.
- (9) Semiautomatic Takes Tubb to HP Title.
- (10) No articles attached.

#### Article 2

- (9) AR-15 Spaceguns Invading Match.



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

DIRECTOR

DEC 10 1997

O:F:S:DMS  
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting. We are asking that your organization voluntarily complete the enclosed survey to assist us in gathering this information. We anticipate that the survey will take approximately 15 minutes to complete.

Responses must be received no later than 30 days following the date of this letter; those received after that date cannot be included in the review. Responses should be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Department FG, P.O. Box 50860, Washington, DC 20091. We appreciate any information you care to provide.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Magaw". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John W. Magaw  
Director

Enclosure

**ATF SURVEY OF STATE FISH AND GAME COMMISSIONS  
FOR RIFLE USAGE**

Page 1 of 2

State: \_\_\_\_\_

**1. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of high-power rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?**

\_\_\_\_\_ Yes (*Continue*)      \_\_\_\_\_ No (*Skip to #2*)

**1a. If "Yes", please cite law(s) and briefly describe the restrictions.**

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**2. Do the laws in your state place any prohibitions or restrictions (other than seasonal) on the use of semiautomatic rifles for hunting medium game (for example, turkey) or larger game (for example, deer)?**

\_\_\_\_\_ Yes (*Continue*)      \_\_\_\_\_ No (*Skip to #3*)

**2a. If "Yes", please cite law(s) and briefly describe the restrictions.**

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An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

**ATF SURVEY OF STATE FISH AND GAME COMMISSIONS  
FOR RIFLE USAGE**

Page 2 of 2

\_\_\_\_\_*(Continue)*

**3. What, if any, is the minimum caliber or cartridge dimensions that may be used for **hunting medium game (for example, turkey) or larger game (for example, deer)?****

Caliber: \_\_\_\_\_ **OR** Dimensions: \_\_\_\_\_

\_\_\_\_\_ There is no minimum.

**4. Does your commission or state collect any data on the types of rifles used in your state for **hunting medium game ( for example, turkey) or larger game (for example, deer)?****

\_\_\_\_\_ *Yes (Continue)*      \_\_\_\_\_ *No (You are finished with the survey. Thank you.)*

**4a.** If "Yes", please provide hard copies of any such available data for the past two hunting seasons of 1995 and 1996. Any data that you provide will be most beneficial to our study.

If you would like us to contact you regarding the data, please provide your name and phone number.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

An agency may not conduct or sponsor, and a person is not required to respond to, the collection of information unless it displays a currently valid OMB control number.

**Survey Fish and Game Commissions for Rifle Usage**

STATE	Restrictions		Minimum Caliber or Cartridge		Q5
	Q1	Q2	Q3	Q4	
	HiPwr	Semiauto	Minimum Caliber	Minimum Cartridge	Collect Data
Alabama	Yes	Yes	Any center fire rifle	None	No
Alaska	Yes	No	No Centerfire for big game		No
Arizona	No	Yes	.22 mag or larger		No
Arkansas	Yes	No	None	None	No
California	No	No	See Question 1a	See Question 1a	No
Colorado	Yes	Yes	0.24		No
Connecticut	Yes	Yes			
Delaware	Yes	Yes			
Florida	Yes	Yes	No rimfire for deer		No
Georgia	Yes	No	.22 Centerfire or larger		No
Hawaii	No	No			
Idaho	Yes	Yes	.22 rimfire		No
Illinois	Yes	Yes	None	None	No
Indiana	Yes	Yes	None		No
Iowa	Yes	Yes	not provided		No
Kansas	Yes	Yes	.23 caliber or larger		No
Kentucky	No	No			
Louisiana	Yes	No	.22 Centerfire		No
Maine	Yes	No	.22 mag or larger		No
Maryland	Yes	Yes			
Massachusetts	Yes	No	None	None	Yes
Michigan	Yes	Yes	.23 or larger		No
Minnesota	Yes	No	0.23	1.285"	No
Mississippi	Yes	No	None	None	No
Missouri	Yes	Yes	None	None	No
Montana	No	No	None		No
Nebraska	No	No			
Nevada	No	No			No
New Hampshire	Yes	Yes		above .22 rimfire	No
New Jersey	Yes	Yes	None	None	No
New Mexico	Yes	No	.24 centerfire or larger		No
New York	Yes	Yes	Must be centerfire		No
North Carolina	Yes	No	None	None	No
North Dakota	Yes	Yes	.22 Centerfire or larger		No
Ohio	Yes	No	None	None	No
Oklahoma	Yes	Yes	.22 magnum		No
Oregon	Yes	Yes	.22 or .24 or larger		No
Pennsylvania	Yes	Yes	None	None	No
Rhode Island	Yes	Yes		.229 maximum	No
South Carolina	Yes	No	Must be larger than .22		No
South Dakota	Yes	No	None	None	No
Tennessee	Yes	Yes	.24 or larger caliber		No
Texas	Yes	No	None	None	No
Utah	Yes	No		None	No
Vermont	Yes	No			No
Virginia	Yes	Yes	.23 caliber for deer		No
Washington	Yes	Yes	.240 or larger for coyote		No
West Virginia	No	No		Any centerfire	No
Wisconsin	Yes	No	.22 caliber or larger		No
Wyoming	Yes	No		23/100 bullet dia.	No



## State Fish and Game Commissions

### Restrictions for High Powered Rifles

1a. Please cite law(s) and briefly describe the restrictions.

#### Alabama

(19) No automatic weapons, no silenced weapons.

#### Alaska

(23) Bison hunters must use a caliber capable of firing a 200-grain bullet having 2,000 pounds of energy at 100 yards.

#### Arkansas

(11) No rifles for turkey.

#### California

(22) Centerfire for big game, 10 gauge or smaller for resident small game.

#### Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

#### Connecticut

(39) Shotgun only on public lands. Can use any type of rifle on private land.

#### Delaware

(40) No rifles - shotguns/muzzle loaders only.

#### Florida

(25) Machine guns and silencers not permitted for any hunting.

#### Georgia

(29) No hi-power rifles allowed for turkey hunting.

#### Hawaii

(49) Must have discharge of 1200 foot pounds.

#### Idaho

(30) No hi-power rifles allowed for hunting turkey.

#### Illinois

(12) Turkey or deer may not be hunted with rifle. Deer may not be hunted with muzzle loading rifle. No restriction on rifles for coyote, fox, and woodchuck, etc.

#### Indiana

(34) No hi-power rifles allowed for deer or turkey hunting. Limited restrictions for specified areas.

#### Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference if public or private lands. For coyote or fox, there is no restriction on rifles, magazine size, or caliber.

#### Kansas

(33) Must use ammunition specifically designed for hunting.

Louisiana

- (6) No rifles for turkey hunting. Rifles for deer hunting must be no smaller than .22 centerfire.

Maine

- (32) No hi-power rifles for turkey and water fowl. Some limited restrictions for specific areas.

Maryland

- (42) Some restrictions based on county. They are allowed in western and southern Maryland. Shotguns only in and around Baltimore and Washington, D.C.

Massachusetts

- (14) Rifles not permitted for hunting deer and turkey.

Michigan

- (27) No turkey hunting with hi-power rifle. No night hunting with hi-power rifle. Deer hunting with hi-power rifle allowed only in lower southern peninsula. Limited restrictions for specific areas.

Minnesota

- (13) Caliber must be at least .23. Ammunition must have a case length of at least 1.285". .30 caliber M1 carbine cartridge may not be used.

Mississippi

- (15) Restricts turkey hunting to shotguns. However quadriplegics may hunt turkey with a rifle.

Missouri

- (5) Rifles not permitted for turkey. Self loading firearms for deer may not have a combined magazine + chamber capacity of more than 11 cartridges.

Nebraska

- (43) Allowed and frequently used, but magazine capacity maximum is six rounds.

Nevada

- (1) Answer to #3 refers to NAS 501.150 and NAS 503.142. Not for turkey.

New Hampshire

- (7) Magazine capacity no more than 5 rounds. Prohibits full metal jacket bullets for hunting. Prohibits deer hunting with rifles in certain towns.

New Jersey

- (17) No rifles.

New Mexico

- (31) No hi-power rifles allowed for hunting turkey.

New York

- (24) No semiautomatics with a magazine capacity of greater than 6 rounds; machineguns and silencers not permitted for any hunting. Limited restrictions for specific areas.

North Carolina

- (20) Centerfire rifles not permitted for turkey hunting.

North Dakota

(28) No hi-power rifles for turkey hunting.

Ohio

(3) Prohibits high power rifles for turkey, deer and migratory birds. High power rifles can be used on all other legal game animals.

Oklahoma

(8) Centerfire rifles only for large game. Magazines for .22 centerfire rifles may not hold more than 7 rounds.

Oregon

(2) OAR 635-65-700(1) must be .24 caliber or larger center fire rifle, no full automatic; OAR 635-65-700(2) hunters shall only use centerfire rifle .22 caliber; OAR-65-700(5) no military or full jacket bullets in original or altered form. Limited restrictions for specific areas.

Pennsylvania

(16) Rifles not permitted in Philadelphia & Pittsburgh areas.

Rhode Island

(44) .22 center fire during the summer for woodchucks.

South Carolina

(18) No rifle for turkey, rifle for deer must be larger than .22 caliber

South Dakota

(50) Magazine not more than five rounds.

Tennessee

(37) No hi-power rifles allowed for turkey hunting.

Texas

(21) Rimfire ammunition not permitted for hunting deer, antelope, and bighorn sheep; machine guns and silencers not permitted for hunting any game animals.

Utah

(9) No rifles for turkey hunting.

Vermont

(47) Turkey size less than 10 gauge. Deer/moose/beer, no restriction on caliber.

Virginia

(48) 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun.

Washington

(46) Hunting turkey limited to shotguns. Small game limited to shotguns.

Wisconsin

(36) No .22 rimfire rifles for deer hunting.

Wyoming

(4) Big game and trophy animals, firearm must have a bore diameter of at least 23/100 of an inch.

Restrictions for Semiautomatic Rifles

2a. Please cite law(s) and briefly describe the restrictions.

Alabama

(19) Turkey may not be hunted with a centerfire rifle or rimfire rifle. Semiautomatic rifles of proper caliber are legal for all types of hunting. No restrictions on magazine capacity, except wildlife management areas where centerfire rifles are restricted to 10 round max.

Arizona

(38) Magazine cannot hold more than 5 rounds.

Colorado

(10) Semiautomatic rifle may not hold more than 6 rounds.

Connecticut

(39) Shotgun only on public lands. Any type of rifle can be used on private land.

Delaware

(40) No rifles - shotguns/muzzle loaders only.

Florida

(25) No semiautomatic centerfire rifles having a magazine capacity greater than 5 rounds.

Idaho

(30) No hi-power rifles (including semiautomatic) allowed for turkey hunting.

Illinois

(12) See #1.

Indiana

(34) No hi-power rifles allowed for turkey hunting.

Iowa

(26) Cannot use rifles for turkey or deer, only shotgun or bow and arrow. No difference in public or private land. For coyote or fox, there is no restriction on rifle, magazine size, or caliber.

Kansas

(33) Must use ammunition specifically designed for hunting.

Maryland

(42) Some restrictions. Based on county. Shotguns only in and around Baltimore and Washington, D.C.

Michigan

(27) Unlawful to hunt with semiautomatic rifles capable of holding more than 6 rounds in magazine and barrel. Rimfire (.22 cal) rifles excluded from restrictions.

Missouri

(5) Combined magazine + chamber capacity may not be more than 11 cartridges.

New Hampshire

(7) Turkey may not be hunted with rifles. Rifles may not have magazine capacity of more than 5 cartridges.

New Jersey

(17) No rifles.

New York

(24) No semiautomatics with a magazine capacity of greater than 6 rounds.

North Dakota

(28) No hi-power rifles (including semiautomatics) may be used for hunting turkey.

Oklahoma

(8) See #1.

Oregon

(2) OAR 635-65-700(1) and (2) limits magazine capacity to no more than 5 cartridges.

Pennsylvania

(16) Semiautomatic rifles are not lawful for hunting in Pennsylvania.

Rhode Island

(44) Cannot use semiautomatic during the winter, only during the summer months for woodchucks (during daylight from April 1 to September 30).

Tennessee

(37) No hi-power rifles, including semiautomatics, allowed for turkey hunting.

Vermont

(47) Semiautomatic 5 rounds or less.

Virginia

(48) Semiautomatics are legal wherever rifles can be used. 23 caliber or larger for deer and bear. No restrictions for turkey. No magazine restrictions, shotgun limited to 3 shells. Restrictions vary from county to county - approximately 90 different rifle restrictions in the State of Virginia based on the county restrictions. Sawed-off firearms are illegal to own unless with a permit, if barrel less than 16 inches for rifle, and 18 inches for shotgun. Striker 12 - drums holds 12 or more rounds and is illegal.

Washington

(46) Cannot use fully automatic for hunting.

West Virginia

(45) Cannot use fully automatic firearms for hunting.

### Comments Provided by Law Enforcement Agencies

- (1) No research.
- (2) No research.
- (3) NOBLE and others forwarded information to a U.S. Senator on circumstances concerning police officers killed or injured by these weapons. No data was provided.
- (4) No research.
- (7) The organization stated: "Most of the data available on guns and crime does not provide the detail needed to identify the types of guns listed. . . . We have conducted several surveys that refer to assault rifles generically, including the Survey of Inmates in State Correctional Facilities 1991, Survey of Inmates in Local Jails 1995, and the Survey of Adults on Probation 1995. The data on assault weapons has not been analyzed in the recently released Survey of Adults on Probation 1995 or in the yet to be released Survey of Inmates in Local Jails 1995.

"Our report Guns Used in Crime includes the results of an analysis of the stolen data from the FBI's National Crime Information Center database. Our analysis was limited to general categories of guns and calibers of handguns. The recent evaluation of the assault weapons ban funded by the National Institute of Justice analyzed a more recent set of the same data with an emphasis on assault weapons. The results of this evaluation were reported in Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994."

"BJS [Bureau of Justice Statistics] supports the Firearms Research Information System (FARIS). . . . This database contains firearms-related information from surveys, research, evaluations, and statistical reports. . . . We queried this database for any research on assault weapons. The results of the query include both the reports listed above, as well as several others. Please note that in BJS's report Guns Used in Crime refers to the report Assault Weapons and Homicide in New York City prepared by one of our grantees. While the data are from 1993, the report provides interesting insights into the use of assault weapons and homicide. Another source of data on assault weapons and crime is the FBI's Law Enforcement Officers Killed and Assaulted series, which records the type of gun used in killings of police officers. Several of the reports listed in the FARIS query used these data, including Cop Killers: Assault Weapons Attacks on America's Police, and Cops Under Fire: Law Enforcement Officers Killed with Assault Weapons or Guns with High Capacity Magazines."

- (9) Guns in America: National Survey on Private Ownership and Use of Firearms (May 1997) states: The 1994 NSPOF (National Survey of Private Ownership of Firearms) estimates for the total number of privately owned firearms is 192 million: 65 million handguns, 70 million rifles, 49 million shotguns, and 8 million other long guns.



DIRECTOR

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

DEC 10 1997

O:F:S:DMS  
3310

Dear Sir or Madam:

On November 14, 1997, the President and the Secretary of the Treasury decided to conduct a review to determine whether modified semiautomatic assault rifles are properly importable under Federal law. Under 18 U.S.C. section 925(d)(3), firearms may be imported into the United States only if they are determined to be of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. The firearms in question are semiautomatic rifles based on the AK47, FN-FAL, HK91, HK93, SIG SG550-1, and Uzi designs.

As part of the review, the Bureau of Alcohol, Tobacco and Firearms (ATF) is interested in receiving information that shows whether any or all of the above types of semiautomatic rifles are particularly suitable for or readily adaptable to hunting or organized competitive target shooting.

Although ATF is not required to seek public comment on this study, the agency would appreciate any factual, relevant information concerning the sporting use suitability of the rifles in question.

Your voluntary response must be received no later than 30 days from the date of this letter; those received after that date cannot be included in the review. Please forward your responses to the Bureau of Alcohol, Tobacco and Firearms, Department TA, P.O. Box 50860, Washington, DC 20091.

Sincerely yours,

*John W. Magaw*  
John W. Magaw  
Director



### Comments Provided by Industry Members and Trade Associations

- (12) The respondent felt that definitions and usage should be subject to rulemaking. The respondent stated that limits on "sporting" use do not take into account firearms technology and its derivative uses among millions of disparate consumers. Millions of gun owners currently engage in informal target competition.

The respondent stated that the firearms are suitable for sporting purposes and that ATF's practice of making "ad hoc" revisions to import criteria disrupts legitimate commerce. The respondent recommends that all changes to criteria should be subject to rulemaking.

- (19) The respondent submitted a brochure and a statement supported by seven letters from FFL's who sell the SLR-95 and 97 and ROMAK 1 and 2. The respondent and all the supporting letters attest to the suitability of these guns for hunting because (1) they are excellent for deer or varmint hunting; (2) they are used by many for target shooting; (3) their ammunition is readily available and affordable; and (4) they are excellent for young/new hunters because of low recoil, an inexpensive purchase price, durability, and light weight, as well as being designed only for semiautomatic fire.
- (20) One respondent submitted results of its independently conducted survey, which consisted of 30 questions. The results of the survey suggest that 36 percent of those queried actually use AK47-type rifles for hunting or competition, 38 percent use L1A1-type rifles for hunting or competition, and 38 percent use G3-type rifles for hunting or competition. Other uses include home defense, noncompetitive target shooting, and plinking. Of those queried who do not currently own these types of rifles, 35 percent would use AK-type rifles for hunting or competition, 36 percent would use L1A1-type rifles for hunting or competition, and 37 percent would use G3-type rifles for hunting or competition.
- (22) The respondent claims that the majority of the study rifles' length and calibers can be used only for sporting purposes. The respondent asserts that the only technical detail remaining after the 1989 decision that is similar to a military rifle is the locking system. After 1989, the imported rifles have no physical features of military assault rifles. All have features which can be found on any semiautomatic sporting/hunting rifle.

However, the respondent writes that the Uzi-type carbines are "not suitable for any kind of sporting events other than law enforcement and military competitions because the caliber and locking system do not allow precise shooting over long distances."

- (23) One respondent, who imports the SAR-8 and SAR-4800 that are chambered for .308 Winchester ammunition, states that neither rifle possesses any of the characteristics of either the 1989 determination or the 1994 law. The respondent states that both are permitted in match rifle and other competitions. The respondent states that only two questions should be considered to determine hunting suitability of a rifle: Whether the caliber is adequate to take one or more game species and whether the gun is safe and reliable. The respondent states that there is no factual or legal basis to conclude that the rifles are not "particularly suitable" for sporting purposes.
- (24) The respondent writes: "The particular firearms differ from other guns that are universally acceptable only in cosmetic ways. There is no functional difference between semiautomatic firearms based on the external features that have been keyed on in an attempt to implement the import restrictions of the 1994 Crime Bill. As further attempts to differentiate functionally identical firearms by these features for the purposes of culling out those that might be politically suitable for an administrative import ban is wrong."
- (25) The respondent writes that the SLG95 was developed exclusively for hunting and competitive shooting. The respondent points out that it is capable of single firing only and cannot be reassembled for use as an automatic weapon. It is made for endurance and accuracy to 300 meters.
- (26) The respondent recommends AK47 variants specifically, but believes all study rifles are suitable or adaptable for sporting. The respondent states that a Galil-chambered .308/.223 with a two-position rear sight, adjustable front sight, or scope mount channel, are reliable, durable, accurate, and suitable for hunting and organized competitive shooting. The respondent states that the Uzi, which chambers 9mm and 40 S&W, two-position rear sight, and an adjustable front sight is suitable for organized competitive target shooting.
- (27) The respondent states that the SIG-SG550-1, in its original configuration, never possessed assault rifle features. The respondent states that it was built as a semiautomatic, not a fully automatic that was converted or modified to semiautomatic. It does have protruding pistol grip, and its ergonomics are geared toward its original design of goal-precision shooting. The respondent says that the name "Sniper" was a marketing decision, and it is extremely popular in .223 competitions. Its price isolates the gun to the competitor/collector.

- (28) Letters from H&K users were submitted in support of their continued importation and use as sporting arms. Specifically, the SR9 and PSG1 were said to be clearly suitable and utilized daily for hunting and target shooting. The respondent states that sport is defined as "an active pastime, diversion, recreation" and that the use of these is all the justification needed to allow their importation. The PSG1 has been imported since 1974, and the SR9 since 1990. The semiautomatic feature dates to turn of the century.

The respondent states that the cost would dissuade criminals from using them. The respondent refers to ATF's reports "Crime Gun Analysis (17 Communities)" and "Trace Reports 1993-1996" to show that the H&K SR9 and PSG1 are not used in crime. In the 4-year period covered by the reports, not one was traced.

- (29) The respondent faults the 1989 report both for not sufficiently addressing the issue of ready adaptability, as well as for the limited definition of sporting purposes. The respondent states that sport is defined as "that which diverts, and makes mirth; pastime, diversion." The respondent says that the NRA sponsors many matches, and personally attests to the FN-FAL and HK91 as being perfectly suitable for such matches. The respondent states that the rifles are also used for hunting deer, rabbits, and varmints. Further, the respondent remarks that the use of these rifles in crime is minuscule.

#### **Importer/Individual Letters**

On January 15, 1998, the study group received a second submission from Heckler and Koch, dated January 14, 1998. It transmitted 69 letters from individuals who appeared to be answering an advertisement placed in Shotgun News by Heckler and Koch. The study group obtained a copy of the advertisement, which requested that past and current owners of certain H&K rifles provide written accounts of how they use or used these firearms. The advertisement stated that the firearms in question, the SR9 and the PSG1, were used for sporting purposes such as hunting, target shooting, competition, collecting, and informal plinking. The advertisement also referred to the 120-day study and the temporary ban on importation, indicating that certain firearms may be banned in the future.

#### **Synopses of Letters:**

1. The writer used his SR9 to hunt deer (photo included).
2. The writer used his SR9 to hunt deer (photo included).
3. The writer used his SR9 for informal target shooting and plinking.
4. The writer used his SR9 for target practice and recreation.
5. The writer (a police officer) used SR9 to hunt. Said that it's too heavy and expensive for criminals.

6. The writer used his SR9 for competition.
7. The writer used H&K rifles such as these around the farm to control wild dog packs.
8. The writer used his SR9 to hunt deer.
9. The writer used his SR9 to hunt, participate in target practice, and compete.
10. The writer used his H&K rifles for informal target shooting.
11. The writer used his SR9 to hunt elk because it's rugged, and to shoot targets.
12. The writer used his SR9 to target practice.
13. The writer used his HK91 to hunt varmints and compete in military rifle matches.
14. The writer does not use the firearms but is familiar with their use for target shooting, hunting, and competition.
15. The writer uses HK firearms for DCM marksmanship competition.
16. The writer used his HK93 for 100-yard club matches and NRA-high power rifle matches.
17. The writer does not own the firearms but enjoys shooting sports and collecting.
18. The writer used his HK91 to hunt deer, boar, and mountain goat and in high-power match competitions.
19. The writer used his SR9 to shoot targets and for competitions.
20. The writer used his HK91 to shoot varmints, hunt small and big game, and shoot long-range silhouettes.
21. The writer used his SR8 to hunt deer, target shoot, and plink.
22. The writer used his HK93 to shoot in club competitions.
23. The writer used his SR9 to shoot targets because the recoil does not impact his arthritis.
24. The writer (a police officer) does not own the firearm but never sees HKs used in crime.
25. The writer used his HKs for target shooting, competition, and collection.
26. The writer does not own the firearms but likes recreational target shooting.
27. Writer does not own the firearms but states, "Don't ban."

28. The writer used his SR9 for hunting deer, varmints, and groundhogs; for target shooting; and for occasional competitions.
29. The writer used his SR9 to hunt deer because it's accurate, rugged, and reliable.
30. The writer used his SR9 to hunt deer and elk.
31. The writer used his SR9 to target shoot.
32. The writer used his SR9 to hunt deer and target shoot.
33. The writer used his HK91 to shoot military rifle 100-yard competitions.
34. The writer used his SR9 for hunting varmints and coyotes, for target shooting, and for competitions.
35. The writer used his SR9 to hunt deer and target shoot.
36. The writer (a former FBI employee) used his SR9 for hunting varmints and for precision and target shooting.
37. The writer used his HK for target shooting and competition.
38. The writer used his SR9 for informal target shooting and plinking and his HK91 for bowling pin matches, high-power rifle competitions, informal target shooting, and plinking.
39. The writer used his SR9 to plink and shoot targets, saying it's too heavy for hunting.
40. The writer has an HK91 as part of his military collection and indicates it may be used for hunting.
41. The writer used his SR9 to target shoot.
42. The writer used his SR9 to hunt deer and target shoot.
43. The writer does not own the firearms but says, "Don't ban."
44. The writer used his SR9 and HK93 for hunting deer, for target shooting, and for home defense.
45. The writer states, "Don't ban."
46. Writer states, "Don't ban."
47. Writer states, "Don't ban."
48. The writer owns an SR9; no use was reported.
49. Writer used his SR9 to compete in club matches and "backyard competitions."
50. The writer used his HK to hunt boar and antelope.

51. The writer states, "Don't ban."
52. The writer (a police officer) does not own the firearms but states that the are not used by criminals.
53. The writer used his HK91 to hunt deer.
54. The writer (a police trainer) says that the PSG1 is used for police sniping and competitive shooting because it's accurate. He says that it's too heavy to hunt with and has attached an article on the PSG1.
55. The writer used her two PSG1s for target shooting and fun.
56. The writer used his SR9 and PSG1 to hunt and target shoot.
57. The writer used his two PSG1s to hunt and target shoot.
58. The writer provides an opinion that the SR9 is used to hunt and target shoot.
59. The writer used his PSG1 for hunting deer and informal target shooting.
60. The writer used his PSG1 to target shoot and plink.
61. The writer states, "Don't ban."
62. The writer used his HK91 to target shoot.
63. The writer used his HK91 to target shoot.
64. The writer (a U.S. deputy marshall) used his SR9 to shoot at the range.
65. The writer used his SR9 to hunt deer and coyotes.
66. The writer used his SR9 to competitively target shoot.
67. The writer used his SR9 to hunt deer and bear.
68. The writer uses military-type rifles like these for predator control on the farm.
69. The writer used his SR9 to target shoot, plink, and compete in DCM matches.

### Comments Provided by Interest Groups

- (7) Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report. March 13, 1997.
- (8) Identical comments were received from five members of the JPFO. They are against any form of gun control or restriction regardless of the type of firearm. References are made comparing gun control to Nazi Germany.
- (9) The respondent contends that police/military-style competitions, "plinking," and informal target shooting should be considered sporting. Note: The narrative was provided in addition to survey that Century Arms put on the Internet.

The respondent questions ATF's definition of "sporting" purposes. The respondent contends that neither the Bill of Rights nor the Second Amendment places restrictions on firearms based on use.

- (13) Citing the 1989 report, the respondent states that the drafters of the report determined what should be acceptable sports, thus excluding "plinking."

The respondent states that appearance (e.g., military looking) is not a factor in determining firearms' suitability for sporting purposes. It is their function or action that should determine a gun's suitability. Over 50 percent of those engaged in Practical Rifle Shooting use Kalashnikov variants. Further, citing U.S. vs. Smith (1973), the "readily adaptable" determination would fit all these firearms.

- (14) The respondent states that the vast majority of competitive marksmen shoot either domestic or foreign service rifles. Only 2-3 participants at any of 12 matches fire bolt-action match rifles. If service rifles have been modified, they are permitted under NRA rule 3.3.1.

The respondent says that attempts to ban these rifles "is a joke."

- (15) The respondent states that these firearms are used by men and women alike throughout Nebraska. All of the named firearms are used a lot all over the State for hunting. The AK47 has the same basic power of a 30/30 Winchester. All of these firearms function the same as a Browning BAR or a Remington 7400. Because of their design features, they provide excellent performance.
- (16) The respondent states that the Bill of Rights does not show the second amendment connected to "sporting purposes." The respondent says that all of the firearms in question are "service rifles," all can be used in highpower rifle competition (some better than others), but under no circumstances should "sporting use" be used as a test to determine whether they can be sold to the American public. The respondent states that "sporting use" is a totally bogus question.

- (17) The respondent's basic concern is that the scope of our survey is significantly too narrow (i.e., not responsive to the Presidential directive, too narrow to address the problem, and inadequate to the task). The respondent states, "We do not indicate that our determination will impact modifications made to skirt law. We rely on the opinions of the 'gun press.' At a minimum, the Bureau should deny importation of: any semiautomatic capable of accepting with a capacity of more than 10 rounds, and any semiautomatic rifle with a capacity to accept more rounds than permitted by the State with the lowest number of permitted rounds. Deny any semiautomatic that incorporates cosmetically altered 'rule-beating' characteristics. Deny any semiautomatic that can be converted by using parts available domestically to any of the 1994 banned guns/characteristics. Deny any semiautomatic manufactured by any entity controlled by a foreign government. OR manufactured by a foreign entity that also manufactures, assembles or exports assault-type weapons. Deny any semiautomatic that contains a part that is a material component of any assault type weapon made, assembled, or exported by the foreign entity which is the source of the firearm proposed to be imported."

"A material component of any assault type weapon, assembled or exported by the foreign entity, which is, the source of the firearms proposed to be imported. The gun press has fabricated 'sporting' events to justify these weapons. The manner in which we are proceeding is a serious disservice to the American people."

Attachments: That Was Then, This is Now: Assault Weapons: Analysis, New Research, and Legislation: Assault Weapons and Accessories in America: and Cop Killers. All authored by the Violence Policy Center.

- (30) The respondent states, "At least for handguns, and among young adult purchasers who have a prior criminal history, the purchase of an assault-type firearm is an independent risk factor for later criminal activity on the part of the purchaser."

NOTE: The above study was for assault-type handguns used in criminal activity versus other handguns. The study involved only young adults, and caution should be used in extending these results to other adults and purchasers of rifles. However, the respondent states, it is plausible that findings for one class of firearms may pertain to another closely related class.

- (31) The 1996 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. The publication outlines 1996 expenditures for guide use and percentage of hunters using guides for both big game and small game hunting.



- (32) In a memo from the Center to Prevent Handgun Violence the sections are Legal Background, History of Bureau Application of the "Sporting Purposes" Test, The Modified Assault Rifles under Import Suspension Should Be Permanently Barred from Importation, [The Galils and Uzis Should Be Barred from Importation Because They Are Banned by the Federal Assault Weapon Statute, and All the Modified Assault Rifles Should Be Barred from Importation Because They Fail the Sporting Purposes Test]. The conclusion states: "The modified assault rifles currently under suspended permits should be permanently barred from importation because they do not meet the sporting purposes test for importation under the Gun Control Act of 1968 and because certain of the rifles [Galils and Uzis] also are banned by the 1994 Federal assault weapon law."

### Comments Provided by Individuals

- (10) The respondent does not recommend the Uzi, but he highly recommends the others for small game and varmints. He feels that the calibers of these are not the caliber of choice for medium or large game; however, he believes that the SIG and H&K are the best-built semiautomatics available.

He can not and will not defend the Uzi, referring to it as a "piece of junk."

The respondent feels that because of their expense and their being hard to find, the study rifles (excluding the Uzi) would not be weapons of choice for illegal activities.

- (11) The respondent questions ATF's definition of "sporting" and "organized shooting." He feels that ATF's definition is too narrow and based on "political pressure."

The respondent feels that the firearms are especially suitable for competitive shooting and hunting and that the restrictions on caliber and number of cartridges should be left to the individual States. He has shot competitively for 25 years.

- (18) The respondent specifically recommends the MAK90 for hunting because its shorter length makes for easier movement through covered areas, it allows for quicker follow-up shots, its open sights allow one to come up upon a target more quickly, and it provides a quicker determination of whether a clear shot exists through the brush than with telescopic sighting.

- (21) The respondent states that the second amendment discusses "arms," not "sporting arms." The respondent further states that taxpayer money was spent on this survey and ATF has an agenda. A gun's original intent (military) has nothing to do with how it is used now. "The solution to today's crime is much the same as it always has been, proper enforcement of existing laws, not the imposition of new freedom-restricting laws on honest people."

### Information on Articles Reviewed

- (1) Describes limited availability of Uzi Model B sporter with thumbhole stock.
- (2) Describes rifle and makes political statement concerning 1989 ban.
- (3) Describes Chinese copy of Uzi with thumbhole stock.
- (4) Quality sporting firearms from Russia.
- (5) Short descriptions of rifles and shotguns available. Lead-in paragraph mentions hunting. Does not specifically recommend any of the listed weapons for hunting.
- (6) Geared to retail gun dealers, provides list of available products. States L1A1 Sporter is pinpoint accurate and powerful enough for most North American big game hunting.
- (7) Discusses the use of the rifle for hunting bear, sheep, and coyotes. Describes accuracy and ruggedness. NOTE: The rifle is a pre-1989 ban assault rifle.
- (8) Deals primarily with performance of the cartridge. Makes statement that AK 47-type rifle is adequate for deer hunting at woods ranges.
- (9) Discusses gun ownership in the United States. Highlighted text (not by writers) includes the National Survey of Private Ownership of Firearms that was conducted by Chilton Research Services of Drexel Hill, Pennsylvania during November and December 1994: 70 million rifles are privately held, including 28 million semiautomatics.
- (10) Discusses pre-1989 ban configuration. Describes use in hunting, and makes the statement that "in the appropriate calibers, the military style autoloaders can indeed make excellent rifles, and that their ugly configuration probably gives them better handling qualities than more conventional sporters as the military discovered a long time ago."
- (15) Not article - letter from Editor of Gun World magazine discussing "sport" and various competitions. Note: Attached submitted by Century Arms.
- (16) Letter addressed to "To Whom It May Concern" indicating HK91 (not mentioned but illustrated in photos) is suitable for hunting and accurate enough for competition. Note: Submitted by Century Arms.
- (17) Describes a competition developed to test a hunter's skill. Does not mention any of the rifles at issue.
- (18) Not on point - deals with AR 15.
- (19) Describes function, makes political statement.
- (20) Discusses function and disassembly of rifle.
- (21) Not on point - deals with AR 15 rifle.

