

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEVORAH HALBERSTAM and
DAVID HALBERSTAM as
Joint Administrators of the
Estate of the decedent,
AARON HALBERSTAM,
and NACHUM SOSONKIN,

Plaintiffs,

CV 95-3323

-against-

: United States Courthouse
Brooklyn, New York

S.W. DANIEL, INC.;
MOUNTAIN ACCESSORIES CORPORATION;
COBRAY FIREARMS, INC.;
F.M.J., INC.; THE ULTRA FORCE, INC.;
R.P.B. INDUSTRIES, INC.;
LEINAD, INC.; SYLVIA DANIEL;
WAYNE DANIEL; and RASHID BAZ,

Defendants.

: March 23, 1998
9:00 o'clock a.m.
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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Plaintiffs:

CRAVATH SWAINE & MOORE
For Plaintiffs Halberstam
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475
BY: THOMAS D. BARR, ESQ.
SANDRA C. GOLDSTEIN, ESQ.
KATHERINE FORREST, ESQ.
KARIN GUIDULI, ESQ.

WEIL GOTSHAL & MANGES, LLP
For Plaintiff Sosonkin
767 Fifth Avenue
New York, New York 10153
BY: RICHARD J. DAVIS, ESQ.

APPEARANCES (Cont'd):

(Continued...)

For the Defendants:

DANIEL KANE, P.C.
133 Nassau Street, N.W.
Atlanta, Georgia 30303

FRIEDMAN & HARFENIST, ESQS.
42-40 Bell Boulevard - Suite 402
Bayside, New York 11361

BY: STEVEN J. HARFENIST, ESQ.
RUSSELL C. FRIEDMAN, ESQ.

ALSO PRESENT:

Alicja Biskupska, paralegal
FRIEDMAN & HARFENIST, ESQS.

Devorah Halberstam

Sylvia Daniel
Wayne Daniel

Court Reporter:
Assisted by:

Diana Pereira, RPR, CRR
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D. Pereira, OCR

1 THE COURT: Is there any application? I redid,
2 slightly, the proposed charge. I had it retyped. It has been
3 distributed as Court Exhibit 13. It is essentially the charge
4 you had Friday night gussied up just slightly.

5 MR. HARFENIST: Before we bring the jury in, a
6 couple of procedural matters.

7 Initially, the defendants intend to put in portions
8 of the deposition of a non-party witness conducted by the
9 plaintiff, Russell Weekes. The plaintiffs videotaped and
10 transcribed the deposition of Mr. Weekes.

11 What we had planned to do is read the deposition
12 transcript, portions of the transcript into evidence rather
13 than go through the whole process of editing the videotape and
14 using portions of the videotape. The rule does provide for,
15 in the court's discretion, use in either form.

16 THE COURT: For what?

17 MR. HARFENIST: In the Court's discretion, the use
18 in either form. We think it is more efficient, much more cost
19 effective.

20 THE COURT: I will allow you to do it that way if you
21 like.

22 MR. BARR: I'm sorry?

23 THE COURT: If the party wants to present it by
24 written deposition, that's appropriate, I would suppose.

25 MR. BARR: Let me call your attention to

1 Rule 32 (c), the last sentence. "On request of any party in a
2 case tried before a jury, deposition testimony offered other
3 than for impeachment purposes shall be presented in
4 non-stenographic form, if available, unless the court for good
5 cause otherwise..."

6 We would request the videotape be played rather than
7 excerpts read from it.

8 THE COURT: Are there parts of it that have to be
9 excised?

10 MR. HARFENIST: We are not using the whole witness's
11 testimony. We are only using portions of it.

12 THE COURT: Who is going to prepare the videotape?

13 MR. HARFENIST: That would have to be done either by
14 the company that prepared it or another company. It wasn't
15 our deposition, judge. It was the plaintiff's deposition.

16 THE COURT: How much of it is going to be excised?
17 If it is just little portions, you can use fast forward and
18 turn off the sound.

19 MR. BARR: I think we can do it that way.

20 MR. HARFENIST: We will play the whole thing. It
21 doesn't matter to us.

22 THE COURT: How long is it?

23 MR. HARFENIST: It is very long. It is a three- or
24 four-hour deposition.

25 THE COURT: I don't want a three- or four-hour

1 deposition played. How much of it are you going to use?

2 MR. HARFENIST: I would say it will take under 45
3 minutes.

4 THE COURT: For your part?

5 MR. HARFENIST: Even including the portions the
6 defendants have now designated. I don't think it is an hour,
7 tops.

8 THE COURT: If the plaintiffs want to use it and they
9 have it, let them use it. Somebody is going to have to take
10 responsibility to make sure that only those portions are
11 played. It is not an insuperable problem to fast forward and
12 turn off.

13 MR. HARFENIST: The problem is to necessarily figure
14 out, based from what line to what line, and monitor the VCR at
15 the same time.

16 THE COURT: If the plaintiffs think they can do it,
17 let them try it.

18 Can you do it?

19 MR. BARR: We can do it tomorrow. We haven't agreed
20 on designations and counter-designations yet.

21 THE COURT: What about tomorrow?

22 MR. HARFENIST: We have no problem putting it in
23 tomorrow morning.

24 THE COURT: Okay. Try to work it out. I prefer the
25 jury to see the person's picture as well.

1 MR. HARTENIST: It just seemed logistically extremely
2 difficult to do it.

3 THE COURT: I understand. If the plaintiffs say they
4 can overcome that problem, that's fine. Just the portions
5 that both of you are designating.

6 MR. HARTENIST: That would be the entire portions
7 agreed on by plaintiff and defendant.

8 MR. BARR: We have got another step to follow, which
9 is the defendants must now counter our counter-designations
10 and then we can put the tape together.

11 THE COURT: That doesn't seem to be a big problem.
12 Okay. What else?

13 Anything else?

14 MR. HARTENIST: One other matter. The defendants,
15 in light of Plaintiff Baz invoking his rights under the Fifth
16 Amendment, want to read and submit before the jury portions of
17 the deposition that was conducted by the plaintiffs in June, I
18 believe of 1996. The entire transcript is 13 pages. Just so
19 the record is clear, other than the first page, the plaintiffs
20 wish to read portions of Mr. Baz's depositions from page 5
21 line 14 through the conclusion of the deposition, which is on
22 page 14. It is about six pages.

23 THE COURT: All right. Then the plaintiffs can read
24 whatever portions they want.

25 MR. DAVIS: Your Honor, the only issue on the

1 deposition would be Mr. Baz refused to acknowledge he told the
2 truth at the deposition. If the deposition should come in, we
3 also request the affidavit he provided to the defendants and
4 was previously filed in the court also be received.

5 THE COURT: All right.

6 MR. HARTENIST: I have no problem with that, Judge.

7 THE COURT: Okay. Whatever portions either side
8 wants on those two documents will come in.

9 You will need the age at the time of Aaron
10 Halberstam's death of the mother and father.

11 MR. BARR: The age.

12 THE COURT: The age so we can use the proper tables.

13 MR. KANE: I have one other matter if I may be
14 heard.

15 THE COURT: Yes.

16 MR. KANE: We had brought to the court's attention
17 the use of the firearm parts on the Internet. I would like
18 some direction from the court whether the court will allow
19 that as an evidentiary showing in this case.

20 THE COURT: Is that prior to the death?

21 MR. KANE: The Internet is kind of a dynamic
22 medium. I don't have any way to show that the Internet screen
23 which I would pull up was shown prior to the incident of March
24 of '94.

25 THE COURT: When did you pull it up?

1 MR. KANE: In the dynamic, I would have to pull it
2 up right in this courtroom. I brought a laptop.

3 THE COURT: Isn't there a way of preserving it?

4 MR. KANE: There is a way of downloading. In fact,
5 the plaintiff's witness, Pitta, as to one of his exhibits he
6 reviewed had a copy of one of the web sites downloaded and
7 attached to his resume.

8 THE COURT: I am not going to permit it unless we
9 have some time sequence. As you say, it is dynamic, changing
10 constantly. The question really is prior to the death.

11 MR. KANE: If I may bring to the Court's attention
12 the plaintiff did submit a witness, Ti-Hua Chang, that
13 testified he bought parts subsequent to the incident from I
14 believe one of the defendants here.

15 It would be our purpose to show that, again, sale of
16 firearm parts is not limited to these defendants before,
17 during, or after the incident, that there are other vendors.
18 In fact, you can go right to the electronic highway if you so
19 choose.

20 THE COURT: That was some years ago. I understand
21 the problem. It is inherently a problem of this, as you say,
22 dynamically-changing situation.

23 What is the plaintiff view?

24 MR. DAVIS: We would oppose it, yes. We have put in
25 some evidence of post-event sales. There are two reasons for

1 that. One is that we have also put in evidence through the
2 deposition testimony of Sylvia Daniel and Wayne Daniel of the
3 practices described in the post-instance preceded; in other
4 words, they weren't asking questions, that they were just
5 sending kits out in response to people who would call up. The
6 practice had already been established by those witnesses as
7 well as by Juan Torres as if it existed before March 1, 1994.

8 Second, we were put in the position of having to rely
9 on that because of post transactions, post-event transactions,
10 because the defendants, with the exception of several months
11 of invoices, never produced any invoices preceding the event.
12 They don't exist for one reason or another. I think those two
13 reasons, and the fact that we are not aware of any of evidence
14 at any time before the incident these parts were sold on the
15 Internet.

16 THE COURT: Why don't you download it. You can
17 present it. I will take it a look at it.

18 MR. KANE: I have it. If I may approach.

19 THE COURT: Mark it as a proposed exhibit.

20 What number?

21 THE CLERK: 14. Defendant's 14.

22 (Defendant's Exhibit 14 in evidence.)

23 MR. KANE: I brought my laptop if you want to see
24 it.

25 THE COURT: No, I don't want to see it.

1 THE COURT: Anything further?

2 MR. KANE: Does the court choose to address the jury
3 verdict form at this time?

4 THE COURT: No, because I fooled around a bit with
5 it. You have a redraft as of this morning. Why don't you
6 look at my draft, which is Court Exhibit 13, and then we can
7 discuss it when we get a chance.

8 MR. KANE: I would ask the court to include in any
9 of its draft the duty as outlined by the Second Circuit Court
10 of Appeals in McCarthy v. Ollen.

