

1 A They were putting the M-11/9 Cobray on an M-11/9. They  
2 were putting the serpent on the M-11/9, producing it, marking,  
3 selling it. Customers were sending it to me and wanting a  
4 refund because it didn't work properly.

5 Q Isn't it the case, Mrs. Daniel, that defendants have  
6 admitted the following. Admitted that as of March 20, 1987,  
7 S.W.D. was the sole manufacturer of the M-11/9 submachine guns  
8 and the nine millimeter assault pistol in the United States?

9 A Did I admit--

10 Q You did?

11 A If I did, then it was an error, because it is not true,  
12 and the lawsuit that was filed in 84 shows that.

13 Q Would you agree with me that the M-11/9 submachine gun  
14 was an idea that was created by S.W.D.?

15 A I don't think so because I believe it was first  
16 introduced by Syonics in the late '60s or early '70s. I  
17 believe that is correct.

18 Q Mrs. Daniel, this is Plaintiffs' Exhibit 275, which is in  
19 evidence. This is an S.W.D. catalog, correct?

20 A Looks like a Cobray catalog, doesn't it?

21 Q Could you read, please, this paragraph.

22 A "For many months the M-11/9 was just an idea in the minds  
23 of S.W.D. engineers. At long last those months of planning  
24 and weeks on the drawing board have paid off. The result is  
25 the new M-11/9 submachine gun."

1 Q That's an S.W.D. ad, right?

2 A That's an S.W.D. ad, but I believe the M-11/9 that was  
3 introduced was produced by Syonics in the late '60s, or early  
4 '70s.

5 Q Mrs. Daniel, I don't know how to ask this question other  
6 than bluntly:

7 Do you lie in your ads?

8 A Ma'am, I don't do all the advertisements. If you go  
9 through my deposition, you will see where Mr. Flemming -- I  
10 think the man is 80 years old now, or may be dead for all I  
11 know -- he did the majority of the advertising.

12 Q He works for you. You paid him?

13 A Correct. Do I proof everything he does? No, ma'am.

14 Q So, some of the things he writes may be right, some of  
15 the things he writes may be wrong. It doesn't matter?

16 A Everybody makes mistakes, that's correct.

17 Q So it doesn't matter what he advertises?

18 A Well, I would hope it would.

19 Q It does matter?

20 A Yeah, I would hope it would.

21 Q So if he advertised in a way that appealed to criminals,  
22 that would matter, right?

23 MR. HARFENIST: Objection.

24 THE COURT: Sustained.

25 Q Mrs. Daniel, would you agree with me that S.W.D.

1 developed the semiautomatic M-11/9?

2 A I wouldn't say S.W.D. developed it.

3 Q Would you look at Plaintiffs' Exhibit 201 which I believe  
4 is in the first page of the compilation.

5 Is this an ad that you proofed, Mrs. Daniel?

6 A I have no idea. I have no idea what I had for lunch on  
7 October 1, 1983, either.

8 Q If you look at the top left in the second paragraph, it  
9 says "This new nine millimeter pistol is the result of many  
10 months of hard work and extensive developing." That's what it  
11 says, right?

12 A Correct. It also says the SM-11, SSM-11.

13 Q It says, Unlike the SM-11, the new M-11/9 millimeter semi  
14 fires from a close range, making it far more accurate.

15 You are talking about the new M-11/9. Many months of  
16 hard work and extensive development, correct?

17 A That's what the ad says, yes, ma'am.

18 Q Mrs. Daniel, this is another one of your ads, right,  
19 S.W.D., Inc. It is Plaintiffs' Exhibit 278.

20 It says: For many months now, the engineers here at  
21 S.W.D., Inc. have spent relentless hours developing the  
22 semiautomatic pistol that is reliable, exact, lightweight and  
23 best of all has the look and feel of the our newly popular  
24 M-11/9 submachine gun.

25 Your ad?

1 A S.W.D. Incorporated, right.

2 Q And it talks about the development of the semiautomatic  
3 M-11/9?

4 A Correct.

5 Q This is true or not true?

6 A I would say it is not true.

7 Q Okay.

8 Thank you.

9 A It looks to me like Mr. Flemming would have cut verbiage  
10 out of other ads, put them in other ones. But I don't know  
11 that. I don't know what he did.