- (22) Discusses competition started to show sporting use of rifles banned for sale in California. Unknown if weapons in study were banned in California in 1990.
- (23) Not on point - deals with national matches.
- (24) Not on point - deals with various surplus military rifles.
- (25) Deals with 7.62x39mm ammunition as suitable for deer hunting and mentions the use in SKS rifles, which is a military style semiautomatic but not a part of the study.
- (26) Not on point - deals with reloading.
- (27) Not on point - deals with reloading.
- (28) Not on point - deals with AR15 rifles in competition.
- (29) Not on point - deals with the SKS rifle.
- (30) Not on point - deals with national matches.
- (31) Not on point - deals with national matches.
- (32) Not on point - deals with national matches.
- (33) Not on point - deals with national matches at Camp Perry.
- (34) Not on point - deals with national matches at Camp Perry.
- (35) Not on point - deals with 1989 national matches at Camp Perry.
- (36) Not on point - deals with Browning BAR sporting semiautomatic rifles.
- (38) Not on point - deals with AR15, mentions rifle in caliber 7.62 x 39.
- (39) Not on point - deals with bullet types.
- (40) Not on point - deals with reloading.
- (41) Discusses tracking in snow. Rifles mentioned do not include any rifles in study.
- (42) Deals with deer hunting in general.
- (43) Deals with rifles for varmint hunting. Does not mention rifles in study.
- (44) Not on point - deals with hunting pronghorn antelope.
- (45) Deals with various deer rifles.
- (46) Not on point - deals with two Browning rifles' recoil reducing system.
- (47) Not on point - deals with bolt-action rifles.
- (48) Not on point - deals with ammunition.

- (49) Deals with modifications to AR15 trigger for target shooting.
- (50) Not on point - deals with M1 Garand as a target rifle.
- (51) Not on point - deals with reloading.
- (52) Deals with impact of banning semiautomatic rifles would have on competitors at Camp Perry.
- (53) Deals with economic impact in areas near Camp Perry if semiautomatic rifles banned. Reprint from Akron Beacon Journal.
- (54) Deals with training new competitive shooters - mentions sporting use of assault rifles, i.e., AR15.
- (55) Not on point - article about Nelson Shew.
- (56) Not on point - deals with reloading.
- (57) Not on point - deals with shooting the AR15.
- (58) Not on point - article about AR15 as target rifle.
- (59) Not on point - article about well known competitive shooter.
- (67) Not on point - deals with reloading.
- (68) Discusses semiautomatic versions of M14.
- (69) Discusses gas operation.
- (70) Discusses right adjustment on M1 and M1A rifles.
- (71) Discusses M1A and AR15-type rifles modified to remove them from assault weapon definition, and their use in competition.
- (72) Deals with AR15 type rifle.
- (73) Not on point - deals with AR15.
- (74) Not on point - deals with target rifle based on AR15/M16.
- (75) Not on point - deals with SKS rifle.
- (76) Not on point - deals with reloading 7.62x39mm cartridge.
- (77) Not on point - deals with reloading. Mentions 7.62x39mm.
- (78) Not on point - deals with ammunition performance.
- (79) Deals with .223 Remington caliber ammunition as a hunting cartridge.
- (80) Describes M1A (semiautomatic copy of M14) as a target rifle.
- (81) Not on point - deals with bullet design.
- (82) Not on point - deals with ammunition performance.

### Information on Advertisements Reviewed

- (11) Indicates rifles are rugged, reliable and accurate.
- (12) Describes rifles, lists price.
- (13) Sporting versions of AK 47 and FAL.
- (14) Sporting version of AK 47, reliable, accurate.
- (61) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (62) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (63) Catalog of ammunition - lists uses for 7.62x39mm ammunition.
- (64) Catalog of ammunition - lists uses for 9mm ammunition.
- (65) Catalog of ammunition - lists uses for 9mm ammunition.
- (66) Catalog of ammunition - lists recommended uses for 9mm ammunition.

# **EXHIBIT C**

**U.S. Department of Justice**

Bureau of Alcohol, Tobacco, Firearms and Explosives

# **ATF**

## **Study on the Importability of Certain Shotguns**



**Firearms and Explosives Industry Division**

**January 2011**



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## Study on the Importability of Certain Shotguns

### Executive Summary

The purpose of this study is to establish criteria that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will use to determine the importability of certain shotguns under the provisions of the Gun Control Act of 1968 (GCA).

The Gun Control Act of 1968 (GCA) generally prohibits the importation of firearms into the United States.<sup>1</sup> However, pursuant to 18 U.S.C. § 925(d), the GCA creates four narrow categories of firearms that the Attorney General must authorize for importation. Under one such category, subsection 925(d)(3), the Attorney General shall approve applications for importation when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”).

After passage of the GCA in 1968, a panel was convened to provide input on the sporting suitability standards which resulted in factoring criteria for handgun importations. Then in 1989, and again in 1998, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) conducted studies to determine the sporting suitability and importability of certain firearms under section 925(d)(3). However, these studies focused mainly on a type of firearm described as “semiautomatic assault weapons.” The 1989 study determined that assault rifles contained a variety of physical features that distinguished them from traditional sporting rifles. The study concluded that there were three characteristics that defined semiautomatic assault rifles.<sup>2</sup>

The 1998 study concurred with the conclusions of the 1989 study, but included a finding that “the ability to accept a detachable large capacity magazine originally designed and produced for a military assault weapon should be added to the list of disqualifying military configuration features identified in 1989.”<sup>3</sup> Further, both studies concluded that the scope of “sporting purposes” did not include all lawful activity, but was limited to traditional sports such as hunting, skeet shooting, and trap shooting. This effectively narrowed the universe of firearms considered by each study because a larger number of firearms are “particularly suitable for or readily adaptable to a sporting purpose” if plinking<sup>4</sup> and police or military-style practical shooting competitions are also included as a “sporting purpose.”<sup>5</sup>

Although these studies provided effective guidelines for determining the sporting purposes of rifles, ATF recognized that no similar studies had been completed to determine the sporting

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<sup>1</sup> Chapter 44, Title 18, United States Code (U.S.C.), at 18 U.S.C. § 922(l).

<sup>2</sup> These characteristics were: (a) a military configuration (ability to accept a detachable magazine, folding/telescoping stocks, pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights); (b) a semiautomatic version of a machinegun; and (c) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less. *1989 Report and Recommendation on the Importability of Certain Semiautomatic Rifles (1989 Study)* at 6-9.

<sup>3</sup> *1998 Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Rifles (1998 Study)* at 2.

<sup>4</sup> “Plinking” is shooting at random targets such as bottles and cans. 1989 Report at 10.

<sup>5</sup> *1989 Report* at 8-9; *1998 Study* at 18-19.

suitability of shotguns. A shotgun study working group (working group) was assigned to perform a shotgun study under the § 925(d)(3) sporting purposes test. The working group considered the 1989 and 1998 studies, but neither adopted nor entirely accepted findings from those studies as conclusive as to shotguns.

### Sporting Purpose

Determination of whether a firearm is generally accepted for use in sporting purposes is the responsibility of the Attorney General (formerly the Secretary of the Treasury). As in the previous studies, the working group considered the historical context of “sporting purpose” and that Congress originally intended a narrow interpretation of sporting purpose under § 925(d)(3).

While the 1989 and 1998 studies considered all rifles in making their recommendations, these studies first identified firearm features and subsequently identified those activities believed to constitute a legitimate “sporting purpose.” However, in reviewing the previous studies, the working group believes that it is appropriate to first consider the current meaning of “sporting purpose” as this may impact the “sporting” classification of any shotgun or shotgun features. For example, military shotguns, or shotguns with common military features that are unsuitable for traditional shooting sports, may be considered “particularly suitable for or readily adaptable to sporting purposes” if military shooting competitions are considered a generally recognized sporting purpose. Therefore, in determining the contemporary meaning of sporting purposes, the working group examined not only the traditional sports of hunting and organized competitive target shooting, but also made an effort to consider other shooting activities.

In particular, the working group examined participation in and popularity of practical shooting events as governed by formal rules, such as those of the United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC), to determine whether it was appropriate to consider these events a “sporting purpose” under § 925(d)(3). While the number of members reported for USPSA is similar to the membership for other shotgun shooting organizations,<sup>6</sup> the working group ultimately determined that it was not appropriate to use this shotgun study to determine whether practical shooting is “sporting” under § 925(d)(3). A change in ATF’s position on practical shooting has potential implications for rifle and handgun classifications as well. Therefore, the working group believes that a more thorough and complete assessment is necessary before ATF can consider practical shooting as a generally recognized sporting purpose.

The working group agreed with the previous studies in that the activity known as “plinking” is “primarily a pastime” and could not be considered a recognized sport for the purposes of

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<sup>6</sup> Organization websites report these membership numbers: for the United States Practical Shooting Association, approx. 19,000; Amateur Trapshooting Association, over 35,000 active members; National Skeet Shooting Association, nearly 20,000 members; National Sporting Clays Association, over 22,000 members; Single Action Shooting Society, over 75,000 members.

importation.<sup>7</sup> Because almost any firearm can be used in that activity, such a broad reading of “sporting purpose” would be contrary to the congressional intent in enacting section 925(d)(3). For these reasons, the working group recommends that plinking not be considered a sporting purpose. However, consistent with past court decisions and Congressional intent, the working group recognized hunting and other more generally recognized or formalized competitive events similar to the traditional shooting sports of trap, skeet, and clays.

### Firearm Features

In reviewing the shotguns used for those activities classified as sporting purposes, the working group examined State hunting laws, rules, and guidelines for shooting competitions and shooting organizations; industry advertisements and literature; scholarly and historical publications; and statistics on participation in the respective shooting sports. Following this review, the working group determined that certain shotgun features are not particularly suitable or readily adaptable for sporting purposes. These features include:

- (1) Folding, telescoping, or collapsible stocks;
- (2) bayonet lugs;
- (3) flash suppressors;
- (4) magazines over 5 rounds, or a drum magazine;
- (5) grenade-launcher mounts;
- (6) integrated rail systems (other than on top of the receiver or barrel);
- (7) light enhancing devices;
- (8) excessive weight (greater than 10 pounds for 12 gauge or smaller);
- (9) excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth);
- (10) forward pistol grips or other protruding parts designed or used for gripping the shotgun with the shooter’s extended hand.

Although the features listed above do not represent an exhaustive list of possible shotgun features, designs or characteristics, the working group determined that shotguns with any one of these features are most appropriate for military or law enforcement use. Therefore, shotguns containing any of these features are not particularly suitable for nor readily adaptable to generally recognized sporting purposes such as hunting, trap, sporting clay, and skeet shooting. Each of these features and an analysis of each of the determinations are included within the main body of the report.

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<sup>7</sup> 1989 Study at 10; 1998 Study at 17.

### Study on the Importability of Certain Shotguns

The purpose of this study is to establish criteria that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will use to determine the importability of certain shotguns under the provisions of the Gun Control Act of 1968 (GCA).

#### Background on Shotguns

A shotgun is defined by the GCA as “a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.”<sup>8</sup>

Shotguns are traditional hunting firearms and, in the past, have been referred to as bird guns or “fowling” pieces. They were designed to propel multiple pellets of shot in a particular pattern that is capable of killing the game that is being hunted. This design and type of ammunition limits the maximum effective long distance range of shotguns, but increases their effectiveness for small moving targets such as birds in flight at a close range. Additionally, shotguns have been used to fire slugs. A shotgun slug is a single metal projectile that is fired from the barrel. Slugs have been utilized extensively in areas where State laws have restricted the use of rifles for hunting. Additionally, many States have specific shotgun seasons for deer hunting and, with the reintroduction of wild turkey in many States, shotguns and slugs have found additional sporting application.

Shotguns are measured by *gauge* in the United States. The gauge number refers to the “number of equal-size balls cast from one pound of lead that would pass through the bore of a specific diameter.”<sup>9</sup> The largest commonly available gauge is 10 gauge (.0775 in. bore diameter). Therefore, a 10 gauge shotgun will have an inside diameter equal to that of a sphere made from one-tenth of a pound of lead. By far, the most common gauges are 12 (0.729 in. diameter) and 20 (0.614 in. diameter). The smallest shotgun that is readily available is known as a “.410,” which is the diameter of its bore measured in inches. Technically, a .410 is a 67 gauge shotgun.

#### Background on Sporting Suitability

The GCA generally prohibits the importation of firearms into the United States.<sup>10</sup> However, the statute exempts four narrow categories of firearms that the Attorney General shall authorize for importation. Originally enacted by Title IV of the Omnibus Crime Control and Safe Streets Act of 1968,<sup>11</sup> and amended by Title I of the GCA<sup>12</sup> enacted that same year, this section provides, in pertinent part:

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<sup>8</sup> 18 U.S.C. § 921(a)(5).

<sup>9</sup> The Shotgun Encyclopedia at 106.

<sup>10</sup> 18 U.S.C. § 922(l).

<sup>11</sup> Pub. Law 90-351 (June 19, 1968).

<sup>12</sup> Pub. Law 90-618 (October 22, 1968).

the Attorney General shall authorize a firearm . . . to be imported or brought into the United States . . . if the firearm . . . (3) is of a **type** that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 and **is generally recognized as particularly suitable for or readily adaptable to sporting purposes**, excluding surplus military firearms, except in any case where the Secretary has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled.<sup>13</sup> (Emphasis added)

This section addresses Congress' concern that the United States had become a "dumping ground of the castoff surplus military weapons of other nations,"<sup>14</sup> in that it exempted only firearms with a generally recognized sporting purpose. In recognizing the difficulty in implementing this section, Congress gave the Secretary of the Treasury (now the Attorney General) the discretion to determine a weapon's suitability for sporting purposes. This authority was ultimately delegated to what is now ATF. Immediately after discussing the large role cheap imported .22 caliber revolvers were playing in crime, the Senate Report stated:

[t]he difficulty of defining weapons characteristics to meet this target without discriminating against sporting quality firearms, was a major reason why the Secretary of the Treasury has been given fairly broad discretion in defining and administering the import prohibition.<sup>15</sup>

Indeed, Congress granted this discretion to the Secretary even though some expressed concern with its breadth:

[t]he proposed import restrictions of Title IV would give the Secretary of the Treasury unusually broad discretion to decide whether a particular type of firearm is generally recognized as particularly suitable for, or readily adaptable to, sporting purposes. If this authority means anything, it permits Federal officials to differ with the judgment of sportsmen expressed through consumer preference in the marketplace....<sup>16</sup>

Since that time, ATF has been responsible for determining whether firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes under the statute.

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<sup>13</sup> 18 U.S.C. § 925(d)(3). In pertinent part, 26 U.S.C. § 5845(a) includes "a shotgun having a barrel or barrels of less than 18 inches in length."

<sup>14</sup> 90 P.L. 351 (1968).

<sup>15</sup> S. Rep. No. 1501, 90th Cong. 2d Sess. 38 (1968).

<sup>16</sup> S. Rep. No. 1097, 90th Cong. 2d Sess. 2155 (1968) (views of Senators Dirksen, Hruska, Thurmond, and Burdick). In Gun South, Inc. v. Brady, 877 F.2d 858, 863 (11th Cir. 1989), the court, based on legislative history, found that the GCA gives the Secretary "unusually broad discretion in applying section 925(d)(3)."

On December 10, 1968, the Alcohol and Tobacco Tax Division of the Internal Revenue Service (predecessor to ATF) convened a “Firearm Advisory Panel” to assist with defining “sporting purposes” as utilized in the GCA. This panel was composed of representatives from the military, law enforcement, and the firearms industry. The panel generally agreed that firearms designed and intended for hunting and organized competitive target shooting would fall into the sporting purpose criteria. It was also the consensus that the activity of “plinking” was primarily a pastime and therefore would not qualify. Additionally, the panel looked at criteria for handguns and briefly discussed rifles. However, no discussion took place on shotguns given that, at the time, all shotguns were considered inherently sporting because they were utilized for hunting or organized competitive target competitions.

Then, in 1984, ATF organized the first large scale study aimed at analyzing the sporting suitability of certain firearms. Specifically, ATF addressed the sporting purposes of the Striker-12 and Streetsweeper shotguns. These particular shotguns were developed in South Africa as law enforcement, security and anti-terrorist weapons. These firearms are nearly identical 12-gauge shotguns, each with 12-round capacity and spring-driven revolving magazines. All 12 rounds can be fired from the shotguns within 3 seconds.

In the 1984 study, ATF ruled that the Striker-12 and the Streetsweeper were not eligible for importation under 925(d)(3) because they were not “particularly suitable for sporting purposes.” In doing this, ATF reversed an earlier opinion and specifically rejected the proposition that police or combat competitive shooting events were a generally accepted “sporting purpose.” This 1984 study adopted a narrow interpretation of organized competitive target shooting competitions to include the traditional target events such as trap and skeet. ATF ultimately concluded that the size, weight and bulk of the shotguns made them difficult to maneuver in traditional shooting sports and, therefore, these shotguns were not particularly suitable for or readily adaptable to these sporting purposes. At the same time, however, ATF allowed importation of a SPAS-12 variant shotgun because its size, weight, bulk and *modified* configuration were such that it was particularly suitable for traditional shooting sports.<sup>17</sup> The Striker-12 and Streetsweeper were later classified as “destructive devices” pursuant to the National Firearms Act.<sup>18</sup>

In 1989, and again in 1998, ATF conducted studies to determine whether certain rifles could be imported under section 925(d)(3). The respective studies focused primarily on the application of the sporting purposes test to a type of firearm described as a “semiautomatic assault weapon.” In both 1989 and 1998, ATF was concerned that certain semiautomatic assault weapons had been approved for importation even though they did not satisfy the sporting purposes test.

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<sup>17</sup> Private letter Ruling of August 9, 1989 from Bruce L. Weininger, Chief, Firearms and Explosives Division.

<sup>18</sup> See ATF Rulings 94-1 and 94-2.

### 1989 Study

In 1989, ATF announced that it was suspending the importation of several semiautomatic assault rifles pending a decision on whether they satisfied the sporting criteria under section 925(d)(3). The 1989 study determined that assault rifles were a “type” of rifle that contained a variety of physical features that distinguished them from traditional sporting rifles. The study concluded that there were three characteristics that defined semiautomatic assault rifles:

- (1) a military configuration (ability to accept a detachable magazine, folding/telescoping stocks, pistol grips, ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights);
- (2) semiautomatic version of a machinegun;
- (3) chambered to accept a centerfire cartridge case having a length of 2.25 inches or less.<sup>19</sup>

The 1989 study then examined the scope of “sporting purposes” as used in the statute.<sup>20</sup> The study noted that “[t]he broadest interpretation could take in virtually any lawful activity or competition which any person or groups of persons might undertake. Under this interpretation, any rifle could meet the “sporting purposes” test.<sup>21</sup> The 1989 study concluded that a broad interpretation would render the statute useless. The study therefore concluded that neither plinking nor “police/combat-type” competitions would be considered sporting activities under the statute.<sup>22</sup>

The 1989 study concluded that semiautomatic assault rifles were “designed and intended to be particularly suitable for combat rather than sporting applications.”<sup>23</sup> With this, the study determined that they were not suitable for sporting purposes and should not be authorized for importation under section 925(d)(3).

### 1998 Study

The 1998 study was conducted after “members of Congress and others expressed concern that rifles being imported were essentially the same as semiautomatic assault rifles previously determined to be nonimportable” under the 1989 study.<sup>24</sup> Specifically, many firearms found to be nonimportable under the 1989 study were later modified to meet the standards outlined in the study. These firearms were then legally imported into the country under section 925(d)(3). ATF commissioned the 1998 study on the sporting suitability of semiautomatic rifles to address concerns regarding these modified firearms.

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<sup>19</sup> 1989 Report and Recommendation on the ATF Working Group on the Importability of Certain Semiautomatic Rifles (1989 Study).

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* At 9.

<sup>23</sup> *Id.* At 12.

<sup>24</sup> 1998 Study at 1.



The 1998 study identified the firearms in question and determined that the rifles shared an important feature—the ability to accept a large capacity magazine that was originally designed for military firearms. The report then referred to such rifles as Large Capacity Military Magazine rifles or “LCMM rifles.”<sup>25</sup>

The study noted that after 1989, ATF refused to allow importation of firearms that had any of the identified non-sporting features, but made an exception for firearms that possessed only a detachable magazine. Relying on the 1994 Assault Weapons Ban, the 1998 study noted that Congress “sent a strong signal that firearms with the ability to expel large amounts of ammunition quickly are not sporting.”<sup>26</sup> The study concluded by adopting the standards set forth in the 1989 study and by reiterating the previous determination that large capacity magazines are a military feature that bar firearms from importation under section 925(d)(3).<sup>27</sup>

### Present Study

While ATF conducted the above mentioned studies on the sporting suitability of rifles, to date, no study has been conducted to address the sporting purposes and importability of shotguns. This study was commissioned for that purpose and to ensure that ATF complies with its statutory mandate under section 925(d)(3).

### Methodology

To conduct this study, the working group reviewed current shooting sports and the sporting suitability of common shotguns and shotgun features. At the outset, the working group recognized the importance of acknowledging the inherent differences between rifles, handguns and shotguns. These firearms have distinct characteristics that result in specific applications of each weapon. Therefore, in conducting the study, the working group generally considered shotguns without regard to technical similarities or differences that exist in rifles or handguns.

The 1989 and 1998 studies examined particular features and made sporting suitability determinations based on the generally accepted sporting purposes of *rifles*. These studies served as useful references because, in recent years, manufacturers have produced shotguns with features traditionally found only on rifles. These features are typically used by military or law enforcement personnel and provide little or no advantage to sportsmen.

Following a review of the 1989 and 1998 studies, the working group believed that it was necessary to first identify those activities that are considered legitimate “sporting purposes” in the modern era. While the previous studies determined that only “the traditional sports of hunting and organized competitive target shooting” would be considered “sporting,”<sup>28</sup> the working group recognized that sporting purposes may evolve over time. The working group felt

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<sup>25</sup> 1998 Study at 16.

<sup>26</sup> 1998 Study at 3.

<sup>27</sup> The 1994 Assault Weapons Ban expired Sept. 13, 2004, as part of the law's sunset provision.

<sup>28</sup> 1998 Study at 16

that the statutory language supported this because the term “generally recognized” modifies, not only firearms used for shooting activities, but also the shooting activities themselves. This is to say that an activity is considered “sporting” under section 925(d)(3) if it is generally recognized as such.<sup>29</sup> Therefore, activities that were “generally recognized” as legitimate “sporting purposes” in previous studies are not necessarily the same as those activities that are “generally recognized” as sporting purposes in the modern era. As stated above, Congress recognized the difficulty in legislating a fixed meaning and therefore gave the Attorney General the responsibility to make such determinations. As a result, the working group did not simply accept the proposition that sporting events were limited to hunting and traditional trap and skeet target shooting. In determining whether an activity is now generally accepted as a sporting purpose, the working group considered a broad range of shooting activities.

Once the working group determined those activities that are generally recognized as a “sporting purpose” under section 925(d)(3), it examined numerous shotguns with diverse features in an effort to determine whether any particular firearm was particularly suitable for or readily adaptable to those sports. In coming to a determination, the working group recognized that a shotgun cannot be classified as sporting merely because it may be used for a sporting purpose. During debate on the original bill, there was discussion about the meaning of the term “sporting purposes.” Senator Dodd stated:

Here again I would have to say that if a military weapon is used in a special sporting event, it does not become a sporting weapon. It is a military weapon used in a special sporting event . . . . As I said previously the language says no firearms will be admitted into this country unless they are genuine sporting weapons.<sup>30</sup>

In making a determination on any particular feature, the working group considered State hunting laws, currently available products, scholarly and historical publications, industry marketing, and rules and regulations of organization such as the National Skeet Shooting Association, Amateur Trapshooting Association, National Sporting Clays Association, Single Action Shooting Society, International Practical Shooting Confederation (IPSC), and the United States Practical Shooting Association (USPSA). Analysis of these sources as well as a variety of shotguns led the working group to conclude that certain shotguns were of a type that did not meet the requirements of section 925(d)(3), and therefore, could not lawfully be imported.

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<sup>29</sup> ATF previously argued this very point in *Gilbert Equipment Company, Inc. v. Higgins*, 709 F.Supp. 1071, 1075 (S.D. Ala. 1989). The court agreed, noting, “according to Mr. Drake, the bureau takes the position...that an event has attained general recognition as being a sport before those uses and/or events can be ‘sporting purposes’ or ‘sports’ under section 925(d)(3). See also Declaration of William T. Drake, Deputy Director, Bureau of Alcohol, Tobacco and Firearms.

<sup>30</sup> 114 Cong. Rec. 27461-462 (1968).

## Analysis

### A. Scope of Sporting Purposes

In conducting the sporting purposes test on behalf of the Attorney General, ATF examines the physical and technical characteristics of a shotgun and determines whether those characteristics meet this statutory requirement. A shotgun's suitability for a particular sport depends upon the nature and requirements inherent to that sport. Therefore, determining a "sporting purpose" was the first step in this analysis under section 925(d)(3) and is a critical step of the process.

A broad interpretation of "sporting purposes" may include any lawful activity in which a shooter might participate and could include any organized or individual shooting event or pastime. A narrow interpretation of "sporting purposes" would clearly result in a more selective standard governing the importation of shotguns.

Consistent with previous ATF decisions and case law, the working group recognized that a sport or event must "have attained general recognition as being a 'sport,' before those uses and/or events can be 'sporting purposes' or 'sports' under Section 925(d)(3)."<sup>31</sup> The statutory language limits ATF's authority to recognize a particular shooting activity as a "sporting purpose," and therefore requires a narrow interpretation of this term. As stated however, the working group recognized that sporting purposes may change over time, and that certain shooting activities may become "generally recognized" as such.

At the present time, the working group continues to believe that the activity known as "plinking" is not a generally recognized sporting purpose. There is nothing in the legislative history of the GCA to indicate that section 925(d)(3) was meant to recognize every conceivable type of activity or competition that might employ a firearm. Recognition of plinking as a sporting purpose would effectively nullify section 925(d)(3) because it may be argued that *any* shotgun is particularly suitable for or readily adaptable to this activity.

The working group also considered "practical shooting" competitions. Practical shooting events generally measure a shooter's accuracy and speed in identifying and hitting targets while negotiating obstacle-laden shooting courses. In these competitions, the targets are generally stationary and the shooter is mobile, as opposed to clay target shooting where the targets are moving at high speeds mimicking birds in flight. Practical shooting consist of rifle, shotgun and handgun competitions, as well as "3-Gun" competitions utilizing all three types of firearm on one course. The events are often organized by local or national shooting organizations and attempt to categorize shooters by skill level in order to ensure competitiveness within the respective divisions. The working group examined participation in and popularity of practical shooting events as governed under formal rules such as those of the United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC) to see

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<sup>31</sup> Gilbert at 1085.

if it is appropriate to consider these events a legitimate “sporting purpose” under section 925(d)(3).

The USPSA currently reports approximately 19,000 members that participate in shooting events throughout the United States.<sup>32</sup> While USPSA’s reported membership is within the range of members for some other shotgun shooting organizations,<sup>33</sup> organizations involved in shotgun hunting of particular game such as ducks, pheasants and quail indicate significantly more members than any of the target shooting organizations.<sup>34</sup> Because a determination on the sporting purpose of practical shooting events should be made only after an in-depth study of those events, the working group determined that it was not appropriate to use this shotgun study to make a definitive conclusion as to whether practical shooting events are “sporting” for purposes of section 925(d)(3). Any such study must include rifles, shotguns and handguns because practical shooting events use all of these firearms, and a change in position by ATF on practical shooting or “police/combat-type” competitions may have an impact on the sporting suitability of rifles and handguns. Further, while it is clear that shotguns are used at certain practical shooting events, it is unclear whether shotgun use is so prevalent that it is “generally recognized” as a sporting purpose. If shotgun use is not sufficiently popular at such events, practical shooting would have no effect on any sporting suitability determination of shotguns. Therefore, it would be impractical to make a determination based upon one component or aspect of the practical shooting competitions.

As a result, the working group based the following sporting suitability criteria on the traditional sports of hunting, trap and skeet target shooting.

#### B. Suitability for Sporting Purposes

The final step in our review involved an evaluation of shotguns to determine a “type” of firearm that is “generally recognized as particularly suitable or readily adaptable to sporting purposes.” Whereas the 1989 and 1998 studies were conducted in response to Congressional interest pertaining to a certain “type” of firearm, the current study did not benefit from a mandate to focus upon and review a particular type of firearm. Therefore, the current working group determined that it was necessary to consider a broad sampling of shotguns and shotgun features that may constitute a “type.”

Whereas rifles vary greatly in size, function, caliber and design, historically, there is less variation in shotgun design. However, in the past several years, ATF has witnessed increasingly diverse shotgun design. Much of this is due to the fact that some manufacturers are now applying rifle designs and features to shotguns. This has resulted in a type of shotgun that has

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<sup>32</sup> See [www.uspsa.org](http://www.uspsa.org).

<sup>33</sup> Organization websites report these membership numbers: for the United States Practical Shooting Association, approx. 19,000; Amateur Trapshooting Association, over 35,000 active members; National Skeet Shooting Association, nearly 20,000 members; National Sporting Clays Association, over 22,000 members; Single Action Shooting Society, over 75,000 members.

<sup>34</sup> Organization websites report these membership numbers: Ducks Unlimited, U.S adult 604,902 (Jan. 1, 2010); Pheasants/Quail Forever, over 130,000 North American members (2010) <http://www.pheasantfest.org/page/1/PressReleaseViewer.jsp?pressReleaseId=12406>.

features or characteristics that are based on tactical and military firearms. Following a review of numerous shotguns, literature, and industry advertisements, the working group determined that the following shotgun features and design characteristics are particularly suitable for the military or law enforcement, and therefore, offer little or no advantage to the sportsman. Therefore, we recognized that any shotgun with one or more of these features represent a “type” of firearm that is not “generally recognized as particularly suitable or readily adaptable to sporting purposes” and may not be imported under section 925(d)(3).

(1) Folding, telescoping or collapsible stock.

Shotgun stocks vary in style, but sporting stocks have largely resembled the traditional design.<sup>35</sup> Many military firearms incorporate folding or telescoping stocks. The main advantage of this feature is portability, especially for airborne troops. These stocks allow the firearm to be fired from the folded or retracted position, yet it is difficult to fire as accurately as can be done with an open or fully extended stock. While a folding stock or telescoping stock makes it easier to carry the firearm, its predominant advantage is for military and tactical purposes. A folding or telescoping stock is therefore not found on the traditional sporting shotgun. Note that certain shotguns may utilize adjustable butt plates, adjustable combs, or other designs intended only to allow a shooter to make small custom modifications to a shotgun. These are not intended to make a shotgun more portable, but are instead meant to improve the overall “fit” of the shotgun to a particular shooter. These types of adjustable stocks are sporting and are, therefore, acceptable for importation.

(2) Bayonet Lug.

A bayonet lug is generally a metal mount that allows the installation of a bayonet onto the end of a firearm. While commonly found on rifles, bayonets have a distinct military purpose. Publications have indicated that this may be a feature on military shotguns as well.<sup>36</sup> It enables soldiers to fight in close quarters with a knife attached to their firearm. The working group discovered no generally recognized sporting application for a bayonet on a shotgun.

(3) Flash Suppressor.

Flash suppressors are generally used on military firearms to disperse the muzzle flash in order to help conceal the shooter’s position, especially at night. Compensators are used on military and commercial firearms to assist in controlling recoil and the “muzzle climb” of the shotgun. Traditional sporting shotguns do not have flash suppressors or compensators. However, while compensators have a limited benefit for shooting sports because they allow the shooter to quickly reacquire the target for a second shot, there is no particular benefit in suppressing muzzle flash in

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<sup>35</sup> Exhibit 1.

<sup>36</sup> *A Collector’s Guide to United States Combat Shotguns* at 156.

sporting shotguns. Therefore, the working group finds that flash suppressors are not a sporting characteristic, while compensators are a sporting feature. However, compensators that, in the opinion of ATF, actually function as flash suppressors are neither particularly suitable nor readily adaptable to sporting purposes.

(4) Magazine over 5 rounds, or a Drum Magazine.

A magazine is an ammunition storage and feeding device that delivers a round into the chamber of the firearm during automatic or semiautomatic firing.<sup>37</sup> A magazine is either integral (tube magazine) to the firearm or is removable (box magazine). A drum magazine is a large circular magazine that is generally detachable and is designed to hold a large amount of ammunition.

The 1989 Study recognized that virtually all modern military firearms are designed to accept large, detachable magazines. The 1989 Study noted that this feature provides soldiers with a large ammunition supply and the ability to reload rapidly. The 1998 Study concurred with this and found that, for rifles, the ability to accept a detachable large capacity magazine was not a sporting feature. The majority of shotguns on the market today contain an integral “tube” magazine. However, certain shotguns utilize removable box magazine like those commonly used for rifles.<sup>38</sup>

In regard to sporting purposes, the working group found no appreciable difference between integral tube magazines and removable box magazines. Each type allowed for rapid loading, reloading, and firing of ammunition. For example, “speed loaders” are available for shotguns with tube-type magazines. These speed loaders are designed to be preloaded with shotgun shells and can reload a shotgun with a tube-type magazine in less time than it takes to change a detachable magazine.

However, the working group determined that magazines capable of holding large amounts of ammunition, regardless of type, are particularly designed and most suitable for military and law enforcement applications. The majority of state hunting laws restrict shotguns to no more than 5 rounds.<sup>39</sup> This is justifiable because those engaged in sports shooting events are not engaging in potentially hostile or confrontational situations, and therefore do not require the large amount of immediately available ammunition, as do military service members and police officers.

Finally, drum magazines are substantially wider and have considerably more bulk than standard clip-type magazines. They are cumbersome and, when attached to the shotgun, make it more difficult for a hunter to engage multiple small moving targets. Further, drum magazines are generally designed to contain more than 5 rounds. Some contain as many as 20 or more

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<sup>37</sup> Steindler's New Firearms Dictionary at 164.

