

1 A Yes, sir.

2 Q That piece doesn't have to have a serial number, does it  
3 not?

4 A No, sir. That's an unfinished firearm.

5 Q That's unfinished?

6 A Correct.

7 Q But in order to make it into a frame, it just has to be  
8 bent up; is that correct?

9 A Not just have to be bent up.

10 Q But it has to be bent up?

11 A It has to be bent into form, yes.

12 Q It has to be bent into form?

13 A Correct.

14 Q If you look at Exhibit 243, you look at the kit diagram  
15 at the top and the frame flat on the bottom, if you bought all  
16 those items and bent the frame, you would be able to put  
17 together a fully operational M-11/9; is that correct?

18 A You could make as an individual your own semiautomatic  
19 weapon, totally with no serial numbers required and no  
20 restrictions.

21 Q Right.

22 A No serial number or no restrictions.

23 Q Mr. Daniel, Mr. Barr questioned you about some R.P.B. ads  
24 in which you said that that you wouldn't keep any records.

25 Do you recall that?

1 A Yes, sir.

2 Q Did you ever give any thought, any thought to the  
3 possibilities that by assuring a purchaser of those gun kits  
4 that you weren't going to keep any records that that might be  
5 attractive to criminals?

6 A No, sir. It was not meant for that, at all.

7 Q But did you give any thought to that as even a  
8 possibility?

9 A No, sir.

10 Q When you sold the parts kits and the frame flat in 243 to  
11 a resident of New York who didn't have a Federal Firearms  
12 License and therefore who couldn't receive the completed  
13 weapon, did you ever give any thought to the possibility that  
14 that might be attractive to criminals?

15 A No, sir. It could have been for resale. It could have  
16 been for selling at gun shows.

17 Q I understand.

18 My question is, did you, Wayne Daniel, give any  
19 thought to the possibility that selling these parts kits and  
20 frame flats interstate to somebody who you couldn't sell the  
21 completed weapon to would be attractive to criminals? Any  
22 thought whatsoever?

23 A No, sir.

24 Q You talked about the 4473.

25 Did you ever give any thought to the possibility that

1 when you sold the items on 243, Exhibit 243, to somebody who  
2 didn't want to fill out a 4473 and therefore couldn't get a  
3 completed weapon, did you ever give any thought to the  
4 possibility that that might be attractive to criminals?

5 MR. HARFENIST: Objection. Calls for speculation on  
6 the part of the witness.

7 THE COURT: No. He is asking, as I understand it,  
8 for the state of mind of the witness.

9 MR. DAVIS: That is correct. I am asking whether he  
10 personally, Wayne Daniel, gave any thought to that  
11 possibility.

12 MR. HARFENIST: He is saying, well, someone who  
13 called up who didn't want to necessarily fill out a form. How  
14 do you frame a question as to state of mind of this witness  
15 when it is based on the state of mind of some hypothetical  
16 human being?

17 MR. DAVIS: I will be happy to reframe the question,  
18 your Honor.

19 Q Mr. Daniel, did you ever give any thought to the  
20 possibility that by making these items available on Exhibit  
21 243 to somebody who did not fill out a 4473, who did not  
22 answer these questions about whether they were criminals and  
23 the like, did you ever give any thought to the possibility  
24 that that would be attractive to criminals?

25 A No, sir.

W. Daniel - For Defendant - Cross/Davis

1 Q We talked about the fact that if you sold a lower  
2 receiver it had to have a serial number but if you sold this  
3 frame flat, no serial number. Is that correct?

4 A No restrictions, no, sir.

5 Q No restrictions, no serial number.

6 A Correct.

7 Q Mr. Daniel, did you ever give any thought to the  
8 possibility that by virtue of the fact that by buying what's  
9 on 243, including the frame flat, that the receiver of that  
10 could end up with a M-11/9 with no serial number? Did you  
11 give any thought to the possibility that that would be  
12 attractive to criminals?

13 A Attractive to criminals? No, sir.

14 Q When you went through with Mr. Barr the fact that you  
15 were selling multiple gun kits, multiple kits, multiple  
16 frames, flats, frame flats, to the same individuals, without  
17 limitation, did you ever give any thought to the possibility  
18 that that might be attractive to somebody like Juan Torres who  
19 you saw in the courtroom?

20 A Did I give any thought that it would be attractive to  
21 him?

22 Q To somebody like Juan Torres who you saw in this  
23 courtroom.

24 A No, sir.

25 Q When you described how you take these telephone orders

1 and I think you said you don't ask information about criminal  
2 records-- is that correct?

3 A Not for gun parts, no, sir.

4 Q Again, we are talking now for gun part kits.

5 You don't ask any questions about whether they are  
6 illegal aliens; is that correct?

7 A No, sir.

8 Q You don't ask any questions about whether they are drug  
9 addicts?

10 A It is not required, no, sir.

11 Q And you don't ask any questions about whether they are  
12 mentally unstable?

13 A It is not required, no, sir.

14 Q And it is over the phone, so you can't see them. You  
15 don't have a sense as to what their state of mind is, do you?

16 A Do I have any -- repeat, please.

17 Q When you are dealing with somebody over the phone who is  
18 buying one of these gun kits, you don't know what that person  
19 looks like?

20 A No, sir.

21 Q You don't know what that person is going to do with the  
22 gun kits and the frame flat that you sell them; is that  
23 correct?

24 A Don't know what he is going to do with it, no, sir.

25 Q Did you ever give any thought to the possibility,

1 Mr. Daniel, that the person on the other end of that phone  
2 might be one of the Rashid Bazes of the world?

3 A No, sir.

4 MR. DAVIS: I have no further questions.

5 MR. KANE: May I proceed?

6 THE COURT: Please

7 REDIRECT EXAMINATION

8 BY MR. KANE:

9 Q Mr. Daniel, I have some questions on redirect based on  
10 counsel for the plaintiffs' cross-examination. You have been  
11 asked a lot of questions about the Form 4473.

12 Do we have a copy of? Plaintiffs have it.

13 I would like you, while they are looking for it, to  
14 tell the jury whether a Form 44 -- tell the jury what a Form  
15 4473 is required for and who has that requirement?

16 A 4473 is a form that is issued by the Bureau of Alcohol  
17 Tobacco & Firearms for FFLs, Federal Firearms Licensed  
18 Dealers, to record the sale of a title one or a title two  
19 firearm prior to the actual taking of possession.

20 Q Let me interrupt you.

21 The company which you mentioned that you had a --  
22 which company did you have that had Federal Firearms License?

23 A R.P.B. Industries, Inc.

24 Q Now did R.P.B. Industries, Inc. sell to dealers or  
25 individuals?

1 A Both.

2 Q And who would be required to fill out the 4473?

3 A 4473 is filled out by the person that's actually buying  
4 the firearm.

5 Q All right.

6 Now who mandates the requirement that a certain form  
7 titled 4473 be filled out?

8 A Bureau of Alcohol, Tobacco and Firearms.

9 Q Okay. As a licensee, were you familiar with the  
10 requirements of the Bureau of Alcohol Tobacco and Firearms as  
11 it pertained to a BATF Form 4473 as outlined in Plaintiffs'  
12 Exhibit 42 (handing)?

13 A Yes.

14 Q All right.

15 When you engaged in the sale of a firearm, did you  
16 conform to the appropriate federal regulations?

17 A Yes, I did.

18 Q Okay.

19 We have also talked at great length about records.  
20 Did the Bureau of Alcohol Tobacco and Firearms have any record  
21 requirements for a manufacturer or a dealer?

22 A Yes, they do. They have both.

23 Q And what are the requirements of the manufacturer or  
24 dealer when they are selling a completed firearm?

25 A The manufacturer must record in his BATF bound books, on

W. Daniel - For Defendant - Redirect/Kane

1 a daily basis, firearms that are manufactured. There is also  
2 a form, the bound books. It is for the dealers when they sell  
3 weapons. They keep a record of every gun that's brought into  
4 their place of business, either sold on a 4473 or shipped to  
5 other dealers and must have an in and out, an acquisition,  
6 disposition of serialization, serial numbers, as well as  
7 manufacturers and who they are sold to.

8 Q As a licensed manufacturer and dealer through R.P.B.  
9 Industries, Inc., did you conform to the BATF requirements to  
10 record the firearms manufactured and sold in R.P.B.'s bound  
11 books?

12 A Yes, I did.

13 Q Okay.

14 Now, just so we understand, is parts regulated by the  
15 Bureau of Alcohol Tobacco and Firearms?

16 A No, sir, parts are not.

17 Q Is this form which counsel has asked you about repeatedly  
18 and questions contained in this form, Plaintiffs' Exhibit 42,  
19 the 4473, is this a document that is required to be filled out  
20 when someone buys parts or part sets?

21 A No, sir. There is no provision on that sheet for any  
22 part sales.

23 Q Okay.

24 So, if you had inquired of a purchaser to fill out a  
25 Form 4473, someone who is buying parts or a part set, and put



1 it in your bound books, what would happen?

2 A I think you would be seriously reprimanded by BATF when  
3 they come out for an audit. There is no provision for parts  
4 in bound books or 4473.

5 Q Does the Code of Federal Regulations or any statute in  
6 the United States Code have any recordation provisions or  
7 requirements for the sale of firearm parts or part sets?

8 A No, sir.

9 Q More specifically, is there any recordation -- let me  
10 back up.

11 We have heard testimony or questions from counsel for  
12 the plaintiff that R.P.B. Industries was doing business back  
13 in the late '70s, early '80s; is that correct?

14 A That's correct.

15 Q And that Mountain Accessories Corporation did business in  
16 the '90s,?

17 A Mountain Accessories Corporation was not a licensed  
18 firearms dealer. Full Metal Jacket, F.M.J.

19 Q Those corporations, F.M.J. and Mountain Accessories  
20 Corporation, did business in the 1990s?

21 A That's correct.

22 Q Has at any time from the late '70s to the '90s the  
23 regulatory agency, the Bureau of Alcohol, Tobacco and  
24 Firearms, come to you as a licensee and said, We want you to  
25 fill out forms like a 4473, for individuals who were buying

1 parts?

2 A No, sir, they did not, but if it had been mandated, I  
3 would have.

4 Q Have you at any time been required, either by the U.S.  
5 Congress, the Code of Federal Regulations, or the Bureau of  
6 Alcohol, Tobacco and Firearms for this period of 20 years to  
7 put a serial number on any part?

8 A No, sir.

9 Q In fact, is there any procedure set by the regulatory  
10 agency for serializing parts?

11 A No, sir.

12 Q Let's talk about America, this diverse country we live  
13 in, and the different ways that an individual may come in  
14 possession of a firearm.

15 You have talked, I believe, at length that as a  
16 manufacturer, a manufacturer sells to either a dealer or an  
17 individual.

18 A That is correct.

19 Q Okay.

20 What is that product that we are talking about that  
21 the manufacturer sells?

22 A Firearms.

23 Q Okay.

24 Now, what if an individual chooses to make a gun  
25 rather than an individual chooses elects not to go to a dealer

W. Daniel - For Defendant - Redirect/Kane

1 to buy a gun but an individual chooses to make a gun, how does  
2 an individual go about that in America?

3 A He would collect the parts that he needs, either from gun  
4 shows or vendors. He would make himself a frame either from  
5 bending up some sheet metal or either cutting sheet metal out  
6 with a band saw and welding it together and make himself a  
7 firearm. There is no provisions for serialization  
8 whatsoever.

9 Q Let me address that.

10 If an individual in America chooses to accumulate  
11 parts and makes a firearm, is there any Code of Federal  
12 Regulations or law that requires the individual to put a  
13 serial number on it?