12 Q Did you care what he did? Did you look at his product  
13 ever?

14 A Excuse me. I looked at some of the ads, yes, ma'am, but  
15 I did not look at all the ads.

16 Q How did you choose which ads to look at?

17 A If it was busy or not. I had a business to run. I am a  
18 business women.

19 Q You would agree with me, several of these ads I just  
20 showed to you that you now say are not true ran several times  
21 in Shotgun News?

22 A Probably so, because he would have ran the ads, also.

23 Q Mrs. Daniel, when you sell your completed guns to FFL  
24 holders, the FFL holders then sell the completed guns to the  
25 public, presumably; right?

1 A Correct, end user.

2 Q Right.

3 When they make such a sale, we talked about it  
4 before, they are required to make certain inquiries of  
5 customers?

6 A 4473s.

7 Q Right. And included in that is an inquiry about criminal  
8 records, right?

9 A Correct, on the 4473. I believe that's correct.

10 Q Included in that is an inquiry about other things,  
11 including emotional stability, correct?

12 A Correct. I believe that's right.

13 Q And did you or did you not make any effort to determine  
14 whether the person on the telephone who was calling you up to  
15 order a gun kit, who wished to purchase the full replacement  
16 part kit the same as gun kit, had any mental or emotional or  
17 criminal background at all?

18 A Actually, if you would look at my deposition, I don't  
19 know what page it is on but I told Mr. Barr this. When a  
20 customer would call in and the staff did not feel comfortable  
21 with the call, then they didn't sell to them. They used their  
22 judgment. It was their judgment call.

23 If you look in my deposition, I don't know what page  
24 it is, but if you show it to me, I am sure I can find it,  
25 where they would say I don't feel good about this, I don't

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1 want to ship this merchandise, and we did not ship the  
2 merchandise.

3 The other times I had dealers that would place --  
4 they would send me a copy of their FFL. They would place an  
5 order for ten guns or ten frames or whatever.

6 But on a FFL, your numbers and your alphabet mean  
7 certain things. What those people were doing, they were  
8 actually making their own FFLs. Then we would notify A.T.F.  
9 and we would ask them, we believe this would not be a correct  
10 FFL. Would you verify. They would call back in 10 or 15  
11 minutes and they would say, no, it didn't exist. I try to run  
12 the corporations as best I could in the guidelines of the  
13 federal law. That's all I could do.

14 Q Can you describe to me, when you say "feel comfortable,"  
15 you said the girl wouldn't ship it unless they felt  
16 comfortable?

17 A That's correct. What the staff--

18 Q What do you mean by "feel comfortable"? I have no--

19 A What I said was I didn't take the phone call. They would  
20 come in, I don't want to ship this person. I would say fine,  
21 don't worry, don't ship it, no big deal.

22 Q Was there a specific standard you gave them? If you hear  
23 x, y, z, don't ship?

24 A No. It was actually their judgment call.

25 Q Purely their judgment.

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1 Mrs. Daniel, if I called up S.W.D. when it was in  
2 existence and I said, my name is Sandra Goldstein, I am a  
3 criminal. I have seen your big, full page ad and I want to  
4 purchase your gun kit. I hope you don't keep too many records  
5 beyond shipping invoices, because I am a little nervous about  
6 that. Here is where I want you to ship it to and I will send  
7 the money order. Would you ship the gun?

8 A Absolutely not.

9 MR. HARTENIST: Objection.

10 A I would tell you, number one, you need to get in touch  
11 with the BATF in Washington, D.C., and then turn around and  
12 call the local A.T.F., which was in Atlanta, Georgia. I would  
13 tell them your name and address, and I would tell them that  
14 you are a convicted criminal, that you said you were, that you  
15 were trying to buy merchandise. And by law, you can't do  
16 that. No, ma'am, I would not, in any shape, form, or  
17 fashion.

18 Q Mrs. Daniel, who is Peter Urea?

19 A He is an A.T.F. agent, I think out of Fresno,  
20 California.

21 Q Are you aware, Mrs. Daniel, that on April 30 --

22 MR. KANE: Wait a minute, now. I am going to object  
23 to this line of questioning. I would address the court at  
24 side bar. Getting into the relationship between a specific  
25 BATF agent and S.W.D., Inc. is irrelevant to this proceeding.

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1 THE COURT: Why don't you leave us for just a minute,  
2 ladies and gentlemen.