<sup>38</sup> See Collector's Guide to United States Combat Shotguns at 156-7, noting that early combat shotguns were criticized because of their limited magazine capacity and time consuming loading methods.

<sup>39</sup> Exhibit 2.

rounds.<sup>40</sup> While such magazines may have a military or law enforcement application, the working group determined that they are not useful for any generally recognized sporting purpose. These types of magazines are unlawful to use for hunting in most states, and their possession and manufacture are even prohibited or restricted in some states.<sup>41</sup>

(5) Grenade Launcher Mount.

Grenade launchers are incorporated into military firearms to facilitate the launching of explosive grenades. Such launchers are generally of two types. The first type is a flash suppressor designed to function as a grenade launcher. The second type attaches to the barrel of the firearm either by screws or clamps. Grenade launchers have a particular military application and are not currently used for sporting purposes.

(6) Integrated Rail Systems.<sup>42</sup>

This refers to a mounting rail system for small arms upon which firearm accessories and features may be attached. This includes scopes, sights, and other features, but may also include accessories or features with no sporting purpose, including flashlights, foregrips, and bipods. Rails on the sides and underside of shotguns—including any accessory mount—facilitate installation of certain features lacking any sporting purpose. However, receiver rails that are installed on the top of the receiver and barrel are readily adaptable to sporting purposes because this facilitates installation of optical or other sights.

(7) Light Enhancing Devices.

Shotguns are generally configured with either bead sights, iron sights or optical sights, depending on whether a particular sporting purpose requires the shotgun to be pointed or aimed.<sup>43</sup> Bead sights allow a shooter to “point” at and engage moving targets at a short distance with numerous small projectiles, including birds, trap, skeet and sporting clays. Iron and optical sights are used when a shooter, firing a slug, must “aim” a shotgun at a target, including deer, bear and turkeys.<sup>44</sup> Conversely, many military firearms are equipped with sighting devices that utilize available light to facilitate night vision capabilities. Devices or optics that allow illumination of a target in low-light conditions are generally for military and law enforcement purposes and are not typically found on sporting shotguns because it is generally illegal to hunt at night.

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<sup>40</sup> Exhibit 3.

<sup>41</sup> See, e.g., Cal Pen Code § 12020; N.J. Stat. § 2C:39-9.

<sup>42</sup> Exhibit 4.

<sup>43</sup> NRA Firearms Sourcebook at 178.

<sup>44</sup> Id.

(8) Excessive Weight.<sup>45</sup>

Sporting shotguns, 12 gauge and smaller, are lightweight (generally less than 10 pounds fully assembled),<sup>46</sup> and are balanced and maneuverable. This aids sportsmen by allowing them to carry the firearm over long distances and rapidly engage a target. Unlike sporting shotguns, military firearms are larger, heavier, and generally more rugged. This design allows the shotguns to withstand more abuse in combat situations.

(9) Excessive Bulk.<sup>47</sup>

Sporting shotguns are generally no more than 3 inches in width or more than 4 inches in depth. This size allows sporting shotguns to be sufficiently maneuverable in allowing hunters to rapidly engage targets. Certain combat shotguns may be larger for increased durability or to withstand the stress of automatic fire. The bulk refers to the fully assembled shotgun, but does not include magazines or accessories such as scopes or sights that are used on the shotgun. For both width and depth, shotguns are measured at the widest points of the action or housing on a line that is perpendicular to the center line of the bore. Depth refers to the distance from the top plane of the shotgun to the bottom plane of the shotgun. Width refers to the length of the top or bottom plane of the firearm and measures the distance between the sides of the shotgun. Neither measurement includes the shoulder stock on traditional sporting shotgun designs.

(10) Forward Pistol Grip or Other Protruding Part Designed or Used for Gripping the Shotgun with the Shooter's Extended Hand.<sup>48</sup>

While sporting shotguns differ in the style of shoulder stock, they are remarkably similar in fore-end design.<sup>49</sup> Generally, sporting shotguns have a foregrip with which the shooter's forward hand steadies and aims the shotgun. Recently, however, some shooters have started attaching forward pistol grips to shotguns. These forward pistol grips are often used on tactical firearms and are attached to those firearms using the integrated rail system. The ergonomic design allows for continued accuracy during sustained shooting over long periods of time. This feature offers little advantage to the sportsman. Note, however, that the working group believes that pistol grips for the trigger hand are prevalent on shotguns and are therefore generally recognized as particularly suitable for sporting purposes.<sup>50</sup>

While the features listed above are the most common non-sporting shotgun features, the working group recognizes that other features, designs, or characteristics may exist. Prior to importation, ATF will classify these shotguns based upon the requirements of section 925(d)(3). The working

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<sup>45</sup> See generally Gilbert.

<sup>46</sup> Shotgun Encyclopedia 2001 at 264.

<sup>47</sup> Exhibit 5.

<sup>48</sup> Exhibit 6.

<sup>49</sup> See Exhibit 1. See generally NRA Firearms Sourcebook at 121-2.

<sup>50</sup> See Exhibit 1.



group expects the continued application of unique features and designs to shotguns that may include features or designs based upon traditional police or military tactical rifles. However, even if a shotgun does not have one of the features listed above, it may be considered “sporting” only if it meets the statutory requirements under section 925(d)(3). Further, the simple fact that a military firearm or feature *may* be used for a generally recognized sporting purposes is not sufficient to support a determination that it is sporting under 925(d)(3). Therefore, as required by section 925(d)(3), in future sporting classifications for shotguns, ATF will classify the shotgun as sporting only if there is evidence that its features or design characteristics are generally recognized as particularly suitable for or readily adaptable to generally recognized sporting purposes.

The fact that a firearm or feature was initially designed for military or tactical applications, including offensive or defensive combat, may indicate that it is not a sporting firearm. This may be overcome by evidence that the particular shotgun or feature has been so regularly used by sportsmen that it is generally recognized as particularly suitable for or readily adaptable to sporting purposes. Such evidence may include marketing, industry literature and consumer articles, scholarly and historical publications, military publications, the existence of State and local statutes and regulations limiting use of the shotgun or features for sporting purposes, and the overall use and the popularity of such features or designs for sporting purposes according to hunting guides, shooting magazines, State game commissioners, organized competitive hunting and shooting groups, law enforcement agencies or organizations, industry members and trade associations, and interest and information groups. Conversely, a determination that the shotgun or feature was originally designed as an improvement or innovation to an existing sporting shotgun design or feature will serve as evidence that the shotgun is sporting under section 925(d)(3). However, any new design or feature must still satisfy the sporting suitability test under section 925(d)(3) as outlined above.

The Attorney General and ATF are not limited to these factors and therefore may consider any other factor determined to be relevant in making this determination. The working group recognizes the difficulty in applying this standard but acknowledges that Congress specifically intended that the Attorney General perform this function. Therefore, the working group recommends that sporting determinations for shotguns not specifically addressed by this study be reviewed by a panel pursuant to ATF orders, policies and procedures, as appropriate.

### Conclusion

The purpose of section 925(d)(3) is to provide a limited exception to the general prohibition on the importation of firearms without placing “any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms....”<sup>51</sup> Our determinations will in no way preclude the importation of true sporting shotguns. While it will certainly prevent the importation of certain shotguns, we believe that

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<sup>51</sup> 90 P.L. 351 (1968).

those shotguns containing the enumerated features cannot be fairly characterized as “sporting” shotguns under the statute. Therefore, it is the recommendation of the working group that shotguns with any of the characteristics or features listed above not be authorized for importation.

## Shotgun Stock Style Comparison

Exhibit 1

“Straight” or “English” style stock (Ruger Red Label):



“Pistol grip” style stock (Browning Citori):



“Pistol grip” style stock (Mossberg 935 Magnum Turkey):



“Thumbhole” style stock (Remington SP-10):



Stock with Separate Pistol Grip



## Hunting Statutes by State

Exhibit 2

State	Gauge	Mag Restriction / plugged with one piece filler requiring disassembly of gun for removal	Attachments	Semi-Auto	Other
Alabama	10 gauge or smaller;	(Species specific) 3 shells			1
Alaska	10 gauge or smaller				
Arizona	10 gauge or smaller	5 shells			
Arkansas	≤ 10 gauge; some zones ≥ .410; ≥ 20 gauge for bear	(Species specific) 3 shells			
California	≤ 10 gauge; Up to 12 gauge in some areas	(Species specific) 3 shells			
Colorado	≥ 20 gauge; Game Mammals ≤ 10 gauge	3 shells			
Connecticut	≤ 10-gauge	(Species specific) 3 shells	telescopic sights		
Delaware	20, 16, 12, 10 gauge	3 shells	Muzzleloaders may be equipped with scopes		2
Florida	Muzzleloading firing ≥ 2 balls ≥ 20-gauge; Migratory birds ≤ 10-gauge; opossums - single-shot .41 -gauge shotguns	(Species specific) 3 shells			
Georgia	≥ 20-gauge; Waterfowl ≤ 10-gauge	5 shells	Scopes are legal		
Hawaii	≤ 10 gauge	(Species specific) 3 shells			
Idaho			some scopes allowed		3
Illinois	20 - 10 gauge; no .410 or 28 gauge allowed	3 shells			
Indiana		(Species specific) 3 shells	Laser sights are legal		

## Hunting Statutes by State

Exhibit 2

<b>Iowa</b>	10-, 12-, 16-, and 20-gauge			
<b>Kansas</b>	≥ 20 gauge; ≤ 10 gauge,	(Species specific) 3 shells		
<b>Kentucky</b>	up to and including 10-gauge, includes .410-	(Species specific) 3 shells	Telescopic sights (scopes)	
<b>Louisiana</b>	≤ 10 gauge	3 shells	Nuisance Animals; infrared, laser sighting devices, or night vision devices	
<b>Maine</b>	10 - 20 gauge	(Species specific) 3 shells	may have any type of sights, including scopes	Auto-loading illegal if hold more than 6 cartridges
<b>Maryland</b>	Muzzle loading ≥ 10 gauge ; Shotgun ≤ 10-gauge	(Species specific) 3 shells	may use a telescopic sight on muzzle loading firearm	
<b>Massachusetts</b>	≤ 10 gauge	(Species specific) 3 shells		
<b>Michigan</b>	any gauge	(Species specific) 3 shells		Illegal: semi-automatic holding > 6 shells in barrel and magazine combined
<b>Minnesota</b>	≤ 10 gauge	(Species specific) 3 shells		
<b>Mississippi</b>	any gauge	(Species specific) 3 shells	Scopes allowed on primitive weapons	
<b>Missouri</b>	≤ 10 gauge	(Species specific) 3 shells		
<b>Montana</b>	≤ 10 gauge	(Species specific) 3 shells		
<b>Nebraska</b>	≥ 20 gauge	(Species specific) 3 shells		Illegal: semi-automatic holding > 6 shells in barrel and magazine combined
<b>Nevada</b>	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells		
<b>New Hampshire</b>	10 - 20 gauge	(Species specific) 3 shells		
<b>New Jersey</b>	≤ 10 gauge; ≥ 20 gauge; or .410 caliber	(Species specific) 3 shells	Require adjustable open iron, peep sight or scope affixed if hunting with slugs. Telescopic sights Permitted	
<b>New Mexico</b>	≥ 28 gauge, ≤ 10 gauge	(Species specific) 3 shells		
<b>New York</b>	Big game ≥ 20 gauge		scopes allowed	No semi-automatic firearm with a capacity to hold more than 6 rounds



## Hunting Statutes by State

Exhibit 2

<b>North Carolina</b>	≤ 10 gauge	(Species specific) 3 shells	
<b>North Dakota</b>	≥ 410 gauge; no ≤ 10 gauge	3 shells (repealed for migratory birds)	
<b>Ohio</b>	≤ 10 gauge	(Species specific) 3 shells	
<b>Oklahoma</b>	≤ 10 gauge	(Species specific) 3 shells	
<b>Oregon</b>	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells	Scopes (permanent and detachable), and sights allowed for visually impaired
<b>Pennsylvania</b>	≤ 10 gauge; ≥ 12 gauge	(Species specific) 3 shells	
<b>Rhode Island</b>	10, 12, 16, or 20-gauge	5 shells	
<b>South Carolina</b>		(Species specific) 3 shells	
<b>South Dakota</b>	(Species specific) ≤ 10 gauge	5 shells	No auto-loading firearm holding > 6 cartridges
<b>Tennessee</b>	Turkey: ≥ 28 gauge	(Species specific) 3 shells	May be equipped with sighting devices
<b>Texas</b>	≤ 10 gauge	(Species specific) 3 shells	scoping or laser sighting devices used by disabled hunters
<b>Utah</b>	≤ 10 gauge; ≥ 20 gauge	(Species specific) 3 shells	
<b>Vermont</b>	≥ 12 gauge	(Species specific) 3 shells	
<b>Virginia</b>	≤ 10 gauge	(Species specific) 3 shells	
<b>Washington</b>	≤ 10 gauge	(Species specific) 3 shells	
<b>West Virginia</b>			
<b>Wisconsin</b>	10, 12, 16, 20 and 28 gauge; no .410 shotgun for deer/bear	(Species specific) 3 shells	
<b>Wyoming</b>			

- 1 Shotgun/rifle combinations (drilling) permitted
- 2 large game training course - Students in optional proficiency qualification bring their own pre-zeroed, ≥ .243 , scoped shotgun
- 3 no firearm that, in combination with a scope, sling and/or any attachments, weighs more than 16 pounds
- 4 no relevant restrictive laws concerning shotguns

General Firearm Statutes by State

Exhibit 2

State	Source	Semi-Auto Restrictions	Attachments	Prohibited* (in addition to possession of short-barrel or sawed-off shotguns by non-authorized persons, e.g., law enforcement officers for official duty purposes)
Alabama	Alabama Code, title 13:			
Alaska	Alaska Statutes 11.61.200.(h)			
Arizona	Arizona Rev. Statutes 13-3101.8.	single shot	silencer prohibited	
Arkansas	Arkansas Code Title 5, Chapter 73.			
California	California Penal Code, Part 4.12276. and San Diego Municipal Code 53.31.	San Diego includes under "assault weapon," any shotgun with a magazine capacity of more than 6 rounds		"Assault weapons": Franchi SPAS 12 and LAW 12; Striker 12; Streetsweeper type S/S Inc. ; semiautomatic shotguns having both a folding or telescoping stock and a pistol grip protruding conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip; semiautomatic shotguns capable of accepting a detachable magazine; or shotguns with a revolving cylinder.
Colorado	2 CCR 406-203			
Connecticut	Connecticut Gen. Statutes 53-202a.			"Assault weapons": Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns
D.C	7-2501.01.			

## General Firearm Statutes by State

## Exhibit 2

Delaware	7.1. § 711.		7.1. § 711. Hunting with automatic-loading gun prohibited; penalty (a) No person shall hunt for game birds or game animals in this State, except as authorized by state-sanctioned federal depredation/conservation orders for selected waterfowl species, with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than 3 shells, the magazine of which has not been cut off or plugged with a filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than 3 shells at 1 time, in the magazine and chamber combined. (b) Whoever violates this section shall be guilty of a class C environmental misdemeanor. (c) Having in one's possession, while in the act of hunting game birds or game animals, a gun that will hold more than 3 shells at one time in the magazine and chamber combined, except as authorized in subsection (a) of this section, shall be prima facie evidence of violation of this section.
Florida	Florida statutes, Title XLVI.790.001.		
Georgia			
Hawaii	Hawaii Rev. Statutes, Title 10., 134-8.	silencer prohibited	
Idaho	Idaho Code, 18-3318.		
Illinois	Code of Ordinances, City of Aurora 29-43.	Aurora includes under "assault weapon," any shotgun with a magazine capacity of more than 5 rounds	"Assault weapons": Street Sweeper and Striker 12 revolving cylinder shotguns or semiautomatic shotguns with either a fixed magazine with a capacity over 5 rounds or an ability to accept a detachable magazine and has at least a folding / telescoping stock or a pistol grip that protrudes beneath the action of firearm and which is separate and apart from stock



## General Firearm Statutes by State

## Exhibit 2

Indiana	Indiana Code 35-47-1-10. and Municipal Code of the City of South Bend 13-95.	South Bend under "assault weapon" firearms which have threads, lugs, or other characteristics designed for direct attachment of a silencer, bayonet, flash suppressor, or folding stock; as well as any detachable magazine, drum, belt, feed strip, or similar device which can be readily made to accept more than 15. rounds	South Bend includes under "assault weapon," any shotgun with a magazine capacity of more than 9 rounds
Iowa	Iowa Code, Title XVI. 724.1.		Includes as an offensive weapon, "a firearm which shoots or is designed to shoot more than one shot, without manual reloading, by a single function of the trigger"
Kansas			
Kentucky	Kentucky Revised Statutes- 150.360		
Louisiana	Louisiana RS 56:116.1		
Maine	Maine Revised Statutes 12.13.4.915.4. §11214. F.		
Maryland	Maryland Code 5-101.		"Assault weapons": F.I.E./Franchi LAW 12 and SPAS 12 assault shotgun; Steyr-AUG-SA semi-auto; Holmes model 88 shotgun; Mossberg model 500 Bullpup assault shotgun; Street sweeper assault type shotgun; Strker 12 assault shotgun in all formats; Daewoo USAS 12 semi-auto shotgun

## General Firearm Statutes by State

## Exhibit 2

<b>Massachusetts</b>	Massachusetts Gen L. 140.121.	under "assault weapon": any shotgun with (fixed or detachable) magazine capacity of more than 5 rounds	"Assault weapons": revolving cylinder shotguns, e.g., Street Sweeper and Striker 12; also "Large capacity weapon" includes any semiautomatic shotgun fixed with large capacity feeding device (or capable of accepting such), that uses a rotating cylinder capable of accepting more than 5 shells
<b>Michigan</b>	II.2.1. (2)		
<b>Minnesota</b>	Minnesota Statutes 624.711		"Assault weapons": Street Sweeper and Striker-12 revolving cylinder shotgun types as well as USAS-12 semiautomatic shotgun type
<b>Mississippi</b>	Mississippi Code 97-37-1.	silencer prohibited	
<b>Missouri</b>	Code of State Regulations 10-7.410(1)(G)		
<b>Montana</b>			
<b>Nebraska</b>	Nebraska Administrative Code Title 163 Chapter 4 001.		
<b>Nevada</b>	Nevada Revised Statutes 503.150 1.		
<b>New Hampshire</b>			
<b>New Jersey</b>	New Jersey Statutes 23:4-13. and 23:4-44. and New Jersey Rev. Statutes 2C39-1.w.	magazine capacity of no more than 5 rounds	"Assault weapons": any shotgun with a revolving cylinder, e.g. "Street Sweeper" or "Striker 12" Franchi SPAS 12 and LAW 12 shotguns or USAS 12 semi-automatic type shotgun; also any semi-automatic shotgun with either a magazine capacity exceeding 6 rounds, a pistol grip, or a folding stock
<b>New Mexico</b>	New Mexico Administrative Code 19.31.6.7H., 19.31.11.10N., 19.31.13.10M. and 19.31.17.10N.		

## General Firearm Statutes by State

## Exhibit 2

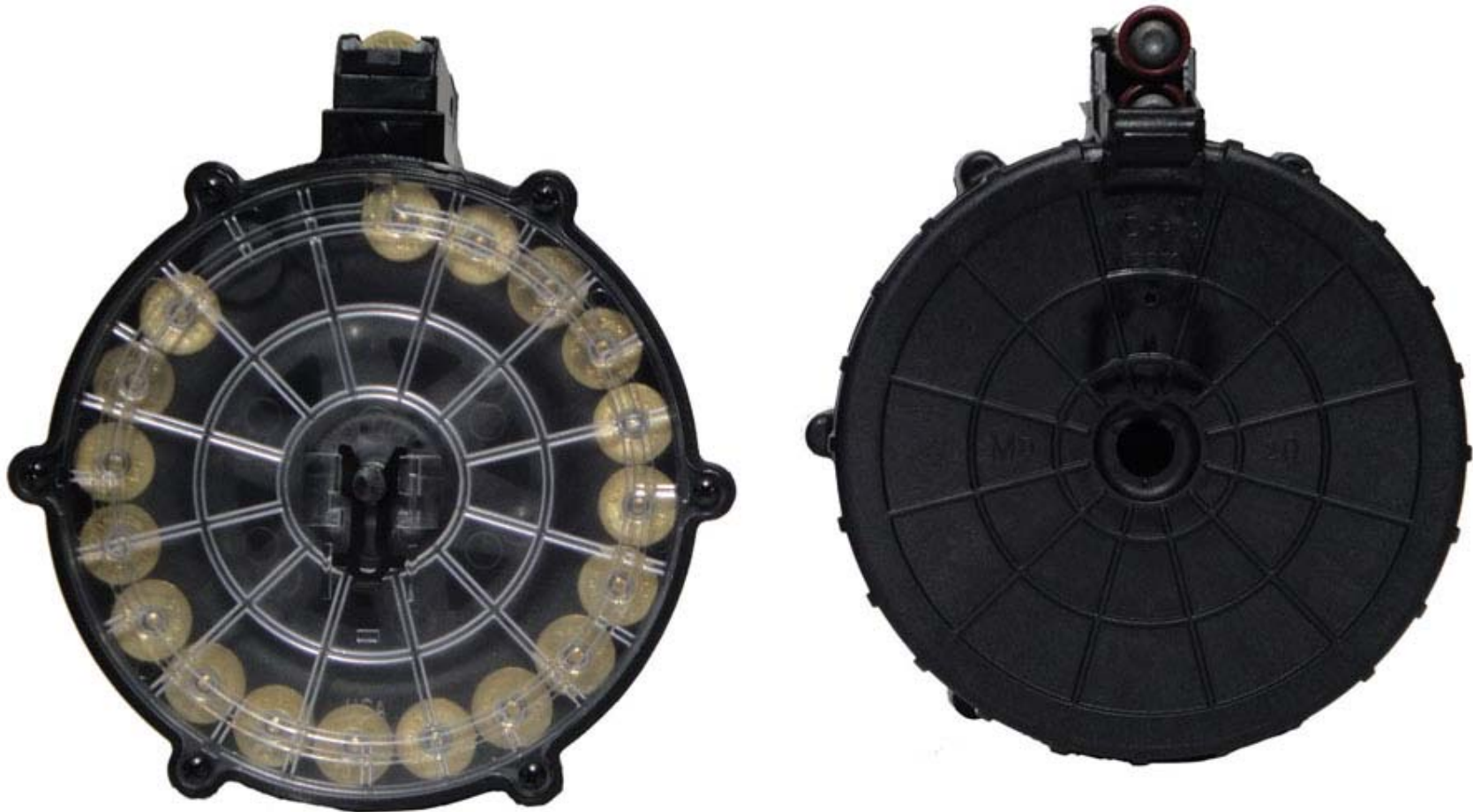
<b>New York</b>	New York Consolidated Laws 265.00. 22. and Code of the City of Buffalo 1801B.	magazine capacity of no more than 5 rounds	sighting device making a target visible at night may classify a shotgun as an assault weapon	"Assault weapons": Any semiautomatic shotgun with at least two of the following: folding or telescoping stock; pistol grip that protrudes conspicuously beneath the action of the weapon; fixed magazine capacity in excess of five rounds; an ability to accept a detachable magazine; or any revolving cylinder shotguns, e.g., Street Sweeper and Striker 12; Buffalo 1801B. Assault Weapon: (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has: (a) A flash suppressor attached to the weapon reducing muzzle flash; (c) A sighting device making a target visible at night; (d) A barrel jacket surrounding all or a portion of the barrel, to dissipate heat therefrom; or (e) A multi-burst trigger activator. (3) Any stockless pistol grip shotgun.
<b>North Carolina</b>	North Carolina Gen. Statutes 14-288.8		silencer prohibited	
<b>North Dakota</b>	North Dakota Century Code 20.1-01-09. Section 20.1-04-10, SHOTGUN SHELL-HOLDING CAPACITY RESTRICTION, repealed/eliminated			
<b>Ohio</b>	Ohio Rev. Code 2923.11. and Columbus City Codes 2323.11.	magazine capacity of no more than 5 rounds		semiautomatic shotgun that was originally designed with or has a fixed magazine or detachable magazine with a capacity of more than five rounds. Columbus includes under "Assault weapon" any semi-automatic shotgun with two or more of the following: pistol grip that protrudes conspicuously beneath the receiver of the weapon; folding, telescoping or thumbhole stock; fixed magazine capacity in excess of 5 standard 2-3/4, or longer, rounds; or ability to accept a detachable magazine; also any shotgun with revolving cylinder
<b>Oklahoma</b>				
<b>Oregon</b>	Oregon Rev. Statutes 166.272.		silencer prohibited	
<b>Pennsylvania</b>	Title 34 Sec. 2308. (a)(4) and (b)(1)			
<b>Rhode Island</b>	Rule 7, Part III, 3.3 and 3.4			
<b>South Carolina</b>	SECTION 50-11-310. (E) and ARTICLE 3. SUBARTICLE 1. 123 40			

General Firearm Statutes by State

Exhibit 2

<b>South Dakota</b>	South Dakota Codified Laws 22,1,2, (8)	silencer prohibited	
<b>Tennessee</b>			
<b>Texas</b>			
<b>Utah</b>	Utah Administrative Code R657-5-9. (1), R657-6-6. (1) and R657-9-7.		
<b>Vermont</b>			
<b>Virginia</b>	Virginia Code 18.2-308.	magazine capacity no more than 7 rounds (not applicable for hunting or sport shooting)	"Assault weapons": Striker 12's commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve shotgun shells prohibited
<b>Washington</b>	Washington Administrative Code 232-12-047		
<b>West Virginia</b>	West Virginia statute 8-12-5a.		
<b>Wisconsin</b>	Wisconsin Administrative Code – NR 10.11 and NR 10.12		
<b>Wyoming</b>	Wyoming Statutes, Article 3. Rifles and Shotguns [Repealed] and 23-3-112.	silencer prohibited	





Sporting



Sporting



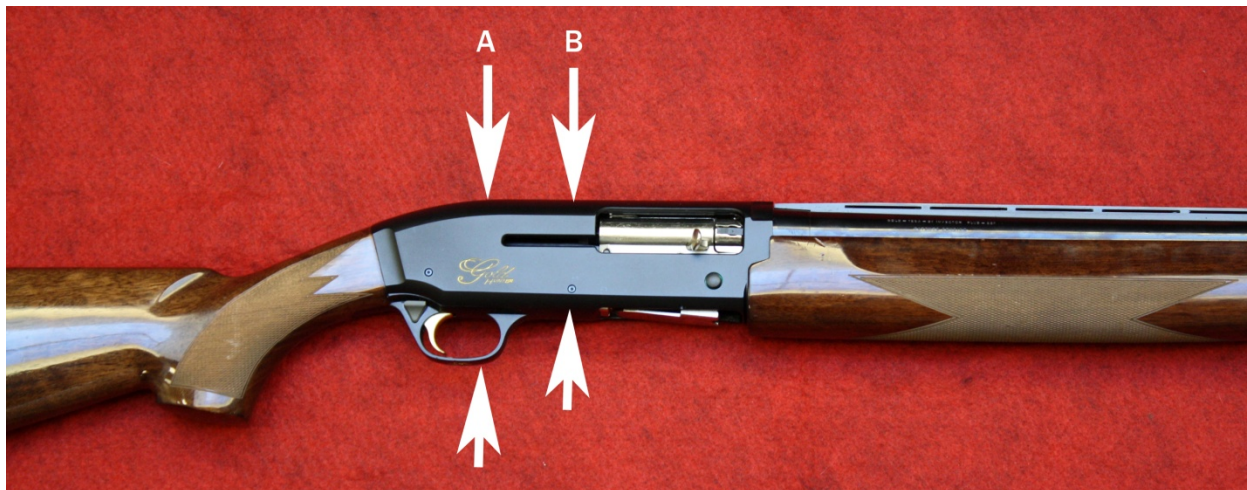
Non-Sporting



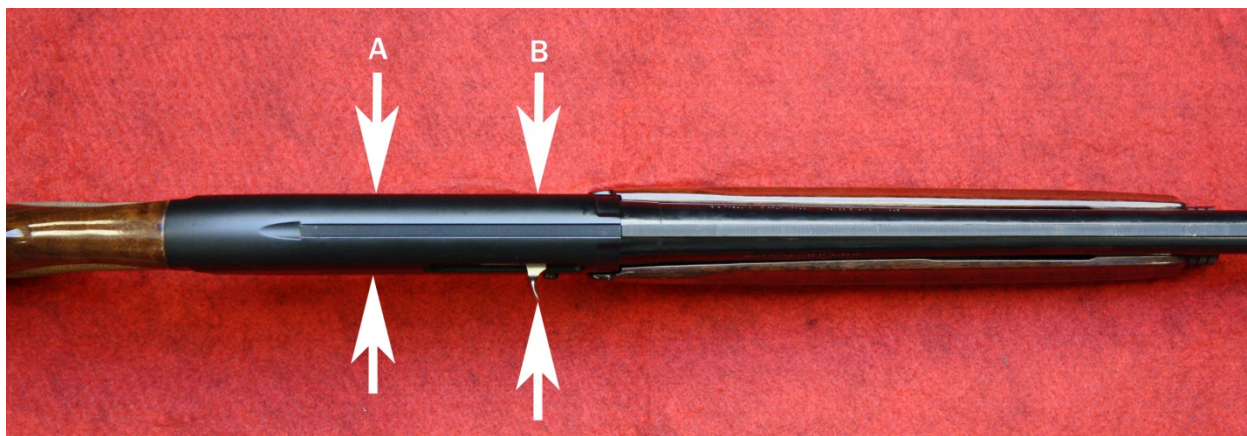
Non-Sporting



Depth refers to the distance from the top plane of the shotgun to the bottom plane of the shotgun. Depth measurement “A” below is INCORRECT; it includes the trigger guard which is not part of the frame or receiver. Depth measurement “B” below is CORRECT; it measures only the depth of the frame or receiver:



Width refers to the length of the top or bottom pane of the firearm and measures the distance between the sides of the shotgun. Width measurement “A” below is CORRECT; it measures only the width of the frame or receiver. Width measurement “B” below is INCORRECT; it includes the charging handle which is not part of the frame or receiver:









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# **EXHIBIT D**

**[This document has been retyped for clarity.]**

MEMORANDUM TO FILE

FIREARMS ADVISORY PANEL

The initial meeting of the Firearms Advisory Panel was held in Room 3313, Internal Revenue Building, on December 10, 1968, with all panel members present. Internal Revenue Service personnel in attendance at the meeting were the Director, Alcohol and Tobacco Tax Division, Harold Serr; Chief, Enforcement Branch, Thomas Casey; Chief, Operations Coordination Section, Cecil M. Wolfe, and Firearms Enforcement Officer, Paul Westenberger. Deputy Assistant Commissioner Compliance, Leon Green, visited the meeting several times during the day.

The Director convened the meeting at 10:00 a.m. by welcoming the members and outlining the need for such an advisory body. He then introduced the Commissioner of Internal Revenue, Mr. Sheldon Cohen, to each panel member.

Mr. Cohen spoke to the panel for approximately fifteen minutes. He thanked the members for their willingness to serve on the panel, explained the role of the panel and some of the background which led to the enactment of the Gun Control Act of 1968. Commissioner Cohen explained to the panel members the conflict of interest provisions of regulations pertaining to persons employed by the Federal Government and requested that if any member had any personal interest in any matter that came under discussion or consideration, he should make such interest known and request to be excused during consideration of the matter.

Mr. Seer then explained to the panel the areas in which the Division would seek the advice of the panel and emphasized that the role of the panel would be advisory only, and that it was the responsibility of the Service to make final decisions. He then turned the meeting over to the moderator, Mr. Wolfe.

Mr. Wolfe explained the responsibility of the Service under the import provisions of the Gun Control Act and under the Mutual Security Act. The import provisions were read and discussed.

The panel was asked to assist in defining Asporting purposes≡ as used in the Act. It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purpose category. A discussion was held on the so-called sport of Apling≡. It was the consensus that, while many persons

participated in the type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation since any firearm that could expel a projectile could be used for this purpose without having any characteristics generally associated with target guns.

The point system that had been developed by the Division and another point system formula suggested and furnished by the Southern Gun Distributors through Attorney Michael Desalle, was explained and demonstrated to the panel by Paul Westenberg. Each panel member was given copies of the formulas and requested to study them and endeavor to develop a formula he believed would be equitable and could be applied to all firearms sought to be imported.

A model BM59 Beretta, 7.62 mm, NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle be authorized for importation. Importation, however, should include the restriction that these weapons must not possess combination flash suppressors/grenade adaptors with outside diameters greater than 20mm (.22 mm is the universal grade adaptor size).

The subject of ammunition was next discussed. Panel members agreed that incendiary and tracer small arms ammunition have no use for sporting purposes. Accordingly, the Internal Revenue Service will not authorize these types of small arms ammunition importation. All other conventional small arms ammunition for pistols, revolvers, rifles and shotguns will be authorized.

The meeting was adjourned at 4:00 p.m.

C.M. Wolfe

# **EXHIBIT E**



Dear Customer:

There has been speculation regarding certain component and ammunition products within the shooting community. The purpose of this letter is to inform our valued customers of the status of Barnes Banded Solids' availability as components, and in Barnes VOR-TX Safari ammunition.

In October 2011, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") classified twelve individual Barnes Banded Solid projectiles as armor piercing ammunition. Following these classifications, Barnes submitted individual "exemption request" petitions to ATF. If the petitions are approved, the projectiles will be removed from the statutory definition of armor piercing ammunition, and therefore Barnes will have clearance to continue manufacturing and selling these projectiles.