11 THE COURT: Duty of what?

12 THE COURT: The duty of a firearm manufacturer or
13 vendor of parts.

14 THE COURT: Write it out.

15 MR. KANE: We have it. It was in submission form.
16 It was excluded from the draft we have. We feel that is
17 binding authority on this district court, and the jury should
18 hear it.

19 THE COURT: Let me see it. I would prefer we take my
20 draft and use that as a basis for discussion. If you have
21 changes, if you give me the changes by page and line, what you
22 want in and what you want out and what you want modified, we
23 can proceed much more expeditiously.

24 MR. DAVIS: We will do that at the charging
25 conference. Your Honor, I would like to know. He has

1 referred to something by Tom Bowers. My co-counsel has spoken
2 to Mr. Bowers. He said he never sold anything before 1995.

3 THE COURT: All right.

4 MR. BARR: I would like have that document to make a
5 copy of it so we can see it.

6 THE COURT: Go ahead.

7 MR. KANE: You already have a copy.

8 MR. BARR: No, I don't.

9 (Brief recess).

10 (Jury enters courtroom).

11 THE COURT: Good morning, everybody.

12 Call the witness, please

13 **WAYNE ERNEST DANIEL**

14 called by the Defendant, having been previously
15 duly sworn, continued testifying as follows:

16 THE COURT: Remember, the witness's testimony was
17 interrupted because we had other witnesses that had to leave.

18 You are still under oath, sir.

19 Give your name again, please, to the reporter.

20 THE WITNESS: Wayne Ernest Daniel

21 **CROSS-EXAMINATION**

22 **BY MR. BARR:**

23 Q Good morning, Mr. Daniel.

24 A Good morning.

25 MR. BARR: Your Honor, I need to have this marked as

1 a plaintiff's exhibit. It is Plaintiff's Exhibit 403.

2 THE COURT: 403.

3 MR. BARR: For identification.

4 (Plaintiffs' Exhibit 403 for identification.)

5 THE COURT: Okay.

6 MR. BARR: I hand to the court a copy of 403.

7 THE COURT: Is this going to be offered in evidence?

8 MR. BARR: Yes, it is, your Honor.

9 THE COURT: Any objection?

10 MR. KANE: I would like to reserve objection.

11 THE COURT: All right. Objection reserved. Deem it
12 marked subject to being stricken.

13 (Plaintiff's Exhibit 403 in evidence, subject to
14 being stricken.)

15 Q Good morning, Mr. Daniel.

16 A Good morning.

17 Q So that we can all be sure we are on the same page, this
18 is an exhibit that I prepared. Actually, I haven't, but some
19 of my staff has, based on the exhibits that are already in
20 evidence. Let me just take you through part of it.

21 The corporation called R.P.B. Industries, Inc. was
22 formed by you in the year 1978; correct?

23 A No, sir.

24 Q When was it formed?

25 A R.P.B. Industries, Inc. was formed by three gentlemen by

1 the name of Robey, Pitts, and Ruben in 1976.

2 Q When did you form R.P.B. Industries, Inc.

3 A When did I buy into R.P.B.?

4 Q Yes.

5 A That would have been in June of 1978.

6 Q All right.

7 R.P.B. Industries, Inc. was then dissolved in 1982,
8 correct?

9 A End of '82, first part, beginning of '83; yes.

10 Q Then it was reformed in 1984?

11 A Yes, sir, sometime in '84.

12 Q By this time, by the reformation of R.P.B. Industries,
13 Inc., you were the 100 percent stockholder?

14 A That's correct.

15 Q And the president and the director of the corporation?

16 A Correct.

17 Q And that corporation, R.P.B., was dissolved in 1990 on
18 July 11th; correct?

19 A May have been administratively dissolved by the state. I
20 believe I was in business in '84 and the latter part of '85.

21 Q You continued in business beyond that date?

22 A The second part of, maybe, '84. Sometime in late '85, I
23 believe.

24 Q You are saying it was dissolved in 1990?

25 A The state may have dissolved it. I did not dissolve that

1 corporation, formally dissolve it. After a certain period of
2 time, the state automatically dissolves it.

3 Q All right.

4 Mountain Accessories Corporation, that was
5 incorporated in 1993?

6 A '93, yes, sir.

7 Q In Tennessee?

8 A In Tennessee.

9 Q And you were a one hundred percent stockholder?

10 A That's correct.

11 Q And it was dissolved likewise in 1997?

12 A Mountain Accessories is current, sir.

13 Q Is what?

14 A It is a current corporation.

15 Q It still exists?

16 A Yes.

17 Q And F.M.J. Incorporated was formed in 1993?

18 A That's correct.

19 Q Same time as MAC?

20 A Yes.

21 Q It is also still in existence?

22 A That's correct.

23 Q And it is also a corporation of which you own a hundred
24 percent?

25 A Correct.

1 Q All right. S.W.D., Inc. is a corporation owned by Sylvia
2 Daniel?

3 A I believe it was at one time; yes, sir.

4 Q Do you know when it was formed?

5 A If it was formed.

6 Q When it was formed.

7 A I believe that would have been in 1982.

8 Q Has it been dissolved, also?

9 A That I wouldn't know.

10 Q You don't know one way or the other?

11 A No, sir.

12 Q Do you know if Sylvia Daniel owns a hundred percent of
13 the stock of that corporation?

14 A That I would not know.

15 Q How about Cobray Firearms, do you know when that was
16 formed?

17 A No, sir, I don't know what year that was formed.

18 Q It exists, does it not?

19 A I don't think it exists today, no, sir.

20 Q Do you know one way or the other?

21 A No, sir, I don't.

22 Q How about a corporation called Ultra Force; do you know
23 when that was formed?

24 A What year, no, sir.

25 Q Do you know who owns that corporation?

1 A My understanding, Sylvia Daniel has stock in the
2 corporation. I don't know whether other people do or not.

3 Q Does that corporation still exist?

4 A I believe it is Ultra Force, Inc., I believe with the
5 Georgia corporation. Maybe UFO or Ultra Force Organization, I
6 am not sure.

7 Q But it still exists?

8 A Yes.

9 Q One more corporation, Leinad. Is that Daniel spelled
10 backwards?

11 A I believe it is, yes, sir.

12 Q That was formed, your understanding is, in 1991?

13 A Somewhere in that time period. I am not exactly sure
14 when.

15 Q Is that corporation still in existence?

16 A I believe it is, yes, sir.

17 Q Were you at any time ever a director of S.W. Daniel,
18 Inc.?

19 A I believe when it was first set up, S.W. Daniel was
20 located at 215 Chester Avenue. It was a building that I owned
21 at the time. Yes, sir.

22 Q Were you a director?

23 A I believe that's true.

24 Q It was located in a building you owned. You were a
25 director of that corporation?

1 A Correct, for a short period of time.

2 MR. BARR: Your Honor, I think we should mark the
3 overlay Plaintiff's Exhibit 403 A.

4 THE COURT: Okay. So marked.

5 (Plaintiff's Exhibit 403 A in evidence, subject to
6 being stricken.)

7 THE COURT: Again, subject to being stricken, it is
8 in evidence.

9 Q Is it correct, Mr. Daniel, that R.P.B. Industries, Inc.
10 acquired the Cobray trademark in 1978?

11 A Either '78 or '79. I am not sure of the exact date.

12 Q How does the date December the 5th, 1978, sound to you;
13 about right?

14 A Could be. I am not sure.

15 Q All right. R.P.B. -- withdrawn.

16 The Cobray trademark was owned by R.P.B. from 1978 or
17 early 1979 on, correct?

18 A Until '82, yes, sir.

19 Q And in 1982 you acquired the trademark?

20 A In '82, yes, sir.

21 Q Actually, R.P.B. sold the trademark to a man named
22 Goddard and he then, within about a month, sold it to you; is
23 that correct?

24 A Yes, sir. There was a gentlemen at the auction that
25 bought a lot of parts and accessories as well as the

1 trademark, and I bought the trademark back a month or two,
2 later.

3 Q After you bought the trademark, after the trademark went
4 from R.P.B. to Goddard to you, you then licensed the trademark
5 to S.W.D. in 1982?

6 A I don't know whether it was '82 or '83. Somewhere along
7 there was discussion between myself and Sylvia that
8 S.W. Daniel, that I think she was having problems with someone
9 that was using the trademark. She needed some sort of
10 paperwork showing that she did actually have the right to use
11 the trademark. That would have been in '82 or '83, I am not
12 sure.

13 Q So you executed a license of the trademark from you
14 personally to S.W.D. Corporation?

15 A Some form of license agreement, yes.

16 Q Which was a corporation, you understood, completely owned
17 by Sylvia Daniel?

18 A S.W. Daniel, Inc., yes, sir.

19 Q Now, the license was for a period of five years?

20 A I don't remember.

21 Q Do you remember personally licensing the trademark, the
22 Cobray trademark, again to S.W.D. in 1987?

23 A I don't remember. I could have.

24 Q What do you remember about the license; was it an
25 exclusive license?

1 A I don't remember, sir.

2 Q Was there a fee charge for the license?

3 A Might have been a nominal fee. I am not sure.

4 Q Nominal fee, a couple of dollars, something like that?

5 A A dollar or more, yes, sir.

6 Q I'm sorry?

7 A One dollar or more, probably.

8 Q All right.

9 Who owns the trademark now?

10 A I am not sure anyone owns it, probably, because of public
11 domain; so many people have used it in the past.

12 MR. BARR: Your Honor, could we have an answer to
13 the question without the editorials.

14 THE COURT: Ask the question again, please.

15 Q Do you presently own the trademark; yes or no?

16 A I don't know.

17 Q You don't know?

18 A No, sir.

19 Q Okay.

20 Have you ever brought any suits for injunctions
21 against people who were using the trademark in your view
22 unlawfully?

23 A Have I personally?

24 Q Yes.

25 A Not that I remember, no, sir.

- 1 Q Not that you remember?
- 2 A Not that I remember.
- 3 Q Okay..
- 4 You testified about a man named Mitchell Werbell?
- 5 A Correct.
- 6 Q Do you remember that?
- 7 A Yes.
- 8 Q I notice that in the transcript, that Werbell was spelled
- 9 R U B E L. How do you spell it?
- 10 A W E or W O R B E L L, I believe.
- 11 Q W E R B E L L?
- 12 A Correct.
- 13 Q Mitchell Werbell, III; correct?
- 14 A The third, yes.
- 15 Q Do you remember a trademark lawsuit that R.P.B.
- 16 Industries brought against Mr. Werbell in the form of a
- 17 counterclaim?
- 18 A The counterclaim I don't remember. I remember
- 19 Mr. Werbell sued R.P.B. Industries, Inc., I believe, for
- 20 infringement.
- 21 Q And R.P.B. Industries sued Mr. Werbell?
- 22 A The counterclaim probably, yes.
- 23 Q Who won that lawsuit?
- 24 A I believe R.P.B. Industries did.
- 25 Q And you got a permanent injunction against Mr. Werbell

1 using the Cobray trademark?