14 A No, sir.

15 Q Are there any restrictions on that individual's use of  
16 the gun?

17 A The use of the gun?

18 Q Yes.

19 A Not in a sporting manner, legal manner, no, sir.

20 Q How about if an individual chooses make a Title II  
21 weapon, what do the Code of Federal regulations say?

22 A Up until 1986, a person, an individual, could fill out a  
23 form, send it to BATF. The first copy went to law  
24 enforcement, either the county or city where he was, to say he  
25 was not a known felon, he was a good guy, goes to ATF with a

W. Daniel - For Defendant - Redirect/Kane

1 \$200 fee. Once it is approved, he can make himself a frame  
2 and assemble his own machine gun.

3 This law was changed in 1986. They can no longer be  
4 made by an individual anymore. It can still be made for a  
5 Police Department, on behalf of the Police Department or for  
6 export, but not for individual sale.

7 Q We heard testimony about the records that were kept by  
8 R.P.B. Industries, Inc.

9 Counsel asked you about a term back in the, I believe  
10 it was '84, or '85 when you stopped keeping records, do you  
11 recall?

12 A Yes.

13 Q Tell the jury, first of all, were those records required  
14 for the manufacturer of the firearms?

15 A Through the year of 1982, when R.P.B. Industries held a  
16 manufacturers license, yes.

17 Q What were the records that were not kept, what were they  
18 for?

19 A Those records that were not kept were for parts.

20 Q What is the reason for a term there you did not keep  
21 records?

22 A Because the computerization of customers' names and  
23 addresses as a nationwide BATF campaign.

24 Q Is it your understanding that that campaign terminated at  
25 some point?

1 A Yes.

2 Q And what did you do after BATF stopped computerizing the  
3 records?

4 A I believe that campaign came to an end in 1986, the  
5 latter part of '86, and they went back into business as M.A.C.  
6 in 1983. All the records were kept.

7 Q Did you have any dialogue or conversation with clients  
8 concerning the computerization of their names and addresses?

9 A I had many conversations in the past, yes.

10 Q What was the cause or what were they telling you that  
11 caused you to stop keeping these records?

12 A BATF would come into their residences as well as their  
13 businesses and knock on the door, tell the people they didn't  
14 have a search warrant but if they didn't let them search the  
15 premises they would go get one. They harassed customers  
16 continually for a period of about a year and a half, over and  
17 over.

18 Q Okay.

19 A It was all from parts sales, it was not firearms.

20 Q You have addressed a number of documents concerning  
21 lawsuits involving the Cobray mark. Do you recall?

22 A Correct.

23 Q I believe at least one of those suits was one that was  
24 brought by you or by a corporation in which you held an  
25 interest to R.P.B. Industries, Inc.?

W. Daniel - For Defendant - Redirect/Kane

1 A I believe someone filed suit against R.P.B. Industries  
2 and we made -- counter- sued, yes.

3 Q What was the nature of the suit brought against R.P.B.  
4 Industries?

5 A I believe it was for the use of the Cobray logo.

6 Q Okay.

7 When we talk about the Cobray logo, what are we  
8 talking about?

9 A We are talking about a mythical creature that was  
10 designed by back in the '60s half Cobra snake and half moray  
11 eel with the globe of the world in the center.

12 Q Who was it that sued R.P.B. saying R.P.B. was using this  
13 mark without authority?

14 A I think that it was Mitchell Werbell, III.

15 Q Are you aware of what individual or corporate capacities  
16 Mr. Werbell was using this mark?

17 A He was using it in a training school, I believe, where he  
18 was training people.

19 Q Had Mr. Werbell used this mark on firearm and firearm  
20 parts in the past?

21 A Many years, yes.

22 Q In what companies did he use the name and use the mark?

23 A I believe he began or may have used it before but the  
24 first company that I knew of he used it in was a company  
25 called Syonics in Powder Springs, Georgia.

1 Q What did Syonics put the Cobray on?

2 A Firearm and firearm parts.

3 Q Any other companies?

4 A He ultimately sold to a company called Environmental  
5 Industries which continued the use of the Cobray logo on  
6 firearms and accessories.

7 Q Any other companies?

8 A They in turn I believe sold to a company called Cromwell  
9 Industries that continued manufacturing the weapon and putting  
10 the Cobray on the firearm and accessories.

11 Q This suit against Werbell that Werbell brought against  
12 you was about what time in history?

13 A Late '70s.

14 Q Okay.

15 Is it your understanding that prior to bringing this  
16 suit, Werbell had used this same mark on firearms, firearm  
17 parts and firearm accessories, in at least three separate  
18 corporate entities?

19 A There was one other corporation, Military Armament  
20 Corporation that also used the Cobray logo on the weapons and  
21 accessories.

22 Q Are those parts and firearms and accessories out in  
23 commerce?

24 A Yes, sir.

25 Q With the Cobray mark on it?

1 A Yes, sir.

2 Q Werbell sued R.P.B. and said R.P.B. didn't have the  
3 authority to use the mark?

4 A Correct.

5 Q And if I understand correctly, the court ordered that  
6 R.P.B. had the authority at that time?

7 A Yes, sir.

8 Q Okay.

9 Now you stated on cross-examination that at this time  
10 you are not sure whether you personally have any ownership  
11 rights in the mark or not?

12 A That's correct.

13 Q Tell the jury why you are not sure whether today you are  
14 not certain of any ownership rights in the trademark?

15 A It's been used by so many firms, so many companies in the  
16 past ten years or so that if you have a trademark or you have  
17 a patent and you don't protect it when you find out people are  
18 using it, it basically goes into public domain and anyone can  
19 use it.

20 Q And have you continued to bring lawsuits against all the  
21 different individuals and all the different companies that  
22 have promoted the use of the Cobray mark on Cobray parts and  
23 accessories?

24 A No, sir, I have not.

25 Q Does that form the basis of your uncertainty at this



1 point about whether you still have ownership rights to the  
2 mark?

3 A Uncertainty of that, as well as financial.

4 Q You were also asked about the sale of firearm parts,  
5 either individually or in multiple sales.

6 Is there any restriction on the sale of parts, either  
7 individually or in lots?

8 A No restrictions, no, sir.

9 Q And have you ever been advised by either the BATF or by  
10 the Code of Federal Regulations that in this commerce of  
11 firearm parts, there was a restriction on multiple sales?

12 A No, sir. On the contrary. I have had several and  
13 various conversations with BATF agents, some of the agents in  
14 charge at Chattanooga, as well as Atlanta, and they are  
15 totally aware of this. They are totally aware that the part  
16 sales are legal, and they have no problem with it.

17 Q If I understand correctly, you testified that you send  
18 out a catalog or mailing list?

19 A That's correct.

20 Q And, again, where did you receive the names and addresses  
21 for that catalog or mailing list purchasers?

22 A The names and addresses were bought from the Bureau of  
23 Alcohol, Tobacco, and Firearms.

24 Q Have you had the opportunity to sell firearms, firearm  
25 parts, and firearm accessories to Police Departments and law

W. Daniel - For Defendant - Redirect/Kane

1 enforcement agencies?

2 A Yes, I have.

3 Q And has that continued since the 1970s through current?

4 A '78 to current.

5 Q Let me just direct your attention now to this PM-11/9  
6 firearm. Is it currently in production?

7 A The PM-11/9 is currently in production.

8 Q There was some talk about didn't you know that Congress  
9 wanted to ban it or the sheriff's department wanted to ban  
10 it. Tell the jury now what was the procedure to have the  
11 PM-11/9 approved for manufacture and sale in America today?  
12 What was done?

13 A In its initial approval?

14 Q Yes.

15 A Several prototypes were sent to BATF technology  
16 department.

17 Q Where is that?

18 A That's in Washington, D.C. It was sent to them for their  
19 scrutiny and their okay on sales. So that, basically, what  
20 BATF is looking for in a semiautomatic gun or Title 1 gun,  
21 that it is not easily converted to a machine gun.

22 The prototypes were sent and the prototypes were  
23 approved by BATF stating that they are not easily converted to  
24 machine guns.

25 Q Okay.

W. Daniel - For Defendant - Redirect/Kane

1           What did BATF respond? What was their response when  
2 you sent these prototypes to them after there had been an  
3 initial ban of this gun and others?

4     A     In '94 when the Assault Weapon Bill was passed, two of  
5 the restricting features, the external threads on the barrel  
6 of the gun were removed, and also the external magazine catch  
7 was removed. It has an internal catch on the magazine. They  
8 approved this gun, said it is not an assault weapon in this  
9 form.

10    Q     Okay.

11           We have heard a lot of testimony in this case about  
12 an advertisement for a part set, the incident which occurred  
13 in March of '94?

14    A     Correct.

15    Q     Do you recall?

16    A     Correct.

17    Q     Is the firearm which is marked as Plaintiffs' Exhibit 1 a  
18 firearm that was put together from a part set?

19    A     That firearm was put together. I don't believe that the  
20 firearm was put together from a part set because it has  
21 various parts that are semiautomatic as well as parts that are  
22 machine gun parts. It would not have been a complete set of  
23 parts of any one type.

24    Q     Is it a firearm that was assembled from the part for  
25 which plaintiff complained about in Plaintiffs' Exhibit 243?

1 A Absolutely not.

2 Q Okay.

3 At any time when you sold parts, at any time when you  
4 sold parts, did you include a frame or receiver with the  
5 parts?

6 A Serialized frame or receiver?

7 Q Yes.

8 A No, sir.

9 Q When you sell a frame or receiver, what does BATF  
10 require?

11 A BATF requires you to either be a federally licensed  
12 dealer, and I have to have a copy of your Federal Firearms  
13 License that is signed in ink, original signature on file  
14 before I could ship the gun.

15 MR. KANE: Thank you.

16 THE COURT: Be very brief on recross, please.

17 MR. BARR: Yes I will, your Honor.

18 RE-CROSS-EXAMINATION

19 BY MR. BARR:

20 Q Mr. Daniel, the net of it all is that you sold multiple  
21 gun kits of part sets to anyone over the telephone or by mail  
22 order; correct?

23 A Yes.

24 MR. KANE: Excuse me, objection. Asked and  
25 answered.

W. Daniel - For Defendant - Recross/Barr

1 THE COURT: I will permit some.

2 Go ahead.

3 A Yes, sir.

4 Q The only question I have for you is:

5 You talk about computerizing because the BATF was  
6 harassing customers?

7 A That's correct.

8 Q What do you think they were, as you call it, harassing  
9 customers for; for fun and games because they like to do it,  
10 or do you think it was because they were interested in  
11 enforcing the law and preventing crime?

12 A At that particular time, the computerization was done for  
13 the benefit of Congress in trying to pass the '86 bill on  
14 guns.

15 Q You think they were harassing your customers for the  
16 benefit of Congress?

17 A Absolutely.

18 MR. BARR: No more questions, your Honor.

19 MR. DAVIS: I just have a couple

20 RECROSS-EXAMINATION

21 BY MR. DAVIS:

22 Q Mr. Kane asked you on redirect whether you could have  
23 filled out 4473 for sale of parts kits?

24 A Yes, sir.

25 Q There would have been nothing illegal about asking a

W. Daniel - For Defendant - Recross/Davis

1 customer over the telephone as to whether they were a  
2 criminal, whether they had a criminal record, whether they  
3 were an illegal alien, or asking for any of the other  
4 information that is contained in the form?

5 A Would it would have been illegal for me to do so?

6 Q Right.

7 A No, sir.

8 Q The practice you described at MAC in terms of what you  
9 asked and didn't ask, that applied when you were selling gun  
10 kits at R.P.B., did it not?