As of today's date, ATF has not ruled on any of the petitions requesting the removal of the Banded Solid projectiles from the statutory definition of armor piercing ammunition. Accordingly, the following eleven Banded Solid projectiles (currently listed in the 2012 Barnes Catalog) are subject to exemption requests that are pending with ATF. Please note that Barnes is not pursuing an exemption for the .223 caliber Banded Solid projectile at this time. The .223 caliber Banded Solids are not listed in the 2012 Barnes catalog or on the Barnes website:

25 Cal	243 Cal	264 Cal	270 Cal
284 Cal	308 Cal	338 Cal	375 Cal
410 Cal	458 Cal (45-70)	458 SOCOM	

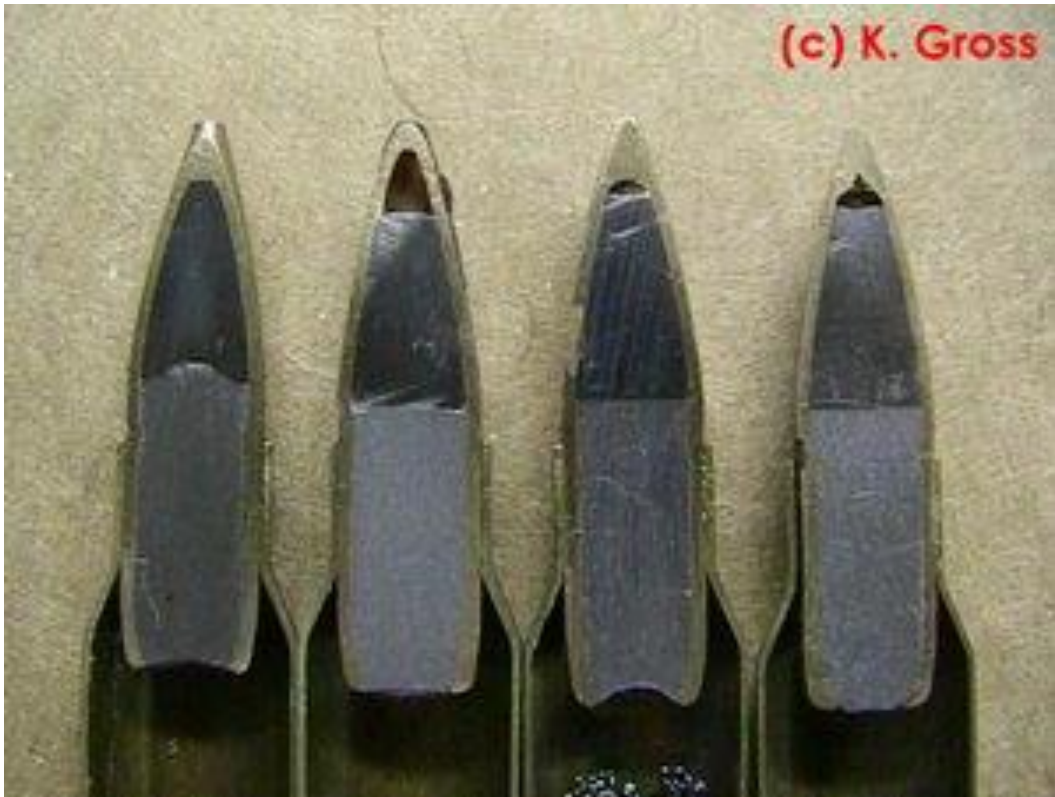
While we await determination from ATF on these calibers, and in compliance with the original classification by ATF, the projectiles listed above will not be available for purchase from Barnes. However, if and when the exemption requests are approved, the projectiles at issue will become available for purchase at that time.

We are confident that most, if not all, of our removal requests with ATF will be successful, and that we will soon be able to provide these calibers to our hunting and sport-shooting customers around the world. In the meantime, we will be happy to answer questions regarding these projectiles and/or the VOR-TX Safari ammunition loaded with these projectiles. Please note the Banded Solids components and VOR-TX Safari ammunition products loaded with Banded Solids not included in the aforementioned calibers (e.g. 416, 470 and 500) and TSX bullets are not subject to the current armor piercing classification and continue to be available for purchase.

We at Barnes recognize the inconvenience caused by lack of access to the appropriate products for individual sporting or hunting purposes. We will continue to aggressively seek immediate resolution to this issue, and inform our customers as further information is provided by ATF. Please refer to [www.barnesbullets.com/products/rifle/banded-solids/](http://www.barnesbullets.com/products/rifle/banded-solids/) for future updates.

We look forward to your continued business and wish you the best in the New Year.

# **EXHIBIT F**



[http://www.ar15.com/ammo/project/ammo\\_cross\\_sections/index.htm#SS109](http://www.ar15.com/ammo/project/ammo_cross_sections/index.htm#SS109)



# **EXHIBIT G**

Commercial Black Rifle Market – Domestically Produced Rifles (Units Manufactured) – 1990 - 2010

Vendor	1990	2000	2007	2008	2009	2010	Slutmetrics Analytics Comments
Adams Arms	0	0	0	0	0	33	Proprietary pistol design
Aero Precision	0	0	9,993	12,938	27,109	19,939	
Armatite	0	8,347	12,643	15,058	17,014	9,562	
Austin Precision Products Inc. (L&R Tactical)	0	0	0	NA	73	903	
Black Rain Ordnance, Inc.	0	0	0	0	13	101	Freedom Group - Carbon 15 - moved to Hon, NV
Blackheart International	0	0	0	0	31	118	
Bravo Company MFG Inc.	0	0	0	0	897	5,330	
Budmaster Firearms Int'l LLC - Arizona	0	2,614	1,644	1,008	2,082	199	
Budmaster Firearms Int'l LLC - Maine	2,139	29,926	57,744	63,036	83,382	40,679	Freedom Group - moved to Hon, NV
CDT / CDT Defense LLC	33,956	27,271	11,138	20,896	46,483	11,175	
CMMG	0	0	1,265	15,655	14,237	7,663	CLTDEF - Privately-owned intspec window
Daniel Defense	0	0	0	0	4,889	2,413	
Delaware Machinery & Tool	0	0	0	0	0	17,140	
Double Star	0	0	6,864	22,426	5,864	2,321	
DeHon	0	0	0	2,037	10,309	6,676	Freedom Group
DRMS Firearms LLC	0	1,541	54,260	94,295	53,120	40,001	
Eagle Arms	NA	0	0	0	0	0	
Heckler & Koch, Inc.	0	0	0	NA	6	6	
JP Enterprises	0	NA	933	438	699	568	Proprietary pistol design
Knights	0	0	124	267	5,000	1,437	
Lancer Systems LP	0	0	0	0	0	96	
Lewis Machine & Tool	0	0	259	1,599	NA	3,553	
LMFO	0	0	0	1,740	9,100	6,144	Proprietary pistol design
Noveske Rifleworks LLC	0	0	100	770	750	748	
Olympic Arms	257	3,653	7,504	9,829	12,089	2,892	
Palmetto State Armory	0	0	0	0	0	1,363	
Pera USA	0	0	0	0	713	1,309	Freedom Group - ceased production
Petrol Ordnance	0	0	2,481	3,059	8,416	947	
PWA	4,058	0	0	0	0	0	
Primary Weapons Systems Inc.	0	0	0	0	11	184	
Rock River Arms	0	104	22,668	25,333	36,706	38,200	SVHC - M&P 15 series
Sabre Defense	0	0	3,077	4,934	5,947	1,104	
SUR15 Rifles Inc.	0	0	0	7	50	46	
Smith & Wesson	0	0	24,670	38,372	110,057	105,051	
Spirit Gun Manufacturing LLC	0	0	0	0	22	287	SVHC - M&P 15 series
Stag Arms	0	0	25,768	31,688	48,620	19,545	
Sun Devil Manufacturing	0	0	805	NA	NA	22	
Superior Arms, Inc.	0	0	0	9,562	0	900	
Yankee Hill Machine Co.	0	0	81	637	66	107	SVHC - M&P 15 series
<b>Total, AR15 Pattern Rifles* 2</b>	<b>42,971</b>	<b>87,513</b>	<b>248,366</b>	<b>400,714</b>	<b>547,519</b>	<b>334,728</b>	
Barrett Firearms	NA	586	4,470	3,864	5,592	1,472	50-BMG rifles
Century Arms	NA	19,168	24,185	28,239	42,876	15,480	
DS Arms	NA	13	1,441	2,192	2,715	8,001	
FL Manufacturing	NA	0	NA	3,038	21,868	19,816	
Kross USA	NA	0	0	525	1,035	470	FN FAL pattern
L.O. Inc.	NA	0	1,563	1,508	7,254	3,059	
LUSA USA LLC	NA	0	21	33	107	NA	
Monolithic Emul Arms Research, Inc.	NA	0	1,020	5,244	NA	NA	
Sig Sauer Inc.	NA	0	6,236	18,808	39,294	29,784	AK pattern
Springfield, Inc.	NA	9,506	15,616	15,117	16,977	20,463	
Sturm-Ruger	NA	NA	NA	NA	NA	NA	
THW Firearms	NA	205	289	194	1,709	1,353	
Vector Arms	NA	0	0	0	501	470	LUSA 9A
Wise Lite Arms	NA	0	569	1,031	4,731	924	
ZDF Import / Export LLC (Robinson Armament)	NA	586	918	956	1,805	808	
<b>Subtotal, Other Military Pattern Semi-Auto Rifles</b>	<b>NA</b>	<b>30,362</b>	<b>58,417</b>	<b>82,340</b>	<b>148,274</b>	<b>101,878</b>	
<b>Combined Total, EBR's*</b>	<b>NA</b>	<b>117,875</b>	<b>306,783</b>	<b>483,054</b>	<b>695,793</b>	<b>436,606</b>	SVHC - M&P 15 series
<b>Total of All Rifles Manufactured in the US*</b>	<b>NA</b>	<b>1,583,042</b>	<b>1,610,923</b>	<b>1,746,139</b>	<b>2,248,851</b>	<b>1,830,556</b>	
<b>AR15 Pattern Share of Rifle Market</b>	<b>NA</b>	<b>5.5%</b>	<b>15.4%</b>	<b>22.9%</b>	<b>24.3%</b>	<b>18.3%</b>	
<b>Total FBR Share of Rifle Market</b>	<b>NA</b>	<b>7.4%</b>	<b>19.0%</b>	<b>27.7%</b>	<b>30.9%</b>	<b>23.9%</b>	

Source: STEAFMER Reports, NSSF, Slutmetrics Analytics estimates

\* Excludes exports

2 Includes complete rifle, lower receiver assemblies, and stripped lower receivers. Does not include AR-style pistols. Available at [www.munroe.com/cv](http://www.munroe.com/cv)

# EXHIBIT H



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

OCT 31 1986

LE:F:TE;EMO

Mr. John R. Hansen, Jr.  
Hansen Cartridge Company  
244-246 Old Post Road  
Southport, Connecticut 06490

Dear Mr. Hansen:

This refers to your letter of October 23, 1986, in which you asked about 5.56mm (.223) caliber SS109 and M855 ball ammunition with respect to the recently enacted legislation restricting the manufacture, importation and sale of armor piercing ammunition.

Section 921(a)(17)(3), Chapter 44, Title 18, U.S.C. defines armor piercing ammunition as:

The term armor piercing ammunition means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. Such term does not include shotgun shot required by federal or state environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

Examination of the SS109 (M855 Ball) ammunition indicates that the projectile is constructed using a full metal jacket and projectile cores constructed of a steel penetrator located forward of a lead core. Based on its construction, the SS109/M855 projectile meets the above definition of armor piercing ammunition.

Mr. John R. Hansen, Jr.

However, our examination also indicates that SS109/M855 ammunition will be the official U.S. military 5.56mm ammunition for use in service rifles. The cartridge was designed to have increased accuracy and range over the previous M193 ball cartridge. Additionally, major U.S. manufacturers of sporting 5.56mm rifles have begun producing their 5.56mm rifle barrels with a one in seven inch twist specifically for the SS109/M855 cartridge. This cartridge is to be the standard 5.56mm rifle cartridge for use in military and civilian rifle match competition. It was also noted that of the few handguns which are produced for the 5.56mm cartridge, the majority are specialized long range competition weapons.

Therefore, the Bureau of Alcohol, Tobacco and Firearms feels that the SS109/M855 ball ammunition in caliber 5.56mm is primarily intended for sporting purposes and is not subject to the restrictions imposed on the manufacture, importation, or distribution of armor piercing ammunition.

Please be advised that should unforeseen problems develop or if the design or construction of the projectile is changed, this classification is subject to review.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,



William T. Drake  
Deputy Director

# EXHIBIT I

## APPENDIX F –EXPLANATORY MATERIALS

The following information is provided as explanation for the sections indicated.

### **Explanatory Material for Section 2 NIJ Body Armor Classification**

The ballistic threat posed by a bullet depends on its composition, shape, caliber, mass, angle of incidence, and impact velocity, among other things. Because of the wide variety of bullets and cartridges available in a given caliber and the existence of handloaded ammunition, armors that will defeat a standard test round may not defeat other threats of the same caliber. An armor that defeats a given lead bullet may not resist perforation by other bullets of the same caliber having different construction or configuration. The test ammunitions specified in this standard represent higher velocity versions of threats that law enforcement officers may face in the United States, but which also are among the more difficult threats to safely stop. By testing armors against these threats, the armor will generally be able to stop a wide variety of similar and lesser threats.

As of the publication of this standard, ballistic resistant body armor suitable for full-time wear throughout an entire shift of duty is available in classification Types IIA, II, and IIIA, which provide increasing levels of protection from handgun threats. Type IIA body armor will provide minimal protection against smaller caliber handgun threats. Type II body armor will provide protection against many handgun threats, including many common, smaller caliber pistols with standard pressure ammunition, and against many revolvers. Type IIIA body armor provides a higher level of protection, and will generally protect against most pistol calibers, including many law enforcement ammunitions, and against many higher powered revolvers.

Types III and IV armor, which protect against rifle rounds, are generally used only in tactical situations or when the threat warrants such protection.

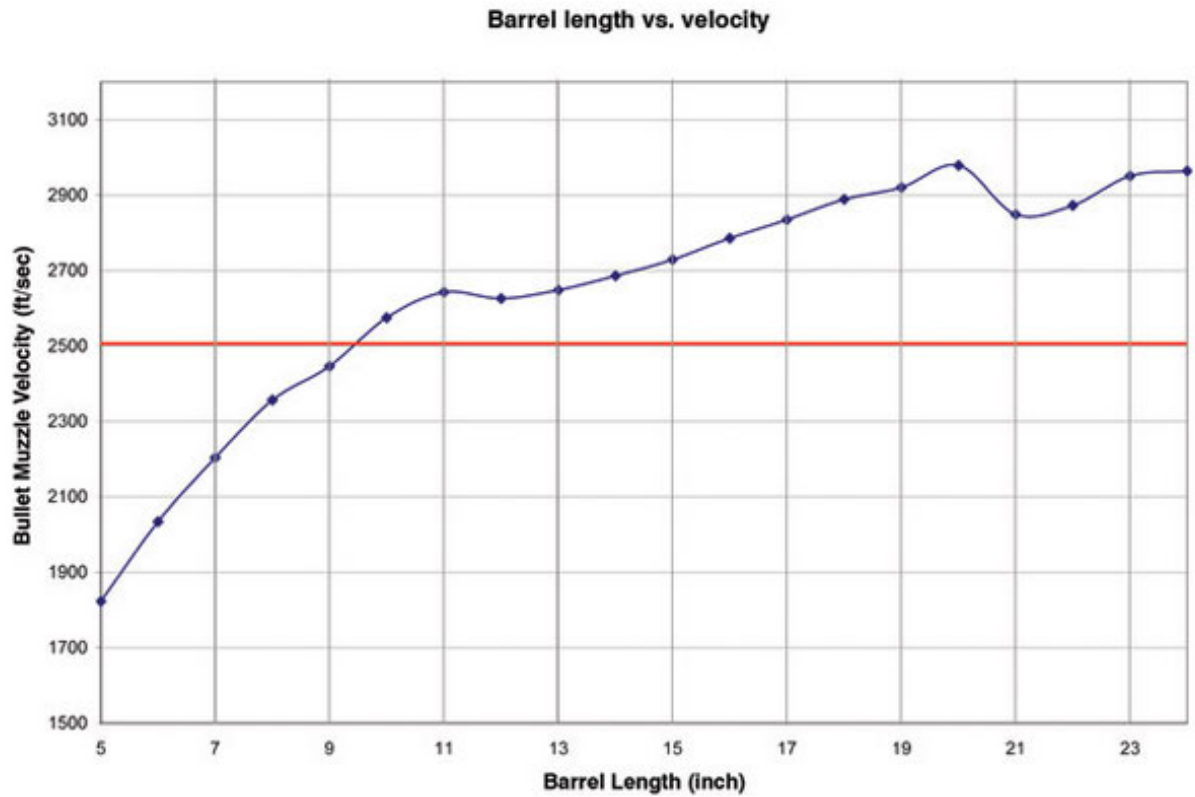
Type I body armor, which was first issued during the NIJ demonstration project in 1975, has been removed from this test standard due to the increasing prevalence of higher powered threats and the increased power of most law enforcement duty weapons. While it is not yet necessary to remove Type IIA armor from service, agencies that are using this level of protection are advised to review the threats they face and to consider upgrading to a higher level of protection when their current armor reaches the end of its service life.

### **Explanatory Material for Section 3 Definitions**

The definition of perforation was added to improve the clarity of the document and make the terminology consistent with international standards. *Perforation* replaces *complete penetration*. Although the terms *partial penetration* and *complete penetration* are no longer used in this standard, they may still be used for compatibility with military standards.

# **EXHIBIT J**





The maximum velocity for the M855 projectile occurred in a 20-inch barrel. This is anticipated since the cartridge was designed specifically for this barrel length. Velocity drops rapidly as the barrel length decreases, especially below 10 inches where the velocity drops below 2,500 fps. M855 bullets traveling below 2,500 fps when impacting a target will not produce a lethal wound channel.

<http://www.sadefensejournal.com/wp/?p=1093>

# EXHIBIT K

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. CR-08-41-L
	)	
LARRY DOUGLAS FRIESEN,	)	
a/k/a "Douglas C. Friesen,"	)	
a/k/a "Doug Friesen,"	)	
	)	
Defendant.	)	

**MOTION IN LIMINE**

COMES NOW the plaintiff, United States of America, by John C. Richter, United States Attorney for the Western District of Oklahoma, through Edward J. Kumiega, Assistant United States Attorney, and respectfully moves this honorable District Court in limine to prohibit the cross examination of the custodian of records for the National Firearm Registration and Transfer Record (NFRTR) regarding the general reliability or accuracy of the document. The custodian of records gathers all relevant documents. Additionally, the government again moves this court to exclude any expert testimony regarding the inaccuracy of the NFRTR unless it pertains to the records for the specific registration numbers in question.

**FACTS**

1. The government has been informed by counsel that the defendant will call expert witnesses to call in question the accuracy of the NFRTR;

2. Trial commences today, September 15, 2008;
3. Two experts were mentioned by counsel. They are 1) Eric Larson; and 2) Fritz J. Scheuren, PH.D.;
4. Counsel later stated that Eric Larson will not testify in this lawsuit;
5. The resume of Dr. Scheuren has been provided; and
6. A *Daubert* hearing will be necessary to vett the witness's expertise in this matter.

### LAW

The government's understanding is that defendant has proffered that there is general evidence that shows that there have been problems with the NFRTR in the past. Defendant at this time has not exhibited any evidence, through expert testimony, that there is a specific inaccuracy, or the appearance of inaccuracy with the government's certified documents that the United States intends to introduce. These certified documents refer to the following serial numbers to wit: 1) E-683; 2) E-682; 3) E-685; 4) E-705; and 5) D95843.

The following case is dispositive on this matter.

In the present case, Defendant has proffered general evidence that there may have been problems with the NFRTR in the past. Defendant has failed to show that the NFRTR is currently unreliable or is **unreliable as it pertains to him**. See *United States v. Rith*, 164 F.3d 1323, 1337 (10th Cir. 1999) (stating that, in relation to a Sixth Amendment challenge, the defendant had "allege[d] no defect in the NFRTR as it pertain[ed] to him. General claims of unreliability, particularly those that rely upon outdated information, are not sufficient . . . ."). Nor has Defendant indicated that a less than diligent search of the NFRTR was conducted, and diligence is the touchstone of trustworthiness. See *Robinson*, 544 F.2d at 115. In

contrast, in *United States v. Robinson* it was determined that a partial search or incomplete records could not support the conclusion that the record did not exist. *Id.* In addition, the proposed testimony of **Eric Larson** does not aid Defendant. Rather, Mr. Larson's statements largely contain conjecture, speculation and lack any scientific basis.

*United States v. Giambro*, 2007 WL 2386320 (D. ME., August 17, 2007). (Emphasis added).

The government has been informed that the *Giambro* has just been argued in the First Circuit.

### **CONCLUSION**

Unless there is an underlying specific challenge to the registration records, defendant's cross-examination and introduction of an expert witness to challenge the NFRTR should be denied.

Respectfully submitted,

JOHN C. RICHTER  
United States Attorney

s/EDWARD J. KUMIEGA  
Assistant U.S. Attorney  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Mack K. Martin.

s/EDWARD J. KUMIEGA  
Assistant U.S. Attorney

# EXHIBIT K

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. CR-08-41-L
	)	
LARRY DOUGLAS FRIESEN,	)	
a/k/a "Douglas C. Friesen,"	)	
a/k/a "Doug Friesen,"	)	
	)	
Defendant.	)	

**MOTION IN LIMINE**

COMES NOW the plaintiff, United States of America, by John C. Richter, United States Attorney for the Western District of Oklahoma, through Edward J. Kumiega, Assistant United States Attorney, and respectfully moves this honorable District Court in limine to prohibit the cross examination of the custodian of records for the National Firearm Registration and Transfer Record (NFRTR) regarding the general reliability or accuracy of the document. The custodian of records gathers all relevant documents. Additionally, the government again moves this court to exclude any expert testimony regarding the inaccuracy of the NFRTR unless it pertains to the records for the specific registration numbers in question.

**FACTS**

1. The government has been informed by counsel that the defendant will call expert witnesses to call in question the accuracy of the NFRTR;



2. Trial commences today, September 15, 2008;
3. Two experts were mentioned by counsel. They are 1) Eric Larson; and 2) Fritz J. Scheuren, PH.D.;
4. Counsel later stated that Eric Larson will not testify in this lawsuit;
5. The resume of Dr. Scheuren has been provided; and
6. A *Daubert* hearing will be necessary to vett the witness's expertise in this matter.

### LAW

The government's understanding is that defendant has proffered that there is general evidence that shows that there have been problems with the NFRTR in the past. Defendant at this time has not exhibited any evidence, through expert testimony, that there is a specific inaccuracy, or the appearance of inaccuracy with the government's certified documents that the United States intends to introduce. These certified documents refer to the following serial numbers to wit: 1) E-683; 2) E-682; 3) E-685; 4) E-705; and 5) D95843.

The following case is dispositive on this matter.

In the present case, Defendant has proffered general evidence that there may have been problems with the NFRTR in the past. Defendant has failed to show that the NFRTR is currently unreliable or is **unreliable as it pertains to him**. See *United States v. Rith*, 164 F.3d 1323, 1337 (10th Cir. 1999) (stating that, in relation to a Sixth Amendment challenge, the defendant had "allege[d] no defect in the NFRTR as it pertain[ed] to him. General claims of unreliability, particularly those that rely upon outdated information, are not sufficient . . ."). Nor has Defendant indicated that a less than diligent search of the NFRTR was conducted, and diligence is the touchstone of trustworthiness. See *Robinson*, 544 F.2d at 115. In

contrast, in *United States v. Robinson* it was determined that a partial search or incomplete records could not support the conclusion that the record did not exist. *Id.* In addition, the proposed testimony of **Eric Larson** does not aid Defendant. Rather, Mr. Larson's statements largely contain conjecture, speculation and lack any scientific basis.

*United States v. Giambro*, 2007 WL 2386320 (D. ME., August 17, 2007). (Emphasis added).

The government has been informed that the *Giambro* has just been argued in the First Circuit.

### **CONCLUSION**

Unless there is an underlying specific challenge to the registration records, defendant's cross-examination and introduction of an expert witness to challenge the NFRTR should be denied.

Respectfully submitted,

JOHN C. RICHTER  
United States Attorney

s/EDWARD J. KUMIEGA  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Mack K. Martin.

s/EDWARD J. KUMIEGA  
Assistant U.S. Attorney

# **EXHIBIT L**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	Case No. CR-08-041-L
	)	
	)	
LARRY DOUGLAS FRIESEN,	)	
	)	
	)	
Defendant.	)	

**DEFENDANT'S MOTION IN LIMINE TO PROHIBIT GOVERNMENT'S  
INTRODUCTION OR REFERENCE TO RECORDS MAINTAINED IN THE  
NATIONAL FIREARMS REGISTRATION AND TRANSFER RECORD**

COMES NOW the Defendant, Doug Friesen, and moves this Honorable Court to prohibit the Government from introducing, mentioning, or otherwise allude or refer to any records from the National Firearms Registration and Transfer Record (NFRTR). In support of said Motion, Defendant Friesen submits the following, to-wit:

The NFRTR is a data base administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives<sup>1</sup> (ATF) to track legally owned machine guns and other "firearms"<sup>2</sup> required to be

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<sup>1</sup> The Bureau of Alcohol, Tobacco and Firearms was renamed the Bureau of Alcohol, Tobacco, Firearms and Explosives under legislation which transferred it from the Department of the Treasury to the Department of Justice, and its law enforcement and administrative functions from the Secretary of the Treasury to the Attorney General, on January 24, 2003. 6 U.S.C. § 531; 116 Stat. 2135 (2003).

<sup>2</sup> Under the NFA a "firearm" is a term of art, and means "(1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer . . . and (8) a destructive device. The term 'firearm' shall not include an antique

registered under the National Firearms Act of 1934<sup>3</sup> (NFA). Said database is inaccurate and incomplete; its error rate is currently unknown; and that unless it can be independently and reliably validated, NFRTR data should be excluded as evidence in a criminal trial.

ATF routinely uses NFRTR data to justify seizing and forfeiting firearms it deems to be unregistered or illegally possessed, issuing search and/or arrest warrants, producing Certificates of Nonexistence of a Record (CNR) for NFA firearms at criminal trials which attest that no record of registration for particular firearms can be located in the NFRTR; determining that a specific firearm is not registered to a specific person; and for other law enforcement activities such as approving or disapproving applications to transfer ownership of NFA firearms.

There are no known data that reliably establish the current accuracy and completeness of the NFRTR. The last audit of the NFRTR according to Generally Accepted Government Auditing Standards (GAGAS), by the Treasury Department Inspector General (Treasury IG) in 1998, raises more questions than it answers. The reasons are that the audit (1) disclosed "critical error" rates of 4.3 percent and 18.4 percent for one category of NFRTR transactions, and (2) was limited in scope.<sup>4</sup> The bad news was reliably documented April 23, 1998, when Treasury IG auditor Gary Wilk reported in a Work Paper:

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firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon." 26 U.S.C. § 5845(a).

<sup>3</sup> 26 U.S.C. § 5801 *et seq.*

<sup>4</sup> These errors apply to Form 4467 data, which may be more inaccurate than the 4.3% critical error rate which can be calculated from data the Treasury IG disclosed in its December 1998 audit report. Office of Inspector General, U.S. Department of Treasury, *Audit Report on Allegations Concerning the Bureau of Alcohol, Tobacco, and Firearms' Administration of the National Firearms Registration and Transfer Record*, OIG-99-018, Dec. 18, 1998 at 12, available at <http://www.nfaaa.org/documents/TreasuryOIG-99-018-1998.pdf>. (Hereafter December 1998 Treasury IG Report.) Treasury IG auditor Carol Borgan stated that "error definitions for critical data fields during sampling" include weapon serial number and registrant's last name (each must "be 100% correct"), and "weapon description". Work Paper P-25, Feb. 29, 1998, available at [http://www.nfaaa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaaa.org/documents/Work_Papers_F.pdf). Treasury IG auditor Gary Wilk determined "our Discovery sample indicated a 18.4 percent error rate, one error per error Form

- **Form 4467 was a critical indicator for our audit. We determined, based on our discovery sample, that the combined error rate for original documentation and the computer database was 18.4 percent.**
- **We were able to determine that the error rate was in excess, with 95 percent confidence, +/- 7 percent, of the NFA Branch specified error rate limit of (+/-) 5 percent. Based on our Discovery error estimate we did not implement the full statistical sampling plan.**

**Conclusion:**

**The NFA database - National Firearms Registration and Firearms Record (NFRTR) does not contain less than the 5 percent error rate limit for Critical data established by the Chief, Firearms and Explosives Division, ATF.**

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During a June 17, 1998, meeting at Treasury Department Office of Inspector General Headquarters to discuss the foregoing audit findings, an NFA Branch representative

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4467 in a 'Critical' field." Work Paper H-1 + Attachments H1-H143, April 6, 1998, available at [http://www.nfaofa.org/documents/Work\\_Papers\\_H.pdf](http://www.nfaofa.org/documents/Work_Papers_H.pdf).

Form 4467 ("Registration of Certain Firearms During November 1968") was used to register unregistered NFA firearms during an amnesty period from November 2, 1968, to December 1, 1968, established by the Gun Control Act of 1968 (P.L. 90-618; Stat. 1235, § 207(b)). The 1998 Treasury IG audit was limited to three categories of NFA transactions (approximately 3.3 percent of the total 2,571,766 transactions "for the years 1934 through July 31, 1998" (December 1998 report, id. at 2); none included Form 1, Form 2, Form 3, Form 4 and Form 5 categories, which account for 2,184,454 transactions (85 percent of total transactions). These forms differ according to whether the applicant is a private citizen, government agency, or Special Occupational Taxpayer (SOT) licensed to manufacture and/or deal in or import NFA firearms.

<sup>5</sup> Work Paper H-0, April 23, 1998 at 2, reviewed May 7, 1998, by Audit Manager Robert K. Bronstrup. In "Discovery" sampling, the auditor draws a random sample, typically 60 to 70 records or more, to determine the presence or absence of irregularities and the need for a full audit. If no irregularities are found, the data base is presumed to be error-free and a full audit is not conducted. If even 1 irregularity is found, the data base cannot be assumed to be error-free; the audit must be extended; and a larger sample drawn to reliably estimate the error rate for the data base. Herbert Arkin, *Handbook of Sampling for Auditing and Accounting*, New York: McGraw-Hill Book Company, 1984 at 132-140.

Treasury IG auditor Gary Wilk reported that after reviewing "528 records and documents" in Discovery sampling:

- **We discovered a total of 395 errors or omissions of which 176 were Critical to the NFA mission and the remaining 219 were Administrative.**

Work Paper H-0, April 23, 1998 at 1.

██████████ asked for an explanation of the analysis results obtained by the OIG audit of the physical and electronic records maintained by ATF and known as the NFRTR. ██████████ further, added that ██████████ reason for asking was that the results obtained by the OIG audit were disappointing at best and could have serious consequences for the ATF firearms registry mission.

6

After Treasury IG auditor Gary Wilk “offered that perhaps ATF would prefer to identify a term other than ‘critical’ as the identifier for the errors identified by this audit report,”<sup>7</sup> one or more NFA Branch representatives asked the Treasury IG auditors to change the definition of “critical error” to obtain a lower rate, and the auditors did so. The Treasury IG did not mention or publish the 18.4 percent rate (or any other error rate) in its December 1998 report or its October 1998 report: whether “critical errors” were present in other major NFRTR categories was not addressed.

The limited audit findings the Treasury IG published regarding errors in the NFRTR as shown in the table below, copied from the December 1998 Treasury IG report, are misleading. In part the reasons are that, as will be documented in this motion, the Treasury IG auditors did violated GAGAS under at least two major standards: (1) failing to extend the audit to determine the impact of the large number of “critical errors” disclosed as the result of Discovery sampling analysis, which required them to report their effects upon the audit results, in view of the auditors’ failure to fully disclose the results of their Discovery sampling analyses , and (2) failing to be organizationally independent. This motion will later discuss the implications of violating GAGAS.

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<sup>6</sup> Work Paper F-37, June 30, 1998 at 1, available at [http://www.nfaaa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaaa.org/documents/Work_Papers_F.pdf). In this Work Paper, Treasury IG auditor Gary Wilk “explained that our definition [of “critical error”] had come from our understanding” of definitions provided earlier by NFA Branch representatives, who now “appeared to obtain an improved appreciation of the specific requirements that determined the outcome of the audit.”

<sup>7</sup> Id. at 1.



### SUMMARY OF SAMPLE DISCREPANCIES

	FORM 4467	LETTER	OTHER	TOTAL
<b>Discrepancies on Registry Database Reports</b>				
<b>Name:</b>				
Missing	2	1	0	3
Incorrect	0	0	0	0
<b>Serial Number:</b>				
Missing	0	0	0	0
Incorrect	1	0	0	1
Computer Records Not Found	0	10	0	10
<b>Original Records Not Found</b>				
	0	4	16	20
Miscellaneous <sup>2</sup>	3	0	0	3
<b>TOTALS</b>	<b>6</b>	<b>15</b>	<b>16</b>	<b>37</b>

Source: Database analysis results are dependent on the retrieval methods used. The results shown above are based on a combination of data retrieval methods.

8

Sworn testimony in *Freisen* by NFRTR custodian Denise Brown in this Court on September 17, 2008, about the current accuracy of the NFRTR was not informative or encouraging. When asked by defense counsel "how accurate are the NFRTR records?" Custodian Brown replied: "I don't have a number." When asked to confirm whether "there are inaccuracies in them [NFRTR data], are there not, ma'am?," she answered "Yes, there are."<sup>9</sup>

ATF officials have willfully failed to disclose that ATF has (1) lost or destroyed firearm registration documents, (2) added registration documents provided by firearms owners to replace those which ATF lost, destroyed, or could not locate, (3) knowledge that the NFRTR contains

<sup>8</sup> December 1998 Treasury IG Report at 12, available at <http://www.nfana.org/documents/TreasuryOIG-99-018-1998.pdf>.