2 A I believe that is correct.

3 Q And that was when, sir?

4 A Late '70s, sometime, '80, maybe.

5 Q Let me show you --

6 MR. BARR: May I approach, your Honor.

7 THE COURT: Yes.

8 Q Let me show you a copy of what has been marked in
9 evidence as Plaintiff's Exhibit 140 (handing). I ask you,
10 please, to direct your attention to the last page.

11 Does Mr. Kane's signature appear on that page?

12 A Yes, sir.

13 Q Does your signature, Wayne Daniel, appear on that page?

14 A Wayne Daniel, President of R.P.B.; yes.

15 Q Do you remember filing this counterclaim?

16 A I don't remember filing the counterclaims. It's been too
17 many years. I do remember the claim where R.P.B. Industries
18 was sued.

19 Q You just remember that R.P.B. Industries was sued; you
20 don't remember that you sued Mr. Werbell?

21 A I remember the litigation. I don't remember this exact
22 document.

23 Q Who won the litigation? You did, didn't you?

24 A I believe R.P.B. Industries did, yes, sir.

25 Q And the result of that litigation is that you got a

1 permanent injunction against Mr. Werbell from ever again using
2 the Cobray trademark?

3 A I believe that is correct.

4 Q And that was in 1983?

5 A This verification is signed in '81. I am not sure when
6 the case was finished.

7 Q All right.

8 Was that only lawsuit that was brought against anyone
9 for using the trademark?

10 A I think there was a lawsuit by S.W. Daniel, Inc. against
11 two or three individuals after this.

12 Q Could I hear that read, again, please.

13 THE COURT: Yes, sir.

14 (Record read.)

15 Q Who was that lawsuit against?

16 A I think it was Military Armament Corporation in Texas,
17 James Leatherwood, Euclid Sales -- E U C L I D -- Sales in
18 Atlanta. There was another company in Powder Springs,
19 Georgia, I believe.

20 Q Perry Smith?

21 A Perry Smith.

22 Q Doing business as Gunworks, Inc.?

23 A I don't remember the Gunworks, Inc., but Perry Smith,
24 yes, sir.

25 Q I show you a copy of Plaintiff's Exhibit 148 (handing).

1 Can you identify that, sir?

2 A I believe this is the complaint against Miltron
3 Corporation, Perry Smith, and Euclid Avenue Savings.

4 Q The lawsuit is by S.W. Daniel, Inc.?

5 A Yes, S.W. Daniel, Inc., plaintiff.

6 Q Also represented by Mr. Kane?

7 A That's correct.

8 Q And that is the same Mr. Kane who is here present in the
9 courtroom as your counsel?

10 A Mr. Daniel Kane, yes.

11 Q What was the result of that lawsuit, sir?

12 A I believe S.W. Daniel, Inc. won the lawsuit.

13 Q What was the result; was there a permanent injunction
14 issued?

15 A I am not sure of whether there was a permanent
16 injunction.

17 Q But, in any case, you know that the result of the lawsuit
18 was that Military Armament Corporation, Perry Smith doing
19 business as Gunworks, and Euclid Avenue Sales Company were all
20 ordered not to use the Cobray trademark again?

21 A Either permanently or temporarily, I am not sure which.

22 Q Both temporarily and permanently, weren't they?

23 A That I'm not sure.

24 Q All right.

25 I show you a copy of Plaintiff's Exhibit 148 in

1 evidence. I ask you if that is a consent order signed by the
2 defendants and by Mr. Kane on behalf of S.W. Daniel granting a
3 temporary and permanent injunction against the use of the
4 trademark and name Cobray?

5 A "It appears that a temporary and permanent order and
6 injunction against the defendant below is proper."

7 Q Any more lawsuits for injunction on behalf of Cobray?

8 A Not that I know of. Could have been.

9 Q Could have been?

10 A Could have been. Not that I know of.

11 Q I show you a copy of Plaintiff's Exhibit 155 (handing).

12 I ask you what that is.

13 A Looks like a complaint for injunctive relief, S.W. Daniel
14 plaintiff vs. Euclid Avenue Sales.

15 Q What was the result of that lawsuit, sir?

16 A This says S.W. Daniel, Inc., order permanently enjoining
17 the defendants and granting S.W. Daniel, Inc. such order and
18 further relief.

19 Q You don't know what happened?

20 A No, sir.

21 Q Now, let me get this straight. At this point in time,
22 you were the owner of the trademark? Is that correct, you
23 owned it?

24 A Correct.

25 Q And S.W. Daniel was a licensee from you personally?

1 A That's correct.

2 Q You don't know what happened to these lawsuits?

3 A This one I do not know.

4 Q All right.

5 I show you, sir, a copy of Plaintiff's Exhibit 157.
6 (handing). I ask you if you can identify it.

7 A Yes, sir. This is a consent order, S.W. Daniel, Inc.
8 plaintiff vs. Euclid Avenue Sales. Order and adjudicated
9 motion for a temporary and permanent restraining order against
10 the defendant is hereby granted.

11 THE COURT: Excuse me. There are a whole series of
12 Euclid, 155, '56 and '57. The Euclid series is not in
13 evidence.

14 MR. BARR: Yes, your Honor, my associate just
15 informed me of that.

16 THE COURT: Are you offering them?

17 MR. BARR: Yes, sir.

18 THE COURT: All right. Admitted.

19 (Plaintiff's Exhibits 155, 156 and 157 in evidence.)

20 Q Any more lawsuits that you know about?

21 A Not that I know of.

22 Q Do you know about a lawsuit called S.W. Daniel against
23 Euclid Avenue Sales Company?

24 THE COURT: Excuse me. Are you offering 150 as
25 well?

1 MR. BARR: What I was offering, your Honor was 155
2 and 157.

3 THE COURT: Okay. 150 is not in evidence? Okay.

4 MR. BARR: I think it is.

5 THE COURT: If you offer it, I will admit it.

6 MR. BARR: I offer it.

7 THE COURT: Okay. Admitted.

8 (Plaintiff's Exhibit 150 in evidence.)

9 Q Are you aware, sir, of a lawsuit filed in Superior Court
10 Fulton County against Euclid Avenue Sales by S.W. Daniel?

11 A I believe that is the one you were speaking of.

12 Q No. This is another one. 1984.

13 A '84. Not unless it has something to do with this exact
14 date here.

15 Q All right.

16 I show you Plaintiff's Exhibit 189 in evidence
17 (handing). I ask if you can identify that for me.

18 Maybe it will help you, sir, if you turn to the page
19 that has 401 in the bottom right-hand corner, which purports
20 to be an affidavit of Wayne Daniel.

21 A 401.

22 Q Look at the lower right-hand column. The lower right
23 hand -- page number -- do you have it?

24 A Okay.

25 MR. BARR: May I, your Honor.

1 Q There you go.

2 That's an affidavit that you made, is it not?

3 A Yes. It appears to be.

4 Q You don't have any doubt of it, do you?

5 A No, sir. Looks like my signature.

6 Q This was a lawsuit brought by S.W. Daniel signed -- let's
7 go through it.

8 Look at page 396, lower right-hand corner. Take a
9 look at 395 first.

10 A I am skipping 394 to 401. I believe they are in the back
11 369?

12 Q Do you have 394?

13 A I have 395.

14 Q All right. Stop there. 395.

15 That's the place where the signature of Mr. Kane
16 appears?

17 A That's correct.

18 Q You recognize that signature as his?

19 A Looks like Daniel Kane's signature, yes.

20 Q He was representing S.W.D. in that lawsuit?

21 A Attorney for plaintiff, yes, sir.

22 Q And then the next page, please look at that. That is
23 headed "verification."

24 A These pages are mixed up, I'm sorry. 39.

25 Q Let me give you another copy.

1 A 396, I got it.

2 Q 396 is headed "verification"?

3 A Yes.

4 Q And it bears the signature of Sylvia Daniels, does it
5 not?

6 A It seems to be me.

7 Q You identify it as such?

8 A No, sir, I didn't.

9 Q You couldn't?

10 A Her signature, no, sir.

11 Q You don't know her signature?

12 A It looks vaguely familiar to hers, but I couldn't verify
13 it, sir.

14 Q How many times have you seen Sylvia Daniel's signature?

15 A Quite a few times.

16 Q But you are not sure that this is her signature?

17 A No, sir.

18 Q You are sure that at this point in time she owned S.W.D.,
19 are you not?

20 A This was in what, '84? Yes, sir.

21 Q All right.

22 Look at page 401 through 404.

23 That is an affidavit made and signed by you, is it
24 not?

25 A Correct.

1 Q All right.

2 Can you tell us whether or not you obtained a
3 permanent injunction against the Euclid Avenue Sales Company
4 against using the Cobray trademark?

5 A S.W. Daniel, permanent injunction, the last page? Page
6 409 I believe has a restraining order, order adjudicated and
7 decreed the defendant Euclid Avenue Sales, Inc. and any
8 associate companies or corporations, agents, and state,
9 Feinberg and John Patronis are enjoined and restrained from
10 using or infringing the trademark Cobray.

11 Q Okay.

12 Were there any more lawsuits for injunctions against
13 anyone for using the Cobray trademark?

14 A Not that I remember. There could have been.

15 Q I'm sorry?

16 A Not that I remember, but there could have been.

17 Q Do you recall a lawsuit against Perry Smith doing
18 business as Gunworks, Inc.?

19 A Yes, sir. I believe we were talking about that earlier.

20 Q No. That's another lawsuit.

21 A I remember one with Perry Smith. Whether there were two
22 of them, I don't know.

23 Q Well, here is another one (handing).

24 Mr. Daniel, take your time.

25 I would like for you to tell me whether Mr. Kane

1 signed the complaint, whether you made an affidavit and Sylvia
2 made an affidavit in that lawsuit and what the final result
3 was, if you can.

4 (Pause)?