3 MR. KANE: Could we have a proffer of what the line  
4 of questioning would be.

5 THE COURT: Let me see the document.

6 MR. KANE: Do you know Peter Urea of the Bureau of  
7 Alcohol Tobacco and Firearms.

8 THE COURT: Come to the side bar.

9 (Sidebar).

10 MS. GOLDSTEIN: I am not interested in getting into  
11 the relationship between Mrs. Daniel and the BATF.

12 Mrs. Daniel just made a statement. Mr. Kane, I think, knows  
13 exactly what's coming. I feel I am entitled to impeach the  
14 witness with the document.

15 THE COURT: Give me a little background, please.

16 MS. GOLDSTEIN: This is an affidavit. It is  
17 attached to a court document. It is in fact a court document  
18 searching -- I am eliciting this, but searching the premises  
19 of Mrs. Daniel and Mr. Daniel, their premises. It is an  
20 affidavit that contains a statement. I think I am entitled to  
21 ask Mrs. Daniel whether she's aware of this or not.

22 THE COURT: What is the statement?

23 MS. GOLDSTEIN: Begins there (indicating).

24 THE COURT: This was in 1984.

25 MS. GOLDSTEIN: Right, 1984, it happened. This is

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1 1985. In light of Ms. Daniel's last answer, I think I am  
2 entitled to ask this.

3 THE COURT: You can certainly ask her about it and  
4 refresh her memory.

5 MR. KANE: May I be heard?

6 THE COURT: Yes.

7 MR. KANE: Urea was a special agent with the BATF  
8 that signed various affidavits that resulted in search  
9 warrants. He also was the grand jury affiant in an indictment  
10 against Ms. Daniel in the Eastern District of California,  
11 Fresno Division.

12 Much of what Mr. Urea said was later stricken as  
13 false. The indictment which he had returned, which was over  
14 36 counts, was dismissed. It is, first of all, irrelevant.  
15 Second of all, it is highly prejudicial. It just opens up a  
16 Pandora's box of information. We can't really establish what  
17 Urea knowingly said was false, what he misled the magistrate  
18 about.

19 THE COURT: You can certainly ask and show her the  
20 document and ask her if that refreshes her recollection.

21 MR. HARTENIST: As to what?

22 THE COURT: As to whether that happened, this man  
23 called in.

24 MR. KANE: She would have to be the recipient of the  
25 phone call.

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1 THE COURT: You can ask it.

2 MR. KANE: Was she recipient of the phone call? If  
3 not, it is hearsay.

4 THE COURT: It is not hearsay as to her employees.  
5 It certainly is hearsay as to the agent.

6 MR. HARFENIST: What he says in that affidavit  
7 clearly can't come into evidence.

8 THE COURT: That's right.

9 MR. HARFENIST: Any reference to it. I will show  
10 you a document. Does this refresh your recollection? No.

11 THE COURT: That's correct.

12 MS. GOLDSTEIN: I am entitled to impeach.

13 MR. HARFENIST: You are not entitled to impeach.

14 MS. GOLDSTEIN: I am entitled to ask whether she is  
15 aware or not.

16 MR. HARFENIST: You can't ask what is she aware of,  
17 what some gentleman said. All you can do is refresh her  
18 recollection as to whether she understands; otherwise, it is  
19 getting the same thing in the different way.

20 THE COURT: What question are you going to ask?

21 MS. GOLDSTEIN: Are you aware -- She just gave me a  
22 certain answer. Are you aware that on.... and I am going to  
23 read this --"yes" or "no" -- that on April 30, 1984, and  
24 go from there.

25 MR. KANE: What do you want to ask her?

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1 MS. GOLDSTEIN: Whether she is aware -- first of  
2 all, she hears this.

3 Whether on April 30, 1984, she is aware that special  
4 agent Urea contacted --

5 THE COURT: Not special agent.

6 MR. KANE: Peter.

7 MS. GOLDSTEIN: Mrs. Daniel has identified him as an  
8 agent.

9 THE COURT: Okay.

10 MS. GOLDSTEIN: And ordered the following items.

11 THE COURT: She will answer however she answers.

12 MR. KANE: Wait a minute. I would move that the  
13 court limit counsel from calling this man special agent  
14 because it gives it a buzz.

15 THE COURT: I said call him mister.

16 MS. GOLDSTEIN: Mrs. Daniel just referred to him as  
17 a special agent.

18 MR. KANE: I don't know that she testified to that  
19 today.

20 THE COURT: Let's move ahead. However, we will take  
21 five minutes.

22 (Recess).