<sup>9</sup> *United States of America vs. Larry Douglas Friesen*, Case No. CR-08-41L, United States District Court for the Western District of Oklahoma, Transcript of Jury Trial, Vols. I-VIII, Sept. 17-Oct. 1, 2008, before the Honorable Tim Leonard, U.S. District Judge at 75-76. (Hereafter *United States of America vs. Larry Douglas Friesen* (2008).)

serious material errors that affect the reliability of its certifications in federal court that a particular firearm is not registered to a defendant, and (4) from time to time, depending on the circumstances, inconsistently applied various definitions of “critical error” in characterizing errors in the NFRTR, as this motion will document. Their actions, reported in documents created and published by the Government since 1979, particularly during the 1990s and continuing to present, violate due process, and obstruct justice.<sup>10</sup> There is evidence, discussed throughout this motion, that ATF has been withholding *Brady* material<sup>11</sup> by failing to disclose potentially exculpatory evidence at criminal trials. Both the Attorney General and his predecessor (Secretary of the Treasury) have failed to establish a new amnesty period to correct errors in the NFRTR because firearm registration documents are missing, as will be shown is required by the Criminal Division of the Department of Justice. Consequently, ATF’s use of NFRTR data whose validity and reliability has not been independently established does not represent an acceptable standard for federal law enforcement in criminal prosecutions.

The Congress heard testimony in 1979 that ATF alleged J. Curtis Earl, a federally licensed NFA dealer, illegally possessed 475 unregistered firearms.<sup>12</sup> More than two decades later, the attorney who represented Mr. Earl informed a Subcommittee Chairman during a 2001 Congressional hearing about continuing inaccuracies in NFRTR records, that Mr. Earl

[T]urned to his file cabinet and began to produce the original records of their registration, and one by one the firearms came off the floor and back onto his

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<sup>10</sup> There are no published law review articles on the NFRTR, and little pertinent case law. The most comprehensive legal review of NFRTR issues to date is in an unpublished article. Joshua Prince, “Violating Due Process: Convictions Based on the National Firearms Registration and Transfer Record when its ‘Files are Missing’” (2008), available at [http://www.nfaaa.org/documents/Violating\\_Due\\_Process20Aug2008.pdf](http://www.nfaaa.org/documents/Violating_Due_Process20Aug2008.pdf)

<sup>11</sup> *Brady vs. Maryland*, 373 U.S. 83 (1963).

<sup>12</sup> Congressional Hearing, Committee on Appropriations, United States Senate, *Oversight Hearings on Bureau of Alcohol, Tobacco and Firearms*, 96th Cong., 1st Sess. at 39 (1979), available at [http://www.nfaaa.org/documents/1979\\_Hearing\\_Excerpts.pdf](http://www.nfaaa.org/documents/1979_Hearing_Excerpts.pdf).

racks. At the end, he could show that he had registered every single one of these 475 firearms. ATF's records were grossly incorrect.<sup>13</sup>

In November 1979, in response to a request by then-Senator James A. McClure, the Criminal Division of the Department of Justice stated if ATF determines that "a particular individual or weapon is registered" and ATF finds that its "files are missing," then "the only solution would be to declare another amnesty period."<sup>14</sup> Sections of this Memorandum that include the preceding quoted phrases are reproduced below.

No amnesty period was established as the result of Mr. Earl's case.

seventeen problem areas in the record system (see pp 3-4). The most significant of these in terms of its effect on the validity of a certification is where both the index card and the registration record are missing. It must be explained, however, that the only way to determine whether this situation exists is by first knowing that a specific individual or weapon is registered and the finding that both files are missing. Obviously, if the individual has never registered a firearm or if the firearm has never been registered by anyone, no record whatsoever will exist. The report does not suggest that this problem actually existed and it cites no examples where both records were determined to be missing.5/ Indeed, none of the BATF personnel we interviewed were aware of any case where this happened. Most of

5/ If this problem actually existed, the only solution would be to declare another amnesty period. The Secretary is empowered to do this under existing legislation.

<sup>13</sup>

<sup>13</sup> Letter to Ernest S. Istook, Jr., Chairman, Subcommittee on Treasury, Postal Service and General Government dated April 10, 2001, from David T. Hardy, Esq., available at <http://www.nfaaa.org/documents/BardHard.pdf>

<sup>14</sup> U.S. Department of Justice, Criminal Division, *Memorandum: Response to letter from Senator McClure*, by Philip B. Heymann and Lawrence Lippe, Nov. 29, 1979 at 4, available at <http://www.nfaaa.org/documents/DOJAmnestyMemo1979.pdf>.

Under § 207(d) of the Gun Control Act of 1968, the Secretary of the Treasury (now the Attorney General) is empowered to administratively establish unlimited numbers of amnesty periods lasting up 90 days per amnesty period, with immunity from prosecution, "as the Secretary determines will contribute" to purposes of the NFA, upon publication in the *Federal Register* of his intention to do.

<sup>15</sup> *Id.* at 4.

In 1997, as the result of allegations by Eric M. Larson, a private citizen,<sup>16</sup> the Chairman, House Committee on Government Reform and Oversight, directed the Treasury IG to audit the NFRTR.<sup>17</sup> One of the audit reports, published in 1998, describes the use and results of Discovery sampling to establish there were “discrepancies” in three categories of NFRTR data, including missing or incorrect name; missing or incorrect serial number; computer records not found; and original records not found.<sup>18</sup> The Treasury IG failed to investigate a credible allegation that “ATF had registered firearms for which the agency had no documentation, but their owners did,”<sup>19</sup> and “did not include a review of the accuracy of ATF’s certifications in criminal prosecutions that no record of registration of a particular weapon could be found” in the NFRTR.<sup>20</sup>

Continuing efforts by citizens, federally licensed firearms dealers and gun collectors, and testimonies and statements from 1996 to 2001 at Congressional hearings involving the accuracy

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<sup>16</sup> Eric M. Larson has been a Senior Analyst, U.S. Government Accountability Office (GAO), since 1987. Mr. Larson’s research, Congressional testimonies from 1996 to 2001, and continuing work involving the NFRTR has been and continues to be done in his personal capacity as a private citizen, and does not represent the policy or position of GAO.

<sup>17</sup> Letter from Dan Burton, Chairman, Committee on Government Reform and Oversight, House of Representatives dated June 25, 1997, to the Honorable Valerie Lau, Inspector General, Department of the Treasury. Work Paper D-4, October 14, 1997, by Diane Kentner at 5, *available at* [http://www.nfaaa.org/documents/Work\\_Papers\\_D.pdf](http://www.nfaaa.org/documents/Work_Papers_D.pdf). Chairman Burton’s letter states: “From the correspondence and testimony I received . . . it appears that the concerns raised by Mr. Larson may be valid and legitimate. Consequently, I believe an investigation by the OIG into [his] allegations would be appropriate to reveal any possible improprieties or mismanagement at the ATF, and to recommend solutions that would improve and strengthen ATF’s registration and record-keeping of firearms.”

<sup>18</sup> December 1998 Treasury IG Report at 12, *available at* <http://www.nfaaa.org/documents/TreasuryOIG-99-018-1998.pdf>. The 1998 Treasury IG reports do not use the term “critical error,” and instead refer to them as “discrepancies.”

<sup>19</sup> Congressional Research Service, *Memorandum: ATF’s National Firearms Registration and Transfer Record: Issues Regarding Data Accuracy, Completeness, and Reliability*, by William J. Krouse, Nov. 28, 2005 at 12, *available at* <http://www.nfaaa.org/documents/CRSmemoNFRTR0001.pdf>. The memorandum also states: “While the OIG found discrepancies in the sampled records . . . the critical error rates were not given in the text of the audit report. Nevertheless, based on its own findings and ATF efforts to improve the NFRTR, the Treasury OIG chose not to perform a full sampling and audit of the NFRTR.” *Id.* at 14.

<sup>20</sup> *Id.* at 12.

and completeness of the NFRTR resulted in another Government examination of the NFRTR. In the June 2007 report of its “review” of the NFRTR, the Department of Justice Inspector General (Justice IG) stated:

We reviewed ATF processes related to requesting records checks from the NFRTR and determined that when an error is detected, the NFA Branch staff thoroughly research the NFRTR and the imaging database to find out if a weapon is actually registered. Additionally, the NFA requires owners to retain the approved NFA weapons application as proof of a weapon’s registration and make it available to ATF upon request. **If the NFA weapons owner can produce the registration paperwork, ATF assumes the error is in the NFRTR and fixes it in the database.**<sup>21</sup> [emphasis added]

The Justice IG’s finding that “ATF assumes the error is in the NFRTR and fixes it in the database” when firearms owners produce copies of their registration documents leaves unanswered questions. Commenting on the foregoing determination, Stephen P. Halbrook, a nationally and internationally recognized authority on U.S. firearms law, observed:

... if the owner or the executor of a deceased owner cannot find the registration paperwork, which may be lost or destroyed, and if the record cannot be found in the NFRTR, then a voluntary abandonment of the firearm may be induced or even a criminal prosecution initiated. On such issues the report is not sufficiently informative.<sup>22</sup>

The loss or destruction of an NFA firearm registration document by anyone is not a trivial matter because all violations of the NFA are serious felony offenses, and the penalties are substantial.<sup>23</sup> Persons who are convicted of illegal possession of a machine gun are singled out for particularly harsh treatment. The reason is that under Title 18 § 922(o), the Government is

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<sup>21</sup> U.S. Department of the Justice, Office of Inspector General, *The Bureau of Alcohol Tobacco, Firearms and Explosives’ National Firearms Registration and Transfer Record*, I-2007-006, June 2007 at 31, available at <http://www.nfaog.org/documents/DOJ-OIG2007NFRTRreport.pdf>. Hereafter June 2007 Justice IG Report.

<sup>22</sup> Stephen P. Halbrook. *Firearms Law Deskbook: Federal and State Criminal Practice*. 2008-2009 Edition. Thomson West Publishing, 2008 at 575.

<sup>23</sup> Violators may be fined not more than \$250,000, and imprisoned not more than 10 years, or both. In addition, any vessel, vehicle or aircraft used to transport, conceal or possess an unregistered NFA firearm is subject to seizure and forfeiture, as is the weapon itself. 49 U.S.C § 781-788, 26 U.S.C. § 5861 and § 5872.

not required to prove that a machine gun is not registered to convict a defendant of Possession of Unregistered Firearm.

The 2007 determination appears to meet the standard the Criminal Division of the Department of Justice established in 1979 for a new amnesty period as "the only solution" when ATF's "files are missing."

When Eric M. Larson filed a FOIA request to the Justice IG to obtain copies of the Work Papers created during its review of the NFRTR, to further clarify its determination, the Justice IG responded by sending them to ATF's Disclosure Division for processing.<sup>24</sup>

It is unusual for an Inspector General to send Work Papers to an agency over which it has oversight responsibility for FOIA processing, because of the potential for conflict of interest it represents for both the agency and the Inspector General. Despite Mr. Larson's repeated efforts to obtain them, ATF has thus far not provided copies of the requested Work Papers. A copy of the July 25, 2008, letter ATF sent to Mr. Larson after receiving the Work Papers from the Justice Department IG, appears on the next page.

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<sup>24</sup> Letter from Marilyn R. LaBrie, Disclosure Specialist, ATF dated July 25, 2008, to Eric M. Larson, bearing identifier REFER TO: 08-726.



**U.S. Department of Justice**

**Bureau of Alcohol, Tobacco,  
Firearms and Explosives**

**JUL 25 2009**

Washington, DC 20226

[www.atf.gov](http://www.atf.gov)

**REFER TO: 08-726**

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

**Re: Work Papers – Report Number 1-2007-006**

**Dear Mr. Larson:**

This is in reference to your Freedom of Information Act request, that you submitted to the Department of Justice. Your request was forwarded to this Agency together with a large volume of records.

It is our intent to grant your request in part. We are sorry that our processing has been delayed but we will endeavor to provide a response as soon as possible.

We are processing your request as an "all others requestor" therefore you are entitled to 100 free copies and 2 free hours of search. We will inform you if we anticipate any costs for copies that are not covered by the foregoing.

We regret the delay and will do all we can to provide a response.

Sincerely,

**Marilyn R. LaBrie  
Team Leader, Disclosure Division**

The Government still declines to establish an amnesty period to correct errors in the NFRTR. For example, in a January 14, 2009, letter, the Department of Justice Deputy Inspector General Paul K. Martin told Senator Barbara Mikulski, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, the following:



U.S. Department of Justice

Office of the Inspector General

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January 14, 2009

The Honorable Barbara A. Mikulski  
United States Senate  
Hart Senate Office Building  
Suite 503  
Washington, D.C. 20510-2003

Attention: Benson Erwin

Dear Senator Mikulski:

We received your correspondence of October 28, 2008, forwarding a letter from Mr. Eric Larson regarding the Office of the Inspector General's (OIG) review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) management of the National Firearms Registration and Transfer Record (NFRTR) database and Mr. Larson's Freedom of Information Act (FOIA) request to the OIG. We will first address the concern with the OIG's review of the NFRTR and, second, with Mr. Larson's FOIA request.

Mr. Larson stated in his letter that he was concerned that the OIG did not review the "material inaccuracies" in the NFRTR and these errors "expose innocent firearms owners to legal jeopardy." Mr. Larson also asks the OIG to issue an opinion on the need for an amnesty period to register National Firearms Act (NFA) weapons. We are aware of Mr. Larson's concern about errors in the NFRTR and his desire for a new amnesty period for the registration of additional NFA weapons. However, our review focused on ATF's management of the NFRTR and the processing of NFA weapons' forms and did not address the issue of an amnesty period. The OIG has no opinion on the establishment of a new amnesty period in which to register NFA weapons. While our review found that there are some technical and programming issues that could cause administrative errors in records, we also found that ATF is taking the appropriate actions to correct these issues and is proactively correcting any errors found in individual records. Moreover, we found no instance in which errors in the NFRTR resulted in inappropriate criminal charges against individuals or federal firearms licensees.

Regarding Mr. Larson's FOIA request, the OIG received a FOIA request from Mr. Larson on July 26, 2007, seeking information pertaining to our review, including the work papers associated with the review. We have fully processed this request.



On August 16, 2007, we provided Mr. Larson with a copy of the report relating to our review. By letter dated September 18, 2007, we informed Mr. Larson that the work papers contained three categories of material: (1) documents that originated with other offices/agencies; (2) public source documents; and (3) documents generated by the OIG that contain information originating from other offices/agencies. We asked Mr. Larson whether he wanted copies of the public source material and whether he wished us to refer the material originating with the other offices/agencies to those entities. We also informed him that we would process the documents generated by the OIG after consultation with the other offices/agencies.

By letter dated September 27, 2007, Mr. Larson responded that he wanted copies of the public source documents and that we should make the referrals to the other entities. We thereafter referred to the Department of the Treasury and the ATF documents that originated with their offices. We informed Mr. Larson of these referrals, telling him that the Department of the Treasury and ATF would respond directly to him regarding the referred documents. We also sent Mr. Larson copies of the public source material.

After consulting with ATF regarding the OIG-generated material, we informed Mr. Larson on December 5, 2008, that these documents were exempt from disclosure pursuant to 5 U.S.C. §552(b)(5). We also informed Mr. Larson regarding his right to appeal our determination.

We are forwarding a copy of this letter to Mr. Larson.

Please feel free to contact us if you have additional questions about the work of the OIG.

Sincerely,

A handwritten signature in black ink, appearing to read "PK Martin".

Paul K. Martin  
Deputy Inspector General

cc: Mr. Eric Larson

While Deputy Inspector General Martin correctly states "[w]e have fully processed" Mr. Larson's FOIA request, his statement is misleading because the Justice IG transferred the documents Mr. Larson requested to ATF for FOIA processing. The Justice IG's action is reminiscent of how the Government long avoided disclosing documents pertinent to Waco in

response to a FOIA request by shifting the paperwork and related responsibilities between the Department of Justice, ATF, and the Texas Rangers, before a Federal District Judge ordered a halt to such evasions and ordered that the documents be produced for his Court, and they were.<sup>25</sup>

**“Institutional Perjury”: The Busey Videotape and *LeaSure***

The most recent efforts to persuade ATF to render the NFRTR accurate and complete originated from statements about its inaccuracy during an October 1995 “ROLL CALL TRAINING” session at ATF headquarters that was also videotaped.<sup>26</sup> During the session, which was broadcast throughout ATF, then-NFA Branch Chief Thomas Busey stated “. . . when we testify in court, we testify that the database [NFRTR] 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.”<sup>27</sup> (Emphasis added). Asserting the error rate in the NFRTR was recently reduced as the result of activities of a “quality review team,” Mr. Busey stated:

. . . 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 your error rate’s 49 to 50 percent. The error rate now is down to below 8 percent, and that’s total. That’s common errors and critical errors.<sup>28</sup>

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<sup>25</sup> David T. Hardy, *This Is Not An Assault: Penetrating the We of Official Lies Regarding the Waco Incident*, Xlibris Corporation, 2001 at 91-108.

<sup>26</sup> A certified copy of the session is transcribed under the title “ROLL CALL TRAINING, 10-95, TOM BUSEY.” *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 104th Cong., 2d Sess., Part 5 at 182-205, available at <http://www.nfaoa.org/documents/1996testimony.pdf>. (Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*.)

<sup>27</sup> *Id.* at 192.

<sup>28</sup> *Id.* at 202. Mr. Busey was apparently referring to an internal ATF “Quality Review” initiative that “commenced operations on July 25, 1994,” according to a “productivity report” prepared February 9, 1996. *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 105th Cong., 1st Sess., Part 5 at 102, available at <http://www.nfaoa.org/documents/1997testimony.pdf>. (Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998*.)

In response to Mr. Larson’s FOIA request for information about the quality review initiative Mr. Busey described, ATF sent approximately 100 loose pages consisting of weekly reports and other documents. The result of the

Mr. Busey's statements that ATF personnel "always testify" in court that the NFRTR "is 100 percent accurate," and "[a]s you probably well know, that may not be 100 percent true." were termed "institutional perjury" by an attorney who learned of the videotape, obtained a transcript of Mr. Busey's statements by filing a FOIA request, and published an article about the incident.<sup>29</sup> During the session Mr. Busey also said the error rate in the NFRTR was between 49 percent and 50 percent in the year before he arrived, and "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<sup>30</sup> waved in your face when you go in there to show that the guy does have a legally-registered [NFA firearm]. I've heard that's happened. I'm not sure."<sup>31</sup>

The videotape of Mr. Busey's remarks, now available on the Internet, has more impact than his published words. The reasons are that Mr. Busey's statements were not spontaneous remarks; Mr. Busey prepared his statements in advance, can be seen reading them, and smirks while saying: "I've heard that's happened. I'm not sure." In response to Mr. Larson's FOIA request for a copy of the Busey videotape, ATF responded:

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initiative is unclear because it is not apparent whether there was a final report, and there are no separate explanations or summaries of the weekly reports.

<sup>29</sup> "Institutional Perjury," by James H. Jeffries III, *Voice for the Defense*, Vol. 25, No. 8, October 1996 at 28-30; available at <http://www.nfaa.org/documents/Jeffriesarticle.pdf>, reprinted in the *Congressional Record* (Extensions of Remarks), Vol. 142, August 2, 1996 at E1461-E1462, available at <http://www.nfaa.org/documents/JeffriesCongRec.pdf>.

<sup>30</sup> ATF Form 4, currently titled "Application for Tax Paid Transfer and Registration of Firearm," is prepared in duplicate original and used to transfer the ownership of registered NFA firearms. After ATF approves the Form 4 application, ATF (1) keeps one approved copy for entry into the NFRTR, and (2) sends the other approved copy to the firearm owner (transferor), who must subsequently transfer the firearm (and the other approved copy) to the new owner (transferee) within a reasonable time or cancel the transfer. The NFA prohibits the physical transfer of the firearm by the transferor to the transferee before ATF approves the transfer.

<sup>31</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*, available at <http://www.nfaa.org/documents/1996testimony.pdf>.

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.

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The Busey videotape was used, in part, to overturn five convictions of John D. LeaSure for possession of unregistered firearms in a May 1996 bench trial, during which ATF Specialist Gary Schaible testified he was aware of "occasions . . . in the NFA Branch of clerks throwing away transmissions because they don't want to fool with them" rather than process them (Mr. LeaSure testified he FAXed registration documents to ATF in 1994, and ATF claimed it was unable to find a record of them).<sup>33</sup> Under cross-examination, when asked "that's one of the things [NFA Branch clerks throwing away documents] that could happen to you?" Mr. Schaible replied "Certainly."<sup>34</sup>

Citing Mr. Schaible's testimony (in which he also confirmed the Busey video had been broadcast throughout and was common knowledge within ATF Headquarters), the presiding Judge ruled " . . . it throws a disagreeable proposition on my finding somebody guilty on records when their chief man [Mr. Busey] says they were 49 percent wrong," and dismissed five

<sup>32</sup> Letter from Marilyn R. LaBrie, Disclosure Specialist, ATF, to Eric M. Larson dated March 18, 1998, bearing symbols L:D:MRL 98-514. *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 105th Cong., 2d Sess., Part 5 at 170, available at <http://www.nfaaa.org/documents/1998testimony.pdf>. Hereafter Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999*.

A videotape of the training session was obtained by an attorney who subpoenaed it for trial and made a copy when the U.S. Attorney that prosecuted the case failed to submit a timely order to the court to prohibit its public disclosure, available at [http://www.nfaaa.org/documents/rollcall\\_highlights.mp4](http://www.nfaaa.org/documents/rollcall_highlights.mp4).

<sup>33</sup> *United States of America vs. John Daniel LeaSure*, Crim. No. 4:95cr54, E.D. Va.—Newport News Div., Transcript of Proceedings before the Honorable John A. MacKenzie (May 21, 1996) at 42-43, available at <http://www.nfaaa.org/documents/LeaSureTrial.pdf>. (Hereafter *United States of America vs. John Daniel LeaSure* (1996).)

<sup>34</sup> *Id.* at 42-43.

convictions under the NFA for possession of unregistered firearms.<sup>35</sup> The *LeaSure* transcript states that Mr. Schiabile was a witness “called on behalf of the Government, having been first duly sworn, was examined and testified” to the above facts.<sup>36</sup> ATF did not appeal the verdict.

ATF acted to contain the damage resulting from Mr. Busey’s statements by (1) adding “corrections” by Mr. Schaible to transcribed copies of the videotape of Mr. Busey’s remarks disclosed by ATF in response to FOIA requests, and (2) requesting the Audit Services Division of the Department of the Treasury to audit the NFRTR. On February 13, 1996, Mr. Schaible stated under penalty of perjury that, to the best of his knowledge, no NFA Branch personnel have ever testified that the NFRTR is 100 percent accurate, and “the reference to an error rate of 49-50 percent is based on an informal, undocumented estimate by personnel from the Firearms and Explosives Regulatory Division.”<sup>37</sup>

In *Rith*, a 1999 court case that included a challenge to the accuracy and completeness of the NFRTR arising from the Busey videotape, after hearing opposing evidence the Court ruled “[t]he record establishes that the NFRTR database has sufficient guarantees of trustworthiness to satisfy the Sixth Amendment.”<sup>38</sup> The Court based its opinion on (1) statements by Mr. Busey that “a quality review team . . . instituted in 1994” had reduced “the critical-error rate to below three percent,” and (2) “a copy of an audit performed February 7, 1996, by the Audit Services Division of the Department of the Treasury” showing a 1.5 percent “critical-error” rate.<sup>39</sup> The

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<sup>35</sup> *Id.* at 45.

<sup>36</sup> *Id.* at 23.

<sup>37</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1997*, available at <http://www.nfaoa.org/documents/1996testimony.pdf>.

<sup>38</sup> *United States of America vs. Rith*, 164 F.3d 1323 at 1336, 51 Fed. R. Evid. Serv. 197 (10th Cir. 1999). Hereafter *United States of America vs. Rith* (1999).

<sup>39</sup> *Id.* at 1336.

Court added: “the accuracy of the registration check is buttressed by a second level review by a branch chief.”<sup>40</sup> It is unclear whether the Audit Services Division of the Department of the Treasury published a formal report of its 1996 audit of the NFRTR; the audit processes it followed are unknown and may not have been fully disclosed to the Court.

ATF and the Audit Services Division may have perpetrated a fraud upon the Court in *Rith*. The reasons are that (1) Mr. Busey’s statements about improvements in the “critical-error” may have been self-serving, (2) there is no evidence that a final report on the “quality review team” accomplishments was rendered, or that the results of the “accomplishments” and reduction of the “critical-error” rate were independently validated, (3) it is unclear whether the 1996 audit was conducted according to GAGAS, and (4) the Audit Services Division auditors may have been improperly influenced by NFA Branch representatives to manipulate the outcome of the audit.

The Audit Services Division is a sister component of ATF; has no oversight authority over ATF; and the purpose of the audit was to establish that the NFRTR was accurate enough to justify criminal prosecutions. It is improbable that one component of a federal law enforcement agency would engage in conduct that would reflect badly upon another component, or the agency itself; and questioning the legal basis for a federal law enforcement activity would be sensitive because of potential legal liabilities, such as overturning convictions and payments to citizens for damages for wrongful convictions.

There are reasons to doubt the independence of Treasury Department and other Government officials regarding their characterization of “errors” in the NFRTR. There are also reasons to question the validity and reliability of Mr. Busey’s characterization of what he termed

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<sup>40</sup> *Id.* at 1336.

"common errors" and "critical errors" and "error rate" in the October 1995 "ROLL CALL TRAINING" session because (1) these terms do not correspond to terms used by the quality control team, and (2) inspection of "Weekly — Quality Review Report" documents disclose that the quality review team manipulated the NFRTR error rate by changing the definition of "Significant Error" by renaming it "Error."<sup>41</sup> Error and error rate reports created by the quality review team, obtained via a FOIA request by Mr. Larson, are not straightforward and their meaning is difficult to interpret; for example, one weekly report states:

Since 6/30/94 reviewed 21611 Errors 1567 Significant errors 373<sup>42</sup>  
Common Error rate .01% Significant error rate .01%

No valid and reliable overall error rate of any type could be identified from any of the documents because numbers of "Errors" and "Significant errors" were different among nearly 100 different weekly reports ATF disclosed in responding Mr. Larson's FOIA request.

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<sup>41</sup> ATF's "Quality Review" team manipulated the definition of "error" as follows. One document states: "On approximately October 3, 1994, we began defining and separating the significant errors from the common errors," and this document defined "Significant Errors" as shown below:

**Significant Errors:**

1. Misspelled and/or Incomplete names.
2. Voided application--didn't indicate current firearms possessor.
3. \$200/\$5 remittance not posted.
4. Never mailed approved form to transferor
5. Approved wrong firearm to transferee.
6. Approved form never updated in NFRTR.

Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998* at 103, available at <http://www.nfaa.org/documents/1997testimony.pdf>.

Another weekly report reclassified "Significant Errors" as "Errors" except for slightly changing one type of error, namely, "2. Voided application - - didn't indicate previous owner," as shown below:

**Errors:**

1. Misspelled and/or Incomplete names.
2. Voided application--didn't indicate previous owner.
3. \$200/\$5 remittance not posted.
4. Never mailed approved form to transferor
5. Approved wrong firearm to transferee.
6. Approved form never updated in NFRTR.

Id. at 104.

<sup>42</sup> Id. at 103.

NFRTR Data Inaccuracies: Early Statistical Evidence, 1992 to 1996

Because of Mr. Busey's statements that records of Forms 4 could not be located in the NFRTR, Mr. Larson sought to determine if there was any independent statistical evidence that ATF had lost or destroyed NFA registration documents by analyzing publicly available NFRTR data on "NFA registration activity" from 1992 to 1996. Mr. Schaible's testimony *LeaSure* indicated that ATF may have added registration documents obtained from firearms owners to the NFRTR after discovering that NFA Branch clerks had thrown documents away rather than work on them.

Under a FOIA request, Mr. Larson obtained copies of reports of annual "NFA registration activity" from 1992 to 1996 from the NFA Branch, which list 11 categories of firearms registration activity represented in the NFRTR.<sup>43</sup> Inspection of the data indicates that some data lack face validity; that is, does not measure what it purports to measure. The reason is that there are records of NFA registration activity during and prior to the 1920s, a logical impossibility because the NFA was not enacted until 1934. Just as when a clock incorrectly strikes 13 on the hour, causing one to question what hour it really is and raising doubts about

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<sup>43</sup> The NFRTR data Mr. Larson obtained are available in Eric M. Larson, *Work Papers on Errors in the National Firearms Registration and Transfer Record, and Other Issues Regarding the Bureau of Alcohol, Tobacco, and Firearms*. Prepared for the Honorable Pete Sessions, House of Representatives, Washington, D.C., April 2, 1999 (unpublished), inserted at 5-6, available at <http://www.nfaaa.org/documents/Critiqueof1998IGreports.pdf>.

The NFRTR data categories are: Form 1, Form 3, Form 4, Form 5, Form 6, Form 9, Form 10, and Form 4467, and differ according to whether the applicant is a private citizen, government agency, or Special Occupational Taxpayer (SOT) licensed to manufacture, import, and/or deal in NFA firearms, and whether the transfer is tax paid or tax exempt. Form 2, currently titled "Notice of Firearms Manufactured or Imported," is a record of notice to ATF used exclusively by and sent to ATF by SOTs, not an application form. The "Letter" category has been used to register or transfer NFA firearms when ATF forms have not been available, but these transactions are uncommon.

Treasury IG auditors reported that ATF has not formally defined the "Other" category, and stated it included "a procedure where movie industry supply houses and movie industry property masters filed applications by telegraph in lieu of filing a Form 3 in order to expedite processing by ATF." October 1998 Treasury IG Report at 18, available at <http://www.nfaaa.org/documents/TreasuryOIG-99-009-1998.pdf>.



what hour it really was during all the other times the clock was supposed to be striking correctly on the hour during previous strikes, records of NFA registration activity before 1934 raise doubts about the accuracy of records of NFA registration activity for other years.