5 A Yes, sir, I made an affidavit in this complaint.

6 Q And?

7 A It was ordered and adjudicated, temporary and permanent
8 injunction.

9 Q And Sylvia also made an affidavit and Mr. Kane signed the
10 complaint, correct?

11 A I didn't see that.

12 Mr. Kane was attorney for plaintiff. Affidavit of
13 Sylvia Daniel. Yes.

14 Q That is Plaintiff's exhibit-- what number does it have on
15 it, sir? Do you see it in the right-hand corner?

16 A 149.

17 MR. BARR: I think it is 149 in evidence, your Honor.

18 THE COURT: That is correct.

19 Q Let me ask you this. Do you remember your testimony on
20 direct examination when you were asked about an article in
21 Machine Gun News by Monty Mintonhall?

22 A Yes, sir, about the M-11/9 that was built for
23 competition.

24 Q Yes.

25 All right. That was in March? That article was in

1 March of 1994?

2 A I believe it was, yes.

3 Q Do you remember an earlier article? I'm sorry, a later
4 article, also in Machine Gun News, by Mr. Mintonhall about the
5 same subject?

6 A I believe there was one other issue, yes.

7 Q I am going to show you what has been, I believe, in
8 evidence as Defendant's Exhibit 8.

9 MR. BARR: Am I correct, counsel, that that is in
10 evidence?

11 MR. HARFENIST: It is.

12 Q This is a copy of an article for Machine Gun News, is it
13 not, sir?

14 A This is the actual Machine Gun News book.

15 Q It is dated, Machine Gun News, February 14, 1995?

16 A Correct.

17 Q Would you look at page 34?

18 Do you have that?

19 A Yes, sir.

20 Q Is that also an article about the M-11/9?

21 A It appears to be an article by Monty Mintonhall.

22 Q Same author, right?

23 A I believe so, yes.

24 Q Would you read the first sentence.

25 A "March 1994 issue of Machine Gun News contained a

1 description of how the author modified a Cobray M-11 to make
2 it a much better gun."

3 Q All right.

4 Now I am going to ask you to go down to the last
5 paragraph. Do you see that?

6 Let me show you. The last paragraph in that
7 article.

8 A Right.

9 Q No, I'm sorry.

10 What I should have said is the last paragraph on that
11 page. Right there (indicating)?

12 A The last paragraph on the left of page 34.

13 Q Yes.

14 Would you read that to the jury, please.

15 A "An out-of-the-box stock M-11 is not useful for much more
16 than cleaning out a phone booth or a small elevator."

17 Q All right. Stop.

18 What does he mean, "'cleaning out' a phone booth or
19 a small elevator"? Does he mean firing the gun into the phone
20 booth or small elevator?

21 A Could have been his intention, yes.

22 Q That was his intention. That's the way you understand
23 it, isn't it, cleaning out a phone booth?

24 A Probably.

25 Q Just the same as Rashid Baz did to the van full of

1 students?

2 MR. HARTENIST: Objection.

3 THE COURT: Sustained.

4 Q Continue to read, will you please, sir.

5 A "Results have proven though that a properly prepared M-11
6 is competitive against MDAs and M-16/9 millimeters. The total
7 cost to buy an M-11 and give ultimate conversion is about
8 \$1,100.

9 Q Okay.

10 How much were you selling the M-11 for at that time;
11 about 100 -- 200?

12 A 1995? \$300, \$400, something like that.

13 Q Okay. So, if you bought one of the guns you sell and
14 spent another \$1,100 on it, you could convert it to a gun that
15 could be used in match competition. That is what he is
16 saying, isn't it?

17 A According to Monty Mintonhall, yes.

18 Q What he is saying, also, is that without spending that
19 additional money, that \$1,100, the M-11 is not useful for much
20 more than cleaning out a phone booth or a small elevator,
21 right?

22 A That's his opinion.

23 Q That's his opinion. All right.

24 You, sir, did you ever personally sell any guns,
25 personally?

W. Daniel - For Defendant - Cross/Barr

1 A Personally.

2 Q Yes.

3 A You mean machine guns or--

4 Q I mean guns.

5 A Guns. No, sir.

6 Q Never did?

7 A No, sir.

8 Q All the sales that were made by you were through a
9 corporation, is that your opinion?

10 A Right.

11 Q Were records or invoices kept of each one of these sales
12 by one of your corporations?

13 A Yes.

14 MR. BARR: If I may approach.

15 Q I am going to show you Plaintiff's Exhibit 209.

16 Do you recognize that as an ad that you ran on behalf
17 of R.P.B. Industries, Inc.?

18 A Yes, sir.

19 MR. BARR: May I give the jury some copies, your
20 Honor?

21 THE COURT: Yes.

22 MR. BARR: I am told this is also in the book of
23 compilations which has already been furnished to the jury,
24 your Honor.

25 At the top, this was an ad run by R.P.B., was it

1 not?

2 A R.P.B. Industries, Inc. Yes.

3 Q Did you personally design this ad?

4 A No, sir.

5 Q Look at the top of the ad. This is a full-page ad in
6 Shotgun News, correct?

7 A It appears to be, yes.

8 Q And it says "They can't keep a good man down, R.P.B.
9 Industries. There is a paragraph in slightly larger type and
10 then there is a paragraph that begins, R.P.B. is the same
11 company, in larger and smaller letters.

12 Do you see that?

13 A Yes.

14 Q Then as the last two sentences in that paragraph read,
15 "For your protection, R.P.B. keeps no records of sales other
16 than the amount of the sale for our tax records. In other
17 words, your name and address will appear only on one invoice,
18 the one we send to you."

19 Who were you telling the buyers you were going to
20 protect them against?

21 A I believe the question you asked me was about keeping
22 records on gun sales, sir.

23 Q It is just a question I ask you now.

24 A Who are you protecting against?

25 Q Who were you protecting?

W. Daniel - For Defendant - Cross/Barr

- 1 A Against the computerization of U.S. citizens' names and
2 addresses, parts they buy by the United States Government.
- 3 Q In other words, you were protecting those buyers against
4 the law enforcement officers; were you not?
- 5 A No, sir, against computerization of their name and
6 address.
- 7 Q So you think just against computerization?
- 8 A By BATF, yes.
- 9 Q By BATF?
- 10 A Correct.
- 11 Q Who had the task of enforcing the guns laws?
- 12 A But it was illegal computerized names and addresses of
13 individuals buying guns.
- 14 Q You thought it was illegal to computerize it, and you
15 were protecting these people you were selling these guns to
16 from being computerized?
- 17 A Strictly against the 68 Gun Control Act, yes, sir.
- 18 Q In your opinion?
- 19 A No, not in my opinion.
- 20 Q Was it in your opinion --
- 21 A In my opinion, and it is true.
- 22 Q What were you telling these people is we will send you a
23 gun or parts, either one?
- 24 A No guns, no, sir.
- 25 Q No guns?

W. Daniel - For Defendant - Cross/Barr

1 A No guns.

2 Q Well, I guess we will let the jury decide.

3 A It says right here, if you allow me to read--

4 Q When he get through, your counsel, Mr. Kane, can ask you
5 anything you want.

6 MR. KANE: Objection to counsel interrupting the
7 witness. The witness has the right to answer the question.

8 MR. BARR: The witness does not have a right to make
9 speeches.

10 THE COURT: Excuse me, gentlemen.

11 Do you have another question?

12 MR. BARR: I do.

13 THE COURT: Please put it.

14 Q What you were telling the buyer is that if you buy any of
15 the products advertised on this page, we will not keep any
16 record of the sale of those products to you. We will send the
17 only copy of the invoice to you with your order. Correct?

18 A That's correct, to keep from being computerized in NFA's
19 computer --

20 Q To keep --

21 A -- by ATF.

22 Q To keep it from being computerized?

23 A Correct.

24 Q How many times did you run ads like this in which you
25 said we don't keep any records of sales?

W. Daniel - For Defendant - Cross/Barr

- 1 A (Pause) .
- 2 Probably monthly.
- 3 Q For how long?
- 4 A Maybe a year.
- 5 Q So every month for at least a year you told prospective
6 buyers we won't keep any record of your sales because, if we
7 do, you may get computerized?
- 8 A By BATF, yes, sir, illegally. BATF.
- 9 Q You didn't say by the BATF illegally in any of these ads,
10 did you?
- 11 A No, sir.
- 12 Q You said to protect you, period?
- 13 A Correct.
- 14 Q You didn't say anything about the BATF?
- 15 A This was an ongoing thing that the general public was
16 aware of the computerization. It was a nationwide
17 computerization.
- 18 Q What was the computerization to be used for?
- 19 A Tracing firearm parts to various buyers and from various
20 sellers.
- 21 Q Tracing guns that were used in the commission of crimes,
22 wasn't it, sir?
- 23 A No, sir, not guns. Gun parts and accessories.
- 24 Q Gun parts that were used in the commission of crimes?
- 25 A No, sir, not commission of a crime.

W. Daniel - For Defendant - Cross/Barr

1 Q Why did they want this computerization? What was it
2 supposed to be?

3 A My understanding, it was to try to get the 1986 Act
4 passed on machine guns and suppressors.

5 Q They wanted to do a computerization so that would get a
6 law passed? That's your view? That is what you are telling
7 us?

8 A Correct.

9 Q So every month for a year you told prospective purchasers
10 that there wouldn't be any record kept if they bought these
11 products from you; correct?

12 A It was probably a year. I would have to look at the
13 records to see.

14 Q All right.

15 Now, you know that the defendants have produced
16 certain documents requested by plaintiffs in this lawsuit?

17 A Correct.

18 Q And are you aware that Sylvia Daniel has testified in her
19 deposition, which has been played here for the jury, that some
20 of the documents of her corporation were destroyed by floods
21 and sewer bursts and so forth?

22 A I saw that on TV, yes.

23 Q And you testified at your deposition, did you not, which
24 has been played, that some of the documents that you had, that
25 you did in fact keep, were destroyed? You had destroyed them

1 yourself several years ago?

2 A Some of the -- when the company was closed in 1982, the
3 accountant kept the records for a period of a year or so or
4 two for IRS purposes, and after that they were done away with,
5 yes.

6 Q So the only corporation that produced invoices, records
7 of sales of any kind to us was this corporation?

8 THE COURT: Pointing to what, for the record?

9 MR. BARR: Pointing to MAC, Mountain Accessories
10 Corporation.

11 Q Correct?

12 A I believe that's correct, yes, sir.

13 Q And the only invoices produced to us were from January
14 17, 1994, until June 4th, 1996; is that correct?

15 A I believe that probably is correct. I had some computer
16 problems in '93.

17 Q But for all of these corporations -- I am looking at only
18 at R.P.B. one and two, Mountain Accessories, and Full Metal
19 Jacket, the only records of invoices that you had were the
20 records for MAC, Mountain Accessories, for 1/17/94 to 6/4/96,
21 correct?