23 (In open court).

24 THE COURT: Proceed, please.

25 (Jury enters courtroom).

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1 Q Mrs. Daniel, are you aware that on April 30, 1984,  
2 Mr. Urea contacted S.W.D., Inc., by telephone and ordered the  
3 following items: One M-11/9 millimeter machine kit, one  
4 millimeter nine frame flat, one M-11/9 silencer kit, one  
5 ARCH&E suppressor kit, one M-10/45 caliber silencer kit. The  
6 total order came to 344.75. Mr. Urea also requested to know  
7 the type of records S.W.D., Inc. maintained and stated that he  
8 had a criminal record. The sales clerk responded they kept  
9 shipping invoices, and subsequently the material was sent to  
10 Mr. Urea. Are you aware of that?

11 MR. HARFENIST: I renew my objection to the  
12 question.

13 A No, ma'am, I am not aware of it.

14 MR. KANE: Objection, hearsay, also.

15 THE COURT: It has been answered.

16 Q Mrs. Daniel, is it the case that Mr. Daniel was involved  
17 and responsible for some of the advertisement of S.W.D.?

18 A He did some of the advertisements, but Mr. Flemming did  
19 the majority of the advertisement.

20 Q I would like to talk to you a little bit about the  
21 trademark about which we were speaking earlier. The  
22 trademark, the Cobray snake moray eel symbol, is that right?

23 A Okay.

24 Q And that was registered as a trademark, correct?

25 A I believe the snake in a round circle was registered.

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1 The trademark that involved Military Armament out of Powder  
2 Springs, I believe that is correct.

3 Q Are you also aware that Mr. Daniel testified that he  
4 acquired the trademark, right?

5 A That's correct.

6 Q And that he licensed the Cobray trademark to S.W.D.,  
7 Inc., in 1982, right?

8 A Well, he assigned it but he said he didn't really have  
9 anything to assign, but he would give me something in writing  
10 because I requested it.

11 Q You, in fact, subsequently put the little "R" symbol with  
12 the circle around it. That signifies registered trademark,  
13 right? This little "R" right over here?

14 A That signifies registered trademark. I believe the one  
15 that Mr. Daniel assigned to me did not have "Cobray" under  
16 it.

17 Q Do you know that?

18 A Yeah. I think you've already gone through it two or  
19 three times.

20 Q All right.

21 But he did assign to you the Cobray logo?

22 A Without the word "Cobray" under it, correct.

23 Q So he assigned to you the trademark which is the -- I'm  
24 sorry. He assigned to you the globe and circle mark but not  
25 the mark Cobray?

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1 A Correct.

2 Q And you put the trademark insignia on the ads, right?

3 A Mr. Flemming would have done that, that is correct. He  
4 would also have added the word "Cobray."

5 Q Okay.

6 But as far as you were concerned, you weren't  
7 entitled to use the Cobray?

8 A No. That was not what Mr. Daniel assigned. It was  
9 already being used freely. Everyone was using it.

10 Q Mrs. Daniel, in our complaint, paragraph 56, and I can  
11 show this to you if you like, of our complaint, it says as  
12 follows: "At times the Daniel defendants have attached to  
13 this logo and/or to the name Cobray, the symbol for a  
14 registered trademark." It has the "R" with a little circle  
15 around it.

16 When you answered the complaint, which you would  
17 either deny or admit as to that paragraph, you denied it? Do  
18 you recall that?

19 A No, I do not.

20 Q Would you like to see it?

21 A Sure.

22 MS. GOLDSTEIN: Mark Plaintiffs' Exhibit 405.

23 Q I am going to show you what has been marked as  
24 Plaintiffs' Exhibit 406, which is the second amended  
25 complaint, and Plaintiffs' Exhibit 405, which is defendant's

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1 Sylvia Daniel's answer to the second --

2 MR. KANE: Before you go into it, I would like to  
3 object to addressing the answers in the pleadings. It calls  
4 for a legal conclusion.