11 A Correct.

12 Q And R.P.B. sold gun kits both for semiautomatics and for  
13 machine guns, isn't that correct?

14 A That's correct.

15 Q You mentioned on redirect Syonics, Environmental  
16 something, Cromwell, and Military Armaments. Those were all  
17 companies that went out of business or went bankrupt before  
18 R.P.B. acquired the Cobray trademark, isn't that correct?

19 A Military Armaments Corporation, that is the only one that  
20 went into bankruptcy.

21 Q But the others were no longer in business, were they?

22 A Syonics, I believe, was.

23 Q It hasn't been in business for a long time, has it?

24 A It hasn't, you say?

25 Q It has not, has it?

W. Daniel - For Defendant - Recross/Davis

1 A Mid '80s, I believe.

2 Q Not in business since the mid-'80s.

3 Mr. Kane finally asked you about changes made after  
4 the assault weapon ban so you could produce the new PM-11/9.  
5 Do you recall he asked you about that?

6 A PM-11/9, yes, sir.

7 Q But as of March 1, 1994, the gun that you were then --  
8 the M-11/9 as it then existed, that was the gun that was  
9 banned later in that year, isn't that correct?

10 A That was the M-11/9, yes.

11 MR. DAVIS: I have nothing further.

12 FURTHER REDIRECT EXAMINATION

13 BY MR. KANE:

14 Q Mr. Daniel, what happened to the parts of the companies  
15 of Syonics, Environmental Industries, and Military Armament  
16 Corporation that had the trademark on them?

17 A The majority of the parts were auctioned off at a public,  
18 bankruptcy auction.

19 Q Did you see the volume of parts?

20 A Yes, sir.

21 Q How many were there?

22 A Tens of thousands of parts.

23 As a matter of fact, R.P.B. Industries acquired quite  
24 a few of them after the bankruptcy auction and used parts to  
25 make firearms for several years out of the surplus of parts.

W. Daniel - For Defendant - Redirect/Kane

1 MR. KANE: Thank you. Nothing further.

2 Come down.

3 THE COURT: Next witness, please.

4 MR. KANE: Shall we proceed or should we take  
5 lunch?

6 THE COURT: Proceed.

7 MR. KANE: We call Sylvia Daniel.

8 **SYLVIA DANIEL**

9 called by Defense, having been first duly  
10 sworn, was examined and testified as follows:

11 THE COURT: Give your name please, spelling it.

12 THE WITNESS: Sylvia Williams Daniel, S-y-l-v-i-a  
13 W-i-l-l-i-a-m-s D-a-n-i-e-l.

14 MR. DAVIS: Should we retrieve those exhibits that  
15 were left from the last witness?

16 THE COURT: Yes.

17 DIRECT EXAMINATION

18 BY MR. KANE:

19 Q Good afternoon. I am going to ask you to identify some  
20 documents.

21 MR. KANE: If the court doesn't mind, I am going to  
22 stand next to the witness.

23 THE COURT: Yes.

24 Q Ms. Daniel, I would like to lay a foundation here and ask  
25 you to identify some documents.



S. Daniel - For Defense - Direct/Kane

1 This is Defendant's Exhibit 68. If you could  
2 identify that document, please (handing)?

3 A It is the incorporation of S.W. Daniel Incorporated,  
4 domestic profit corporation.

5 Q What's the status of S.W.D., Inc.?

6 A S.W.D. Daniel, Inc. is no longer in existence.

7 Q I show you what is marked as Defendant's Exhibit 712 and  
8 ask if you would identify that document, please.

9 A This is also the corporation document of Cobray Firearms  
10 Incorporated.

11 Q And what is the status of Cobray Firearms, Inc.?

12 A Cobray Firearms Incorporated is no longer in existence.

13 Q Let me show you what is marked as Defendant's Exhibit 72  
14 and ask you if you could identify that document, please.

15 A Corporate document of Ultra Force Incorporated.

16 Q What is the status of Ultra Force?

17 A Ultra Force Incorporated is a Georgia corporation. No  
18 longer in existence.

19 Q Let me show you what is marked as Exhibit D 85  
20 (handing).

21 A "Shareholder and Directors Meeting for Ultra Force  
22 Organization Incorporated."

23 Q For what years?

24 A '93, 1994, 1995. These are the corporate annual reports  
25 for '94.

S. Daniel - For Defense - Direct/Kane

1 Q What state?

2 A Tennessee.

3 There is also a documentation, the articles are the  
4 corporation of Ultra Force Incorporated in the state of  
5 Tennessee, dated March 18, 1993. There is also articles of  
6 incorporation for Ultra Force Corporation, dated January 2,  
7 1996.

8 Q Let me show you what is marked as Defendant's Exhibit 81,  
9 ask you what that is.

10 A These are the South Central Bell telephone bills for  
11 Ultra Force Organization from -- the date is covered on most  
12 of them. 93.

13 Q '4?

14 A '4.

15 Q Okay.

16 Let me show you what is marked as Defendant's Exhibit  
17 84 (handing). Identify that document, please.

18 A This is the incorporation of Leonard Incorporated dated  
19 January 16, 1996, in the State of Nevada.

20 Q Let me show you what is marked as Defendant's Exhibit  
21 70. Identify it.

22 A This is incorporation documents of Leinad, Inc. dated  
23 1991 Atlanta, Georgia.

24 Q Put all those documents in one pile.

25 I am going to show you several lawsuits and ask if

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1 you would identify those, please. I have certified copies  
2 here. Defendant's Exhibit 64. What is that?

3 A This is a lawsuit that S.W.D. brought against Military  
4 Armament Corporation, a Texas corporation, Perry Smith, D/B/A  
5 Gunworks, and Euclid Avenue Sales.

6 Q Let me show you what is marked as Defendant's Exhibit  
7 64. I ask you to identify that document, please?

8 A It is the original complaint of S.W. Daniel, Inc. versus  
9 Perry Smith, d/b/a Gunworks. Motion of complaint, temporary  
10 and permanent injunction restraining order for damages.

11 Q Let me show you what is marked as Defendant's Exhibit 63,  
12 please.

13 A S.W. Daniel, Inc., plaintiffs, versus Euclid Avenue Sales  
14 Incorporated.

15 Q Okay.

16 If I may just address some foundation questions.

17 For the corporations for the entities in which you  
18 did business in the firearms industry, did you do business  
19 individually or through a corporate entity?

20 A Corporate entity.

21 Q Okay.

22 The exhibits which I have tendered to you, that being  
23 Exhibits 68, 71, 72, 85, 81, 84 and 70, are these exhibits  
24 various corporate charters which you registered with the  
25 appropriate states that do business as a corporation?

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1 A Yes, they are.

2 Q Have you ever done business as an individual?

3 A No, sir.

4 Q Would it be accurate to say that any business that you  
5 perform in the firearms industry was done through a corporate  
6 entity?

7 A Yes.

8 Q Let's back up. When did you get in the firearms  
9 business?

10 A 1982 or '83.

11 Q What was the name of that company?

12 A S.W. Daniel Incorporated.

13 Q What other company did you do business in subsequent to  
14 S.W. Daniel, Inc.

15 A Subsequent, I was a director of R.P.B. Industries for a  
16 while.

17 THE COURT: Excuse me. You have mentioned a number  
18 of documents by number. Are you offering them?

19 MR. KANE: Yes, sir. I would like to offer them.

20 THE COURT: Give me the documents you are offering by  
21 number now, all of them, so we can have them introduced and  
22 marked.

23 MR. KANE: Yes, sir. It would be Defendant's  
24 Exhibit 70, certified copy of the Corporate Charter of Leinad,  
25 Inc.; Defendant's Exhibit 84, Certificate of Incorporation of

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1 Leinad, Inc.; Defendant's Exhibit 81, copies of various bills  
2 from South Central Bell Company to UFO, Inc.; Defendant's  
3 Exhibit 85, cumulative directors minutes for Ultra Force,  
4 Inc.; Defendant's Exhibit 72, certified copy of Ultra Force,  
5 Inc.; Defendant's Exhibit 71, certified copy of corporate  
6 charter of Cobray Firearms, Inc.; and Defendant's Exhibit 68,  
7 certified copy of the corporate charter of S.W. Daniel, Inc.

8 THE COURT: Okay. You didn't mention 64?

9 MR. BARR: I have another pile here.

10 THE COURT: All of these you just mentioned are now  
11 in evidence.

12 (Plaintiffs' Exhibits 68, 70, 71, 72, 81, 84 and 85  
13 in evidence.)

14 MR. KANE: Defendant's Exhibit 63, certified copy of  
15 the lawsuit S.W. Daniel, Inc. versus Euclid Avenue Sales,  
16 Inc.; Defendant's Exhibit 64, certified copy of the lawsuit  
17 of S.W. Daniel, Inc. versus Perry Smith d/b/a Gunworks; and  
18 Defendant's Exhibit 65, certified copy of the lawsuit of S.W.  
19 Daniel, Inc. versus Military Armament Corporation, a Texas  
20 corporation, Perry Smith, d/b/a Gunworks and Euclid Avenue  
21 Sales Company, Inc.

22 THE COURT: All right. They are all in evidence.

23 (Plaintiffs' Exhibits 63, 64 and 65 in evidence.)

24 MR. KANE: Should I proceed?

25 THE COURT: Please.

1 MR. KANE: Thank you

2 BY MR. KANE:

3 Q We were talking about the business structure, whether it  
4 was proprietorship or corporate. The manner in which you  
5 conducted business was through what type of entity?

6 A Corporation, S.W. Daniel Incorporated.

7 Q Thereafter, what corporations did you do business as?

8 A S.W. Daniel Incorporated, Cobray Firearms Incorporated,  
9 Ultra Force Incorporated, Ultra Force Organization  
10 Incorporated, and Leinad Incorporated.

11 Q Have any of your companies ever engaged in the sale of  
12 the interstate sale of firearm parts?

13 A Excuse me?

14 Q Have any of the companies for which you did business ever  
15 engage in the interstate sale of firearms parts?

16 A Yes.

17 Q What were they?

18 A Ultra Force Organization, Ultra Force Incorporated, and  
19 Leinad, Inc.

20 Q What does Leinad, Inc. do?

21 A Leinad, Inc. is a Class III dealer.

22 Q Tell the jury what that means?

23 A Okay. The Class III dealer is, in the firearm industry,  
24 it means like the dealers get a transfer. Like I would sell  
25 machine guns or NFA items to the dealer in Nevada.

S. Daniel - For Defense - Direct/Kane

1 Q Wait a minute. You have to tell the jury what an NFA  
2 item is?

3 A Excuse me. NFA is like a machine gun or silencer, things  
4 that are actually controlled. You have to be fingerprinted,  
5 mugshot, before you can actually purchase one.

6 Q Okay.

7 What is Leinad, Inc.?

8 A Leinad buys and sells Class III items or NFA items,  
9 only. They are an 03, they are not an 07. Leinad, Inc. is  
10 not a manufacturer. It is just a dealer.

11 Q Are they a dealer in parts?

12 A No, sir.

13 Q And how about Ultra Force, Inc.?

14 A Ultra Force sells parts in the rough.

15 Q Do they sell interstate to customers?

16 A No, sir.

17 Q All right.

18 What was the business of S.W. Daniel, Inc. and Cobray  
19 Firearms, Inc.?

20 A S.W. Daniel, Inc. was the manufacturer -- S.W. Daniel was  
21 an 07, as well as Cobray Firearms.

22 Q The jury has no idea what you mean when you say 07.

23 A Excuse me.

24 An 07 is a manufacturer. An 03 would be a dealer.

25 An 07 means your corporate entity has the ability to

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1 manufacture Title I, Title II firearms.