These data tables of NFA registration activity during 1992 to 1996 are reproduced below in the same form ATF sent them to Mr. Larson.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS											RUN: 2/11/93 13:31	
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LYR	4467	OTHER	TOTAL
1992	357	71294	26852	4527	44462	2	20385	289	60		50	172040
1991	224	78062	28916	5390	42117	1	36848	258			35	183049
1990	692	88093	22623	6807	56015	4	37877	289	43		134	203577
1989	871	69932	23605	8165	51190	12	18133	281	51		106	151754
1988	342	24660	39747	7699	4519	2	1473	403	64		450	83561
1987	409	17427	34692	8311	9380	2	745	324	144	1	717	71960
1986	955	69957	22944	5150	4880		528	381	181	5	749	105724
1985	845	14666	15512	3524	6245	1	1386	334	45	1	728	43885
1984	334	14846	14720	3911	5437	1	1506	294	3	3	335	61590
1983	458	11143	11132	5293	3872	27	248	347	4	1	29	29684
1982	324	7720	11417	2774	2671	9	1	481	2	3	37	25435
1981	270	7101	8148	3734	2718	24	1	341	10	1	18	22546
1980	163	3872	6850	3848	1834	6	1	329	7	4	23	15189
1979	108	3284	6980	2160	1513	13	6	353	5	1	28	14441
1978	88	1459	5498	1879	1257	7	1	729	5	4	17	10989
1977	77	1988	6806	1535	1737	2	1	590	14	1	22	11973
1976	38	878	18943	979	1754	20	5	457	3	38	26	19134
1975	78	1399	3279	567	1830	18	3	613	10		49	7646
1974	29	1017	2941	579	1680	9	3	587	15	5	8	4821
1973	16	1351	2833	353	1782	5	7	513	8	17	16	6181
1972	30	4017	1963	261	1611	14	8	439	33	84	19	8380
1971	74	2241	209	36	251	18		381	1959	26	19	5086
1970	38	191	19	10	24	16		1	1543	272	34	2168
1969	36	760	41	13	61	8	1		1148	2086	19	4865
1968	1510	1277	366	192	935	7		4	29	54657	37	58844
1967	909	1144	386	181	844	2			5	64	19	3445
1966	988	1293	435	134	1042	2				8	28	3856
1965	841	1246	420	142	1047	7		1	1	2	21	3734
1964	744	937	275	139	499	8		1		3	4	2888
1963	709	724	291	124	868	3	4		1	2	8	2872
1962	714	1111	272	204	789	3			1	14	7	3135
1961	809	1466	548	152	1338	5		1	4	2	4	4321
1960	790	657	314	148	654	10			2	4	1	2592
1950 TO 1960	6429	8955	2185	1158	2917	841	14	2	6	23	67	19771
1940 TO 1949	6574	7234	4784	361	4985	8455	5	2	4	9	57	52387
1930 TO 1939	11422	191	568	15	786	22	1	14	26	25	1288	14658
1920 TO 1929	12	4	12	2	7	1				6	4	53
1910 TO 1919	1	34	21	2	37	1	2	1	1	4	15	121
1900 TO 1909	12	386	32	22	170	6	24		6	58	3513	4147
TOTAL	38766	521183	349593	79573	251462	9614	149148	9118	5437	57187	8671	1398836

DATA THROUGH 12/31/93

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON

RUN: 1/04/96 7:11

YEAR	F1	F2	F3	F4	F5	F6	F9	F10	LTR	6467	OTHER	TOTAL
1993	299	187362	27228	7769	67625		27905	485	11		25	238609
1992	357	75734	26836	6556	46561	2	20391	289	40		25	176809
1991	226	78157	20983	5400	42124	1	56834	258			33	184016
1990	692	89697	22858	6821	56884	4	27827	289	44		132	206448
1989	271	69927	23728	8176	51218	12	18133	281	51		104	151893
1988	342	24851	39767	7703	8370	2	1473	403	66		450	83627
1987	489	17491	34519	8318	9421	2	745	324	143	1	714	72087
1986	936	70211	22959	5162	4903		528	381	181	3	744	186808
1985	645	16728	15520	3526	6288	1	1386	354	45	1	725	43111
1984	534	14849	14725	3913	5437	1	1588	294	3	3	334	41681
1983	458	11142	11144	3204	3878	27	248	367	4	1	29	29782
1982	325	7720	11420	2771	2674	9	1	481	2	3	37	25451
1981	270	7188	8148	3735	2720	23	1	341	10	1	18	22375
1980	162	3873	6838	3840	1837	6	1	329	7	4	22	15111
1979	188	3285	6990	2150	1513	13	6	354	5	1	19	14444
1978	80	1438	5497	1878	1257	7	1	729	4	6	17	18908
1977	77	1987	6089	1533	1737	2	1	590	14	1	22	11975
1976	38	879	10945	979	1754	19	5	459	3	39	26	15138
1975	78	1399	3288	567	1831	18	3	413	18		49	7848
1974	29	1817	2961	579	1689	9	3	587	15	5	8	6822
1973	14	1351	2838	553	1783	5	7	513	8	17	15	6898
1972	58	4828	1963	261	1511	14	11	638	33	84	19	8586
1971	24	2242	289	36	251	10		311	1959	26	19	5887
1970	38	192	18	18	23	16		3	1566	272	32	2168
1969	36	760	63	13	42	8	1		1140	2818	18	4871
1968	1509	1278	368	193	935	7		6	29	54485	37	58845
1967	909	1143	386	181	844	2			5	64	10	3464
1966	988	1293	435	134	1862	2				8	28	3856
1965	841	1246	428	142	1847	7		1	2	2	21	3737
1964	744	937	275	139	699	6		1		3	4	2888
1963	789	720	291	124	888	3	4		1	2	8	2872
1962	734	1111	272	205	789	3			1	14	7	3136
1961	810	1466	548	152	1330	5		1	4	2	4	4322
1960	791	657	314	148	655	20			2	6	1	2594
1950 TO 1959	6829	5956	2164	1151	2915	868	16	2	4	23	47	19769
1940 TO 1949	6572	7238	4783	363	4908	8456	5	2	4	9	57	32309
1930 TO 1939	11422	191	548	15	706	22	1	14	26	25	1288	14250
1920 TO 1929	12	4	12	2	7	1				6	10	54
PRIOR TO 1920	1	36	21	2	37	1	2	1	1	4	15	121
UNKNOWN	12	328	32	23	263	6	24		6	58	3749	4493
TOTAL	39867	634228	337325	87413	318520	9612	136989	9517	5451	57189	8908	1644219

DATA THROUGH 12/31/94

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON

RUN: 1/26/95 16:03

YEAR	F1	F2	F3	F4	F5	F6	F7	F10	LTR	4467	OTHER	TOTAL
1994	1278	180150	22498	7838	62258		35392	2857	2		1	232246
1993	309	108830	27638	7819	67739		28118	487	11		19	240881
1992	358	78161	26878	6568	46587	2	20366	298	40		21	177271
1991	225	78280	21018	8411	42243	1	36814	261			29	184282
1990	691	89287	22888	6858	56066	4	27504	289	44		130	203733
1989	271	69582	23755	8176	31138	12	18132	281	51		96	151494
1988	341	25164	39769	7787	8586	2	1673	483	68	1	448	83760
1987	412	17188	34536	8321	9441	2	745	328	144	1	788	71738
1986	938	78278	22978	5172	4905		527	341	181	3	737	106092
1985	645	14742	15534	3529	6281	1	1388	334	45	1	722	43140
1984	535	14848	16738	3915	5437	1	1586	294	3	5	336	41688
1983	454	11137	11145	3287	3878	27	248	367	4	1	26	29694
1982	325	7724	11614	2770	2674	9	1	481	2	3	37	25446
1981	270	7127	8152	3737	2720	23	1	342	18	1	18	22401
1980	162	3873	6829	3844	1637	6	1	329	7	4	22	15114
1979	188	3285	4988	2151	1515	13	6	354	5	1	18	14444
1978	88	1438	5497	1879	1237	7	1	710	4	6	16	18987
1977	77	1987	6818	1537	1737	2	1	598	14	1	22	11978
1976	38	879	10947	983	1756	19	5	458	3	39	26	15145
1975	79	1601	3288	567	1831	18	3	614	18		48	7851
1974	29	1818	2981	579	1690	9	3	587	15	5	8	6824
1973	16	1353	2832	353	1785	5	7	513	8	18	14	6182
1972	38	4828	1963	261	1511	14	11	638	33	84	19	8584
1971	24	2241	289	36	250	18		311	1968	26	19	5086
1970	38	192	18	18	23	16		1	1547	271	32	2168
1969	36	768	43	13	42	8	1		1148	2816	18	4877
1968	1518	1277	368	193	935	7		4	29	54485	36	58844
1967	909	1141	386	181	844	2			5	64	9	3461
1966	902	1295	436	156	1859	2				8	28	3856
1965	841	1246	429	142	1847	7		1	2	2	28	3737
1964	744	934	276	139	698	6		1		3	4	2885
1963	789	728	291	126	888	3	4		1	2	8	2672
1962	734	1115	277	285	787	3			1	14	7	3143
1961	818	1463	548	153	1329	5		1	4	2	4	4319
1960	792	657	314	148	655	28			2	6	1	2595
1958 TO 1959	6631	5952	2164	1152	2915	859	16	2	6	23	44	19766
1948 TO 1949	6571	7230	4695	363	4914	8452	5	2	6	9	56	32381
1938 TO 1939	11422	186	548	17	788	22	1	14	26	26	1268	14248
1928 TO 1929	12	4	12	2	8	1				6	9	54
PRIOR TO 1928	1	36	22	2	37	1	2	1	1	4	15	122
UNKNOWN	38	329	33	26	273	6	24	1	6	57	3159	3944
TOTAL	40362	735622	340421	95398	381882	9687	172224	12379	5436	57196	8252	1877919

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS											SUM: 1/52/98 11:28	
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F7	F10	LTR	447	OTHER	TOTAL
1995	1124	85445	17277	8859	66347	2	31503	1492	19			221488
1996	1272	884481	22794	7878	62350		35304	2845	2			237138
1997	508	108202	27696	7837	67741		28117	494	11		18	248488
1998	358	76134	26883	6573	66593	2	28564	298	48		21	177298
1999	225	78255	21828	5628	42244	1	36884	262			25	184266
1990	691	81266	22952	4635	58870	4	27497	289	44		138	283728
1989	271	69548	23761	8181	51138	12	18128	281	51		94	151485
1988	341	25129	39798	7712	8588	2	1433	413	44	1	443	83758
1987	412	17181	34546	6338	9441	2	745	320	144	1	787	71749
1986	959	78501	22976	5174	6989		527	381	183	3	735	136328
1985	645	14758	15548	5532	4293	1	1384	384	45	1	728	43167
1984	535	14858	14737	3916	9447	1	1588	294	3	3	534	41818
1983	455	11134	11158	3297	1987	27	248	367	4	1	25	29787
1982	525	7751	11621	2779	2474	9	1	481	2	3	15	25473
1981	278	7152	8157	3741	2721	23	1	342	18	1	18	22414
1980	162	5874	8827	3844	1838	4	1	338	2	4	28	15117
1979	188	3205	6988	2151	1516	13	8	354	5	1	18	14445
1978	88	1434	5498	1878	1258	7	1	738	4	1	16	18938
1977	77	1987	6818	1537	1737	2	1	598	14	1	22	11978
1976	38	884	12948	983	1757	19	5	458	3	19	26	15148
1975	79	1482	3288	548	1835	18	5	814	18		68	7857
1974	29	1816	2942	579	1493	9	3	597	15	5	7	4824
1973	14	1353	2833	353	1781	5	7	513	9	18	13	4181
1972	38	4821	1964	262	1511	14	11	488	33	84	19	8587
1971	24	2242	289	34	251	18		311	1945	24	18	5892
1970	38	192	18	18	23	16		1	1347	271	32	2148
1969	34	761	43	13	42	8	1	1141	2817	17	4879	
1968	1518	1292	348	194	935	3		4	28	58543	35	58877
1967	989	1149	384	181	844	2			5	84	9	3441
1966	932	1293	437	134	1059	2				8	29	3857
1965	843	1248	479	142	1047	7		1	2	2	28	3731
1964	744	934	274	134	698	4		1		3	4	2885
1963	789	728	291	128	888	3	4		1	2	8	2172
1962	734	1115	277	785	787	3			1	14	7	3143
1961	811	1483	548	153	1339	5		1	4	2	4	4324
1960	792	437	314	148	654	28			2	4	1	2594
1958 TO 1959	6633	5861	2188	1152	2916	859	14	2	6	23	45	19778
1948 TO 1949	6574	7231	4895	363	4917	8432	5	2	4	1	55	32387
1938 TO 1939	11427	198	347	17	718	22	1	14	28	27	1263	16258
1928 TO 1929	12	4	12	2	8	1				4	5	54
PRE188 TO 1924	1	36	21	2	58	1	2	1	1	4	13	128
UNKNOWN	68	549	32	25	334	6	24	3	9	57	3377	4274
TOTAL	41534	835388	378162	185548	447588	9649	283495	13888	5487	57214	8435	2184544

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS										RUN: 1/06/92 0:52		
NFA REGISTRATION ACTIVITY - ANNUAL COMPARISON												
YEAR	F1	F2	F3	F4	F5	F6	F7	F10	LTB	GLB	OTHER	TOTAL
1996	1253	96677	17197	6367	67749	1	60223	1262	21			230710
1995	1125	99075	17329	8086	66512	2	37332	1687	20			225970
1994	1273	104543	22796	7887	62351		15388	2868	2			257492
1993	301	100226	27714	7059	47752			28116	406	11	14	246392
1992	350	76127	26896	4577	46517	2	20563	298	60		19	177269
1991	224	70239	21030	5423	42775	1	56783	262			22	104257
1990	691	89257	22916	6843	56881	4	27496	289	66		129	203748
1989	271	69599	23769	8184	37143	12	10120	201	69		94	151492
1988	341	25173	39893	7714	8309	2	1473	483	88		445	83759
1987	414	17163	34557	8331	9445	2	745	320	142		706	71765
1986	839	78656	22988	5174	4946		527	301	138	1	731	106521
1985	645	14832	15539	3537	6375	1	1381	333	45		710	43381
1984	535	14852	14739	3919	5438	1	1507	294	3		336	41626
1983	455	11137	11149	3288	3089	27	268	367	4		25	29788
1982	326	7759	11424	2771	2676	9	1	681	2		36	25483
1981	271	7131	8142	3741	2722	26	1	342	10		10	22421
1980	162	3877	6876	3046	1638	6	1	338	7		29	15113
1979	108	3285	6987	2151	1516	13	6	354	5		18	14443
1978	89	1438	5541	1878	1250	7	1	730	4		15	10984
1977	77	1948	6814	1538	1748	2	1	591	14	1	19	11985
1976	38	888	10946	103	1758	17	5	650	3	36	26	15144
1975	79	1442	3260	569	1835	18	3	613	10		48	7857
1974	29	1816	2963	579	1440	9	3	549	15	5	7	6827
1973	16	1854	2853	354	1700	5	7	513	9	10	12	6101
1972	38	4821	1964	262	1513	14	11	639	33	85	10	8590
1971	24	2243	289	36	252	10		312	1965	26	10	5095
1970	39	192	18	18	23	16			1567	271	31	2167
1969	36	761	43	13	42	8	1		1148	2853	17	4114
1968	1511	1320	340	104	935	7			29	54585	35	58904
1967	909	1141	396	181	844	2			5	64	9	3461
1966	902	1293	437	136	1060	2				8	26	3058
1965	843	1246	429	142	1048	7			2	2	29	3739
1964	744	934	276	139	690	6				3	4	2894
1963	789	720	291	134	800	3	4		1	2	8	2672
1962	734	1115	277	205	707	3			1	14	7	3163
1961	912	1464	548	194	1330	5			4	2	4	4323
1960	792	637	314	148	656	20			2	6	1	2596
1958 TO 1959	6638	5961	2165	1152	2917	859	16	2	4	23	45	19784
1948 TO 1949	6575	7232	4497	864	4919	8456	4	2	4	18	64	32817
1938 TO 1939	11449	199	566	17	718	22	1	14	27	27	1247	14959
1928 TO 1929		4	4		1						5	11
UNKNOWN TO 1926		11	8		4						5	28
UNKNOWN	10	353	12	25	339	6	26	1	10	58	3072	4789
TOTAL	42818	938867	395562	110814	516673	9612	244717	15866	5588	57223	6076	2341576

Mr. Larson arranged the Form 4 data from 1992 to 1996 by and across single years to determine if the number of registrations changed over time. As shown in the following table, the total number of Form 4 registrations increased by 625 during 1992 to 1996, for registrations that occurred since 1934 by single years through 1996 and during unknown years (registrations for

years in and before 1968 have been combined). Mr. Larson reported these results in 1997 in Congressional testimony, as shown below.

Table 4

**Form 4 (Tax-Paid) Transfers from 1934 to 1996, and During Unknown Years, as Reported by ATF During 1992 to 1996 in the National Firearms Registration and Transfer Record: Calculations Showing Results of Annual and Overall Changes Have Been Added**

<b>Year</b>	<b>1992</b>	<b>1993</b>	<b>Change</b>	<b>1994</b>	<b>Change</b>	<b>1995</b>	<b>Change</b>	<b>1996</b>	<b>Change</b>	<b>Change,</b>
			<b>(2)-(1)=</b>		<b>(4)-(2)=</b>		<b>(5)-(4)=</b>		<b>(8)-(6)=</b>	<b>1992-96</b>
	<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>	<b>(8)</b>	<b>(9)</b>	
1998								6,387	0	0
1995						8,059	0	8,086	+27	+27
1994				7,838	0	7,870	+32	7,887	+17	+49
1993		7,749	0	7,818	+70	7,837	+18	7,850	+13	+101
1992	6,527	6,555	+28	6,568	+12	6,573	+5	6,577	+4	+50
1991	5,390	5,400	+10	5,411	+11	5,420	+9	5,423	+3	+33
1990	4,807	4,821	+14	4,830	+9	4,835	+5	4,841	+6	+34
1989	4,165	4,176	+11	4,176	0	4,181	+5	4,186	+5	+21
1988	7,099	7,703	+604	7,707	+4	7,712	+5	7,714	+2	+18
1987	8,311	8,318	+7	8,321	+3	8,330	+9	8,331	+1	+20
1986	6,188	6,182	-6	5,172	+10	5,174	+2	6,174	0	+18
1985	3,524	3,525	+1	3,529	+4	3,532	+3	3,537	+5	+18
1984	3,911	3,913	+2	3,915	+2	3,918	+3	3,919	+1	+8
1983	3,208	3,204	-4	3,207	+3	3,207	0	3,208	+1	+5
1982	2,770	2,771	+1	2,770	-1	2,770	0	2,771	+1	+1
1981	3,734	3,735	+1	3,737	+2	3,741	+4	3,741	0	+7
1980	3,040	3,040	0	3,044	+4	3,046	+2	3,046	0	+6
1979	2,150	2,150	0	2,151	+1	2,151	0	2,151	0	+1
1978	1,879	1,878	-1	1,879	+1	1,878	-1	1,878	0	-1
1977	1,535	1,535	0	1,537	+2	1,537	0	1,538	+1	+3
1976	979	979	0	983	+4	983	0	983	0	+4
1975	567	567	0	567	0	568	+1	568	+1	+2
1974	579	579	0	579	0	579	0	579	0	0
1973	353	353	0	353	0	353	0	354	+1	+1
1972	261	261	0	261	0	262	+1	262	0	+1
1971	36	36	0	36	0	36	0	36	0	0
1970	10	10	0	10	0	10	0	10	0	0
1969	13	13	0	13	0	13	0	13	0	0
1968	192	193	+1	193	0	194	+1	194	0	+3
< 1968	2,780	2,785	+5	2,792	+7	2,791	-1	2,983	+192	+209
Unknown	22	23	+1	25	+3	25	-1	25	0	+3
<b>CHANGE</b>			<b>+92</b>		<b>+150</b>		<b>+100</b>		<b>+283</b>	<b>+625</b>
<b>Totals</b>		<b>79,573</b>	<b>87,413</b>		<b>95,328</b>		<b>103,558</b>		<b>110,014</b>	

Data source: Bureau of Alcohol, Tobacco and Firearms. All numbers shown in boldface type were calculated by Eric M. Larson.

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Mr. Larson's analysis used arithmetic calculations to determine if there are changes in NFRTR data, which could mean that registrations were being added after the fact, years after

<sup>44</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1998* at 71, available at <http://www.nfaa.org/documents/1997testimony.pdf>. Mr. Larson found similar patterns of apparent additions of registrations for Forms 1, 2, 3, 5, 4467, and "Letter" and "Other" categories.

ATF approved the original registration and concluded NFRTR reporting for a given year. For example, the number of registrations for 1992 changed from 6,527 to 6,556 in 1993, a difference of 29; similarly, the number of registrations for 1992 changed from 6,568 in 1994 to 6,573 in 1995, an increase of 12. Inspection of these Form 4 data disclose that the number of registrations in 1992 (6,527) increased to 6,577 in 1996. Put another way, ATF added 50 registrations during 1992 to 1996, for the year 1992, which gives the appearance that ATF could have added 50 Forms 4 to the NFRTR during that period. Using the same arithmetic calculations to analyze total Form 4 registrations for all years from 1992 to 1996, Mr. Larson determined that total registrations increased by 625; again, the implication is that ATF may have added 625 Forms 4 to the NFRTR after being unable to locate them in the NFRTR, and NFA firearms owners provided ATF with copies of their approved Forms 4. Note that 203 registrations were added for years in or before 1968.

In an effort to determine whether he may have made any errors of fact or omission, Mr. Larson asked NFA Branch officials if the increases in registrations resulted from ATF added copies of lost or destroyed NFA registrations back into the NFRTR, after obtaining them from firearms owners, or if there was another explanation. NFA Specialist Gary N. Schaible told Mr. Larson if an error was detected on a form and the form was misclassified, it would be reclassified as a Form 4, a Form 4467 or whatever form was correct, and that it would be re-entered in the NFRTR in the year that the registration occurred.<sup>45</sup> Mr. Schaible also stated "I assume that's happened," in response to Mr. Larson's question: "Has ATF ever added a firearm to the NFRTR, after a lawful owner produced a valid registration, because ATF had no record of the firearm in

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<sup>45</sup> Id. at 95

the NFRTR?"<sup>46</sup> In addition to Mr. Schaible's comments, NFA Branch Chief Nereida W. Levine told Mr. Larson in a January 7, 1997, letter that correcting errors in entering data according to Form number or year of registration "may result in an adjustment to previously generated statistics."<sup>47</sup> NFA Branch Chief Levine concluded:

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 a 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. 48

If no registrations were added to the NFRTR, explanations by NFA Branch representatives that changes in annual "NFA registration activity" could result from correcting errors in Form number and/or year of registration means such changes would be a "zero-sum" game, and represent classification errors. In other words, if the annual changes resulted from reclassified data, total registrations from all categories would not change.

To determine if the number of total registrations did not change, Mr. Larson analyzed total registrations (for all categories) for each year from 1992 to 1996 using the same arithmetic calculations he used to analyze Form 4 data. He found that total registrations increased each year and totaled 18,869 for the period from 1992 to 1996, and that registrations had been added to all NFRTR data categories for each year.

Mr. Larson concluded the discrepancies he observed in NFA registration activity, and statements by ATF representatives, required additional evidence to reliably determine the reason(s) for the increased number of reported registrations. While ATF personnel adding

<sup>46</sup> Id. at 97. This question was asked and answered twice.

<sup>47</sup> Letter from Nereida W. Levine, Chief, NFA Branch, Bureau of Alcohol, Tobacco and Firearms, dated Jan. 7, 1997, to Eric M. Larson, bearing symbols E:RE:FN:GS. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 110-111, available at <http://www.nfaa.org/documents/1998testimony.pdf>.

<sup>48</sup> Id. at 41.



registrations was one possible explanation, there was insufficient statistical and evidence upon which to reliably base such a conclusion. For example, there also could have been flaws in computer software, problems with reporting functions resulting from editing, inadequate internal quality controls or checks, and so forth, so Mr. Larson concluded that a formal investigation was needed, and did not present his findings as definitive. Because he was unable to conduct additional research according to standard social sciences practices, Mr. Larson asked appropriate Government officials to determine if ATF was adding registrations to the NFRTR.<sup>49</sup>

**Coverups in an internal ATF investigation, and audit of the NFRTR by the Treasury IG**

ATF and the Treasury IG conducted separate investigations in 1997 and 1998, respectively, of allegations by Mr. Larson that ATF had mismanaged the NFRTR, and there is valid and reliable evidence that each entity avoided determining whether ATF had added registrations. Each covered up facts and failed to diligently investigate Mr. Larson's complaint. All of Mr. Larson's allegations will not be reviewed in this motion, but it is instructive to note that the Treasury IG censored his most serious allegation. Although an audit Work Paper dated October 10, 1997, prepared Treasury IG auditor Diane Kentner, states the following:

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<sup>49</sup> Because NFRTR data are protected from disclosure under the NFA (26 U.S.C.A. § 5848) and considered "tax return" information prohibited from disclosure under the tax code (26 U.S.C.A. § 6103), it was not legally possible for Mr. Larson to visit the NFA Branch to inspect NFRTR data or observe procedures involving NFA registration activities conducted by NFA Branch personnel.

Because the names and addresses of individual NFA firearms owners and SOTs are also protected from disclosure, it was not possible for Mr. Larson to conduct ordinary social science research, such as drawing representative random samples to try and contact or survey them to investigate what their experiences may have been regarding NFA paperwork for guns in their inventory for which they had valid registration documents, but for which ATF could find no record in the NFRTR. Similarly, Mr. Larson was legally prohibited from accessing the computerized NFRTR data base, and thus was unable to inspect these data, run tabulations and cross-tabulations, or conduct other analyses.

(OIG Follow Up)

- Did ATF add additional firearms to the NFRTR that were originally registered on Form 1 or 4467 during 1934 to 1971, for which ATF lost or destroyed original records.

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there is no evidence in either of its 1998 reports on the NFRTR, or in the 1998 audit Work Papers, that the Treasury IG fully investigated Mr. Larson's allegation.

Mr. Larson's original allegation, reproduced below, states:

L. ATF employees have deliberately destroyed original firearms registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by ATF Special Agent Gary N. Schauble.<sup>50</sup> In analyses of data made public by ATF, I found that during 1982 to 1986, 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.<sup>51</sup>

The Treasury IG censored Mr. Larson's allegation in its October 1998 audit report, and is reproduced on the following page.

<sup>50</sup> Work Paper D-5, October 10, 1997 at 1, available at [http://www.nfaa.org/documents/Work\\_Papers\\_D.pdf](http://www.nfaa.org/documents/Work_Papers_D.pdf).

<sup>51</sup> Letter to Valerie Lau, Inspector General, Office of Inspector General, Department of the Treasury, dated May 10, 1997, from Eric M. Larson. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 99, available at <http://www.nfaa.org/documents/1998testimony.pdf>.

Form 1 ("Registration of Firearms") was used from 1934 to 1968 to register unregistered NFA firearms; after 1968 it was titled "Application to Make and Register a Firearm" because the Gun Control Act of 1968 prohibited the registration of unregistered NFA firearms after the 1968 amnesty period expired (a citizen can "make" and register an NFA firearm by paying a \$200 tax and first obtaining ATF's approval to do so). ATF created Form 4467 "Registration of Certain Firearms in November 1968") under § 207(b) of the 1968 Act to accept registrations of unregistered firearms, with immunity from prosecution, during the amnesty period from November 2, 1968, to December 1, 1968.

The year 1971 specified in Mr. Larson's complaint relates to a different allegation that ATF had improperly registered unregistered NFA firearms after the 1968 amnesty period expired. Such registrations would violate the NFA, because "[n]o firearm may be registered by a person unlawfully in possession of the firearm after December 1, 1968, except that the Director, after publication in the FEDERAL REGISTER of his intention to do so, may establish periods of amnesty, not to exceed ninety (90) days in the case of a single period with such immunity from prosecution as the Director determines will contribute to the purposes of" the NFA, as stated ATF's published regulations in the *Code of Federal Regulations*, 1969 edition at 93. See 26 C.F.R. 179.120(a)(3)(b), available at <http://blog.princelaw.com/assets/2008/7/7/1969-CFR-ATF-amnesty-reg.pdf>.

## **Allegation 1. Destruction of Documents**

**"ATF employees have deliberately destroyed original firearms registration documents that they are required by law to maintain, as noted in sworn testimony in 1996 by [an ATF Specialist]."**

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In the internal 1997 ATF investigation, which was completed before the Treasury IG started audit work to investigate Mr. Larson's allegations, Mr. Schaible contradicted his testimony in *LeaSure* about NFA Branch employees destroying NFA documents in 1994 by stating under oath to ATF Special Agent and internal investigator Jeff Groh:

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 NFRTR. 53

The October 1998 Treasury IG report stated that Mr. Schaible

... was referring to an incident in 1988 when NFA Branch management suspected that two contract employees were disposing of documents. These contract employees were

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<sup>52</sup> October 1998 Treasury IG Report, at 7, available at <http://www.nfaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>53</sup> "[REDACTED], et al." Report of Investigation, by [REDACTED], Bureau of Alcohol, Tobacco and Firearms, September 8, 1997 at 90. Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1999* at 102-103, available at <http://www.nfaa.org/documents/1998testimony.pdf>.

Mr. Schaible's reference to "Title II firearms" refers to Title II of the Gun Control Act of 1968 (Title II is also, but less commonly, known as the National Firearms Act of 1968); consequently, NFA firearms are also referred to as Title II firearms. Special Agent Groh, representing ATF Internal Investigations, contacted Mr. Larson and advised that he had been assigned to investigate his allegations, is the author of the foregoing Report of Investigation.

immediately removed from their assignment to the NFA Branch. The employees could not be hired or fired since they were employed by a contractor.<sup>54</sup>

In *LeaSure*, Mr. Schaible testified under oath he was aware of “occasions . . . in the NFA Branch of clerks throwing away transmissions because they don’t want to fool with them” rather than process them (Mr. LeaSure testified he FAXed registration documents to ATF in 1994, and ATF claimed it was unable to find a record of them).<sup>55</sup> Under cross-examination, asked “that’s one of the things [NFA Branch clerks throwing away documents] that could happen to you?,” Mr. Schaible replied “Certainly.”<sup>56</sup> In response to a question whether “people have been transferred and fired as a result of that, haven’t they,” Mr. Schaible answered: “The only situation I can remember is, no, they weren’t transferred. No, they weren’t fired. They eventually quit, yes, but, no, nothing like transferred or fired.” When asked “Did [ATF] ever continue anybody in that particular job after they threw something away, threw an important transmission away or destroyed it or put it in the shredder or whatever they did? [ATF] continued them doing that kind of work?” Mr. Schaible said “With monitoring, yes.”<sup>57</sup>

Regarding Mr. Schaible’s contradictory statements, made under oath, the October 1998 Treasury IG audit report concluded:

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<sup>54</sup> October 1998 Treasury IG Report at 7, available at <http://www.nfaaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>55</sup> *United States of America vs. John Daniel LeaSure* (1996) at 42-43, available at <http://www.nfaaa.org/documents/LeaSureTrial.pdf>.

<sup>56</sup> *Id.* at 42-43.

<sup>57</sup> *Id.* at 43.

**Our review of the allegations showed that:**

- 1. National Firearms Act (NFA) documents had been destroyed about 10 years ago by contract employees. We could not obtain an accurate estimate as to the types and number of records destroyed.**

58

The limited scope of the Treasury IG audit is troubling because Discovery sampling analysis disclosed a large number (176) of “critical errors”<sup>59</sup> which the Treasury IG failed to mention or publish in either of its 1998 audit reports, compared with 37 “discrepancies” it identified in its December 1998 report;<sup>60</sup> and despite finding large numbers of “critical errors,” there was no effort to reliably estimate the accuracy and completeness of the NFRTR.

The 1998 Treasury IG audit also raises reasonable doubt about the validity of Certificates of Nonexistence of a Record (CNR) that ATF provides to courts to certify that no record of registration for particular firearms can be located in the NFRTR. The reason is that the Treasury IG auditors formally declined to evaluate the accuracy of procedures ATF uses to search the NFRTR to legally justify issuing CNRs, which are also issued to attest that specific firearms are not registered to specific persons. NFRTR data are also routinely used for other law enforcement activities, including legal justifications for issuing search warrants.

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<sup>58</sup> October 1998 Treasury IG Report at 1, available at <http://www.nfaog.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>59</sup> Work Paper H-0, April 23, 1998, at 1.

<sup>60</sup> December 1998 Treasury IG Report, at 12, available at <http://www.nfaog.org/documents/TreasuryOIG-99-018-1998.pdf>. The “discrepancies” identified in the December 1998 Treasury IG Report are identified as “critical errors” in audit Work Papers.

The “Objectives, Scope and Methodology” section of the December 1998 Treasury IG report states:

**Our scope did not include a review of the accuracy of ATF’s certifications in criminal prosecutions that no record of registration of a particular weapon could be found in the registry. We also did not evaluate the procedures that ATF personnel use to search the registry to enable them to provide an assurance to the court that no such registration exists in specific cases. Accordingly, this report does not provide an opinion as to the accuracy of the registry searches conducted by ATF.**

**Audit work was performed from October 1997 through May 1998. Our review generally covered ATF’s administration of the registry for the period October 1, 1996 through March 31, 1998.**

**Our work was conducted in accordance with Government Auditing Standards issued by the Comptroller of the United States, and included such audit tests as we determined necessary.**

According to the edition of *Government Auditing Standards* the Treasury IG used in its audit of the NFRTR, the Treasury IG auditors failed to comply with an applicable audit standard, “abuse,” as stated below:

Abuse is distinct from illegal acts and other noncompliance. When abuse occurs, no law, regulation, contract provision, or grant agreement is violated. **Rather, the conduct of a government program falls far short of societal expectations for prudent behavior.** Auditors should be alert to situations or transactions that could be indicative of abuse. **When information comes to the auditors’ attention (through audit procedures, tips, or other means) indicating that abuse may have occurred, auditors should consider whether the possible abuse could significantly affect the audit results. If it could, the auditors should extend the audit steps and procedures, as necessary, to determine if the abuse occurred and, if so, to determine its effect on the audit results [emphasis added].**<sup>62</sup>

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<sup>61</sup> Id. at 4.

<sup>62</sup> See Chapter 6, “Field Work Standards for Performance Audits,” *Government Auditing Standards*, by the Comptroller General of the United States. 1994 Revision. Washington, D.C., U.S. Government Printing Office, 1994 at 75.

There is no statement in the 1998 Treasury IG reports that the auditors (1) considered whether decreasing the "critical error" rate at the request of the audited party at interest (NFA Branch representatives) to achieve a desired result "could significantly affect the audit results," or (2) attempted "to determine its effect on the audit results." In a Work Paper documenting the 1998 audit procedures and activities, the Audit Manager attested that "abuse" was not an issue:

	Ref.	Initials	N/A	Remarks
2.12 Auditors have been alert to situations or transactions that could be indicative of illegal acts or abuse, and have extended audit steps as necessary (GAS 6.26, 6.32, 6.35). (Support is statement in audit guidelines to be alert to these situations or transactions, and any related work performed.)	A-1	RKB		Report deals with allegation of ATF mismanagement of its reports

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The conduct of the Treasury IG auditors, who under *Government Auditing Standards* are required to be "independent,"<sup>64</sup> clearly "falls far short of societal expectations for prudent behavior." The reasons are that the Treasury IG auditors (1) manipulated audit procedures at the request of NFA Branch representatives for the purpose of deliberately decreasing the "critical error" rate of the NFRTR because the 18.4 percent "critical error" rate the Treasury IG auditors found was "disappointing at best and could have serious consequences for ATF's firearm

<sup>63</sup> Work Paper Bundle A, page 5. The initials RKB are those of Treasury IG auditor Robert K. Bronstrup, identified in Work Paper A-1 as the "Lead Auditor"; and as "Audit Manager" in the October 1998 Treasury IG report at 27, and December 1998 Treasury IG report at 49.

<sup>64</sup> *Government Auditing Standards*, by the Comptroller General of the United States. 1994 Revision. Washington, D.C.: U.S. Government Printing Office, 1994 at 22. See Chapter 3, "General Standards," which states: "In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance."

registry mission,” (2) left unanswered whether “critical errors” exist in other NFRTR categories, (3) failed to reliably estimate the “critical error” rate of the NFRTR, as required by Discovery sampling rules and procedures, by increasing the size of the sample and conducting additional analysis, (4) chose to avoid resolving reasonable doubts (created by their audit findings) about the accuracy and completeness of the NFRTR, and by extension the validity and reliability of ATF’s Certifications of Nonexistence of a Record (CNRs) that “provide an assurance to the court that no such registration [for an NFA firearm] exists in specific instances.”

**Congressional Hearings on the NFRTR from 1996 to 2001, and related issues**

Each year from 1996 to 2001, Mr. Larson and other concerned citizens provided testimony or statements to the Congress about the accuracy and completeness of the NFRTR.<sup>65</sup> The most important outcomes of these testimonies and statements were (1) the 1998 Treasury Department Inspector General audit of the NFRTR, and (2) appropriations language that allocated \$1 million to ATF, with instructions to use it to render the NFRTR accurate and complete. There is no evidence, however, that either of the foregoing outcomes rendered the NFRTR accurate and complete, or resulted in a valid and reliable estimate of the NFRTR error rate. Consequently, the accuracy of the NFRTR is still currently unknown.

The Treasury IG auditors did not follow GAGAS to reliably estimate the “critical error” rate of the NFRTR database, in part, because NFA Branch representatives inappropriately requested them to manipulate the definition of “critical error” to achieve a lower rate, but that is not the whole story. The reason is that the Treasury IG auditors requested an Assistant Director at the U.S. Government Accountability Office to advise them how to conduct Discovery

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<sup>65</sup> These Congressional testimonies and statements are listed in Mr. Larson’s VITA, which has been separately submitted to this Court, and include a variety of issues not relevant to *Friesen*; they are not listed or reviewed in this motion.



sampling in its 1998 audit,<sup>66</sup> and with knowledge of correct procedures for doing so declined to follow his advice. Consequently, the “critical error” rate for the NFRTR database was not estimated in the 1998 audit.