5 THE COURT: I haven't heard the question yet.

6 Q Paragraph 56, Ms. Daniel.

7 A Okay. As you see, the statement is, "At times the Daniel  
8 defendants have attached to this logo and/or the name Cobray  
9 the symbol for a registered trademark" and the answer --

10 MR. KANE: Same objection.

11 THE COURT: I will allow it.

12 Q The answer, Mrs. Daniel, I believe this is the answer?

13 THE COURT: Can you hear back there?

14 Q I believe this is the answer of the defendant Sylvia  
15 Daniel, is it not?

16 A Okay.

17 Q In response to that paragraph 56, you deny the assertion,  
18 is that right?

19 A Correct, Sylvia Daniel never did that.

20 Q It does say here at times, "The Daniel defendants have  
21 attached to this logo" --

22 A You said Sylvia Daniel.

23 Q This is the response.

24 A Sylvia Daniel never did that.

25 Q You never attached the logo?

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1 A That's correct.

2 Q In your deposition in this case, Mrs. Daniel, you  
3 testified as follows:

4 "QUESTION: Who owns those trademarks?

5 "ANSWER: Who owns the trademarks? To my  
6 understanding, anyone can use them. No one owns them to my  
7 understanding, to my knowledge. You are talking about the  
8 Cobray?

9 "QUESTION: I am talking about the circle mark with  
10 the word "Cobray" underneath it and it looks to be a snake,  
11 kind of?

12 "ANSWER: Mythical creature.

13 "QUESTION: Mythical creature, all right.

14 "ANSWER: To my knowledge, that is very commonly  
15 used in the gun industry by different people.

16 "QUESTION: You don't claim any ownership or right in  
17 it?

18 "ANSWER: No, I have no ownership right. I just use  
19 it. I did in my corporations."

20 That was your testimony, right?

21 A You are talking about the Cobray -- you are talking about  
22 the mythical creature with "Cobray" under it? Or, are you  
23 talking about the mythical creature that Wayne Daniel assigned  
24 to me that did not have the word "Cobray"?

25 Q I am talking about your testimony.

1 A What I was referring to Mr. Barr was the one that  
2 Mr. Daniel--

3 Q This was your testimony?

4 A Correct.

5 Q It was true at the time you gave it?

6 A It is still true today.

7 Q As you talked about before, you went to some trouble and  
8 expense to prosecute infringers of the trademark at a certain  
9 time, correct?

10 A In the early days, that is correct.

11 Q Now, if Mr. Daniel -- you also testified earlier that  
12 Mr. Daniel told you that you probably had no right, but you  
13 had him sign this piece of paper anyway, or something like  
14 that?

15 A That's correct.

16 Q And yet you sued to enforce that thing that you didn't  
17 really have a right in?

18 A That's correct. He assigned that to S.W. Daniel  
19 Incorporated and other persons and entities was using it. I  
20 tried to protect it, but I couldn't. There was too many  
21 people using the Cobray --

22 Q Let me, just for ease, Ms. Daniel, hand you a stack. I  
23 think it is the same documents that defendants referred to  
24 before.

25 Let me hand you what has been marked as Plaintiffs'

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1 Exhibit 155, 157, 189, 160, 150, 154, 143, and 148.

2 (handing). I believe they are all in evidence.

3 Mrs. Daniel, the first document, Plaintiffs' Exhibit  
4 145, is a lawsuit by you against Euclid Avenue Sales, right?

5 A 145? Let me find it.

6 Q I'm sorry, 155. It should be the first document I gave  
7 you?

8 A 155, yeah. Correct.

9 Q Let's just go through this a little bit. I apologize. I  
10 am not very good at this.

11 This is a lawsuit by S.W. Daniel against Euclid.

12 It says in paragraph 2, Mrs. Daniel, S.W. Daniel  
13 Inc., not the defendant, has the legal right to the use of the  
14 Cobray trademark. By "trademark" there, you are referring to  
15 the circle with the picture in it, right, the mythical  
16 creature?

17 A Correct.

18 Q And the goodwill attended therewith by the virtual  
19 license agreement and by its continuous use of the mark in  
20 conjunction with the sale of firearms and accessories since  
21 the fall of 1982.

22 I will stop right there. That's when Mr. Daniel  
23 assigned to you the right, the trademark right?

24 A Correct.

25 Q License to trademark. So you are claiming the right

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1 based on the license, right?

2 A Correct.

3 Q And also by virtue of the use of the mark by S.W. Daniel,  
4 Inc.'s predecessors in business, R.P.B. Industries, Inc.,  
5 which is a Georgia corporation and Military Armaments  
6 Corporation, by virtue of their use on firearms, accessories  
7 and firearm magazines, their force since 1970. If I am  
8 understanding this correctly?