22 A I believe that's the only ones we produced other than
23 some copies of FFLs of our jobbers that bought guns through
24 F.M.G.

25 Q But invoices of sales, records of sales, those were the

W. Daniel - For Defendant - Cross/Barr

1 only documents that you produced?

2 A I believe that is correct.

3 Q And those were the only documents that you had that any
4 of these companies had?

5 A We have invoices on F.M.J..

6 Q So you do.

7 Okay.

8 Those were produced to us?

9 A No, sir. Those are internal records that should not,
10 cannot be disseminated because of privacy act for the FFL
11 dealers.

12 Q So you have some records for F.M.J. but they have not
13 been produced to us?

14 A Records of gun sales, yes.

15 Q Uh-huh. Well, we will have to take that up at a later
16 time.

17 In any case, the only records that we now have is for
18 MAC for the period I have indicated, correct?

19 A I believe that is correct, yes, sir.

20 MR. BARR: All right.

21 Q Let me ask you, before I do it the hard way, whether it
22 is true that you -- in this case I mean MAC, because they are
23 the only records that we have -- regularly, routinely, sold
24 multiple sets of M-11/9 gun parts over the telephone to
25 individuals throughout the country who did not have an FFL?

W. Daniel - For Defendant - Cross/Barr

1 A Yes, sir. There is no restrictions on gun part sales in
2 the U.S.

3 Q But you concede that you regularly and routinely sold
4 what you call full replacement parts or gun kits to purchasers
5 throughout the United States who did not have FFLs?

6 A Yes, sir, sold gun part sets less receivers.

7 Q And then you had them delivered in boxes such as pasta
8 boxes and cranberry boxes?

9 A All sorts of boxes. We buy from a surplus box company.
10 Yes, sir.

11 Q Now, is it also true that you knew perfectly well that no
12 single individual was going to buy five or ten, some number of
13 multiple M-11/9 gun kits, part sales, unless they intended to
14 make those into guns and sell them? You knew that, didn't
15 you?

16 A No, sir, that's not true.

17 Q Did you hear Mr. Torres testify here?

18 A I heard a criminal testify here. Yes, sir.

19 Q He was a criminal?

20 A Yes, sir.

21 Q He admitted it.

22 A That's correct.

23 Q And you never -- withdrawn. I will ask you one final
24 question.

25 You knew also, did you not, that the finished guns

W. Daniel - For Defendant - Cross/Barr

1 were being sold to criminals, to drug dealers and others who
2 wanted a weapon that could not be traced; didn't you?

3 A You say finished guns?

4 Q Yes?

5 A Guns with serial numbers?

6 Q None of these parts had any serial numbers, did they,
7 Mr. Daniel?

8 A You are saying finished guns; are you speaking serialized
9 guns or non-serialized guns?

10 Q I am speaking of what you sold. None of them had serial
11 numbers; you know that. You kept no records for them; you
12 know that. And you sent them in multiples to anybody who
13 wanted to buy them; didn't you? Didn't you?

14 A Multiples? Yes, sir.

15 Q Okay.

16 Let's do it the hard way. I am going to take you
17 through some of these, Mr. Daniel.

18 I show you what has been marked Plaintiff's Exhibit
19 363 for identification (handing).

20 MR. BARR: 363 D, your Honor, for identification.

21 THE COURT: Thank you.

22 (Plaintiffs' Exhibit 363D for identification.)

23 Q I ask you if you could identify this.

24 A Looks like an invoice from Mountain Accessories
25 Corporation dated -- shipping date 3/15 of '94, to George

W. Daniel - For Defendant - Cross/Barr

1 Rodriguez.

2 MR. KANE: Objection, your Honor; outside the
3 scope --

4 THE COURT: I'm sorry, I couldn't hear you.

5 MR. KANE: Excuse me. Objection to this document.

6 It is outside the time line of the court's evidentiary
7 ruling.

8 THE COURT: What's the date of the document?

9 MR. BARR: The date of the document is 3/14/94.

10 MR. HARFENIST: Two weeks after the incident.

11 MR. BARR: Two weeks after the incident.

12 THE COURT: I will allow it.

13 (Plaintiffs' Exhibit 363 D in evidence.)

14 Q To whom?

15 A George Rodriguez, Brooklyn, New York.

16 Q Brooklyn, New York?

17 A Correct.

18 Q How many guns did he buy or how many gun sets did he
19 buy?

20 A These two different invoices; would be a total of three.

21 Q This is one of the invoices of MAC that you produced to
22 us; is it not?

23 A Yes, sir. This is a reprint, yes, sir.

24 Q You see the line that says "FFL date"?

25 Do you see that?

W. Daniel - For Defendant - Cross/Barr

1 A Correct.

2 Q It doesn't have anything written in. That means you
3 don't have an FFL for that purchase?

4 A We don't have an FFL on file, no, sir.

5 Q But, nevertheless, you ship three parts to George
6 Rodriguez in Brooklyn?

7 A That's correct. There is no restrictions on parts.

8 MR. BARR: May I show this to the jury, your Honor?

9 THE COURT: Yes.

10 MR. BARR: Again, I apologize. I don't have enough
11 copies to go around. Perhaps you can share.

12 (Exhibit 363 D published to jury).

13 Q Were you here when Mr. Pitta testified?

14 A Yes.

15 Q Do you recall him mentioning a man named Tony Montalban
16 from Westbury, New York?

17 A I believe so, yes, sir.

18 Q And a raid that he made on the premises occupied by
19 Mr. Montalban?

20 A Correct.

21 Q In Westbury, New York?

22 A I believe that was the time, yes, sir.

23 Q And he testified to what he found there?

24 A I don't remember exactly what he found.

25 Q All right.

W. Daniel - For Defendant - Cross/Barr

1 Let me show you Plaintiff's Exhibit 363 A in
2 evidence.

3 MR. BARR; it is only marked for identification. I
4 need to offer 363 D in evidence.

5 THE COURT: Yes. That has been admitted. This is
6 another one.

7 MR. BARR: 363 A.

8 THE COURT: For identification only.

9 MR. BARR: Now.

10 (Plaintiffs' Exhibit 363 A for identification)

11 Q Can you identify it?

12 A It seems to be an invoice from Mountain Accessories
13 Corporation.

14 MR. BARR: I offer it in evidence, your Honor.

15 MR. KANE: Could we have the date of the invoice?

16 THE COURT: What's the date?

17 MR. BARR: The date is --

18 THE WITNESS: Shipping date is 1/10 of '95.

19 MR. HARFENIST: I object on relevancy grounds. What
20 difference does it make after--

21 THE COURT: That's quite a bit after the event. 363
22 A, you are objecting to it?

23 MR. HARFENIST: Objection.

24 MR. KANE: Ask it be stricken and ask counsel be
25 instructed not to do this. He has been before the court. He

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1 knows what the time line is. He is just subverting the
2 court's order.

3 THE COURT: Sustained.

4 MR. BARR: Defendants have deliberately destroyed
5 most of their documents and produced only these invoices.

6 THE COURT: Excuse me. I don't want any argument in
7 front of the jury.

8 You will ignore that last statement by counsel.

9 Okay. 363 A is out.

10 MR. BARR: Is out?

11 THE COURT: 363 A is dated sometime after the event.

12 MR. BARR: Your Honor, could I be heard on this
13 briefly?

14 THE COURT: You could ask him, if you wish, because
15 he is your witness now, whether this was the practice before.
16 If you can connect it to a continuing practice, that may bring
17 it in. As of this moment, it doesn't come in.

18 Q Mr. Daniel, after March of 1994, did you change in any
19 way the practice that MAC had maintained for keeping records
20 of invoices?

21 A March of '94?

22 Q Yes, sir?

23 A No.

24 Q Did you continue after March of 1994 to sell parts kits
25 and parts sets in the same manner after March of '94 as you

W. Daniel - For Defendant - Cross/Barr

1 had done before?

2 A I believe there was a change in October of '94 when the
3 Omnibus Crime Bill was passed.

4 Q But there was none before?

5 A Sir?

6 Q There were no changes before that?

7 A No, sir.

8 Q For how long a period of time prior to March of 1994 had
9 the defendant corporations sold part sets and parts kits over
10 the telephone without requiring an FFL by the purchaser?

11 A March -- Since March of '93 by MAC, yes.

12 MR. BARR: I'm sorry, could I have the question and
13 answer read.

14 THE COURT: Yes.

15 (Record read).

16 Q So the practice remained uniform throughout the period
17 for which these documents were furnished by you from March of
18 1993 to, I guess, December of 1996; correct?

19 A I believe it was changed, like I said before, in '94 when
20 the Omnibus Crime Bill was passed by Congress.

21 Q How was it changed?

22 A It was changed with the definition of assault pistols and
23 assault rifles definition.

24 Q How did that change the invoice?

25 A The invoice was changed to reflect -- I assume the

W. Daniel - For Defendant - Cross/Barr

1 invoice was changed -- the part sets after that period of time
2 did not have a trigger guard and a magazine housing or
3 threaded barrels.

4 Q Nothing was changed on the invoices? The invoices were
5 still the same?

6 A I am not sure that they were or were not.

7 MR. BARR: Your Honor, I believe it is perfectly
8 proper to continue to offer these invoices, many of which are
9 beyond the date of the incident. These are the only invoices
10 that we have for the whole period of time that they operated.

11 THE COURT: Why do you need something in addition to
12 363 D if the witness says that it is representative?

13 MR. BARR: I'm sorry. The witness says it is...? I
14 don't know why, but I can't quite hear you.

15 THE COURT: If 363 D represents the system, why do
16 you need more documents?

17 MR. BARR: Your Honor, I don't in the sense need
18 more documents except to show how profuse, how many of these
19 things were constantly selling. I will make clear what I
20 intend to do. I got a whole box full of invoices which show
21 multiple parts kits, sets, sold to people all over the country
22 without any FFL. Now if we can work out some kind of a
23 stipulation --

24 MR. KANE: May I be heard?

25 THE COURT: I don't see any need for all of these

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1 documents. They are cumulative. He has already made some
2 admissions with respect to this. I don't know we have to go
3 further.