2 Q Was S.W. Daniel, Inc. and Cobray Firearms, Inc. licensed  
3 by the federal Government?

4 A Yes.

5 Q What type of license did they have?

6 A 07. They were manufacturers.

7 Q Okay.

8 Whom did they sell to?

9 A A hundred percent of S.W. Daniel Incorporated as well as  
10 Cobray Firearms firearms that were sold were sold to FFL  
11 dealers.

12 Q What's an FFL dealer?

13 A Federal firearms licensees, people that actually have  
14 been licensed by the Bureau of Alcohol, Tobacco, and Firearms.

15 Q Explain to the jury how a sale of a firearm would occur  
16 if someone called in at S.W. Daniel, Inc. or Cobray?

17 A Someone would call in and they would say I would like to  
18 place an order for an M-11/9 semi. And then your next  
19 question would be, sir, do we have a copy of your FFL on  
20 file? If he says no, then we say we can't sell to you, you to  
21 have to go through an FFL dealer. We sell only to FFL dealers  
22 throughout the United States. We do not sell to individuals.

23 Q How about the sale of parts?

24 A Sale of parts is not restricted.

25 Q How would Cobray or S.W. Daniel, Inc. sell parts?



S. Daniel - For Defense - Direct/Kane

1 A You would ask them if you had a copy of their FFL on  
2 file. If you did, that meant men they were a dealer and they  
3 would get dealer pricing. If you did not, that meant they  
4 would pay retailer pricing. The difference between dealer and  
5 retail is 40 percent.

6 Q Are you familiar with Shotgun News?

7 A Yes.

8 Q What is Shotgun News?

9 A It is a publication for the gun industry. We have seen  
10 lots of copies of it here.

11 Q Did you use Shotgun News as an advertising media?

12 A Yes, I did.

13 Q We have heard quite a bit of testimony here today. You  
14 were present during the trial, also the testimony of  
15 Mr. Daniel. If you would explain to the jury what the  
16 difference is between the sale of a firearm and the sale of  
17 firearm parts.

18 A The sale of a firearm, when a manufacturer manufacturers  
19 a firearm, you have to enter it on your bound books. Your  
20 bound books, they are requirements required by the Bureau of  
21 Alcohol Tobacco and Firearms. Anything you do as a  
22 manufacturer you have to enter on your books.

23 So a gun, the best scenario I would know would be to  
24 say it is like a chain, like a link in a chain. You don't  
25 break that chain. You manufacture a firearm. You ship that

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1 firearm to an FFL dealer. You have to have -- you have to  
2 keep it on your books as long as you are in business to say  
3 what happened to that particular firearm in case there is ever  
4 a trace or anything.

5           As far as parts, there is absolutely no restriction  
6 on parts whatsoever.

7 Q     How about the recordation of parts, is there any  
8 regulation that you know of that requires the recordation of  
9 parts by the seller?

10 A     No. There is absolutely no restriction on parts  
11 whatsoever.

12 Q     Let's say you wanted to put serial numbers on parts. How  
13 would you do it or could you do it?

14 A     There is absolutely no way. There is no guidelines.

15 Q     Is there any regulation that the federal government sets  
16 up for you to record the manner in which parts would be  
17 serialized and the recordation of the serial number for parts?

18 A     Absolutely not.

19 Q     Now, are you familiar with this Form 4473 which the  
20 plaintiffs have discussed?

21 A     Yes.

22 Q     What is that form?

23 A     That is a form. An individual, you, as an end user, or  
24 an individual would go into a gun shop. You would purchase a  
25 Glock or Smith & Wesson, M-11/9. You would fill out a 4473.

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1 And if you answer "no" on any of the questions, then you would  
2 not be allowed to leave with that weapon.

3 Q Let's say an individual chose to buy -- let's say you  
4 were selling parts. What individuals buy parts?

5 A Individuals buy parts because it is totally legal for an  
6 individual to build themselves a Title I firearm for their own  
7 protection or their own use. Parts are also sold all over the  
8 United States, and the largest supplier of parts would be the  
9 federal government. But parts are sold because when you take  
10 your gun apart, you lose parts, you are cleaning it, they get  
11 bent up, they rust. For whatever reason. They are just  
12 replacement parts.

13 Q How about to make a gun?

14 A It is strictly legal for an individual to make a Title I  
15 firearm.

16 Q And what are the regulations that you understand  
17 concerning the sale of firearm parts, and I include in that  
18 replacement parts or part sets.

19 A There is absolutely no regulation whatsoever on the  
20 control of parts.

21 Q Have you ever been to places where parts are sold openly,  
22 like flea markets or gun shows?

23 A Well, a gun show is very similar to a large flea market.  
24 The only difference is it is gun-related items.

25 Yes, I have.

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1 Q Tell the jury what that it is like, what size auditorium  
2 these products are sold in?

3 A The largest one that I know would be in California. They  
4 are all over the United States. There is probably ten  
5 thousand different maybe, 5, 10, 15,000 gun shows in the  
6 United States in the year. It is no different than going into  
7 a flea market. If you are looking for ammunition you are  
8 looking for ammo, you are looking for camouflage, you are  
9 looking for sites, you are looking for lasers, you are looking  
10 for guns, you are looking for carry cases, you are looking for  
11 holsters. Anything you would possibly want in the firearm  
12 line, in the sporting goods line you would find at a gun  
13 show.

14 Q Does that include parts for the M-11/9?

15 A It includes parts for all firearms.

16 Q How about Uzis?

17 A Correct.

18 Q Smith & Wesson pistols?

19 A All firearms.

20 Q Glock pistols?

21 A Correct.

22 Q Have you been to gun shows? .

23 A Absolutely.

24 Q And how many? Can you guess or estimate?

25 A Probably four, five hundred.

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1 Q Okay.

2 I have a number of exhibits before you dealing with  
3 the Cobray mark, they being Defendant's Exhibit 63, 64, and  
4 65.

5 Do you have any knowledge of the use of the  
6 trademark, Cobray trademark, by individuals or companies other  
7 than the ones for which you have owned?

8 A Yes. Absolutely.

9 Q Have you been party to litigation concerning the  
10 trademark?

11 A Yes, I have.

12 Q Tell the jury what was involved in, say, the case against  
13 Military Armament Corporation?

14 A When I originally set up S.W. Daniel, Inc., Wayne and I  
15 had an agreement, I guess, that I would use the snake, but he  
16 said he didn't really think he owned anything so he really  
17 didn't think I would need anything. So we just let it go at  
18 that.

19 Then, as everything progressed and Military Armament  
20 Corporation, Stephenville, Texas, started producing the M-11/9  
21 and the PM-11/9 and putting the snake on it, the emblem, the  
22 globe and serpent, and they were selling parts, magazines,  
23 accessories and everything. Then the customers would buy  
24 their product, and then the customers would send the product  
25 back to me for a refund because they would say it didn't work

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1 or it wasn't what it was held out to be. That's when we went  
2 into litigation to stop them from using the snake.

3 Q What were you finding with these other firearms and these  
4 other firearm parts? Were they parts or guns that were  
5 manufactured by your company?

6 A No, sir, they were not. No.

7 Q Did you bring a lawsuit against Euclid Avenue Sales?

8 A Yes, I did.

9 Q What was Euclid Avenue Sales doing?

10 A He was stamping the Cobray on parts and accessories, as  
11 well as magazines, top receivers, boats, everything, as  
12 everybody else in the industry. Everybody thought it was free  
13 game.

14 Q How about Perry Smith, what was he doing?

15 A Perry Smith, my understanding is he was a distributor for  
16 Military Armament Corporation to distribute the M-11/9 and  
17 M-10/9s that were being produced by Military Armament  
18 Corporation out of Stephenville, Texas.

19 Q Was there use of the trademark on those parts and  
20 firearms?

21 A Yes, there was.

22 Q Are you familiar with the company Syonics, Inc.  
23 Environmental Industries, Inc., and the Military Armament  
24 Corporation in Powder Springs, Georgia?

25 A Yes, I am familiar with them.

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1 Q What do you know of the use of the trademark by those  
2 companies?

3 A Those trademarks were used. My understanding is it  
4 originally came up through Mitchell Werbell, and Syonics used  
5 it.

6 Q When you say "use it," how did they use it?

7 A Parts, accessories, guns, frames, flats, cut and sew,  
8 tool bags, carry case, this type of stuff. T-shirts, hats.  
9 Everything.

10 Q Now, was there a time when you stopped bringing lawsuits  
11 and stopped trying to enforce your license for the use of the  
12 Cobray trademark?

13 A Well, Wayne Daniel told me I had didn't have any anything  
14 anyway, a license. So, when it got so that everybody in the  
15 industry was putting the snake or the globe and serpent on  
16 everything being produced, there is no way you could protect.  
17 Not financially. I mean there is no way.

18 Q What do you mean "financially"?

19 A I didn't have the money to fight all of them.

20 Q Did you continue to bring lawsuits to enjoin the use, or  
21 did you stop?

22 A I stopped. I couldn't afford the litigation.

23 Q Are you familiar with the publication by the Bureau of  
24 Alcohol Tobacco and Firearms which is marked as Defendant's  
25 Exhibit 29, Federal Firearm Regulations Reference Guide?

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1 A Yes, sir.

2 MR. KANE: I think this is already in evidence,  
3 D 29.

4 MR. DAVIS: I don't know if it is. It is a series of  
5 regulations.

6 THE COURT: D 29.

7 Do you have an objection.

8 MR. DAVIS: I thought we had wanted to put in various  
9 statutes.

10 MR. KANE: I will ask rather than submit.

11 THE COURT: It is marked for identification. I don't  
12 want to burden you, members of the jury, with all of these  
13 laws. You will have enough problems with the facts.

14 Q Are you familiar with the directives by the Bureau of  
15 Alcohol Tobacco and Firearms to you as someone engaged in the  
16 firearm industry and as published in the BATF publication,  
17 Federal Firearm Regulations Reference Guide dealing with  
18 firearm parts?

19 A Yes, I am.

20 Q What is your understanding of the regulatory agency's  
21 position on the sale of parts?

22 A There is no regulation whatsoever for firearm parts.

23 Q Now, if I may, you have seen the advertisements for which  
24 the plaintiffs have complained of here throughout the past  
25 several weeks.



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1 A Yes.

2 Q You have heard the testimony of various individuals  
3 concerning the Baz firearm.

4 Do you have an opinion on whether the Baz firearm was  
5 assembled from the parts which are depicted in Plaintiffs'  
6 Exhibit 243, that being the ad which is selling part sets or  
7 parts sets?

8 A Well, my opinion would be, I guess, the same as your  
9 expert, as well as the plaintiffs' expert, that said there was  
10 no way that the gun was assembled from those part sets.

11 MR. KANE: Thank you. That's all I have.

12 MS. GOLDSTEIN: Your Honor, should we take a lunch  
13 recess.

14 THE COURT: We could do that. Yes.

15 Would you be back at quarter to two, please.

16 Counsel will remain.

17 (Jury leaves courtroom).

18 THE COURT: How does it look for the completion of  
19 the evidence? You have this witness and then you have your  
20 deposition you are putting on.

21 MR. KANE: We have this witness and then one more  
22 live witness.

23 THE COURT: Could we finish that witness today.

24 MR. KANE: I believe we will get through that  
25 witness today. Then we have the Baz confession which we can

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1 show on video, and we have some deposition readings, and we  
2 are done.

3 MR. KANE: We are prepared to go forward with the  
4 reading of the Baz deposition. The video deposition of  
5 Mr. Weekes won't be ready until sometime in the morning, early  
6 morning tomorrow.

7 THE COURT: Okay. One reason I ask is they are  
8 having a conference, high school young adults, beginning at  
9 twelve, running to three, tomorrow. If we could finish by  
10 twelve or so, we could let the jury go, spend the rest of the  
11 afternoon after I finish the conference on the jury charge  
12 conference, and then we could have summations first thing  
13 Wednesday, with a charge Wednesday.