9 MR. KANE: If I may voice an objection. We are now  
10 into the world of trademark law and trademarks not existing in  
11 gross and continuous use of marks. I object for two reasons.  
12 One, it is not relevant what the pleadings say and whether the  
13 mark was continually in use. Two, these questions call for  
14 legal conclusions from the witness as to what or what is not  
15 appropriate trademark law usage. I think it is an irrelevant  
16 line of questioning. I object.

17 THE COURT: I will allow it to the extent that the  
18 jury finds that there is an interrelationship among these  
19 various parties, which is an issue for the jury.

20 Q Mrs. Daniel, you are claiming in this paragraph two, two  
21 things. You are claiming first by virtue of the fact that  
22 Mr. Daniel licensed to you in 1982 the trademark?

23 A That's what I testified to earlier, that's correct.

24 Q And you are claiming a legal right to the use of the  
25 trademark by virtue of the predecessors in interest of S.W.D.,

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1 namely, R.P.B., Inc., and Military Armament Corporation,  
2 correct?

3 A Correct.

4 Q Let's look at paragraph 3.

5 MR. KANE: That misstates paragraph 2. It doesn't  
6 say they were predecessors in interest. They say they were  
7 predecessors in interest in the use of the mark on firearms.  
8 That's out of context. This again is trademark law, that  
9 marks don't exist in gross, they have to be on a particular  
10 product, so it misstates the representations on paragraph 2.  
11 It also is not an accurate representation of trademark law.

12 MS. GOLDSTEIN: I literally read part it.

13 MR. KANE: It says right there use on firearms.

14 MS. GOLDSTEIN: If Mr. Kane would like me to read  
15 the entire document, I will.

16 THE COURT: If counsel wishes you to read another  
17 part of it for completeness. What other part with would you  
18 like read?

19 MR. KANE: I think I made it clear what part was  
20 left out.

21 MS. GOLDSTEIN: If I did, it was un intentional.

22 Q Let's look at paragraph 3 and I will read. "The word  
23 mark Cobray " -- by "word mark," we are talking about the word  
24 Cobray underneath the picture --"The word mark Cobray is also  
25 vested in S.W. Daniel, Inc. by virtue of a license agreement

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1 and is not owned by defendants herein. S.W. Daniel, Inc. has  
2 used the word mark Cobray since the fall of 1982 in  
3 conjunction with the making and selling of firearms,  
4 accessories, and firearm magazines therefor by the continual  
5 use of its predecessors in interest, R.P.B. Industries, Inc.  
6 and MAC since 1970. The use of the word mark Cobray since  
7 1970 inures to the benefit of S.W. Daniel, Inc.

8           So in paragraph 3, Mrs. Daniel, you are claiming a  
9 right to use the word mark and a right that Euclid Avenue  
10 Sales doesn't have, again by virtue of your license from  
11 Mr. Daniel in 1982 and by virtue of -- I will read it  
12 exactly-- predecessors in interest, RPB Industries, Inc. and  
13 MAC, since 1970, correct?

14 A       That's correct. But it still didn't stop them from using  
15 it.

16 Q       Mrs. Daniel, also, if you would look at paragraph 6,  
17 paragraphs 2 and 3 we talked about, you asserted that S.W.  
18 Daniel, Inc. had the legal right to use both the trademark,  
19 the picture, and the word mark.

20           Paragraph 6 reads as follows: "Similarly, S.W.  
21 Daniel, Inc. is the owner because its and its predecessors use  
22 of the word mark Cobray in conjunction with the sale of  
23 firearms, accessories, and firearm magazines therefor since,  
24 it is believed, 1970 to this date."

25           So, again, Mrs. Daniel, before we were talking about

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1 the right to use. Now you are talking about the ownership.  
2 You have a right to ownership because of both the license and  
3 your predecessors in business, correct?

4 A Yeah. Mr. Daniel would have actually owned it, correct,  
5 and he assigned it, correct.

6 Q And Mrs. Daniel, in paragraph 7, it says as follows:  
7 S.W. Daniel, Inc. and its predecessors have built up a great  
8 deal of goodwill in the word mark Cobray because of the  
9 uniqueness and quality of firearms and accessories that have  
10 been produced under the mark.

11 Where you talk about uniqueness there, Mrs. Daniel,  
12 that would be the opposite of generic? Uniqueness in quality  
13 is not a generic product?

14 A That would be, but it still doesn't stop people from  
15 using it also, other vendors.

16 Q Are you saying you sought a temporary and permanent  
17 injunction enjoining the defendants from using the trademark  
18 and the word mark, correct?