Mr. Larson’s requests to top Government officials with oversight responsibility over ATF to conduct meaningful oversight, particularly over ATF’s continuing mismanagement of the NFRTR, failed. For example, when Mr. Larson expressed concerns to Treasury Department Inspector General David C. Williams about the integrity of the 1998 audit based on the Treasury IG censoring his most serious allegation against ATF, and that the audit was conducted during a period that included the regime of the his corrupt predecessor (who resigned in 1998 following Senate hearings documenting her misconduct), Dennis S. Schindel, Assistant Inspector General for Audit, responded in a January 7, 1999, letter:

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<sup>66</sup> The Treasury IG auditors informally requested Barry Seltser, Assistant Director and Manager, Design, Methodology and Technical Assistance Group, U.S. Government Accountability Office (GAO), for advice in conducting sampling procedures and data analysis in its 1998 audit of the NFRTR. At a January 20, 1998, meeting at GAO Headquarters, which included Sidney Schwartz, Mathematical Statistician, GAO; Carol Burgan, Auditor [DELETED], Robert Bronstrup, Audit Manager, and Gary Wilk, Auditor:

**Mr. Seltser suggested that we use “discovery” sampling for the top three Forms that we were concerned about (Form 4467, Other, and Letter categories). In discovery sampling, about 60-70 items are selected from each category and tested for “critical” and “non-critical” errors. If no errors are found in this discovery sample, then we could make a statement about the category. If errors are found, then we must expand our sample based on a mathematical formula.**

Work Paper F-19, prepared by Carol Burgan, January 24, 1998 at 1.

The Treasury IG auditors did not follow Mr. Seltser’s recommendation to “expand our sample based on a mathematical formula” after discovering “critical errors” in the Discovery samples. Mr. Seltser’s advice was informal; representative of the kind of informal advice GAO typically and often renders to Executive Branch agencies upon request; and GAO was not involved in the Treasury IG’s 1998 audit of the NFRTR.

Dear Mr. Larson:

Mr. Williams has asked me to respond to your letter of November 5, 1998. In that letter you expressed concern that the previous Inspector General, Valerie Lau and others may have tried to compromise a congressionally directed audit of the firearm registration practices of the Bureau of Alcohol, Tobacco and Firearms (ATF). Since my office oversaw the work, I assured Mr. Williams and wish to assure you that no effort to influence the audit occurred.

<sup>67</sup>

In March 1999, Mr. Schindel told Mr. Larson the 1998 audit "determined there were errors in the [NFRTR] based on statistically valid sampling methodologies." He added that ATF "is operationally responsible for correcting the errors in the [NFRTR] data base," and it is "ATF's management responsibility to identify and correct all of the records that may be in error in the registry."<sup>68</sup>

Similarly, Mr. Larson expressed concerns to then-ATF Director John W. Magaw, who answered them in a November 19, 1999, letter:

Your allegations concerning my staff are totally without foundation. I have been advised of all your allegations concerning the Bureau of Alcohol, Tobacco and Firearms' (ATF) administration of the National Firearms Act (NFA), beginning with your attempts in 1987 to have certain firearms removed from the statute up through the recent issuance of the Office of the Inspector General (OIG) reports. I have reviewed the OIG reports and agree with my staff that most of your allegations are without merit.

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<sup>67</sup> Eric M. Larson, *Work Papers on Errors in the National Firearms Registration and Transfer Record, and Other Issues Regarding the Bureau of Alcohol, Tobacco, and Firearms*. Prepared for the Honorable Pete Sessions, House of Representatives, Washington, D.C., April 2, 1999 (unpublished), inserted at 36-37, available at <http://www.nfaog.org/documents/Critiqueof1998IGreports.pdf>.

<sup>68</sup> Letter from Dennis S. Schindel, Assistant Inspector General for Audit, Office of Inspector General, Office of Inspector General, Department of the Treasury dated March 25, 1999, to Eric M. Larson.

We have carefully considered the recommendations made by the OIG and are working to ensure that the NFRTR continues to be an accurate and reliable database of firearms transactions.

69

The foregoing statements by Assistant Inspector General for Audit Schindel and ATF Director Magaw, each of whom were key Government officials who had major and significant federal law enforcement responsibilities in 1999, are not worthy of belief.

Congress appropriated \$500,000 for fiscal year 2002 for ATF to use “with the aim of reducing processing times and ensuring the completeness and accuracy of the NFRTR.”<sup>70</sup> The appropriations hearing records included questions by the Subcommittee on Treasury, Postal Service and General Government about the NFRTR, including the need for “[a]n independent, annual audit of the [NFRTR] database covering registration to retrieval,” and when it would be “possible to confirm the completeness and accuracy of the NFRTR.”<sup>71</sup> Congress again appropriated \$500,000 for fiscal year 2003 for improving ATF’s licensing and regulatory operations, “including making significant progress in correcting remaining inaccuracies within the NFRTR database.”<sup>72</sup>

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<sup>69</sup> Letter from John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms dated November 19, 1999, to Eric M. Larson at 1 and 3, available at <http://www.nfaaa.org/documents/MagawLetter1999toLarson.pdf>.

<sup>70</sup> Report No. 107-152, to accompany H.R. 2590, Treasury, Postal Service, and General Government Appropriations Bill, 2002. 107th Cong., 1st Sess., House of Representatives (2001) at 20. These funds were approved in The Treasury and General Government Appropriations Act, 2002, P.L. 107-67, 115 Stat. 514 (2001).

<sup>71</sup> “Regulatory Processes and Resources,” *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*. Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 107th Congress, 1st Sess., Part 1 at 476-479.

<sup>72</sup> Report No. 107-575, to accompany H.R. 5120, Treasury, Postal Service and General Government Appropriations Bill, 2003. 107th Cong., 2d Sess., House of Representatives at 19 (2001). These funds were approved in Report No. 108-10, Conference Report to accompany H.J. Res. 2, 108th Cong., 1st Sess. at 1324-1325 (2003).

The Subcommittee was influenced by an independent statistical expert, Dr. Fritz J. Scheuren, who advised them in response to its request for his review of responses ATF provided to three questions asked by the Subcommittee.<sup>73</sup> Dr. Scheuren stated, in part:

**Technology question.** My reading of the OIG reports suggests that very serious problems were uncovered in ATF's recordkeeping systems. In fact, in my long experience, I cannot think of any instance where poorer results were obtained. I was greatly troubled, therefore, by ATF's comment that it "... found nothing in the OIG report to justify a statutory or administrative change..." The automation Conclusions. I can only offer a qualified opinion on the ATF's answers but if their responses are to be taken at face value, two conclusions arise: (1) ATF has serious material weaknesses in its firearm registration system which it has yet to acknowledge and (2) the ATF steps taken to improve its recordkeeping clearly lack thoroughness and probably lack timeliness as well.

**Recommendations.** Let me offer three recommendations to the Committee for its consideration: (1) ATF should be asked to engage an outside audit organization to give a more complete assessment of the weaknesses in their existing firearms system. The scope of the OIG audit was too narrow. These audits should be annual, including a full test of the system from registration to retrieval. The Post Office has such audit practices and offers a model of the completeness needed. (2) ATF should be asked to conduct a thorough benchmarking effort looking at recordkeeping practices and how they are changing both within government and in organizations like insurance companies that have to keep files for long periods. This benchmarking will require another (separate) outside contractor experienced in conducting such studies. (3) The use of record linkage technologies to test and update the ATF firearms system to reduce its isolation are worth study. A match with the SSA decedent file is an example, but there are other government systems that might be looked at too. Possibly legislation would be needed but before seeking legislation ATF should engage one or more experts in record linkage techniques as consultants on the present "matchability" of the system and needs for its future "matchability."

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Dr. Scheuren's influence is evident in the following exchange between the Subcommittee and ATF, which subsequently occurred during ATF's appropriations hearing:

**Question:** An independent, annual audit of the database covering registration to retrieval?

**Answer:** We do not believe an independent audit of the database is needed. The ongoing efforts we are making to ensure the completeness and accuracy of the NFRTR by imaging and indexing the documents, performing database verification, and linking the retrieval system with the imaging system will result in strong internal controls for the NFRTR.

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<sup>73</sup> *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002* Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 107th Cong., 1st Sess., Part 3 at 23-25, available at <http://www.nfaa.org/documents/2001statement.pdf>. (Hereafter Congressional Hearings, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*.) Fritz J. Scheuren, Ph.D., a past elected President of the American Statistical Association, is currently Vice President, Statistics, National Opinion Research Center (NORC), University of Chicago.

<sup>74</sup> Letter from Fritz J. Scheuren dated May 23, 2000, to the Honorable Jim Kolbe, Chairman, Subcommittee on Treasury, Postal Service, and General Government. Id. at 24-25.

There is currently no evidence that ATF has satisfactorily complied with Congressional instructions to render the NFRTR accurate and complete. The Treasury IG terminated another NFRTR audit in 2002 before it was completed, and a former staff member stated: "We found there were still serious problems with the NFRTR data that, to the best of my knowledge, are still uncorrected."<sup>76</sup>

In 2007, seven years after his Congressional statement, because private citizens expressed concerns to him about the accuracy and completeness of the NFRTR, Dr. Scheuren reanalyzed the NFRTR database situation. In a December 11, 2007, letter, to the Congress, Dr. Scheuren reiterated and expanded his concerns about the consequences of "serious material errors" in the NFRTR that ATF "has yet to acknowledge," and added: "In my considered professional judgment, these errors render the NFRTR questionable as a source of evidence in federal law enforcement."<sup>77</sup>

In or about 2006, possibly in response to the Justice IG's "review" of the NFRTR, ATF created a new form entitled "Firearms Inspection Worknote: NFA Inventory Discrepancies," a

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<sup>75</sup> Congressional Hearing, House of Representatives, *Treasury, Postal Service, and General Government Appropriations for Fiscal Year 2002*. Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives. 107th Cong., 1st Sess., Part 1 at 479, available at <http://www.nfaaa.org/documents/NFRTRdocpack.pdf>, at Tab 4.

In October 2008, Mr. Larson filed a FOIA request to ATF for (1) documents pertinent to this "imaging system" and how it may help render the NFRTR accurate and complete by "imaging and indexing the documents," including any evaluation of the accuracy and completeness of the "imaging system"; that is, whether complete documentation is available for firearms for original registration and each subsequent transfer; (2) documents that describe the search procedures ATF uses to provide assurances to the Court that no record of a firearm registration can be located in the NFRTR, and (3) a copy of the current NFRTR procedures manual. ATF has not provided any documents in response to any of the foregoing FOIA requests to date.

<sup>76</sup> For additional information, see Stephen P. Halbrook, *Firearms Law Deskbook: Federal and State Criminal Practice*. 2008-2009 Edition. Thomson West Publishing, 2008 at 572-573.

<sup>77</sup> Letter to the Honorable Alan B. Mollohan, Chairman, Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, House of Representatives dated December 11, 2007, by Fritz J. Scheuren, Vice President, Statistics, National Opinion Research Center, University of Chicago, at 1, available at [http://www.nfaaa.org/documents/Scheuren\\_Committee\\_Chair\\_Letter.pdf](http://www.nfaaa.org/documents/Scheuren_Committee_Chair_Letter.pdf).

copy of which Mr. Larson obtained by a FOIA request.<sup>78</sup> A copy of this form is reproduced as received by Mr. Larson from ATF on the following page.

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<sup>78</sup> Letter to Averill P. Graham, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, Firearms and Explosives dated January 24, 2007, by Eric M. Larson, *available at* <http://www.nfaa.org/documents/FOIA-FRTRJan2007.pdf>.

# NFA Inventory Discrepancies

PURPOSE: To reconcile discrepancies disclosed between the licensee's inventory/records

SOURCE/SCOPE:

NOTE:

Licensee Name:

UI Number:

0

0

#	Manufacturer/Importer	Model	Type	Caliber/ Gauge	Serial Number	Date Transferred or Received	Transferred to or Received From:	Nature of the discrepancy	In Inventory Yes/No

Prepared By:

Date:

0

01/00/00

Revised 2/17/06

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NFA Inventory

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1

In his January 2007 FOIA request, Mr. Larson also requested ATF to provide

- 2) Written or audio instructions to ATF personnel which provide guidance and/or definitions of what constitutes an “error” or “discrepancy” in the NFRTR. These would include classroom training materials, flash cards, a manual or similar guide, instructions imparted via DVD, videotape or similar mediums of communication. These instructions would most likely be given to ATF Inspectors, but may also be given to Legal Document Examiners, ATF Special Agents, and others.**

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ATF stated that a search failed to locate such documents responsive to Mr. Larson's FOIA request, and he appealed. In a letter dated October 2, 2007, Janice Galli McLeod, Associate Director, Office of Information and Privacy, Department of Justice, stated:

After carefully considering your appeal, I am affirming ATF's action on your request. ATF conducted a search for records responsive to your request and was unable to locate any records pertaining to the National Firearms Registration and Transfer Record documentation you referred to in your request. I have determined ATF's response was correct.<sup>80</sup>

Associate Director McLeod's statement may be valid and reliable evidence that ATF and the Department of Justice have improperly denied a FOIA request. It is hard to believe that a form ATF inspectors are supposed use to record “discrepancies” in the NFRTR database after encountering them during compliance inspections of SOTs would not have been given instructions regarding and procedures to follow in to reliably identify and report suspected “discrepancies,” when the stated “purpose” of the form is to “reconcile discrepancies” in the NFRTR. It is not reasonable to believe ATF has not defined the term “discrepancy,” because otherwise there would be no reason for the new form to exist.

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<sup>79</sup> Id. at 1.

<sup>80</sup> Letter to Eric M. Larson from Janice Gail McLeod, Associate Director, Office of Information and Policy, U.S. Department of Justice dated October 2, 2007, bearing identifiers RE: Appeal No. 07-1961, Request No. 07-458. BE:REG. available at <http://www.nfaa.org/documents/McLeodDOJletter2007.pdf>.



According to SOTs who have been inspected in or after 2006, ATF personnel who encounter a discrepancy in NFRTR data are required to assign each discrepancy a “control number” and forward the information to the National Firearms Act Branch for resolution. Are there not tabulations, analyses, and other performance measures used to evaluate the accuracy and completeness of the NFRTR? Are there no records of the type and number of discrepancies? Associate Director McLeod’s statement that no documents responsive to Mr. Larson’s FOIA request can be found at National Firearms Act Branch is unworthy of belief.

**Giambro: A 2007 federal court case involving the NFRTR**

In 2008, the United States Court of Appeals for the First Circuit upheld the validity of NFRTR data, including its use in twice creating a Certificate of Nonexistence of a Record, in affirming a conviction for Possession of Unregistered Firearm.<sup>81</sup> The Court of Appeals based its decision mainly on *Rith*, testimony on the NFRTR’s reliability by ATF Specialist Gary N. Schaible, and stated “[a]lthough both the *Rith* court and the district court here acknowledged past

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<sup>81</sup> *United States of America vs. Dario Giambro*, United States Court of Appeals for the First Circuit, No. 08-1044, October 2, 2008, available at <http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=08-1044P.01A>. Hereafter Court of Appeals, *United States of America vs. Dario Giambro* (2008).

The Court of Appeals decision was based on *United States vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Transcript of Proceedings, before the Honorable George Singal, U.S. District Judge, Sept. 25, 2007, available at <http://www.nfaa.org/documents/GiambroTrial1.pdf>; rest of transcript continued at <http://www.nfaa.org/documents/GiambroTrial2.pdf>. Hereafter *United States of America vs. Dario Giambro* (2007).

The firearm, a Model 1908 Marble’s Game Getter Gun, is a low-powered small-game over-and-under combination gun (has .22 long rifle/.44 Game Getter barrels 12” in length) with a folding shoulder stock, and was designed mainly for trappers, hunters and outdoorsmen. The Model 1908 Game Getter is classified as “Any Other Weapon” under the NFA (26 U.S.C. § 5845(a)(5)), was last manufactured in 1914. In excellent condition, accompanied by the original box, a 12” barrel Model 1908 Game Getter is valued at \$2,500 or more. Ned Schwing, “Marble’s Game Getter Gun NFA, Curio or Relic,” *2005 Standard Catalog of Firearms: The Collector’s Price & Reference Guide*, 15th Edition. Iola, Wisconsin: KP Books. 2004 at 728.

problems with the NFRTR, both emphasized that the ATF has addressed problems with the database and improved its reliability.”

The Court of Appeals did not state that it specifically reviewed either of the 1998 Treasury IG audit reports, or the 2007 Justice IG report (all were introduced in *Giambro*), in its opinion and went on at length to affirm the District Court decision to exclude Mr. Larson as an Expert Witness. In particular, the Court of Appeals cited the District Court finding that Mr. Larson’s motion in limine testimony<sup>82</sup> was not “based upon sufficient facts or data,” not “the product of reliable principles and methods,” and that Mr. Larson had not “applied the principles and methods reliably to the facts of the case.”<sup>83</sup> The Court of Appeals stated that “suppositions . . . and conjecture abound[ed]” in Mr. Larson’s testimony, and the District Court “was well within its discretion” to “conclude that . . . the data on which Larson based his analysis was ‘purely anecdotal.’”<sup>84</sup>

The Court of Appeals decision was criticized the same day it was published.<sup>85</sup>

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<sup>82</sup> *United States of America vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Transcript of Proceedings before the Honorable George Z. Singal, United States District Judge, Sept. 24, 2007, available at <http://www.nfaaa.org/documents/GiambroMotionInLimine-LarsonTestimony.pdf>. Hereafter Larson testimony. *United States of America vs. Dario Giambro* (2007).

An enhanced version of Mr. Larson’s testimony, with insertions of the Exhibits to which he referred has been created for ease of reference to said Exhibits, is available at <http://www.nfaaa.org/documents/GiambroLarsonMotionInLimineTestimonyWithExhibits.pdf>.

<sup>83</sup> Court of Appeals, *United States of America vs. Daria Giambro* (2008).

<sup>84</sup> *Id.*

<sup>85</sup> See “CA1: First Bends to Help Government Prove Negative in Antique Gun Registration Case,” Oct. 2, 2008. The critique states: “*US v. Giambro*, No. 08-1044 affirms a conviction for possessing an antique gun. (He was acquitted of a number of state charges.) The least interesting issue is under 26 U.S.C. 5861(d), where the court holds that the defendant need not have specific knowledge of the registration requirement, but just knowledge of the statutory elements of the guns subject to the registration requirements. More interesting is the admission of the ATF’s ‘Certificates of Nonexistence’ of a registration record. The maker of the certificate testified. The First’s analysis isn’t that satisfactory. It basically says ‘other circuits have upheld their use’ even though there used to be problems. Finally, and without much analysis, the First says that it was fine for the District Court to exclude the testimony of an expert witness that had done some statistical analysis on the reliability of the ATF’s system of gun registration. Because the First speaks in broad, general terms (and throws around words like ‘Daubert’), it doesn’t

Mr. Larson's motion in limine testimony was based upon, and is not materially different from, most of the evidence presented in this motion. It was not until his motion in limine testimony in *Giambro* that Mr. Larson concluded ATF had been adding firearm registrations to the NFRTR after being confronted with NFA firearms owners with their copies of the registrations, based on the 2007 Justice IG report, and that is what he stated.<sup>86</sup> For more than a decade, Mr. Larson qualified his concerns that, e.g., ATF "may have" added registrations to the NFRTR after losing their copies or records of them, because Mr. Larson did not believe the evidence he cited was sufficiently conclusive.<sup>87</sup> It was only after the Justice IG report reported in 2007 that ATF had added registration documents to the NFRTR that he concluded otherwise (the Treasury IG confirmed his allegation that "National Firearms Act (NFA) documents had been destroyed").<sup>88</sup>

*Giambro* differs from *Friesen* because (1) Mr. Giambro never contended the NFRTR was inaccurate with respect to him, and told one of his attorneys he had not registered the firearm.<sup>89</sup>

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seem like it was taking this issue seriously." Available at <http://appellate.typepad.com/appellate/2008/10/cal-first-bends.html>.

<sup>86</sup> Larson testimony. *United States of America vs. Dario Giambro* (2007) at 67-68.

<sup>87</sup> It would have been inappropriate for Mr. Larson to attempt to estimate or publish (such as in a professional, refereed journal) a "critical error" rate of, e.g., ATF adding firearm registrations it had lost or destroyed to the NFRTR, because any such estimate would not have been based on valid and reliable evidence.

Results of Discovery sampling analysis by Treasury IG auditors in 1998 provided valid and reliable evidence of "critical errors" in the NFRTR database, but the auditors failed to extend the audit as GAGAS required and estimate the "critical error" rate, or explain the effect of these "critical errors" upon the audit. Because the NFA (26 U.S.C.A. § 5848) and the tax code (26 U.S.C. § 6103) each prohibit Mr. Larson from accessing these data, he was unable to estimate the "critical error" rate for NFRTR data.

<sup>88</sup> October 1998 Treasury IG Report at I, available at <http://www.nfaa.org/documents/TreasuryOIG-99-009-1998.pdf>.

<sup>89</sup> An unexplored aspect of *Giambro* is whether his late father — from whom Mr. Giambro inherited the Game Getter and 203 other firearms, and who instructed him to always keep an accompanying "certificate" in the original wooden box provided by the manufacturer along with the gun — had registered the Game Getter or acquired it through a lawful transfer approved by ATF, and ATF withheld the registration record to enable a prosecution after Mr. Giambro was acquitted in state court of an unrelated firearm wounding charge on grounds of self-defense. This

(2) that attorney misunderstood the NFA and attempted to register the firearm on Mr. Giambro's behalf, and (3) both attorneys petitioned the District Judge to exclude Mr. Giambro's statements and the attempt by one attorney to register the firearm, because the NFA prohibits using information resulting from an attempt to register an NFA firearm in criminal prosecutions,<sup>90</sup> which could have predisposed the District Judge to fail to adequately consider evidence at trial that the NFRTR is inaccurate and incomplete.

**In *Friesen*, this Court questioned the reliability of NFRTR data**

On September 17, 2008, this Court expressed concerns about the validity and reliability of NFRTR data in *Friesen*, in part because the "government has relied almost exclusively" upon NFRTR data in "many of its exhibits."<sup>91</sup> In further explaining the reasons that "persuade[d] me to allow the testimony [of Dr. Scheuren] and overrule the motion" by the Government to exclude him as an Expert Witness, the Court stated:

One is, of course, the duplicate records of Exhibit 100, and then the government's record of the same firearms, which both appear — I've never heard satisfactorily explained why there were two of those records. Secondly, the other relationship to the issue over the accountability of the other guns that are on the government's chart. And thirdly, the issue,

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unexplored aspect is significant because (1) there are no independent checks on whether ATF personnel are truthful about their inability to locate a registration document, (2) as the evidence in this motion has reliably documented and contends, there is reasonable doubt regarding ATF's integrity in characterizing the accuracy and completeness of NFRTR data, (3) there has been no publicly known independent evaluation of the adequacy of the search procedures ATF uses to certify to a court that a particular firearm is not registered, and (4) it is not uncommon for persons who inherit registered NFA firearms to be unaware of the need to apply to have ownership of the firearm transferred to them. In such cases, as long as the firearm remains in the chain of inheritance, ATF does not typically initiate criminal action and allows a reasonable time for the firearm to be transferred to the lawful heir. Based on Mr. Giambro's statement, he did not register the Game Getter. It is unclear whether (1) the Game Getter was registered to Mr. Giambro's father (ATF attested that it was not), and (2) Mr. Giambro was aware of the legal requirement for a registered NFA firearm to be transferred to a lawful heir after the death of the registered owner. Because Mr. Giambro may have been suffering from mental illness to some extent, which could have further complicated his legal situation, he did not fully participate in his own defense. Mr. Giambro, whose assets include a \$3.5 million passbook savings account, chose to remain in jail for 5 months until trial because he believed the Government would make corrupt use of the bail money he would have had to post to be released.

<sup>90</sup> *United States of America vs. Dario Giambro*, United States District Court, District of Maine, Criminal Action, Docket No. 07-14-P-S. Motion in Limine re: Evidence of Disclosure of Information During Compliance Attempt (26 U.S.C. 5989), July 24, 2007, available at <http://www.nfaog.org/documents/GiambroPart6.pdf>.

<sup>91</sup> *United States of America vs. Larry Douglas Friesen* (2008), Vol. VI at 1012.

the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR].<sup>92</sup>

Regarding this Court's first concern, NFRTR Custodian Denise Brown's failure to satisfactorily explain the existence in NFRTR records why there are two approved Forms 2 bearing different dates and the same serial number (E683) as that of the STEN machine gun that ATF acknowledges it lawfully transferred to Mr. Friesen in 1996, indicates a lack of knowledge of the NFRTR database and, possibly, of procedures NFA Branch personnel use to file or retrieve firearm registration documents (or records of them).<sup>93</sup>

Relevant to this Court's second concern was "the other relationship to the issue over the accountability of the other guns" the Government introduced into evidence to try and explain the characteristics of the STEN machine gun at issue in *Friesen*. ATF's characterization of "weapon description" of the STEN machine gun as a Mark II,<sup>94</sup> a point this motion will further

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<sup>92</sup> Id., Vol. VI at 1011-1012.

<sup>93</sup> Defense counsel asked NFRTR Custodian Denise Brown to explain the significance of a Form 2 dated April 20, 1986, entered as Defense Exhibit 100, bearing serial number E683, provided to the defense under Discovery. The Government said the NFRTR contains a record that a STEN machine gun bearing serial number E683 is registered to Mr. Friesen (Vol. 1, Id. at 15). Custodian Brown testified that the firearm ATF approved for transfer to Mr. Friesen was "E683, STEN Mark II . . . approved February 22, 1996" (Id. at 48-49), and that the "birthing document" for that E683 STEN Mark II is a certified Form 2 dated May 14, 1986, submitted to ATF by manufacturer Charles Erb (Id. at 68).

<sup>94</sup> At issue in *Friesen* is whether the STEN machine gun bearing serial number E683 manufactured by Mr. Erb is the same one he manufactured, or if another STEN machine gun bearing serial number E683 was substituted in its place. Consequently, also at issue is the accuracy of the STEN "weapon description" based on (1) data from the NFRTR, and documentation in the custody of ATF, and (2) examinations of the STEN seized by ATF, by ATF officials, by Mr. Erb, by transferees who previously owned the STEN, and by a defense Expert Witness. The Government contends the STEN that ATF lawfully transferred to Mr. Friesen is a Mark II, based on the description on the Form 2 submitted by Mr. Erb (Id. at 15) and by previous transferees who were available to testify, all of whom denied that the STEN in *Friesen* was the STEN they had previously owned, and by others as described below. Because one previous transferee is deceased (Vol. IV at 674-675), descriptions by other previous transferees are not described in this motion.

After examining the firearm at trial in *Friesen*, Mr. Erb testified it was not the gun he manufactured "as E683" (Vol. IV at 590); was "made to resemble a STEN Mark III" (Id. at 574); and that the gun "is a MARK III" (Id. at 579). Len Savage, an Expert Witness for the defense who examined the STEN testified: "It appears to be a Sten Mark II-S tube that was completed with Sten Mark III components." Vol. VII at 1349. Mr. Erb testified: "The barrel is the same on a Mark III and a Mark II. They are the same length." Vol. IV at 589.

develop, is relevant to the Court's second concern. Defense counsel agrees that ATF approved the lawful transfer of a STEN machine gun bearing serial number E683 to Doug Friesen in 1996, and disagrees with the Government's characterization of that STEN as a Mark II. Defense counsel notes that to validate the its description of the STEN machine gun bearing serial number E683 as a Mark II, the Government sought "confirmatory" information that the Mark II description was valid and reliable. The Government sought this "confirmatory" information because Dr. Scheuren testified: "I find the existing [NFRTR] records are quite useful in an exploratory setting, but they are not accurate enough by themselves to be used in a confirmatory way," including "for purposes of prosecution."<sup>95</sup>

The Government asked Dr. Scheuren if NFRTR data could be reliably verified each time the firearm was transferred by independently obtaining such data from each transferee, he would consider the NFRTR data to be accurate for that firearm. Dr. Scheuren replied in the affirmative. On redirect, defense counsel asked "... although you didn't come here to testify about this, if there is a break in the link, for example, one of these witnesses didn't testify, would that cause you a concern?" Dr. Scheuren answered: "[I]f there was gap in the evidence, yes. If there was a chain of custody break, yes." The significance of Dr. Scheuren's answer is that "one of these witnesses" is a deceased transferee,<sup>96</sup> which breaks the chain of evidence.

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Also at issue is whether the STEN machine gun manufactured by Mr. Erb was (1) an unfinished tube, not a finished receiver, (2) finished by Mr. Erb as a STEN Mark II, (3) finished by someone other than Mr. Erb in as a STEN Mark II, Mark II-3, or Mark III, or (4) whether Mr. Erb registered air on one or both of the Forms 2 he submitted to ATF; that is, that Mr. Erb had not physically manufactured a STEN Mark II or a finished or unfinished receiver.

The issue of who manufactured or finished the STEN machine gun in *Friesen* has not been resolved.

<sup>95</sup> Id., Vol. VI at 1024.

<sup>96</sup> Id., Vol. IV at 674-675.

This Court's third concern about *Friesen* — “the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR]”<sup>97</sup> — is justified for three major reasons.

First, the “critical error” rate of the NFRTR is currently unknown, and efforts to discern or estimate it even informally are compromised because (1) ATF officials changed the definition of a “Significant Error” in 1995 by renaming it an “Error,” and (2) Treasury IG auditors manipulated the definitions of “critical error” in 1998 at the request of NFA Branch representatives, to subjectively lower the “critical error” rate of the NFRTR. Dr. Scheuren testified that “in fact, their reworking of the original 1998 data is data fishing. And you cannot make a statement about the reliability, the probability of your being right with that data fishing, that exercise. So they should have done another audit sample.”<sup>98</sup>

Second, relevant to *Friesen*, there is no law or regulation that requires ATF to physically inspect an NFA firearm at the time of its original manufacture (or as a condition of or during any subsequent transfer), and ATF has not presented any evidence that it has done so. Because one transferee who possessed the STEN machine gun bearing serial number E683 is deceased, the chain of evidence has been broken and it is not possible to reliably confirm even by sworn statements of all living previous transferees that ATF's contention that STEN is a Mark II is correct. Even if all living transferees so testified, there is no logical reason for any of them to testify to a “weapon description” with which the Government disagrees, because doing so would put the onus of alleged illegal manufacture of the STEN upon that previous transferee and subject him to the hazards of prosecution.

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<sup>97</sup> Id., Vol. VI at 1012.

<sup>98</sup> Id., Vol. VI at 1030.

Third, although ATF has identified “weapon description” as a “critical” data field,<sup>99</sup> that is not the most critical problem with the NFRTR data ATF uses and the concern stated by this Court in *Friesen* about “the issue, the fact that the government has relied almost exclusively on many of its exhibits which are records from the [NFRTR].”<sup>100</sup> The reason is that based on ATF’s inability to physically locate original documents that literally are NFRTR data, there is reasonable doubt whether Exhibits based on NFRTR data that the Government entered into evidence in *Friesen* are based on valid and reliable evidence. During the 1998 audit ATF was unable to provide original documentation to validate computerized data routinely generated by the NFRTR. ATF’s inability to locate original documents to reliably validate computerized NFRTR data is an audit finding in the December 1998 Treasury IG report as follows:

ATF provided copies of other records to clarify the [37] discrepancies [reported in our audit results]. These other records, for example, included microfiche records and other registry database reports. We examined these records but we could not fully determine if the records sufficiently resolved the discrepancies.<sup>101</sup>

ATF’s inability to locate original documents, and the Treasury IG auditors’ inability to reliably validate computerized NFRTR data, is further discussed in an audit Work Paper that was not reviewed and signed by Audit Manager Robert K. Bronstrop until December 18, 1998, the

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<sup>99</sup> Treasury IG auditor Carol Burgan stated that “error definitions for critical data fields” include “weapon description.” Work Paper F-25, Feb. 19, 1998, at 1. During a January 21, 1998, meeting at ATF Headquarters that included ATF participants (“[redacted], Chief, Firearms and Explosives Division,” and [redacted]), Carol Burgan, Auditor [redacted], and Gary Wilk, Auditor, agreed that

**Critical errors would include: serial number of the weapon, name of weapon owner, address of owner, date of application (if applicable), date of birth, and weapon description. Address of owner is important however, owners do not have to report intrastate moves (only interstate).**

Work Paper F-22, January 26, 1998, prepared by Carol Burgan, at 1. Both Work Papers in this footnote available at [http://www.nfaa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaa.org/documents/Work_Papers_F.pdf).

<sup>100</sup> *United States of America vs. Larry Douglas Friesen* (2008), Vol. VI, at 1012.

<sup>101</sup> December 1998 Treasury IG Report, at 12, available at <http://www.nfaa.org/documents/TreasuryOIG-99-018-1998.pdf>.



same day the December 1998 Treasury IG report was published, suggesting there was the most extreme of concerns about this audit finding. In fact, less than 3 weeks before the report was issued, Treasury IG auditor Gary Wilk determined and stated the following conclusion:

**Conclusion:** Examination of the ATF of the photo copied records did not permit this auditor to fully determine whether the discrepancies continued to exist within the computerized NFRTR database. The materials did not clearly demonstrate that the computer system, typically in use, provides reliable and valid data when a search is performed. ATF did demonstrate that they have the capacity to generate various information from various sources but the original documentation remains missing and the accuracy of the documentation provided cannot be assured.

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At the outset of *Friesen* on Sept. 17, 2008, this Court stated: “the evidence that I exclude . . . is [if] it’s not relevant to this case, or secondly, it’s not reliable evidence.”<sup>103</sup> The conclusion of Treasury IG auditor Gary Wilk constitutes reasonable doubt that computerized NFRTR data are valid and reliable. To the extent any Exhibits introduced by the Government in *Friesen* are based upon computerized NFRTR data, such exhibits may not be “reliable evidence” and should be excluded by this Court as evidence in a criminal trial unless the validity and reliability of the NFRTR data upon which such Exhibits are based can be independently and reliably validated.

In addition to other evidence presented in this motion that NFRTR data are inaccurate, incomplete and, therefore unreliable, there is also valid and reliable evidence that statements by ATF inspectors (including statements of ATF inspectors involved in *Friesen*), which are based on NFRTR data may not be reliable. The reason is that the 2007 “review” of the NFRTR by the Justice IG concluded:

. . . continuing management and technical deficiencies contribute to inaccuracies in the NFRTR database. For example, NFA Branch staff do not process applications or enter

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<sup>102</sup> Work Paper F-52, November 30, 1998, prepared by Gary Wilk, at 1, available at [http://www.nfaa.org/documents/Work\\_Papers\\_F.pdf](http://www.nfaa.org/documents/Work_Papers_F.pdf).