14 MR. DAVIS: That's fine.

15 THE COURT: Let's try to shoot, if we could, to  
16 finish the evidence itself at 12:00 noon.

17 MR. KANE: I think we will.

18 MR. HARFENIST: I don't think that will be a  
19 problem.

20 THE COURT: No. I think so but I wanted to alert you  
21 anyway.

22 (Continued on next page.)  
23  
24  
25

S. Daniel - For Defense - Direct/Kane

1 Afternoon session

2 THE COURT: Will the witness take the stand, please.

3 (Jury enters courtroom)

4 SYLVIA WILLIAMS DANIEL

5 called by Defense, having been previously duly  
6 sworn, was examined and testified further as follows:

7 CROSS-EXAMINATION

8 BY MS. GOLDSTEIN:

9 Q Good afternoon, Mrs. Daniel.

10 A Good afternoon.

11 Q Mrs. Daniel, I believe in response to the last question  
12 that Mr. Kane asked you, he asked you -- I believe you  
13 testified there was no way the crime gun is assembled from the  
14 part kit depicted in plaintiffs 243.

15 That was your testimony, right, Mrs. Daniel?

16 A Yes, I believe that is correct.

17 Q Mrs. Daniel, isn't it a fact you testified at your  
18 deposition the following?

19 "QUESTION: Are you familiar personally with the  
20 manufacture of the M-11/9?

21 "ANSWER: No.

22 "QUESTION: You don't know how it is done or what  
23 parts are used?

24 "ANSWER: No, sir, I do not."

25 That was your testimony, correct?

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1 A Correct.

2 But I also said, I believe in my last statement, that  
3 I agree with your expert as well as the one we called, and  
4 they said also there was no way the Baz guns could have been  
5 produced from the part set.

6 Q Mrs. Daniel, do you have any personal knowledge of this  
7 topic, one iota, at all?

8 A Excuse me?

9 Q Do you have any personal knowledge about the topic,  
10 personal knowledge, as to whether the crime gun was put  
11 together from something that was depicted in Plaintiffs'  
12 Exhibit 243, or not? Personal knowledge?

13 A No, but according to the experts, it is what they said,  
14 also.

15 Q Mrs. Daniel, I am asking if you have personal knowledge.

16 A Okay.

17 Q I am not asking for what some other expert said. I am  
18 asking you for your personal knowledge.

19 A No.

20 Q Mrs. Daniel, we've heard lots testimony in this case  
21 about semiautomatic kits, fully automatic or submachine gun  
22 kits. You would agree with me that fully automatic kits are  
23 submachine gun kits, correct?

24 A Correct.

25 Q About which one the crime gun is.

## S. Daniel - For Defense - Cross/Goldstein

1           You sold both semiautomatic kits and fully automatic  
2 or submachine gun kits, right?

3   A     No, ma'am.

4   Q     You did not?

5   A     No, ma'am.

6   Q     S.W. did not sell --

7   A     Yes, ma'am, S.W.D. did.

8   Q     And S.W.D. sold fully--

9   A     S.W.D. Incorporated; yes, ma'am. Sylvia Daniel did not.

10  Q     You wholly owned S.W.D.; correct?

11  A     100 percent stock; correct.

12  Q     And I believe in your deposition you referred to them as  
13 your corporations, correct?

14  A     It was my idea to establish corporations, correct.

15  Q     So when I refer to "your corporation," I am referring to  
16 the same thing you referred to in your deposition; I am  
17 referring to S.W.D., Cobray, Leinad, and Ultra Force. Okay?

18  A     But you are not referring to Sylvia Daniel, personally?

19  Q     I am referring to your corporations.

20  A     Then we can refer to it as corporation or whatever  
21 corporations we are talking about, then?

22           THE COURT: Excuse me for just a minute.

23           (Pause).

24           MS. GOLDSTEIN: I will try to slow down.

25  Q     Ms. Daniel, let me show you, I believe, and the jury has

S. Daniel - For Defense - Cross/Goldstein

1 this document --

2 MR. KANE: Identify the exhibit, please.

3 MS. GOLDSTEIN: It is a compilation of ads,  
4 Plaintiffs' Exhibit 201 through 265, all of which are in  
5 evidence.

6 Q Ms. Daniel, can you look, please, at Exhibit 223 and flip  
7 through to all the exhibits, through 242, 223 to 242.

8 You would agree with me, Mrs. Daniel, that these are  
9 all semiautomatic gun kits that you advertised in your  
10 corporations; correct?

11 A I believe that would be correct.

12 Q You also sold submachine gun kits, right, to end users,  
13 right?

14 A Yes.

15 Q And you had submachine guns, fully automatic. So when  
16 we've heard testimony about the crime gun firing fully  
17 automatic, the submachine gun kits that you sold when put  
18 together create a fully automatic gun; correct?

19 A Correct. Those were only sold prior to 1986, though.

20 Q I understand. You sold them.

21 Let's go through some of those just to make sure.

22 Let's look at Plaintiffs' Exhibit 201 which is the  
23 first compilation.

24 This is an ad, is it not, for a fully automatic kit  
25 that includes everything, right? It includes the frame flat,

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1 it includes barrels, it includes magazines. You have every  
2 single thing you need to put together a gun on this page?

3 A You said 201?

4 Q 201, yes.

5 A Excuse me. No, ma'am. What I am looking at doesn't say  
6 that. It says M-11/9 semiautomatic pistols and submachine  
7 guns from Cobray.

8 Q Could you look, please, on the ad at the bottom. I will  
9 put it on the wall so you see what I am referring to.

10 You see this line over here?

11 A Yes.

12 Q Right over here is --

13 A Okay.

14 Q That refers to submachine gun part sets available to the  
15 general public. Right. It says it includes frame flats.

16 Correct?

17 A Correct. I believe it is dated October 1, 1983.

18 Q I understand. But this is your ad?

19 A S.W. Daniel, yes.

20 Q Do you have any facts at all that suggest that the Cobray  
21 M-11/9 crime gun couldn't have been put together from this  
22 ad?

23 A Yes, ma'am. According to the experts, they said there  
24 were semiautomatic parts in the gun.

25 Q I am asking for your knowledge.

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1 MR. KANE: If I may, this is kind of a trick  
2 question. Ms. Daniel has been here for two weeks and has  
3 heard counsel for the Plaintiffs' own witness make certain  
4 declarations as an expert in court. She also heard the  
5 representative from the San Diego Police Department, our  
6 representative, Eugene Wolberg designated as an expert and  
7 make certain comments. When counsel says, from your own  
8 knowledge, Ms. Daniel has heard expert witnesses make certain  
9 conclusory statements.

10 THE COURT: Why don't you lay down the foundation of  
11 your series of questions so the witness will understand you  
12 are not including what was developed at the trial.

13 Q Ms. Daniel, when I ask you questions about your own  
14 personal knowledge, I am not asking you questions with respect  
15 to what other people have said during the course of this  
16 trial. I am asking questions with respect to what you know of  
17 your own personal knowledge that you came into this courtroom  
18 with, not what you have found out or heard or thought you  
19 heard over the last two weeks. Okay?

20 A Okay.

21 Q Do you have any knowledge at all, personal knowledge,  
22 that makes clear that the gun in question, the crime gun,  
23 could not have been put together from this semiautomatic kit  
24 -- I'm sorry, submachine gun kit advertised in Plaintiffs'  
25 Exhibit 201?



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1 A No.

2 Q Turn to page 202. That is another submachine gun kit --  
3 correct -- that S.W.D. is advertising, correct?

4 A Correct.

5 Q This one has barrels, right? Barrels are included?  
6 Correct?

7 A Correct.

8 Q Let's look at 203 and 204, also submachine gun kits from  
9 S.W.D., correct?

10 A Correct, but I believe these are January 10th and  
11 February 10th, 1984. These were prior to 1986, when the law  
12 was passed and an individual could no longer make a machine  
13 gun.

14 Q I understand. Is it possible that the crime gun dates  
15 back to 1983 or 1984?

16 A I wouldn't think so.

17 Q You wouldn't think so.

18 What personal knowledge do you have about that?

19 A Normally when persons buy parts of any kind, they buy  
20 replacement parts for existing guns. They use them and they  
21 wear and they break, just like anything else.

22 Q Are you telling me -- is it your testimony that all the  
23 kits that you sold were used as replacement parts as opposed  
24 to people making -- we've heard a lot about making. No one,  
25 no one who bought your kits made their own guns? They were

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1 all used to repair parts?

2 A No, ma'am. I am telling you that up until 1986, an  
3 individual could make one on a form one, a machine gun. You  
4 can no longer do that.

5 Q I understand. I am asking you whether it is possible  
6 that someone bought the crime gun or bought the kit that  
7 became the crime gun back in 1984?

8 Do you have any personal knowledge to suggest that's  
9 not possible?

10 A I don't believe anyone bought a kit in 1984 and put it up  
11 and kept it for 10 or 15 years. No ma'am, I do not believe  
12 that.

13 Q I wasn't suggesting it was necessarily put together in  
14 1994. I am saying it was ordered, purchased, put together and  
15 used later? And used and used again and again?

16 Not possible?

17 A Anything is possible but I don't believe it is possible  
18 that the kits were bought in 1984, put up somewhere and then  
19 they decided to build it in 1994. I don't believe that.

20 Q Do you have any personal knowledge that the kit was put  
21 together in 1994, that created the crime gun?

22 A No, ma'am.

23 Q Let's look at Exhibit 205.

24 Ms. Daniel, you are selling a couple of things,  
25 right? You are selling the 10 Flats, right?

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1 A Correct.

2 Q And you are selling the complete internal replacement  
3 part set for the M-11/9 submachine gun, correct?

4 A Correct.

5 Q So on this page, you've got every single thing you need  
6 to put together a gun; right?

7 A On this page?

8 Q On this page, you got your kit, you got your flat. You  
9 got everything you need to put together the gun, right?

10 A A flat is not a frame until it is formed.

11 Q I understand. You do whatever you need to do to make the  
12 flat into a frame.

13 Is there any piece that you need that is not on this  
14 page, to create a submachine gun?

15 A I believe in '84, I don't believe it included magazines  
16 or MAC houses, if you flip back.

17 Q Does it say that anywhere here?

18 A I believe the part sets on the January 10, 1984 issue,  
19 says less the flats and magazines.

20 Q Does it say less flats? Certainly not less the flats. We  
21 have flats on the page.

22 A Correct.

23 Q Does it say less the magazines on the April 24, 1984  
24 edition?

25 A No, ma'am, but they would not have been put in the sets.

1 Q Do you tell people they weren't there?

2 You didn't tell people they weren't in there? They  
3 had to figure that out for themselves?

4 A No, ma'am. The other advertisements said it.

5 Q Mrs. Daniel, if I picked up a Shotgun News ad of April  
6 1984, you wouldn't expect me to have in mind what was in a  
7 January edition some other month, wouldn't you?

8 A No, ma'am. When you place an order, the staff would tell  
9 you what it did not include.

10 Q Mrs. Daniel, let me ask you a question.

11 How many flats do you need? Flats turn into a  
12 frame. You bend up the flat and it becomes a frame, right?

13 A Depends on how many you need first.

14 Q How many flats do you need to put together a gun?

15 A One.

16 Q One. You are selling ten of them here, right?

17 A Correct.

18 If you look at my deposition, I believe it says that  
19 a hundred percent of the firearms I sold are sold to FFL  
20 dealers, and it also says that 95 percent of the parts that  
21 were sold were also sold to dealers.