4 You can ask him about multiple matters, if that's
5 what's on your mind. Although, I thought that was inquired
6 about.

7 MR. BARR: I have already asked, your Honor. Yes,
8 your Honor is correct, I have already asked it.

9 THE WITNESS: Mr. Barr --

10 MR. KANE: May the court rule?

11 THE COURT: Okay.

12 There is nothing before me for ruling.

13 MR. BARR: I'm sorry?

14 THE COURT: There is nothing before me for a ruling.

15 MR. BARR: No. I understand that.

16 MR. KANE: May I be heard?

17 THE COURT: There is nothing before me. I have
18 excluded the document offered.

19 MR. BARR: May I consult with counsel, your Honor?

20 THE COURT: Maybe we ought to take a short break.

21 How much longer is your examination going to be?

22 MR. BARR: It depends significantly on what we would
23 do with these documents.

24 (Jury leaves courtroom).

25 THE COURT: Do we really need this machine on the

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1 witness stand? It seems to block the reporter.

2 MR. BARR: We do not need it.

3 THE COURT: Maybe it can be removed temporarily.

4 Have somebody try to accommodate the reporter.

5 THE COURT: Is there anything that the parties wish
6 to take up with me in the absence of the jury?

7 MR. HARFENIST: Very briefly, judge.

8 With regard to the Russell Weekes deposition we
9 talked about earlier this morning, we spoke to the
10 videographer who the manufacturers used to edit the Wayne and
11 Sylvia Daniel deposition. They told us they could probably
12 begin editing the tape 4:00 this afternoon and hopefully have
13 it done sometime in the early morning tomorrow.

14 The only problem is, my understanding is that there
15 was at least two videotapes and I only have one. I don't know
16 if the plaintiffs have a full set here. I can just run it
17 over to them and they can start doing what they are going to
18 do.

19 THE COURT: You have to agree on the designations.

20 MR. BARR; we are going to finish it up at the next
21 break.

22 MR. KANE: Is the court'S order we can read it if we
23 can't get it videoed?

24 THE COURT: Yes. I prefer if the parties want to use
25 the videotape. If it can't be done, we have to move forward.

W. Daniel - For Defendant - Cross/Barr

1 MR. KANE: I don't want the case delayed.

2 MR. KANE: The other issue is this matter that's
3 pending before your Honor at this time. That is, counsel for
4 plaintiff going outside the time line of March of '94.

5 If I understand the testimony, counsel has on several
6 occasions asked Mr. Daniel has he sold parts sets to
7 individuals that did not have an FFL, a Federal Firearms
8 License. The answer several times has been yes. Counsel for
9 plaintiff has asked, have you sold multiple sets of parts to
10 individuals who did not have an FFL, Federal Firearm License?
11 Mr. Daniel has answered yes. This has been asked and answered
12 two or three times.

13 Counsel has gotten in the document of George
14 Rodriguez, which we objected to, which was after the incident
15 on the Brooklyn Bridge. The Court allowed it. Counsel then
16 went to another invoice dated 1995 which we objected to and
17 the Court had ruled it was inadmissible.

18 It is our position that the issue of multiple sales
19 of gun part sets has been addressed to the witness, has been
20 asked and answered several times, and that the Court has
21 ordered that any additional questions are cumulative and
22 inadmissible.

23 We would ask that to be the court's ruling.

24 MR. BARR: Your Honor, I could cut this down but I
25 would certainly like to pursue it for a bit.

W. Daniel - For Defendant - Cross/Barr

1 THE COURT: I don't understand the point of it if you
2 have the admission. We have one document and you have already
3 established the pattern with respect to either destruction or
4 failure to keep. Why do we have to go into this.

5 MR. BARR: Perhaps I can ask some summary questions
6 of the witness which will summarize what these exhibits would
7 show.

8 THE COURT: Post.

9 MR. BARR: Post. They are the only records we
10 have. I mean we had -- they didn't keep records.

11 THE COURT: I know. That's an argument you can make
12 to the jury. The jury may or may not --

13 MR. BARR: I think also --

14 THE COURT: -- appreciate it.

15 MR. BARR: I think that also relates to the decision
16 which your Honor has to make, which is the admissibility of
17 these documents. Because the rest of the documents either
18 were not kept or destroyed, and the witness has testified to a
19 consistency in the keeping of records.

20 THE COURT: I don't understand. How did you get
21 these documents if everything before was destroyed?

22 MR. BARR: I have no idea.

23 MR. KANE: This is an argument that comes out of
24 both sides of the mouth, all the tracing, the evidence Dr. Fox
25 put in, was the result of records.

W. Daniel - For Defendant - Cross/Barr

1 THE COURT: Those are completed guns.

2 MR. KANE: They are completed firearms that are
3 kept, the records that are required by the Code of Federal
4 Regulations by the Department of Treasury.

5 THE COURT: They have numbers.

6 MR. KANE: They are guns. The problem is the
7 plaintiff uses the terms guns, with firearms manufactured.
8 The kits are not guns. The part sets are not guns. There is
9 no regulation that requires recordation of parts sets. In
10 fact, you can record them. There is no forum set by the
11 bureau to record parts. That is the other kind of
12 idiosyncrasy of their logic. Nonetheless, the records for the
13 guns were kept by the bureau, kept by the manufacturers, for
14 the bureau.

15 THE COURT: What about the parts? I have here before
16 me three 363 D. How did this record of this part --

17 MR. KANE: They were produced by defendants.

18 THE COURT: I don't understand why you don't have
19 records prior to the shooting and you have records after the
20 shooting. Why is that?

21 MR. KANE: Records for corporations that were
22 dissolved were discarded, were destroyed. Some records were
23 damaged in the flood and sewage breaks. The records that were
24 retained, the non-required records that were retained, we
25 produced.

W. Daniel - For Defendant - Cross/Barr

1 For instance, a corporation that was dissolved in
2 1983 --

3 THE COURT: I have 363 D. The plaintiffs say they
4 have a box full like 363 D which were recorded after the event
5 in question.

6 Why do you have those and not before the shooting? I
7 don't understand that.

8 MR. KANE: The dated records prior to the date that
9 were produced were destroyed either in a flood or a sewage
10 backup.

11 MR. DAVIS: Or Mr. Daniels said he had another
12 reason.

13 MR. BARR: Those were her records. Those were
14 Sylvia's. We are now talking about Wayne's. I never heard
15 anything about Wayne's corporations having floods or sewer
16 breaks.

17 MR. KANE: Okay. Wayne's corporation that he is
18 talking about commenced business in March of '93.

19 MR. BARR: But this corporation, there is not a
20 single invoice produced by this corporation (indicating).

21 THE COURT: But March '93? When was the event in
22 question, March '94?

23 MR. KANE: March 94.

24 THE COURT: What is there for March '93 to March
25 '94?

W. Daniel - For Defendant - Cross/Barr

1 MR. KANE: Doesn't have any.

2 THE COURT: Does he have post '94?

3 MR. KANE: Yes.

4 MR. BARR: Yes.

5 THE COURT: I don't understand why he has post.

6 That's what I am asking, just so I understand what's going
7 on. Why does he have post '94 and not pre '94.

8 MR. KANE: The witness testified that pre '94 in
9 3/93 to 1/94, sometime in '94 he had computer problems.

10 THE COURT: I see.

11 MR. BARR: Your Honor, this is a good example. This
12 is the man named Montalban. He bought ten different sets of
13 these parts kits. Mr. Pitta testified about a raid on his
14 premises. The first one that we have a record for was
15 3/17/94, after the shooting.

16 THE COURT: 3/17.

17 MR. BARR: Yes, sir.

18 THE COURT: That's just a few days.

19 MR. BARR: A few days after.

20 THE COURT: Yes. That's consistent with D. That can
21 come in.

22 MR. BARR: Then it runs through the last one. He
23 bought ten parts sets in all. The last one is 1/10/95. All
24 the invoices are exactly the same except for the numbers.

25 THE COURT: Why don't you ask him if he did make the

W. Daniel - For Defendant - Cross/Barr

1 sale and use these to refresh, if you want to. I suppose
2 that's okay.

3 MR. HARTENIST: Judge, what does the sales after
4 March 1 have to do with anything?

5 THE COURT: If it were consistent with what was
6 happening --

7 MR. HARTENIST: They are not using it for
8 consistency. What Mr. Barr is trying to do is put a cop on
9 the stand who said I raided a guy's house and found a gun and
10 look, see, you sold them to him. It is all after the fact.
11 The prejudice so outweighs any probative values, it is scary.

12 MR. BARR: My contention is all of these
13 corporations were doing exactly what this corporation was
14 doing --

15 MR. HARTENIST: Ask the question. All you have to
16 do is ask the question.

17 MR. BARR: Can I finish?

18 -- that they were doing exactly what this corporation
19 was doing and they destroyed all the records.

20 THE COURT: Okay.

21 Well, that you have established, that they destroyed
22 their records.

23 MR. HARTENIST: If I could be heard briefly for one
24 second. If they are trying to show the consistency and
25 methodology of sales by putting the records in about a guy who

W. Daniel - For Defendant - Cross/Barr

1 was raided by one of their witnesses, it so prejudicial. It
2 outweighs the probative of value. It is petrifying. All he
3 has got to do is ask a question, Did you ever change the
4 methodology of your sale from January 1993 to March 1, 1994?
5 If the witness says no, it is a non-issue in the case.

6 THE COURT: Well, were you selling ten at a time
7 before.

8 MR. HARFENIST: He asked them that. He said yes.
9 He said he sold multiple parts.

10 MR. KANE: That has been asked and answered
11 repeatedly.

12 THE COURT: Did you sell ten at a time before?

13 MR. HARFENIST: He asked if you are selling multiple
14 part sets.

15 THE COURT: Well.

16 MR. BARR: I have got a box full of invoice where
17 they sold, ten, seven, eight, five, six, four, three.

18 MR. HARFENIST: So what?

19 MR. BARR: Consistently.

20 MR. HARFENIST: Ask the question.

21 MR. BARR: Consistently.

22 THE COURT: Ask, and you kept no records of it. You
23 can ask. I don't see why we need the box of subsequent
24 records. I will allow a few of them in because of the
25 destruction of documents. It falls within that category.