<sup>103</sup> *United States of America vs. Douglas Larry Friesen* (2008), Vol. I, at 5.

data into the NFRTR in a consistent manner, which leads to errors in records and inconsistent decisions on NFA weapons applications. In addition, the NFA Branch has a backlog of record discrepancies between the NFRTR and inventories of federal firearms licensees that were identified during ATF compliance inspections. Further, the NFRTR's software programming is flawed and causes technical problems for those working in the database. **The lack of consistency in procedures and the backlog in reconciling discrepancies, combined with the technical issues, result in errors in the records, reports, and queries produced from the NFRTR. These errors affect the NFRTR's reliability as a regulatory tool when it is used during compliance inspections of federal firearms licensees.**<sup>104</sup> [emphasis added]

The Justice IG evaluators did not define the terms "error" or "discrepancy" in the 2007 report, and their "review" did not include determining the extent to which NFRTR data are accurate and complete. The 2007 Justice IG report acknowledges lack of an NFRTR procedures manual and inadequate training of staff.<sup>105</sup> "Supervisors' inadequate training led to variations in their direction and inconsistent decisions about approving or disapproving NFA weapons registration and transfer applications."<sup>106</sup>

**NFRTR data that cannot be independently and reliably validated should be excluded from a criminal trial**

The totality of evidence presented and documented in this motion establishes that federal law enforcement officials, and representatives of the Treasury Department, have willfully engaged in systematic efforts to cover up the fact that the NFRTR contains serious material errors, and that its error rate is currently unknown, among other issues relevant to *Friesen*. The Treasury Department's successor, the Department of Justice, has also declined to consider valid and reliable evidence that the NFRTR is inaccurate, incomplete and, therefore, unreliable.

<sup>104</sup> June 2007 Justice IG Report at iii, available at <http://www.nfaaa.org/documents/DOJ-OIG2007NFRTRreport.pdf>.

<sup>105</sup> "The NFA Branch does not provide staff with a comprehensive standard operating procedures manual," and NFA Branch staff stated that they did not have adequate written direction on how to enter data such as abbreviations in the NFRTR . . . and who has responsibility for correcting errors in the NFRTR." *Id.* at v.

<sup>106</sup> *Id.* at v-vi.

Attestations or testimonies about NFRTR data by ATF and other Government officials are, as demonstrated in this motion, not worthy of belief.

The totality of the breadth, depth and diversity of reliably documented evidence presented in this motion justifies this Court prohibiting the Government from using any NFRTR data that cannot be independently and reliably validated in prosecuting Doug Friesen in a criminal trial.

Reasonable doubt about the accuracy and completeness of the NFRTR has been reliably established by a variety of documented evidence published by a diverse array of Government entities that include (1) the Executive Branch (Justice IG, Treasury IG, ATF, Audit Services Division of the Treasury Department); (2) the Legislative Branch (Congressional Research Service, the Congress in the *Congressional Record*, Congressional Hearings in 1979 and during 1996 to 2001; and “report language” in reports on appropriations bills; and (3) the Judicial Branch (the sworn testimony of and official documents presented by ATF officials in *Friesen*).

Also regarding the Judicial Branch, in 2007 the Government implied Mr. Larson’s research was not customary or diligent when he was asked by an Assistant United States Attorney during a federal court hearing to confirm that he “ . . . never had personal or direct access to any ATF documents internally? And you’ve never had personal or direct access to the NFRTR?”<sup>107</sup> Because NFRTR data are protected from disclosure under the NFA (26 U.S.C.A. § 5848), and are also considered “tax return” information prohibited from disclosure under the tax code (26 U.S.C.A. § 6103), it was not legally possible for Mr. Larson to obtain “personal or direct access” to the NFRTR and related documents under the NFA; moreover, neither could any other person, with the limited exception discussed below.

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<sup>107</sup> Larson Testimony, *United States of America vs. Dario Giambro* (2007) at 79, available at <http://www.nfaopa.org/documents/GiambroMotionInLimine-LarsonTestimony.pdf>.

To any extent ATF may claim that NFRTR documents, data or records of them are protected "tax return" information that cannot be disclosed and decline to provide that information to defense counsel under any Discovery motion, ATF cannot decline to disclose that information to this Court. The reason is that after reviewing pertinent statutes, ATF determined in 1978:

**the return submitted by the transferor. Except for section 6103(o)(1) which authorizes the disclosure of subtitle B (i.e., Chapters 51-53) tax information to Federal employees whose official duties require such information, the only disclosure subsection regarding Chapter 53 returns and return information is section 6103(d) governing disclosure to State tax officials. That section does not extend to --**

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Since this Court is constituted by a Federal employee "whose official duties require such information," there is no legal basis for ATF to refuse to disclose "tax return" information if it is relevant and required, including potentially exculpatory evidence under *Brady*. Accordingly, to the extent this Court believes it could be better informed about the accuracy and completeness, and validity and reliability, of NFRTR data by obtaining documents or information that may constitute "tax return" information, Doug Friesen respectfully requests this Court to consider compelling ATF to disclose such information for review by this Court for these proceedings.

### Conclusion

For the reasons set forth above, Defendant requests this Honorable Court grant a hearing on this motion and, thereafter to exclude, under F.R.E. 803(10), any evidence

<sup>108</sup> Memorandum to Director, ATF, from ATF Chief Counsel regarding Freedom of Information Act Appeal of [redacted] dated August 18, 1980, bearing symbols CC-18,778 RMT, at 14, available at <http://www.nfaaa.org/documents/ATFmemoTaxInfo6103.pdf>.

derived from a search of the NFRTR that has not been independently and reliably validated.

Respectfully Submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on Thursday, March 19, 2009, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants: Mr. Edward J. Kumiega, Assistant United States Attorney.

S/ Kendall A. Sykes

# **EXHIBIT M**



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## POLITICO

### Attorney General Eric Holder held in contempt of Congress

By: [John Bresnahan](#) and [Seung Min Kim](#)  
June 28, 2012 04:43 PM EST

The House has voted to hold Attorney General [Eric Holder](#) in contempt of Congress over his failure to turn over documents related to the [Fast and Furious](#) scandal, the first time Congress has taken such a dramatic move against a sitting Cabinet official.

The vote was 255-67, with 17 Democrats voting in support of a criminal contempt resolution, which authorizes Republicans leaders to seek criminal charges against Holder. This Democratic support came despite a round of behind-the-scenes lobbying by senior White House and Justice officials - as well as pressure from party leaders - to support Holder.

Two Republicans, Reps. Steve LaTourette (Ohio) Scott Rigell (Va.), voted against the contempt resolution.

Another civil contempt resolution, giving the green light for the House Oversight and Government Reform Committee to sue the Justice Department to get the Fast and Furious documents, passed by a 258-95 margin. Twenty-one Democrats voted for that measure.

But dozens of other Democrats marched off the floor in protest during the vote, adding even more drama to a tumultuous moment in the House chamber.

The heated House floor fight over Holder capped a historic day in Washington, coming just hours after the Supreme Court, just across the street from the Capitol, issued its landmark ruling upholding most of Barack Obama's health care law. The passions of the day were evident inside the Capitol, where Democrats accused Republicans of ginning up the contempt vote for political purposes while Republicans continued to charge the Justice Department with a cover up on the Fast and Furious scandal.

The fight over the Holder contempt resolution also drew intense interest from outside groups ranging from the NAACP to the National Rifle Association.

In a statement released by his office, Holder blasted the contempt votes as "politically motivated" and "misguided," and he singled out Rep. Darrell Issa (Calif.), chairman of the Oversight and Government Reform Committee and lead Republican on the Fast and Furious probe, for special criticism.

"Today's vote is the regrettable culmination of what became a misguided - and politically motivated - investigation during an election year," Holder said in his statement. "By advancing it over the past year and a half, Congressman Issa and others have focused on politics over public safety. Instead of trying to correct the problems that led to a series of flawed law enforcement operations, and instead of helping us find ways to better protect the brave law enforcement officers, like Agent Brian Terry, who keep us safe - they have led us to this unnecessary and unwarranted outcome."



Holder added: "Today's vote may make for good political theater in the minds of some, but it is – at base – both a crass effort and a grave disservice to the American people. They expect – and deserve – far better."

White House officials also slammed House Republicans for the unprecedented contempt vote. White House Communications Director Dan Pfeiffer said GOP congressional leaders "pushed for political theater rather than legitimate congressional oversight. Over the past fourteen months, the Justice Department accommodated congressional investigators, producing 7,600 pages of documents, and testifying at eleven congressional hearings... But unfortunately, a politically-motivated agenda prevailed and instead of engaging with the President in efforts to create jobs and grow the economy, today we saw the House of Representatives perform a transparently political stunt.

However, Speaker John Boehner (R-Ohio), in a brief interview with POLITICO, blamed Holder for the standoff. Boehner said the Justice Department wanted to turn over some Fast and Furious documents - but not all - if the House agreed to drop the contempt resolution, a deal that neither Boehner nor Issa was prepared to make.

"The idea that we're going to turn over some documents, and whatever we turn over is all you're gonna get and you have to guarantee that you're never going to seek contempt, no deal," Boehner said.

Boehner added that Holder never sought a personal meeting with him to resolve the fight, despite suggestions from some Obama administration officials that Holder asked to do so.

[\(Also on POLITICO: Report: Holder said no 'BS' on guns\)](#)

Issa also said the House had to take such a move in order to get to the bottom of the Fast and Furious scandal.

"Throughout this process, I have reiterated my desire to reach a settlement that would allow us to cancel today's vote," Issa said. "Our purpose has never been to hold the Attorney General in contempt. Our purpose has always been to get the information that the Committee needs to complete its work, and to which it is entitled."

Issa also pointed out that then Speaker Nancy Pelosi (D-Calif.) backed a call for a contempt resolution against the Bush White House over the firing of U.S. attorneys back in 2008, which he raised to counter Democratic charges of partisanship.

The practical, immediate impact of the contempt votes will be minimal. Holder remains as attorney general with strong backing from Obama, and any criminal referral after the contempt vote is unlikely to go far.

In a floor speech before the vote, Boehner stressed that Holder and the Justice Department needed to be held accountable for not providing sufficient answers to Congress about what happened during Fast and Furious.

"Now, I don't take this matter lightly. I frankly hoped it would never come to this," Boehner said. "But no Justice Department is above the law and no Justice Department is above the Constitution, which each of us has sworn to uphold."

[\(Also on POLITICO: Brown: Eric Holder should resign\)](#)

But the GOP-led move infuriated other Democrats, especially minority lawmakers, who see racism and unbridled partisanship in the Republican drive to sanction the first African-American to hold the attorney general post in U.S. history.



The Democratic walkout was led by the Congressional Black Caucus, many of whom gathered outside the Capitol while their GOP colleagues moved against Holder.

Rep. Elijah Cummings (Md.), the top Democrat on the Oversight and Government Reform, charged that Republicans, led by Issa, had been unfairly targeting Holder for months.

"They are finally about to get the prize they have been seeking for more than a year – holding the attorney general of the United States in contempt," Cummings said. "In reality, it is a sad failure. A failure of leadership, a failure of our constitutional obligations and failure of our responsibilities to the American people."

Rep. Gerald Connolly (D-Va.), who serves on the Oversight panel, called the vote "a craven, crass partisan move that brings dishonor to this body."

A procedural motion by Rep. John Dingell (D-Mich.), calling for further investigation before any contempt vote, was defeated by Republicans.

During the floor debate, a group of nine black lawmakers, led by Rep. Sheila Jackson Lee (D-Texas), raised a question of the privileges of the House, accusing Issa of interfering with the investigation and withholding critical information from Democrats. The motion disapproved of Issa for "interfering with ongoing criminal investigations, insisting on a personal attack against the attorney general of the United States and for calling the attorney general of the United States a liar on national television," which "discredit[ed] ... the integrity of the House." The motion was not allowed to proceed.

For his part, Issa insisted that the House must act in order to get to the bottom of what happened in the botched Fast and Furious program.

During this under cover operation, federal agents tracked the sale of roughly 2,000 weapons to straw buyers working for Mexican drug cartels. The sting operation failed, and weapons related to the Fast and Furious program were found at the shooting scene when a Border Patrol agent was killed in Dec. 2010.

Relying on what they said was inaccurate information supplied by the Bureau of Alcohol, Tobacco, Firearms and Explosives - which comes under DOJ - senior Justice officials told lawmakers in Feb. 2011 that no guns were allowed to "walk" to Mexico. That letter was later withdrawn by the Justice Department as inaccurate.

Issa has been investigating what happened during Fast and Furious for 16 months, and he subpoenaed the Justice Department last October. Since that time, his panel has been squabbling over what documents will be turned over. Justice officials note that 7,600 pages of Fast and Furious material has already been given to Issa, but the California Republican has demanded more.

Obama asserted executive privilege on some of the documents Issa is seeking shortly before the Oversight and Government voted on party lines to approve a contempt resolution against Holder.

Despite a face-to-face session between Issa and Holder recently, the two men never reached a compromise to end the standoff.

Since the Justice Department would have to seek an indictment of Holder - a department he oversees as attorney general - no criminal charges will be brought against him. Previous administrations, including the Bush administration in 2008, refused to seek criminal charges against White House officials when a Democratic-run House passed a criminal contempt resolution over the firing of U.S. attorneys.

Boehner's office, though, is expected to submit a criminal referral to the U.S. attorney for the District of Columbia, Ronald Machen, in the next few days, according to a Republican official.

Issa's aides have already begun discussions with the House General Counsel's office over the anticipated lawsuit against DOJ, but it is not clear when that the legal challenge will be filed.

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# **EXHIBIT N**



November 20, 2013, 12:18 pm

## Feds consider new gun regs



The Obama administration is working on new gun control regulations that would target stolen and missing weapons.

Police have a hard time tracking firearms that disappear from gun shops, which "just feeds the sort of already large and existing secondary market on guns," said Sam Hoover, a staff attorney with the Law Center to Prevent Gun Violence.

It is unclear precisely what the draft regulations, drawn up by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and under review at the White House's regulations office, would do.

The ATF would not comment on the draft rule, since it has not yet been released to the public, but a description provided by the White House asserts that it would target cases where guns go missing "in transit."

Currently, gun dealers with a federal license are required to tell federal agents after they discover a firearm has gone missing, but they aren't required to do routine checks.

"They can discover a gun missing today and have no idea when it went missing, which really makes that information useless to law enforcement," said Chelsea Parsons, associate director of crime and firearms policy at the Center for American Progress.

The White House office has 90 days to review the proposed rule before releasing it to the public and allowing them to comment.

The draft rule was sent to the White House five months after the ATF completed a report that found that more than 190,000 firearms were estimated to have been lost or stolen last year. The report was one of 23 executive actions President Obama announced in January to reduce gun violence in the wake of last year's shooting in Newtown, Conn.

That report helped to shine light on an often unseen corner of the gun market, supporters of stricter gun laws say.

"I think that in the area of guns and gun violence and gun commerce, we have had a complete lack of data and a lack of information," said Parsons.

She wants the ATF to be able to take stronger action to monitor and track guns that go missing.

Since 2004, an appropriations rider has prevented the ATF from requiring gun dealers to do periodic checks. Gun rights advocates say that the measure protects innocent victims of crimes from punishment by the government.

*-- After this story was posted, the ATF contacted The Hill to clarify that the pending proposal would not affect the longstanding law preventing the agency from requiring gun dealers to check their inventories.*

**TAGS:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Gun control

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# EXHIBIT O



CR-10-01047-PHX-ROS (DKD), November 29, 2012

I N D E XTESTIMONY

WITNESS	Direct	Cross	Redirect	Recross
GARY SCHAIBLE	370	388 414	422	443
DANIEL PINCKNEY	444	455 477	482	
KENDRA TATE	486	493 496	504	
JASON FRUSHOUR	511	519		
RALPH FOX	523	532	538	
SCOTT H. COLE	540	550	552	
JOHN BROWN	554			

E X H I B I T S

Number	Ident	Rec'd
3 86-0012729 model 1919 machine gun	542	
5 86-0013454 model 1919 machine gun	524	
19 A6042075 model 1919 machine gun-PICTURE ONLY	558	
23 820101086 model 1919 machine gun	569	
31 820101592 model 1919 machine gun	569	
42 Blue ribbon certification for 86-0012726	385	
48 Blue ribbon certification for A6041868	405	
49 Blue ribbon certification for A6041869	404	
53 Blue ribbon certification for A6042000	406	
54 Blue ribbon certification for A6042001	408	
55 Blue ribbon certification for A6042026	408	

United States District Court



GARY SCHAIBLE - Direct

P R O C E E D I N G S

(Jury enters.)

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 8:46.)

THE COURT: Please be seated.

08:46:25

Good morning. We're ready to go.

All right. Counsel, ready?

MR. VANN: Yes, Your Honor. Gary Schaible.

GARY SCHAIBLE,

called as a witness herein by the Government, having been first  
duly sworn or affirmed to testify to the truth, was examined  
and testified as follows:

08:47:00

COURTROOM DEPUTY: State your name for the record,  
spell your last name, please.

THE WITNESS: My name is Gary Schaible.  
S-C-H-A-I-B-L-E.

08:47:08

COURTROOM DEPUTY: Great. Have a seat right up here.

**DIRECT EXAMINATION**

BY MR. VANN:

Q. Good morning, Mr. Schaible.

08:47:42

A. Good morning.

Q. Can you please tell the jury what it is that you do?

A. I'm well, I'm assigned to the firearms and explosives  
division in bureau headquarters of Bureau of Alcohol, Tobacco,  
Firearms & Explosives and most of my time is spent in the NFA

08:47:58

United States District Court



GARY SCHAIBLE - Direct

1 branch, which is part of this division, and I would write  
2 letters, do rule-makings, provide -- well, not technical but  
3 interpretations of the statutory requirements of the National  
4 Firearms Act, occasionally process forms. I'm a custodian of  
5 the record, make sure it's maintained.

08:48:02

08:48:19

6 Q. And how long have you been employed at ATF?

7 A. 40 years.

8 Q. 40 years?

9 A. Yes.

10 Q. And in that 40 years, where was the majority of your time  
11 spent?

08:48:27

12 A. In the National Firearms Act branch.

13 Q. What positions have you held in the National Firearms Act  
14 branch?

15 A. I have been a supervisor coordinator. I have been the  
16 branch chief and a program manager which was retitled to  
17 pre-liaison analyst.

08:48:36

18 Q. All right. Now, before we get into the details of your  
19 job and of some the things related to this case, do you know  
20 either of the defendants sitting here today?

08:48:57

21 A. I know Mr. Rodman.

22 Q. You do know Mr. Rodman?

23 A. Yes.

24 Q. Please explain your relationship with Mr. Rodman to the  
25 jury.

08:49:09

United States District Court

## GARY SCHAIBLE - Cross

1 A. Falls Church.

09:41:37

2 Q. All right. And do you have any knowledge of how he became  
3 involved in the investigation?

4 A. No.

5 Q. Now, moving on to another subject, I'm going to go through  
6 a number of the certificates, Mr. Schaible, and I'll move as  
7 fast as I can. There's a lot of them there.

09:41:51

8 Let's take number 60. Do you have that?

9 A. Yes.

10 Q. Just a cursory review. You've seen what that is?

09:42:37

11 A. Yes.

12 Q. And what do you call that in the jargon of ATF, blue  
13 ribbon certificate?

14 A. A blue ribbon certificate, yes.

15 Q. That's a common name.

09:42:49

16 A. Yes.

17 Q. Would you explain to the members of the jury what a blue  
18 ribbon certificate is?

19 A. This is where someone in the NFA branch would do a search  
20 of the registry, the National Firearms Registration Transfer  
21 Record, and report the results where they would, you know, say  
22 that after a diligent search of the record, this is what I  
23 found or didn't find, would sign off on it. It would go, then,  
24 to the branch chief who would sign off on the blue cover sheet  
25 saying that they basically recognize the specialist's signature

09:43:01

09:43:24

## GARY SCHAIBLE - Cross

1 in this case.

09:43:28

2 Q. In a few sentences, that is a certificate that everything  
3 within that packet is what's in the official record, the NFRTR;  
4 right?

5 A. Correct.

09:43:47

6 Q. Okay now, if you'll go to the first few pages, there is  
7 something called a screen shot.

8 A. Right.

9 Q. And would you describe what that is?

10 A. For each firearm in the registry, we maintain basically a 09:44:01  
11 transaction history starting with the first registration and  
12 basically moving up. So whoever it's registered to at the  
13 current time would appear on the top of the list and we do some  
14 color coding in there, that if it's a magenta color, as far as  
15 the database goes, that identifies the current registrant. 09:44:23

16 Q. And you -- in the top there, the serial number of the  
17 machine gun is described.

18 A. Correct.

19 Q. And the descriptive data, the manufacturer, the type of  
20 firearm, the model, the caliber, the barrel length and the 09:44:43  
21 overall length are all described on the top line; correct?

22 A. Correct.

23 Q. And that is the same information that appears on the Forms  
24 3 and Forms 4?

25 A. Right.

09:45:03

## GARY SCHAIBLE ~ Cross

1 Q. Those are the six items of information; correct?

09:45:03

2 A. Correct.

3 Q. So that when -- this is a snapshot of the computer as it  
4 exists on the date that is in the upper right-hand corner?

5 A. I don't have a date in the upper right-hand corner.

09:45:23

6 Q. On the screen shot, you don't have a date and time?

7 A. No, not on the screen shot, no.

8 Q. All right. But since it's in the blue ribbon certificate,  
9 that date would be the effective date that this thing was

10 prepared. This is a shot of the computer as it appeared on  
11 that date?

09:45:50

12 A. Correct.

13 Q. Now, if you'll look at -- do you have number 60?

14 A. Yes.

15 Q. The description is manufacturer, MIX; type; model. That's  
16 that. And the caliber is 9 millimeter. The barrel length is  
17 five seven five, 5.75 inches?

09:46:03

18 A. M'hum.

19 Q. And the overall length of the barrel is 11 inches;  
20 correct?

09:46:31

21 A. Correct.

22 Q. Now, if you would move down the forms to the form that  
23 went from Clark to my client, Mr. Rodman, for this machine gun.

24 A. Okay.

25 Q. How is the caliber barrel length and overall length --

09:46:58

## GARY SCHAIBLE - Cross

1 what appears on the form?

09:47:05

2 A. On the form it shows .30 caliber. The barrel length of 24  
3 and an overall length of 41.

4 Q. So each of those in the screen shot, the actual database  
5 is inaccurate; correct?

09:47:21

6 A. They differ, correct.

7 Q. Right.

8 And when the -- the person that approved it at that  
9 time, the examiner, the people that work for you are supposed  
10 to correct the record in the NFRTR to conform to the form if  
11 it's approved; right?

09:47:37

12 A. If what was shown on the form is correct, then yes.

13 Q. Well, if it's approved, that's what was approved; right?

14 A. That's what was approved. Whether it was picked up as an  
15 error is a different matter.

09:48:04

16 Q. Is it signed as approved?

17 A. Yes.

18 Q. So that the person who received this form received a form  
19 that is different than the description in the database?

20 A. Correct.

09:48:21

21 Q. Okay. And now if you'll move to the number 64. Do you  
22 have 64?

23 A. Yes.

24 Q. Would you read the description on the screen shot, just  
25 the caliber, barrel length, overall length?

09:49:02

## GARY SCHAIBLE - Cross

- 1 A. Caliber, .45; barrel length 6.25; overall length, 11. 09:49:05
- 2 Q. And now on the Form 3 that came from Clark to Mr. Rodman,
- 3 for that machine gun.
- 4 A. This is from Clark to Mr. Rodman you said?
- 5 Q. Yes. Caliber, barrel length, overall length. 09:49:35
- 6 A. Okay. It shows .30 caliber; barrel length of 24; overall
- 7 length of 41.
- 8 Q. The variants in barrel length and overall length of three
- 9 feet approximately; correct?
- 10 A. Yes. The overall length of 41. 09:50:03
- 11 Q. And once again, whoever approved that was supposed to
- 12 change the description in the database and did not; correct?
- 13 A. Correct. If they subpoenaed that, there was something
- 14 that we should look into.
- 15 Q. It would be something to look into. What was the date 09:50:26
- 16 that it was approved?
- 17 A. September 21, 2000.
- 18 Q. And in 12 years nobody looked into it; correct?
- 19 A. As far as I know.
- 20 Q. Okay. Number 58. I think that was the one you had. 57, 09:50:40
- 21 I'm sorry.
- 22 A. I have 64. Number 57.
- 23 Q. 57, yes.
- 24 A. Okay.
- 25 Q. And to save a little time, would the same discrepancies 09:51:03

## GARY SCHAIBLE - Cross

1 appear in that one? For instance, what is the serial number?

09:51:09

2 A. A6042028.

3 Q. And what does the screen shot, the actual computer, say?

4 A. 9 millimeter, 5.75 barrel length, 11-inch overall length.

5 Q. Okay. So the same discrepancies appear in that one.

09:51:32

6 A. I am getting there. Yes. The form shows .30 caliber, a  
7 barrel length of 22 inches and an overall length of 49.

8 Q. So that this, the computer, is inaccurate as far as this  
9 machine gun is concerned as of today, as of the date of the  
10 blue ribbon certificate?

09:52:17

11 A. Again, they differ. The descriptions, yes.

12 Q. And the person that has the -- that it's registered to has  
13 a different gun than the one that's described in the database;  
14 correct?

15 A. Different caliber, barrel length, and overall length, yes.

09:52:35

16 Q. And the next one is 56. To save a little time, if you  
17 could view the same data, compare the screen shot with the  
18 transfer itself and tell me if the screen shot is accurate,  
19 whether the computer is accurate.

20 A. And this would be for the transfer from Mr. Clark to  
21 Mr. Rodman?

09:53:13

22 Q. Yes. This is serial number -- what?

23 A. A6042027 and, yes, our database shows 9 millimeter with a  
24 5.75 barrel length and an 11-inch overall length. The form  
25 shows .30 caliber with a 22-inch barrel length and a 49-inch

09:53:34

## GARY SCHAIBLE - Cross

1 overall length. 09:53:39

2 Q. A different description; correct?

3 A. Correct.

4 Q. Inaccurate?

5 A. I'm sorry? 09:53:43

6 Q. Inaccurate. The database is inaccurate?

7 A. Or the form is inaccurate.

8 Q. Well, the form is approved.

9 A. Yes.

10 Q. So the database shows a different description than what's 09:53:51

11 in the database?

12 A. And, again, should this have been picked up on? Maybe so.

13 Q. When was that approved, that form?

14 A. June 1, 2002.

15 Q. Two thousand and . . .? 09:54:12

16 A. Two.

17 Q. So in 10 years nobody has picked that up?

18 A. Correct.

19 Q. Now, the next one is number 49, Mr. Schaible, the number?

20 A. A6041869. 09:54:42

21 Q. And the description on the form transferring it to

22 Mr. Rodman?

23 A. On the form it shows .30 caliber, barrel length of 24,

24 overall length of 41.

25 Q. So the database is inaccurate on this firearm? 09:55:16



## GARY SCHAIBLE - Cross

1 A. Again, they differ. The database shows .45, 5.75, and 11. 09:55:20  
2 Q. And what's the date of the transfer?  
3 A. February 21, 2001.  
4 Q. So that hadn't been picked up in 11 years?  
5 A. Correct. 09:55:36  
6 Q. And the next one is number 48.  
7 A. Okay.  
8 Q. Serial number?  
9 A. A6041868.  
10 Q. The description in the screen shot, the database? 09:56:12  
11 A. Shows .45 caliber, 5.75 barrel and 11 overall.  
12 Q. And the form transferring it from Clark to my client?  
13 A. .30 caliber, 24-inch barrel length, 41-inch overall.  
14 Q. Okay. The computer, once again, is inaccurate?  
15 A. It's different. 09:56:37  
16 Q. And the next one is number 69.  
17 A. Okay.  
18 Q. Serial number?  
19 A. 820101457.  
20 Q. And description? 09:57:10  
21 A. In the database, it's a .45 caliber, the barrel length of  
22 6.25 and overall length of 11.  
23 Q. And the form transferring it from Clark to Mr. Rodman?  
24 A. Shows a caliber of .30, a barrel length of 22, and an  
25 overall of 36. 09:57:27

## GARY SCHAIBLE - Cross

1 Q. Okay. And the date of the transfer?

09:57:28

2 A. February 20, 2008.

3 Q. Okay. So the database is inaccurate for that machine  
4 gun?

5 A. Different.

09:57:46

6 Q. And the final one for Mr. Rodman is number 68.

7 A. Okay.

8 Q. The serial number?

9 A. 820101546.

10 Q. And the description in the database?

09:58:27

11 A. .45 caliber, 6.25 barrel length, 11-inch overall.

12 Q. All right. And what is the description of that machine  
13 gun on the transfer form from Clark to my client?

14 A. It is .30 caliber, 22-inch barrel length, and 36-inch  
15 overall.

09:58:48

16 Q. Okay. And the date of that transfer is the same as the  
17 other; right?

18 A. I don't remember what the other one is. February 20,  
19 2008.

20 Q. February 20, correct. And the database is inaccurate once  
21 more. That is a different machine gun?

09:58:57

22 A. Shows a difference in description, yes.

23 Q. We're nearing the end. I'm sure you'll be happy to hear  
24 that.

25 The next one is number 53.

09:59:13

## GARY SCHAIBLE - Cross

1 A. Okay. 09:59:37

2 Q. This is a serial number -- what is the serial number?

3 A. A6042000.

4 Q. And the description of the machine gun as it appears in

5 the database? 09:59:55

6 A. .45 caliber, 5.5 -- I'm sorry, 5.75 barrel length, 11-inch

7 overall.

8 Q. And the transfer form from Clark to -- who was the

9 transferee on that one?

10 A. I'm sorry. Could you ask me that again? 10:00:15

11 Q. The Form 3 transferring it from Clark, who is the

12 transferee?

13 A. From Mr. Clark, I show a transfer to Mr. Clark but

14 nothing --

15 Q. It was never transferred? 10:00:58

16 A. -- nothing transferred from Mr. Clark.

17 Q. What is the description of the machine gun that was

18 transferred to Mr. Clark?

19 A. Okay. It's not shown as a machine gun.

20 Q. It's not a -- 10:01:10

21 A. It's shown as an any other weapon.

22 Q. Oh. Okay. And does the description match?

23 A. No.

24 Q. Okay. So that one is inaccurate?

25 A. Descriptions differ between a form and a database, yes. 10:01:25

## GARY SCHAIBLE - Cross

1 Q. The database does not match the description of the 10:01:30  
2 registration form?

3 A. Right.

4 Q. Number 54, what's the serial number of that one?

5 A. I'm sorry, 54 or 64. 10:01:45

6 Q. 54. Five four.

7 A. Okay. That's A6042001.

8 Q. All right. And what is the -- how is that described in  
9 the computer?

10 A. .45 caliber, 5.75 barrel length, 11 overall. 10:02:21

11 Q. And how is that same machine gun described on the form  
12 transferring it from Mr. Clark to a Richard Simpson?

13 A. Okay. It is shown as a .30 caliber with a barrel length  
14 of 24 inches and an overall length of 40.

15 Q. And what's the date of that transfer? 10:02:50

16 A. October 2, 2003.

17 Q. All right. And so that one is inaccurate. The computer  
18 has an inaccurate description.

19 A. It has a different description, yes.

20 Q. Okay. Number 55. 10:03:05

21 A. Okay.

22 Q. What serial number is that?

23 A. It is A6042026.

24 Q. And the description in the computer, in the NFRTR?

25 A. Shows 9 millimeter, 5.75 barrel length, and an 11-inch 10:03:40

## GARY SCHAIBLE - Cross

1 overall length.

10:03:46

2 Q. Now, that machine gun or machine gun with that serial  
3 number was transferred from Clark to Richard Simpson. Do you  
4 have the Form 3 there -- Form 4, I'm sorry.

5 A. Yes, sir.

10:04:00

6 Q. And how is that machine gun described there?

7 A. .30 caliber, 23-inch barrel, 45-inch overall.

8 Q. And so the -- once again, the database is inaccurate?

9 A. It is different, yes.

10 Q. Is it accurate?

10:04:20

11 A. Well, the 9 millimeter, 5.75, and 11 were what was  
12 reported upon manufacture I would believe?

13 Q. That would be on the Form 2 from the date of birth.  
14 Sometime before '86?

15 A. Right.

10:04:37

16 Q. Okay. And it had been transferred a number of times after  
17 that?

18 A. Yes, it has.

19 Q. And anytime the description changes and is approved, the  
20 database must be corrected; correct?

10:04:50

21 A. If the examiner picks up on it and sees a difference, yes.

22 Q. That's what the examiner is supposed to do?

23 A. Correct.

24 Q. All right.

25 Now, the next one is number 59.

10:05:05

## GARY SCHAIBLE - Cross

1 A. Okay. 10:05:27

2 Q. What is the serial number of that, Mr. Schaible?

3 A. A6042030.

4 Q. All right. And what does the computer say is the  
5 description of that machine gun? 10:05:40

6 A. 9 millimeter, 5.75 inch barrel, 11 overall.

7 Q. All right. And that machine gun or machine gun with that  
8 serial number was transferred from Mr. Clark to Richard  
9 Simpson, correct, on the Form 4?

10 A. Correct. 10:05:57

11 Q. And what is the date of that transfer?

12 A. March 24, 2003.

13 Q. All right. And how is that machine gun described on the  
14 form?

15 A. .45 caliber, 10-inch barrel, 33-inch overall. 10:06:07

16 Q. Correct. Once again, the database is inaccurate.

17 A. It is different, yes, sir.

18 Q. The next-to-the-last one is number 63.

19 A. Okay.

20 Q. Serial number is what? 10:06:51

21 A. A6044921 (sic).

22 Q. And what's the description of that machine gun in the  
23 database?

24 A. It's a .45 caliber, 5.75 barrel, and 11-inch overall.

25 Q. And that machine gun was transferred on a Form 4 from 10:07:11