22 Q 95 percent of the parts were sold to dealers?

23 A Correct. That's right.

24 Q You have records that suggest that?

25 A Excuse me?

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1 Q Do you have records that meet that?

2 A I did, yes, ma'am.

3 Q Those are the ones that got destroyed?

4 A The S.W.D.'s records were destroyed in the water. The  
5 pipes burst, in, I think, 1993, '92, '93.

6 Q You had at one point a 24-hour-a-day-7-day-a-week toll  
7 line that someone could call and order, right?

8 A Correct.

9 Q Are you telling me that you had dealers calling at 3:00  
10 in the morning on a Saturday morning ordering ten frame  
11 flats? That was to dealers?

12 A Okay. If you place an order at 10:00 at night in New  
13 York time, what time is it in California?

14 What we try to do is be there for the customer.  
15 Then, if a customer placed an order, you called him back, and  
16 said, is this what you wanted.

17 Q You are telling me you did a lot of business with dealers  
18 between -- any time zone you want -- between 12 p.m. and 12  
19 a.m.

20 A Not everyone works the first shift.

21 Q Let's get back to 205. Mrs. Daniel, is there anywhere  
22 here where you say you won't sell these ten flats to  
23 individuals?

24 A No. Totally legal for an individual to build a Title I  
25 or Title II firearm as of April 20, 1984.

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1 Q So if an individual called up and said I want ten frame  
2 flats, you would sell it?

3 A Sure.

4 Q And I want ten gun kits, you would sell it?

5 A Excuse me?

6 Q I want a gun kit for each of these frame flats; you would  
7 sell them?

8 A Sure. But that never happened. Most of the frame flats  
9 and part sets were sold to dealers who went to gun shows or  
10 sold through their own advertisements.

11 Q Did you answer the phones?

12 A No, ma'am, not 24 hours a day.

13 Q You never answered the phones?

14 A No, ma'am.

15 Q So how do you know that it never happened? You don't  
16 have any records to prove it to me? How do you know it never  
17 happened?

18 A Because I was the president of S.W. Daniel Incorporated.

19 Q Had it happened, would it have been negligent for you to  
20 sell to that that person had someone called up and said I am  
21 an individual, I want frame flats and ten gun pieces to go  
22 with my ten frame flats?

23 MR. KANE: Objection to the form of the question.

24 Calls for a legal conclusion: Would it have been negligent  
25 for you to do blah, blah, blah.

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1 MR. BARR: I will rephrase it.

2 THE COURT: Sustained.

3 Q Do you think it would have been irresponsible for you:

4 MR. KANE: We're kind of playing a synonym game, but  
5 I would make the same objection.

6 THE COURT: Sustained.

7 Q Should you sell it, Mrs. Daniel?

8 MR. KANE: "Should?" Objection to -- I don't even  
9 know what that means, should you.

10 THE COURT: Sustained.

11 MR. KANE: Objection to the form of the question.  
12 Should she according to --

13 THE COURT: I sustained the objection.

14 MR. KANE: -- this witness's standards?

15 THE COURT: I sustained the question.

16 MR. KANE: -- or this lawyer's standards?

17 Q Would you have sold it?

18 A Yes. I would have sold it because it was totally legal  
19 in 1984 for an individual to build a Title I and/or a Title II  
20 firearm through the proper channels.

21 Q The answer to my question is, yes, you would have sold  
22 it, right?

23 A Correct. But chances are I did not sell it.

24 95 percent of the parts that S.W. Daniel manufactured  
25 and sold were sold to qualified FFL holders throughout the

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1 United States.

2 Q You are saying it is not possible that there was a time  
3 that someone called up at 3:00 in the morning on a Saturday  
4 morning and asked for ten frame flats and ten kits and you  
5 shipped? That's not possible?

6 A I am saying anything is possible. But in order for a  
7 customer to do that, they are going to pay 40 percent more  
8 than they would if they were a dealer, so why would you do  
9 that?

10 Q If they are not a dealer, what choice did they have?

11 Mrs. Daniel, you would agree with me, if you just  
12 flip through 207, 208, 210, these are all similarly submachine  
13 gun kits that S.W.D. sold, correct?

14 A Through 210, you said?

15 Q Yes, I did.

16 A Correct.

17 Q I'm sorry I have to do this up here, but there is only  
18 one copy.

19 Mr. Daniel identified these on Friday and I believe  
20 you referred to them today as well as Shotgun News and other  
21 publications that contain ads with parts for the M-11/9. You  
22 heard Mr. Daniel's testimony about that, correct?

23 A Parts for all firearms, not just M-11/9.

24 Q Okay.

25 THE COURT: Can you hear back there?



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1 (Jurors nod affirmatively).

2 THE COURT: You can, okay.

3 Q Would you agree with me that parts for firearms, if they  
4 are not M-11/9 parts, don't have much to do with this case,  
5 right?

6 The gun in question is a M-11/9 gun?

7 A Yeah, but what you asked me was, in these publications  
8 was it only referenced to parts for the M-11/9. The answer is  
9 no. There is other parts in the publications, also.

10 Q The other parts that have nothing to do with the M-11/9  
11 are not relevant to this case. You would agree with me,  
12 right?

13 MR. KANE: I would object to the form of that  
14 question.

15 THE COURT: Sustained.

16 Q Okay.

17 Why don't we go through some of these and see what  
18 they are.

19 I am simply going through the pages that were tagged  
20 and circled in various places by defendants', I assume,  
21 counsel. I am not sure.

22 Okay. Let's look at Defendant's Exhibit 10.

23 MS. GOLDSTEIN: This is what -- let me just show the  
24 jury, if I might. Again, I am picking the page that was  
25 tagged by defendants.

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1 (Exhibit published to jury).

2 Q Do you see anything on this page that has anything to do  
3 with M-11/9 parts?

4 A I see Ohio Ordinance Works Incorporated sells conversion  
5 kits for a .38 for \$650. Parts. It is parts kits.

6 Q Okay.

7 A Parts sets.

8 Q Not M-11/9 part set, right?

9 A Here is a nine millimeter.

10 Q Is it M-11/9? Is it Cobray M-11/9?

11 A Not Cobray M-11/9, nine millimeter.

12 Q Right. Not a Cobray M-11/9, right?

13 A No, I don't believe so.

14 Q Back to the conversion.

15 You would agree with me one can readily convert  
16 through all these conversion kits available, a semiautomatic  
17 gun to a fully semiautomatic or submachine gun, right?

18 A Correct.

19 Q But there is nothing on this page at all that has  
20 anything to do with the Cobray M-11/9 semiautomatic or fully  
21 automatic kit, right?

22 A No, but there is a 1919 A4 Browning, complete outfit for  
23 \$3,000.

24 Q Does that have anything to do with the M-11/9?

25 A No, but its about kits, parts you can buy to build

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1 machine guns.

2 Q But it has nothing to do with somebody else advertising,  
3 or manufacturing, or anything else with M-11/9 guns or kits,  
4 right?

5 A No, ma'am, but if an individual makes a machine gun, they  
6 have to do it on a form one.

7 Q Okay.

8 I want to make sure we understand each other. All I  
9 am asking you is whether there is anything in here that has  
10 anything to do with an M-11/9 kit?

11 A You just showed me one page. You want me to look through  
12 the rest of the book?

13 Q You certainly can. I am showing you the page counsel  
14 flagged. Actually that's page 11.

15 A How to prepare a submachine. Jay Curtis Earl. He was  
16 selling the MAC 10 guns silencers.

17 Q Is the MAC 10 the M-11/9?

18 A M-10 and 11 are the almost the same thing.

19 Q You are not saying the M-10 is the exact same thing?

20 A MAC ten and MAC eleven, this has illustrations -- the  
21 Cobray, the M-11, the M-10, the MACs, the MAC. It is the same  
22 verbiage whichever gun you are talking about.

23 Q But you're agreeing with me it is a different gun. You  
24 are saying they are all in some way related to the Ingram  
25 design, or whatever you call it, but there is a difference

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1 between the gun that is called the M-10 and the gun that is  
2 called the M-11/9, is there not?

3 A You are talking about -- are you talking M-11/9 11,  
4 30820, talking about .45?

5 Q All of the above. They are all different, aren't they?

6 A Yes, they are all different, but they are all basically  
7 the same.

8 Q Okay.

9 Is the M-10 the same gun -- not basically -- the  
10 same gun as the M-11/9?

11 A No, it is not the same gun, but it is very similar. Same  
12 type gun. I believe this just says M-11. Does that count?

13 Q Not if it is not an M-11/9. Is it an ad for an M-11/9?

14 A No, I don't believe so, but I believe it is an M-11/9.

15 Q There is an M-11/9 picture, you said. Does it have  
16 anything to do with advertising an M-11/9 kit or an M-11/9 kit  
17 semiautomatic, fully automatic?

18 A I thought we were talking about an M-11/9 guns?

19 Q M-11/9 kits.

20 A Oh, we changed, now.

21 This is an M-11/9 gun. This is what I was talking  
22 about.

23 Q It is an article about it?

24 A Correct.

25 Q Right.

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1 A I believe that's all it says here.

2 Q Okay.

3 Let me show you Defendant's Exhibit 15. Again, I am  
4 pointing to the page that defendants pointed to.

5 A Okay.

6 Q And defendants have circled on three places the word MAC,  
7 M-11/9 millimeter, MAC. Is there anything on this page that  
8 advertises an M-11/9 kit?

9 A I believe what they are advertising on here is the -- it  
10 is the kit, consists of complete upper receiver units. Is  
11 that what you are talking about?

12 Q Let's look at what they are advertising. It says "as  
13 Clintonics takes a bigger and bigger bite out of wallets, it  
14 only makes sense to use one of our 22 rim fire conversion kits  
15 on your MAC."

16 Right. Are they advertising conversion kits, here,  
17 right?

18 A Conversion kits, conversion to 222, that's correct.

19 Q Conversion kit. They are not advertising an M-11/9 kit  
20 gun here?

21 A You said a kit. That's what this is. This kit consists  
22 of complete upper receiver unit with both assembly and one 30  
23 round line 1022 Ruger magazine.

24 Q All my questions, I can assure you, will be directed to  
25 the M-11/9 kit.

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1 A What it does say, M-11/9 --

2 Q Right, it says M-11/9, and that's what is circled. But  
3 this is advertising an M-11/9 kit, or is this advertising a  
4 conversion kit for the M-11/9?

5 A This says M-11 (indicating). This says kit  
6 (indicating). You figure.

7 MR. KANE: Can we have the exhibit identified.

8 MS. GOLDSTEIN: Defendant's Exhibit 15.

9 MR. KANE: Who is the vendor selling the conversion  
10 kits in Exhibit 15?

11 A Flemming Firearms Incorporated.

12 Q Is there anywhere here? Can you read any sentence here  
13 that says anything about the sale of an M-11/9 kit gun?

14 A It says M-11/9. It says kit. You got another receiver  
15 here. You got a boat and a magazine.

16 Q Do you see anywhere where it says sale of M-11/9 kit gun,  
17 or are you taking words on a page? You are taking words on a  
18 page? Does it or does it not notice say that they are selling  
19 a conversion kit for the MAC?

20 A Correct, conversion kit.

21 Q That's what is sold?

22 A Correct.

23 Q Defendant's Exhibit 19. This is also, right? This is  
24 not even a kit, this is a conversion manual that's being sold,  
25 right?

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1 A For MAC 10 11.

2 Q Conversion manual?

3 THE COURT: Are we going to go through all of those?  
4 It is not necessary for the witness to tell us what is in  
5 there if it is evidence. You can use it in your summation.

6 MS. GOLDSTEIN: My only concern, the defendants have  
7 circled various things. I want to make clear things they have  
8 circled may be slightly misleading in terms of what's being  
9 sold.