W. Daniel - For Defendant - Cross/Barr

1 What else do you have at or about the time of the
2 shooting?

3 MR. BARR: I will select out a few, your Honor.

4 MR. HARFENIST: Just so that the court has a clear
5 understanding of the defendant's position. The use of
6 invoices a year beginning post-incident and continuing on for
7 over a year and a half in an attempt to link it up to a
8 testimony of a plaintiffs', quote, unquote, expert/former BATF
9 agent is so highly prejudicial that destruction of records or
10 no destruction of records, the prejudice clearly outweighs any
11 probative value. All they are trying to say is look --

12 THE COURT: Excuse me. What I have ruled on is the
13 series of documents, the whole box full. Is there a specific
14 document that you say is prejudicial?

15 MR. HARFENIST: I have to see it. I have to see
16 which ones they are going to necessarily try to put in.

17 THE COURT: Which is the document that links up a
18 sale with what the policeman found?

19 MR. HARFENIST: That was the Montalban document.

20 MR. BARR: There are a group of documents which
21 would show between the period of 3/17/94 and 1/10/95,
22 Mr. Montalban bought ten, at least ten parts kits, and these
23 are the invoices that establish that.

24 THE COURT: It started in 3/17. That's the first.
25 What was his first purchase?

W. Daniel - For Defendant - Cross/Barr

1 MR. BARR: The first purchase that I have a record
2 of -- I suspect this has been going on for years. The first
3 one that I have a record of is 3/17/94.

4 THE COURT: How many parts kits? How many kits?

5 MR. BARR: How many?

6 THE COURT: At that time.

7 MR. BARR: One in later in March. One, two, three,
8 four, five, seven eight --

9 THE COURT: In when?

10 MR. BARR: I'm sorry. All the rest are in '94,
11 except for one in January of '95. So there are ten parts kits
12 purchased, nine of them in 1993, throughout the year.

13 MR. HARFENIST: '93.

14 MR. BARR: '94, I'm sorry. March, May, August,
15 September, December, and one in January.

16 MR. HARFENIST: All commencing seventeen days after
17 the incident. The first one commencing seventeen days after
18 the incident.

19 THE COURT: That I will allow. Ask him whether he
20 was prepared to sell this fellow, if you want to, or whether
21 he sold them earlier.

22 MR. HARFENIST: Just the mention of the sales to
23 Mr. Montalban has no relevance. Its prejudice outweighs its
24 probative value. All they are trying to do is bolster the
25 testimony of the expert. That's all they are trying to do.

W. Daniel - For Defendant - Cross/Barr

1 MR. BARR: We are trying to show there are facts --

2 THE COURT: I will allow the first of those. Then
3 you can question him about whether he sold them before and
4 whether he was prepared as part of the practice to sell when
5 there were repeat calls.

6 I take it that is what you are trying to establish,
7 that it didn't have to be a single call; each call was treated
8 independently.

9 MR. BARR: What I am trying to show is, from this
10 limited set of records that we have been furnished with, all
11 of the rest of the records of the corporation either they have
12 told the buyer we don't keep records or they destroyed the
13 records.

14 THE COURT: I understand.

15 MR. BARR: All I am trying to show is that as a
16 routine and regular matter they sold these parts kits over the
17 telephone without an FFL or anything else.

18 THE COURT: That you can ask him about. You have one
19 document. I am giving you this other document. You ask him
20 the other point I thought you were trying to make, and that is
21 if you sold him one on Monday, if they called on Tuesday, you
22 would sell them another one. Or up to ten, whatever you want
23 to establish.

24 The witness seems to be quite forthcoming. He is not
25 hiding anything.

W. Daniel - For Defendant - Cross/Barr

1 MR. HARFENIST: In fact, he has virtually answered
2 the question Mr. Barr asked. Would you sell multiple kits to
3 the same person? He said sure.

4 MR. KANE: "Did MAC regularly sell gun parts sets to
5 individuals throughout the United States?" "Answer: Yes."
6 He asked the question.

7 THE COURT: I know. He is entitled to go through
8 numbers, ten, nine. Next day.

9 MR. HARFENIST: I don't have a problem with that.
10 There is no need for the document. Just ask a question.

11 MR. BARR: Let me try some questions without
12 documents.

13 THE COURT: You can use that first document that you
14 referred to if you want to.

15 MR. BARR: Yes.

16 THE COURT: You have a few of them in March of 1994?

17 MR. BARR: We do.

18 THE COURT: All right. You can use the March 1994
19 and inquire about prior consistency and continuing
20 consistency, although I think he has already admitted
21 consistency.

22 All right. Go ahead.

23 All right.

24 Let's take a break for a few minutes.

25 (Recess).

W. Daniel - For Defendant - Cross/Barr

1 (Jury enters courtroom).

2 THE COURT: Go ahead.

3 CROSS-EXAMINATION (Cont'd.)

4 BY MR. BARR:

5 Q Mr. Daniel, when did you begin the practice of selling
6 M-11 part kits or gun kits over the telephone to individuals
7 without a license?

8 A Over the telephone?

9 Q Yes. When did you begin?

10 A I began taking telephone sales, I believe, March of '93.

11 Q You hadn't sold any guns prior to that over the
12 telephone, parts or anything?

13 A A few M-11/9 parts, a lots of M-10/9 and .45 parts at the
14 first R.P.B. back in the early '80s.

15 Q So you are telling me that R.P.B. sold gun kits, parts
16 kits, whatever, over the telephone, regularly and routinely,
17 to people?

18 A Back in the early '80s, yes.

19 Q Back in the early '80s.

20 And then this R.P.B. continued --

21 A Mail order only. No telephone sales.

22 Q No telephone sales?

23 A No, sir.

24 Q Why not?

25 A Just didn't have a telephone sale. Strictly mail order.

W. Daniel - For Defendant - Cross/Barr

1 Q All right.

2 So for this period of time, R.P.B. only sold by mail
3 order?

4 A That's correct.

5 Q And that was on the same basis as was sold over the
6 telephone; anybody could buy parts kits, gun kits, no FFL
7 needed?

8 A No FFL and no restrictions on gun parts sales.

9 Q And then MAC continued?

10 A Correct.

11 Q How about F.M.J.?

12 A Yes.

13 F.M.J., I think in '97 started selling some gun part
14 sets.

15 Q How about in 1987 -- did you say?

16 A '87. No, '97.

17 Q How about S.W. Daniel, Sylvia's corporation?

18 A From the catalogs that I viewed, yes.

19 Q From the catalogs that you viewed, she was regularly and
20 routinely selling gun kits, gun parts over the telephone?

21 A I believe that is correct.

22 Q Now, during the period of time -- how about Cobray
23 Firearms? Was Cobray Firearms regularly and routinely selling
24 gun parts, gun kits over the telephone to people without
25 FFLs?

W. Daniel - For Defendant - Cross/Barr

1 A On the Shotgun News ads that I have seen, Cobray did sell
2 gun parts, yes.

3 Q That began when?

4 A I don't know what year it began.

5 Somewhere in the late '80s, I believe.

6 Q Was there any limit on the number of kits or the number
7 of part sets that would be sold to any single individual?

8 A MAC does not have any limit on the sale of part sets. We
9 have a lot of vendors that buy for resale at gun shows as well
10 as ads in Shotgun News, and they field their ads through
11 Shotgun News.

12 Q What's the answer to my question?

13 A It is yes.

14 Q Is there any limit on the number of gun parts kits that
15 you would sell over the telephone to an individual?

16 A No, sir, there is no limit. Like we say, we had vendors
17 that bought multiple sets, three sets.

18 Q If I show you that box, am I going to find any in there
19 to other than individuals?

20 A I wouldn't know.

21 Q You know that you were selling as many gun kits or gun
22 parts sets to individuals as they wanted, either in the mail,
23 mail order, or over the telephone; correct?

24 A Individuals as well as vendors; yes, sir.

25 Q Did you have any limit on the number you would sell?

W. Daniel - For Defendant - Cross/Barr

1 MR. KANE: Excuse me. If I may, it is becoming
2 redundant. Counsel asked and answered now half a dozen times.

3 THE COURT: I will allow it.

4 Q Do you have any recollection, you, personally, of who the
5 purchasers of large numbers of kits or parts sets were, people
6 that bought ten sets or ten kits, or twenty or thirty? Do you
7 have any recollection?

8 MR. KANE: Objection. Irrelevant.

9 THE COURT: I will overrule it.

10 A Do I have a recollection of --

11 Q Who the people were?

12 A Who the people were.

13 Other than a few vendors, I remember R.P.B.
14 Industries or R.P.B. buying multiples of parts sets for
15 resale. Euclid Sales, several other large vendors.

16 Q How about individuals, the question I asked you--

17 A Do I recollect any particular names?

18 Q Yes.

19 A No, sir.

20 Q You didn't care?

21 A I didn't say I didn't care. There is no restriction on
22 gun parts sales, no limits.

23 Q Was there any limit of any kind that you personally --
24 you and/or Mrs. Daniel placed on the sale of gun kits or parts
25 sets, other than those that you thought you were compelled to

W. Daniel - For Defendant - Cross/Barr

1 put on it by the federal government or the state government?

2 Did you limit the sales in any way voluntarily?

3 A Did I personally limit the sales?

4 MR. HARFENIST: Excuse me. Objection; asked and
5 answered.

6 THE COURT: Overruled.

7 A No, I didn't personally limit the sale; no, sir.

8 Q So, long and short, as long as you thought the sales were
9 legal, you would sell to anybody?

10 A As long as the sales were legal, they are not restricted
11 by the federal government or state laws that I know of
12 anywhere, I would sell; yes, sir.

13 Q For any purpose, for anything they wanted to do with
14 them?

15 A No. No, I didn't say that.

16 MR. HARFENIST: How would the witness know what they
17 wanted to do with it and what the purpose was? Calls for
18 total speculation. That was.

19 Q I will ask.

20 Did you inquire of the purchasers what they were
21 going to do with the guns?

22 A Guns?

23 Q Parts.

24 A Parts?

25 Q Did you make any inquiry of the people who wanted to buy

W. Daniel - For Defendant - Cross/Barr

1 ten, twenty, thirty sets of parts, what were they were going
2 to do with it? Did you ask?

3 A We assumed they were vendors of parts.

4 Q You assumed that?

5 A Right.

6 Q You never made any inquiry?

7 A No, sir.

8 MR. BARR: No further questions, your Honor.

9 MR. DAVIS: I just have a few.

10 CROSS-EXAMINATION

11 BY MR. DAVIS:

12 Q Mr. Daniel, you knew in the early '90s when you were
13 selling these part kits that there was a controversy about the
14 completed gun, the M-11/9; did you not?