10 THE COURT: I know, but that's in evidence. We  
11 don't need the witness to tell us that.

12 Q Mrs. Daniel, you are aware, are you not, that the Cobray  
13 M-11/9 appeals to criminals?

14 A Not really. I think any firearm would appeal to anyone  
15 that wanted to do something that wasn't upstanding.

16 Q Mrs. Daniel, isn't it the case that S.W.D. advertised the  
17 M-11/9 as a weapon that infamous drug barons can adopt?  
18 S.W.D. ad. That's your ad; right?

19 A What day is on that ad?

20 Q It is November 20th, 1987.

21 A Okay. That would be my ad, that's correct. But where  
22 that came from, in the early '80s, BATF went to R.P.B.  
23 Industries and spoke to Wayne Daniel and asked him to please  
24 quit addressing his packages --

25 Under Federal law, you are only allowed to ship a

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1 package to the licensee as well as the address on the  
2 license. You cannot dropship firearms.

3           BATF went to Wayne Daniel and asked him to stop  
4 putting Gun Shop or Sporting Good Center, or whatever, on the  
5 invoices because they were being -- UPS was being robbed and  
6 the packages were coming off the UPS. They were stealing  
7 packages from UPS. That verbiage came from BATF. That's what  
8 they said.

9 Q     Mrs. Daniel, you put that verbiage in one of your ads to  
10 sell your guns?

11 A     No, ma'am, I did not.

12 Q     Is this one of your ads?

13 A     That's correct. I had people that did advertising for  
14 me. Mr. Flemming did advertising me for me. Terry out of  
15 Norfolk did advertising. I didn't do my advertising.

16 Q     So you are not responsible for your ads?

17 A     I depend on other people.

18 Q     Did you look at the ads before they went out?

19 A     Sometimes I would and sometimes I would not.

20 Q     Had you seen this ad, would you have let it go out?

21 A     Probably not. That's not something I would say.

22 Q     So this is irresponsible?

23 A     I wouldn't say it is irresponsible. I am saying it is a  
24 fact because that's what A.T.F. said.

25 Q     Okay, Ms. Daniel. You also advertised -- you boasted in



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1 your advertisements, I should say, that the Cobray M-11/9 is  
2 hated by the U.S. Government, right? Probably difficult to  
3 read. Let me read this.

4 A I think the Tec-9 also is hated by the U.S. Government.

5 Q And so --

6 A And those--

7 Q But you boasted about this in your advertisement. I am  
8 not asking you about Tec-9 advertisements and Uzzi  
9 advertisement.

10 MR. KANE: Could we have an exhibit number.

11 MS. GOLDSTEIN: Plaintiffs' Exhibit 362 in  
12 evidence.

13 Q This is an S.W.D. ad, right? And it says the following:  
14 Someone once said that no one could ever build a firearm that  
15 would be hated by the U.S. Government inasmuch as the failed  
16 Thompson gun was in the 20s and 30s, but alas 50 years later  
17 the Cobray brand guns and accessories merged, and BATF's  
18 hatred for them has far surpassed anything in the history of  
19 the U.S. Government. This is your ad?

20 A That's S.W. Daniel; correct.

21 Q Are you are disclaiming responsibility for anything that  
22 S.W.D. Daniel did?

23 A I did not do all of it personally. I mean, I can't do my  
24 advertising, answer the phones, and run a business and do  
25 everything totally. I have to have people to help me.

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1 Q Okay.

2 You were the president of S.W.D.

3 A That is correct. And I had persons that did my  
4 advertising for me.

5 Q You wholly owned S.W.D.?

6 A Correct.

7 Q You paid for the advertisements, right?

8 A Correct.

9 Q And you looked at the advertisements?

10 A Not always, no, ma'am.

11 Q When you didn't look at the advertisement, therefore you  
12 are not responsible if you didn't look at it? Is that what  
13 you are saying?

14 A Responsible for what?

15 Q For the advertisements? For the harm that can result  
16 from the advertisements?

17 MR. HARTENIST: Objection.

18 THE COURT: Sustained.

19 Reframe it, please.

20 Q Mrs. Daniel, isn't it the case that you just didn't care  
21 whether the weapons you sold were likely to attract  
22 criminals?

23 A No, ma'am.

24 Q Okay.

25 Mrs. Daniel, in selling a different assault weapon,

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1 you advertised that it is so deadly it should be illegal.

2 MR. KANE: Object on relevancy grounds.

3 MS. GOLDSTEIN: Your Honor, I think this goes very  
4 much to Mrs. Daniel's state of mind.

5 MR. KANE: We then would have to open every ad in  
6 any publication.

7 MS. GOLDSTEIN: Of Mrs. Daniel.

8 MR. KANE: No, for everyone.

9 MS. GOLDSTEIN: You have already.

10 THE COURT: Excuse me. Address your remarks to the  
11 court.

12 Ask another question, please.

13 Q Mrs. Daniel, isn't it the case that the Cobray M-11/9 is  
14 well suited for violent encounter where one wants heavy fire  
15 power and not sporting or self-defense uses?

16 A No, ma'am.

17 Q I wanted to show you this S.W.D. ad, dated September 10,  
18 1984. It says as follows, "The exact design of these  
19 submachine guns makes them perfect for SWAT teams and special  
20 purpose military units."

21 Is that what your advertisement says?

22 A Correct.

23 Q Do you see -- and I can bring a copy up to you if you  
24 like -- is there any place on this ad that you advertise that  
25 the design of the M-11/9 makes it perfect for sporting uses?

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1 A Ma'am, I did transfer firearms, machine guns to the  
2 government, SWAT teams, FBI, GBI.

3 Q Is there any place on this ad that makes clear?

4 THE COURT: Do you have a copy of it so I could look  
5 at it?

6 MS. GOLDSTEIN: Absolutely. Plaintiffs' Exhibit  
7 283.

8 A Would you repeat your question.

9 Q Is there any place on this ad that you advertise that the  
10 M-11/9, the design of the M-11/9 makes it perfect for sporting  
11 uses?

12 MR. KANE: Can we have the exhibit identified,  
13 please.

14 MS. GOLDSTEIN: Plaintiffs' Exhibit 283.

15 A This is an M-11/9 machine gun. In order for an  
16 individual to purchase this firearm, a Class III dealer would  
17 order it from S.W. Daniel, Inc. S.W. Daniel, Inc. would  
18 transfer on a Form 3 to that dealer. That dealer then would  
19 transfer to that individual.

20 Q Mrs. Daniel, when you sell the kit, submachine kit guns,  
21 the submachine kits, they turn into the submachine gun,  
22 right? When put together they promise a sub --

23 A An individual would file a Form One for the BATF, and  
24 yes, ma'am, they could make themselves a Title II firearm as  
25 of September 10, 1984. You are absolutely correct.

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1 Q That submachine gun that that individual makes is perfect  
2 for SWAT teams and special purpose military units, right?

3 A Well, if an individual made it for himself, it would not  
4 be for resale.

5 Q That's not my question.

6 A Oh, I'm sorry.

7 Q My question is, you have advertised here that the  
8 submachine gun, the design of the submachine gun makes it  
9 perfect for SWAT teams and special purpose military units,  
10 right?

11 A Correct.

12 Q And I am asking you whether when you put together the  
13 submachine kit it turns into a submachine gun, right?

14 A After you file a Form 1, that would be correct.

15 Q I show you one more, Mrs. Daniel.

16 Again, this is Plaintiffs' Exhibit 281. It is a S.W.  
17 Daniel ad advertisement, and it says, "The new M-11/9  
18 submachine gun is perfect for SWAT tactics or hostage  
19 situations where heavy fire powder may be needed in a split  
20 second," correct?

21 A That's correct, ma'am. That would have been after I did  
22 emergency transfers to the FBI on some of their raids. That's  
23 where the verbiage would have come from.

24 Q Would you be selling this only to the FBI?

25 A No, ma'am. That would be sold to Class III dealers.

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1 Q And the submachine gun kit that you sold turns into a  
2 submachine gun that would be perfect for a hostage situations  
3 and where heavy fire powder is needed?

4 A After you file a Form 1.

5 Q Right?

6 The M-11/9 gun kits you sold didn't have serial  
7 numbers on any of the parts, right?

8 A Excuse me?

9 Q The M-11/9 gun kits you sold didn't have serial numbers  
10 on any parts, correct?

11 A Parts are not controlled. There is no way you could  
12 register a set of parts.

13 Q Well, let's put aside registering for the moment. Is  
14 there any reason you couldn't put numbers on the parts that  
15 you sold and keep an internal record? Forget about  
16 registering with any government agency.

17 Is there any reason you couldn't put serial numbers  
18 on the parts that you sold?

19 A Why would you want to? For what reason?

20 Q Well, a serial number is very much like a serial number  
21 on a firearm, is very much like a link in a chain; right?

22 A Correct.

23 Q If you don't break the link, you don't lose it, right?

24 A That's right.

25 Q Serial numbers allow law enforcement to control the gun,

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1 right?

2 A That's correct. The majority of the people that build  
3 themselves a Title One firearm will turn -- they end up  
4 putting their Social Security number on that firearm. So then  
5 actually it would have a number on it. It would be your  
6 personal Social Security number if you built it for yourself.

7 Q When it leaves your factory, the kit gun does not have  
8 serial numbers on any of the parts?

9 A I don't sell kit guns, ma'am.

10 Q The parts, the full replacement part kit that becomes a  
11 submachine gun for the semiautomatic gun --

12 A -- does not have serial numbers on it.

13 Q On any parts?

14 A That's correct.

15 Q You can't, as you sit here now, tell me why there is any  
16 sort of impossibilities to putting serial numbers on those  
17 parts and internally keeping a record, right?

18 It is possible?

19 A Anything is possible, but I don't believe it would be  
20 cost effective from a business point of view.

21 Q Can you think of any valid reason why someone would  
22 intentionally seek a gun that didn't have a serial number on  
23 it?

24 A No, ma'am, no more than I can tell you why anyone would  
25 take a knife and kill somebody and cut someone's throat.

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1 I truly believe that if a person plans on committing  
2 a crime, they are going to do it, whether it is with a gun,  
3 whether it is with a knife, whether it is with a baseball bat,  
4 or whatever.

5 Q So, it is your testimony that you believe you can act in  
6 a way that's likely to increase risk, that a criminal will end  
7 up with a submachine gun, but you will not bear responsibility  
8 because he or she ultimately pulls the trigger? Is that what  
9 you are saying?

10 MR. HARTENIST: Objection. The question calls for a  
11 legal conclusion.

12 THE COURT: Sustained.

13 Q Mrs. Daniel, the fully assembled, let's say  
14 semiautomatic, for example, M-11/9 gun that you sold, let's  
15 say in 1988 or so, would cost approximately, how much, \$165 or  
16 so?

17 A 19 -- I don't remember. I would have to go back to the  
18 ads.

19 Q Okay.

20 A '90, it was \$160, I believe.

21 Say \$160, I guess.

22 Q I am going to show you Plaintiffs' Exhibit 316. I can  
23 bring it up to you if you like, or put it here. I think this  
24 one is pretty large. All right.

25 This is a completed M-11/9 semiautomatic gun, which



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1 you sell for \$165?

2 A Correct, to FFL dealers, only.

3 Q I understand..

4 The fully assembled gun you would have sold had a  
5 serial number on it, right?

6 A Correct.

7 Q The kit that someone would have to put together, let's  
8 say semiautomatic kit, costs approximately, around that time,  
9 \$160 as well?

10 A Correct.

11 Q And?

12 A But I don't believe that would kit would have the lower  
13 receiver or a magazine or possibly a barrel.

14 Q Okay.

15 So if you ad up -- \$160 for the kit, say frame flat,  
16 lower receiver. Which, the frame flat becomes a receiver,  
17 right, so the frame flat costs how much, around? Say \$50?

18 A Okay.

19 Q How much would the barrel cost?

20 A I don't know. Probably \$35.

21 Q Okay.

22 \$35. How much would the magazine cost?

23 A Before '94, probably \$12, \$14.

24 Q All right. Not too good at math. You just described to  
25 me a \$200 purchase of a kit, right? If you are going to

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1 purchase the kit to put together the gun, you are going to  
2 spend \$200?

3 A Correct.

4 Q As opposed to the --

5 A However, but if you have already got the lower receiver  
6 and it is registered, you already got an existing firearm.  
7 All you need is the parts in case you lose a part or in case  
8 one gets broken.

9 The majority of the parts that were sold were sold as  
10 replacement parts sets for existing firearms.

11 Q How do you know that?

12 A How do I know that? Because that's what my customers  
13 said. Hey, I got a Glock, I got a Smith & Wesson. I got a  
14 .45. I need parts for my M-11/9. What do you suggest we  
15 say? We can sell you one piece or we can sell you a whole set  
16 of parts?

17 Q Let me understand. You are telling me they are calling  
18 up ordering parts for an M-11/9 and for some reason tell you  
19 about --

20 A Ma'am, they tell you about their wife and their children.

21 Q So you are telling me that some people happen to  
22 volunteer it?

23 Are you telling me every single person who calls --

24 A Majority. Majority of men love to brag about the  
25 firearms they own; yes, ma'am.

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1 Q Let's assume for a moment the someone doesn't brag about  
2 the firearms. You sell them the kit, right? You would sell  
3 them?

4 A Parts.

5 Q You would sell them the kit?

6 A I would sell the replacement parts, yes, ma'am.

7 Q Let's go back to the equation.

8 So you've got it for someone who doesn't brag to you  
9 and doesn't have, you know, a lot of other guns. They are  
10 ordering the gun, the kit -- excuse me -- to make the gun,  
11 right?

12 A Okay.

13 Q And they are going to pay you for the kit, or some total  
14 of about \$200 as opposed to buying the fully assembled gun for  
15 \$165?

16 A But what you got to do is look at, \$165 is with a coupon  
17 special that was running. If you look at the ad, I don't  
18 remember what the actual gun sold for at that time, but it was  
19 not the \$165 price. That was a special that was running.  
20 Also, that would be only for FFL dealers.

21 Q I am specifically not talking about FFL dealers. I am  
22 talking about individuals who call up.

23 A The firearm you are talking about at \$165 was a special  
24 that was run totally for dealers. You have to have a copy of  
25 your FFL on file and have the gun shipped to the address on

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1 the FFL.

2 Q How much would it cost for non-dealers?

3 A I don't sell guns to non-dealers.

4 Q You don't sell any guns to non-dealers?

5 A No, ma'am. I sell strictly to FFL dealers, federal  
6 firearms licensees, people the federal Government have  
7 licensed to deal in firearms.

8 Q If the individual wanted to buy that gun from a dealer,  
9 how much would --

10 A They would call up and say, I want to buy an M-11/9 and I  
11 would go, okay, what state are you in. They say I am in  
12 Atlanta, Georgia. I say, okay, then you need to find a local  
13 dealer near you and buy it through him.

14 Q How much would it cost that person?

15 A That would be between the two of them. I would be  
16 removed from the equation because the dealer would purchase it  
17 from me and he would sell it to the end user. The end user at  
18 that point would fill out a 4473 in order for him to purchase  
19 the firearm.

20 Q Mrs. Daniel, while we are other on the topic of guns, you  
21 talked about gun shows. You would agree that if one were  
22 inclined to have an unserialized gun, someone were inclined to  
23 have an unserialized gun with no background checks required,  
24 it is cheaper to buy your own kit than it is to purchase  
25 individual parts at a gun show, correct?

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1 A Repeat that one.

2 Q If one were inclined to have unserialized guns with no  
3 background checks required, it is cheaper to buy your gun kit  
4 than it is to purchase individual parts at a gun show the way  
5 you were describing it before, right?

6 A I wouldn't think so. I would think it would be easier to  
7 drill serial numbers up on existing firearms.

8 Q Mrs. Daniel, let me refer to your deposition page 68.  
9 Did you or did you not testify:

10 "It is actually cheaper to buy a full replacement  
11 part than it is to buy pieces." That was your testimony,  
12 right?

13 A That's correct.

14 Q It was true then?

15 A Excuse me.

16 Q It was true when you gave it, right?

17 A Correct.

18 Q And it is true today, correct?

19 A That's correct.

20 But you said a gun with no serial number on it.  
21 Parts do not have serial numbers on it. If you own a firearm  
22 with serial numbers on it, best thing to do is drill the  
23 serial numbers out. Takes two or three minutes.

24 Q With due respect, my question to you is, I was talking  
25 about the gun kit, buying a gun kit from you versus buying

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1 pieces at a gun show. That was my question. I asked you  
2 whether --

3 MR. KANE: I would object. That was not counsel's  
4 question.

5 THE COURT: Sustained.

6 Q Mrs. Daniel, you have been at the trial since it started,  
7 correct?

8 A Yes, ma'am.

9 Q And you heard--- it was last Thursday, Ms. Guiduli,  
10 plaintiffs' counsel, read to the jury some things that  
11 defendants admitted in this case, right?

12 A Ms. Who?

13 Q Ms. Guiduli, Karin Guiduli?

14 A Okay.

15 Q You heard her read some things?

16 A Yes.

17 Q Some of those statements were admissions based on  
18 statements made in your advertisements which defendants found  
19 out that plaintiffs had. I will represent to you they found  
20 out that we had those within the last month or so.

21 MR. KANE: Wait a minute. Objection to the form of  
22 the question.

23 THE COURT: Sustained.

24 MR. KANE: And the dialogue.

25 THE COURT: It is sustained.

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1 Put your question, please.

2 Q You would agree, Mrs. Daniel, that as of March 20, 1987,  
3 S.W.D. was the sole manufacturer of the M-11/9 submachine guns  
4 and the nine millimeter assault pistols in the United States,  
5 right?

6 A No, ma'am.

7 Q You wouldn't agree to that?

8 A No, ma'am. There is other manufacturers all over the  
9 United States. You got Euclid Avenue, you got Military  
10 Armament corporation, you got R & R distributors, Venier,  
11 Placer Sales in California. Plus numerous more. (Phonetic  
12 spellings).

13 Do you want me to continue? John Joline. You've got  
14 the parent, MAC company. That was started in Powder Springs.  
15 They produce probably, at auction, when they went into  
16 auction, there was the lower receiver which was bent and  
17 formed was not a controlled component. It was not considered  
18 the controlled component until later in production. They sold  
19 thousands of those. They had tractor trailer loads of them  
20 that were sold at auction, at Public Outcry.

21 Q Mrs. Daniel, are you finished?

22 A I can name more.

23 Let me think.

24 You've got Venier. You've got -- there was two  
25 gentlemen that were at the auction at R.P.B. Industries. They

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1 ended up buying a 40-foot container of parts and tooling,  
2 et cetera, to build the M-11/9. As well as the M-10/9. You  
3 got Euclid Avenue. You got Component Metals. You have got  
4 Speed Racer. You've got -- that's all I can think of off the  
5 top of my head.

6 Q Did you hear my question?

7 My question was, as of March 20, 1987, was S.W.D. the  
8 sole manufacturer of the M-11/9 submachine guns and the nine  
9 millimeter assault pistol in the United States?

10 A I believe I answered no to that plus named all the other  
11 companies.

12 Q I just wanted to make sure --

13 A -- we are on the same wavelength.

14 Q -- you heard it.

15 This is a March 20th, 19 -- I don't know if you can  
16 see that. I certainly can give you the ad, Mrs. Daniel, if  
17 you like.

18 This is a March 20, 1987, ad?

19 A Yes.

20 MR. HARFENIST: Which is Plaintiffs' Exhibit 304 in  
21 evidence.

22 Q It says, "The sole manufacturer of the world renowned  
23 M-11/9 submachine guns and the most popular nine millimeter  
24 assault pistol in the United States now gives you the  
25 opportunity to buy factory direct."



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1 Was the statement true?

2 A No, ma'am, it was not true.

3 Q It is not true?

4 A Ma'am, ma'am, S.W.D. was not the only manufacturer of the  
5 M-11/9 in the '80s.

6 Q Is this your ad?

7 A It looked like to be my ad, yes, ma'am.

8 Q You are not saying it is not true?

9 A I am saying S.W.D. Incorporated was not the only  
10 manufacturer of the M-11/9.

11 Q I am asking you what's in your ad is true?

12 A No, ma'am, it is not true. Like I told you, I didn't  
13 proof every one of them.

14 Q Mrs. Daniel, at your deposition, Mr. Barr asked you the  
15 following question. He showed you a bunch of ads, including  
16 all of these, and you authenticated them as your ads?

17 A I thumbed through them and said yeah, I don't think some  
18 of these are, I am not sure about this one, and the others  
19 look like possibilities (indicating).

20 Q These, I will represent, were part of the pile that were  
21 yours.

22 A Okay.

23 Q You were asked the following question and gave the  
24 answer.

25 "QUESTION: Are all the statements made in your ads

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1 factually correct?

2 "ANSWER: If you are talking about an ad that was  
3 put in a publication, let's say, in 1984 or 1985, at the time  
4 that publication was put in that ad and placed in that ad, it  
5 was true."

6 Do you remember saying that?

7 A What Mr. Barr was referring to was parts.

8 Q Mr. Barr asked you -- perhaps I should read the question  
9 to you.

10 What Mr. Barr asked you: "Are all the statements  
11 made in your ads factually correct?" I don't think there is  
12 nothing in there that suggests --

13 A Could you read the total deposition, because all he asked  
14 me all day long was about parts.

15 Q I could read to you, or you could read to yourself,  
16 either way. There is a whole new topic starting on page 81 of  
17 your deposition where Mr. Barr marks Exhibits 1 A through 1  
18 AAA?

19 A How many documents would that be, 1 A through 1 AAA?

20 Q And you looked through each one of those?

21 A I just scanned, just like there, and said, yes, they look  
22 my like my ads.

23 Q You are saying there are things in your ads that were not  
24 correct?

25 A I am saying S.W. Daniel Incorporated was not the only

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1 manufacturer of the M-11/9. Was not then, is not now.

2 Q Let me show you another S.W.D. ad, October 10, 1986. It  
3 says as follows. This is Plaintiffs' Exhibit 300. "The sole  
4 manufacturer of the world renowned M-11/9 submachine guns and  
5 the most popular nine millimeter assault pistol in the U.S.  
6 now gives you an opportunity to buy factory direct."

7 Different ad same concept. Not true?

8 A Correct.

9 Q Let me show you again Public Enemy Number One ad?

10 MR. HARTENIST: Objection to any commentary.

11 I apologize.

12 Q August 20, 1986, an S.W.D. ad, right. It says S.W.D. is  
13 the sole manufacturer of the Cobray M-11/9. Not true?

14 A No, ma'am. I believe if you go back to the lawsuits that  
15 were filed in '84, where I believe S.W.D. Incorporated sued  
16 Military Armament Corporation in Stephenville, Texas, because  
17 they were producing it with the Cobray logo on it, I believe  
18 that will show you that it is not true.

19 Q You sued to enforce --

20 THE COURT: Excuse me.

21 Q What you are saying, they put the Cobray logo on  
22 something. You sued to enforce that?

23 A Excuse me?

24 Q You sued because you thought there was something wrong  
25 with that, right?