15 A In the early '90s?

16 Q Yes.

17 A '94, I believe is when they started talking about the
18 Assault Weapon -- I call it the Assault Weapon Bill that was
19 won before Congress.

20 Q Well, you included references in ads for MAC earlier than
21 '94, did you not, to the phrase "Get them while they are
22 hot"? At the time of this ad, they were released, they are
23 still legal to possess for how long nobody knows, you included
24 that reference in ads in '93?

25 A Correct.

W. Daniel - For Defendant - Cross/Davis

1 Q And you knew that the controversy was because there was
2 concerns that these completed weapons were being used in
3 violent crimes, did you not?

4 A No, sir. That was the Assault Weapon Bill that I was
5 speaking of.

6 Q You didn't know that the concern about the completed gun,
7 the M-11/9, was that those guns were being used in crimes?

8 A Nothing specifically, no, sir.

9 Q You thought that there was just a desire to ban it
10 without regard to whether or not they had been used in crimes?

11 A Yes. I think it went along with the importation of
12 assault weapons as well. They were trying to follow the same
13 guidelines.

14 Q But you thought there was no reason, that it wasn't based
15 upon any concern that law enforcement had expressed about the
16 fact that the M-11/9 was being used in crime?

17 A I didn't know that specifically, no, sir.

18 Q Are you familiar with the facts that the International
19 Chiefs of Police as early as 1989 called for a ban on the
20 M-11/9 because it was being used in violent crimes?

21 MR. KANE: Objection.

22 THE COURT: Excuse me. I will allow it on the issue
23 of credibility.

24 A International Chief of Police.

25 Q Association of Chiefs of Police.

W. Daniel - For Defendant - Cross/Davis

1 A No, sir.

2 Q You are not aware of that?

3 A No, sir.

4 THE COURT: I caution you again, ladies and
5 gentlemen, it is the answer plus the question. Just asking a
6 question doesn't imply a fact.

7 Proceed.

8 Q I would like to show you Plaintiffs' Exhibit 376 for
9 identification.

10 MR. KANE: May I be heard.

11 THE COURT: Let me look at the exhibit, please.

12 MR. DAVIS: I intend to ask if this refreshes his
13 recollection, your Honor.

14 THE COURT: 376 for identification. I will allow
15 that.

16 (Plaintiffs' Exhibit 376 for identification)

17 MR. KANE: May I be heard?

18 THE COURT: Yes.

19 MR. KANE: What I have here is some document, IACP
20 News. I move it not be admitted.

21 THE COURT: It is not being offered.

22 MR. KANE: No proper foundation has been laid to
23 this.

24 THE COURT: You mean that it is not authenticated.

25 MR. KANE: That it is not authenticated.

W. Daniel - For Defendant - Cross/Davis

1 THE COURT: Pursuant to the rules the document itself
2 is self-authenticating.

3 MR. KANE: It is not certified.

4 THE COURT: It doesn't have to be certified. As I
5 understand, we are not offering it in evidence. As I
6 understand it, it is just being used to refresh. There is a
7 question about whether authentication is required. I find it
8 sufficiently authenticated for this purpose.

9 MR. KANE: If I may respectfully disagree with the
10 court that this piece of Xerox paper is self-authenticating
11 without someone from the IACP here to testify that this is in
12 fact some formed organization, that they have a news letter,
13 that there is a publisher, that they receive these
14 correspondence, and in fact this is a dated correspondence
15 originating from this organization.

16 MR. DAVIS: There is testimony --

17 Excuse me, your Honor, I apologize.

18 THE COURT: Excuse me. One at a time. You are
19 objecting to the use for refreshment.

20 MR. KANE: For any purpose.

21 THE COURT: All right.

22 Your objection is overruled.

23 Q Looking at Plaintiffs' Exhibit 376 for identification,
24 does that refresh your recollection as to whether the IACP,
25 International Association of Chiefs of Police, were seeking to

W. Daniel - For Defendant - Cross/Davis

1 have the M-11/9 banned as early as 1989?

2 MR. KANE: If I may object to the form of the
3 question. I think the first question would have to be, are
4 you familiar with the organization and are you familiar with
5 the news letter. Then, are you familiar with the
6 publication.

7 THE COURT: That would be an appropriate way of
8 proceeding.

9 Why don't you proceed in accordance with suggestions
10 made by defense counsel.

11 Q Have you ever heard of the International Association of
12 Chiefs of Police?

13 A Yes, I have.

14 Q You know it is an organization that includes heads of
15 police departments, certainly from around the entire United
16 States?

17 A The only thing I am familiar with is in some of the
18 police departments and courts I have been in I have seen the
19 booklet that I guess comes out, a monthly publication. Other
20 than that, I am not familiar with the organization whatsoever.

21 Q You never heard of them taking positions on any issues
22 relating to crime and guns or any of those kinds?

23 A I don't believe so. I don't take the magazine. I don't
24 belong to the association.

25 Q I am going to ask you to look at Plaintiffs' Exhibit 243

W. Daniel - For Defendant - Cross/Davis

1 which is the compilation that was previously handed out. Let
2 me give you a copy of that to have in front of you, Mr. Daniel
3 (handing).

4 Do you see at the top it says, "Get them while they
5 are hot,"?

6 A Yes.

7 Q "At the time this ad was released they are still legal to
8 possess. For how long, nobody knows." Do you see that?

9 A Yes, sir.

10 Q So you were aware as early as the date of this ad in May
11 of 1993 that legislation had been introduced to ban the
12 M-11/9, isn't that correct?

13 A I was aware of all of the importation bans on assault
14 weapons that had happened in the past.

15 Q Your weapons aren't imported, are they?

16 A No, sir.

17 Q You make them in your own factory?

18 A Correct.

19 Q You make the parts down there; is that correct?

20 A Correct.

21 Q So importation bans wouldn't affect you, would they?

22 A Usually spills over. Once importation starts, then they
23 start on the domestic firearms. And that's what I was trying
24 to get across to the public.

25 Q So my question is, you had no knowledge in May of 1993,

W. Daniel - For Defendant - Cross/Davis

1 is that what you are telling us, no knowledge whatsoever that
2 there were attempts to ban the M-11/9?

3 A I had heard rumors that the M-11/9 might be on the next
4 agenda. But nothing specific.

5 Q You just wanted to tell your potential customers to get
6 them while they are hot, while they were still legal; is that
7 correct?

8 A While they are still legal, yes.

9 Q And the M-11/9 as it was being produced at the time
10 ultimately was banned, was it not, in October of 1994?

11 A The M-11/9 as it was manufactured then, was, yes. There
12 was a change. The threads were taken off the barrels and the
13 magazine catch for the magazine was changed, and it was
14 totally legitimate after that.

15 Q So what you are saying is after the M-11/9 was banned,
16 you made some changes to get around the ban; is that correct?

17 A I made some changes that BATF approved; yes.

18 Q So that you would be able to continue selling a different
19 form of the M-11/9; is that what you are saying?

20 A That's correct.

21 Q And at the same time as the M-11/9 was banned, are you
22 familiar with the fact that that same legislation listed 650
23 other semiautomatic weapons that were not going to be banned
24 because they were not dangerous?

25 MR. KANE: Excuse me. Objection. Irrelevant, how

W. Daniel - For Defendant - Cross/Davis

1 many firearms were banned by Congress and how many firearms
2 were not banned by Congress and what the configuration of the
3 ones that were banned and were not banned is.

4 THE COURT: Yes. This is not evidence in chief,
5 ladies and gentlemen. It is just being asked to test the
6 credibility of the witness and should be used by you only for
7 that limited purpose.

8 Q Were you aware of that fact?

9 A I don't know how many.

10 Excuse me. I don't know how many weapons were not
11 banned. I know there were several that were banned and
12 changes were made, and I believe all of the guns are still on
13 the market at the present time.

14 Q But you know there was a long list of weapons that were
15 not banned, isn't that correct?

16 A Probably 75 or 80 different weapons, different styles of
17 weapons were not; right.

18 Q Now, Mr. Daniel, Cobray was the choice of the drug lords
19 of the '80s, was it not?

20 A That was the verbiage that BATF told me back in the early
21 '80s, late '79, early '80s, that the drug lords in Miami were
22 using the MAC 10 open boat semiautomatic as a weapon against
23 other drug dealers and drug importers.

24 Q But you in 1994, when you issued a catalog, you put that
25 into your sales catalog, did you not?

W. Daniel - For Defendant - Cross/Davis

1 A My advertising man did, yes, sir.

2 Q And was the M-11/9 the gun that made the '80s roar?

3 A I don't really know whether it was or not, but it was
4 good advertising.

5 Q You put that in your ads as well, did you not?

6 A Correct.

7 Q Now I just want to go back quickly. If you were selling
8 a completed gun, not a gun kit, a completed gun, and you were
9 in Tennessee, you could not send that gun to somebody living
10 in New York who didn't have a federal firearm license; is that
11 correct?

12 A That's correct.

13 Q And if you were selling a completed gun -- again, not a
14 gun kit -- you could not sell that to a convicted felon; is
15 that correct?

16 A I could not sell it to convicted felon if he answered the
17 questions "no" on the 4473.

18 Q When you say the 4473, that means that when you sell a
19 gun, completed gun, not a kit, the person has to answer a lot
20 of questions; do they not?

21 A That's correct.

22 Q They have to answer them in writing; is that correct?

23 A That is correct.

24 Q They have to answer questions about their criminal
25 record?

W. Daniel - For Defendant - Cross/Davis

1 A Correct.

2 Q About whether they are illegal aliens?

3 A Correct.

4 Q About their mental state, mental condition?

5 A Correct.

6 Q About whether they have any drug abuse problems?

7 A Correct.

8 Q About whether they are subject to court order from
9 harassing, stalking, or threatening an intimate partner or
10 child of such partner?

11 A I believe that's on the new 4473. I haven't used any of
12 those.

13 Q But on the 4473 is contained all of those kinds of
14 questions which the person has to answer; is that correct?

15 A When buying a firearm, yes.

16 Q When buying a complete -- that's what we are talking
17 about.

18 And Mr. Daniel, when you sell a lower receiver,
19 talking about the real McKoy now, a fully manufactured lower
20 receiver, that has to have a serial number, does it not?

21 A Must be serialized, that is correct.

22 Q If you look at Exhibit 243, look at that, the bottom of
23 the page, that flat. It says you can purchase the frame flat
24 stamping unbent with no permits. Do you see what I am
25 referring to?