19 A Correct.

20 Q This was submitted by Mr. Kane, your attorney, correct?

21 A Correct.

22 Q And verified by you?

23 A Correct.

24 Q Right. That's your signature?

25 A Correct.

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1 Q I will not go through in great detail, as we established,  
2 as I think you testified before, the temporary and permanent  
3 injunction was granted?

4 A It was granted but it didn't mean that they abided by  
5 it. They continued to produce the parts and put the Cobray  
6 snake, as well as the verbiages, the word Cobray, as well as  
7 just the snake by itself on parts, after the fact.

8 Q As a result of that, Mrs. Daniel, you sued them again,  
9 right?

10 A Correct.

11 Q So they continued to use it and you sued them.

12 So we have another lawsuit filed in the Superior  
13 Court of Fulton County, State of Georgia, S.W. Daniel versus  
14 the same defendants as before. I will not go through in great  
15 detail again.

16 You talk about the legal right to use the Cobray  
17 trademark by virtue of the same things as before, that S.W.  
18 Daniel, Inc. is the owner and -- I'm sorry, Mrs. Daniel, I am  
19 now on Plaintiffs' Exhibit 189.

20 That S.W. Daniel, Inc. is the owner--

21 MR. KANE: If counsel would finish reading.

22 Q "Owner by usage, designee, assignments of the globe and  
23 serpent design (the Cobray logo) trademark which has been used  
24 by it and its predecessors in the State of Georgia since 1970,  
25 and in interstate commerce and throughout the world since 1971

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1 to the present date."

2 So you are claiming ownership based on that, correct?

3 A Correct. The globe and serpent design, that would be the  
4 assignment from Mr. Daniel.

5 Q I'm sorry. Just to make clear because I asked you  
6 questions before about the word mark, that this lawsuit also  
7 seeks to enforce the word mark. Paragraph 7, Mrs. Daniel.  
8 Similarly S.W. Daniel, Inc. is the owner because of its and  
9 its predecessors use of the word mark Cobray in conjunction  
10 with the sale of firearms and accessories therefor, since it  
11 is believed 1970 to date, correct?

12 A  
13 Correct.

14 Q Again, your injunction was upheld, correct?

15 A Absolutely, but it still didn't stop them from using the  
16 design as well as the verbiage. I believe they still use it  
17 today.

18 Q Mrs. Daniel, you would agree with me that you also sued  
19 Perry Smith doing business as Gunworks for the same thing,  
20 same bases, same essential complaint; correct?

21 A Correct.

22 Q You won that also?

23 A Correct.

24 Q Similarly, you sued Military Armament Corporation,  
25 et cetera, for the same reason?

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1 A Out of Stephenville, Texas. But they also continued to  
2 sell the parts with the snake on them, as well as the  
3 firearms.

4 Q Okay.

5 Mrs. Daniel, when did you stop bringing lawsuits?

6 A What's the last date on these?

7 Q August 1985?

8 A I guess that would be the day.

9 Q So it is your position that as of August 1985, this is in  
10 the public domain, it is everybody's?

11 A It was free game before '85. That is why I brought the  
12 lawsuit.

13 Q I guess I am having a hard time understanding that. If  
14 it is free game before 1985, how could you bring a lawsuit  
15 suing to enforce the trademark and the word mark?

16 A Everyone in the industry was using the trademark.

17 Q Okay.

18 A After the auction. The auction was in either -- I think  
19 it was in '81 or '82.

20 Q But you believed it was yours?

21 A No. I believe Mr. Daniel had assigned it to me, and he  
22 said he didn't really know if he even had an interest in it or  
23 not.

24 Q If he doesn't know if he has an interest in it or not,  
25 how can you honestly bring a lawsuit suing to enforce the

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1 trademark?

2 A Because I was trying to protect it. Because the vendor  
3 would make parts and then the customers would send them back  
4 to me wanting a refund.

5 Q So you were seeking to protect it by lawsuit, whether or  
6 not it was truly yours?

7 A I was seeking to protect it so that I didn't have to give  
8 refunds to persons that weren't entitled to them.

9 Q Mrs. Daniel, isn't it the case that S.W.D. continued to  
10 protect the trademark after these lawsuits?

11 A You said the last one was in '85.

12 Q Yes.

13 A I guess that would be the last one that was filed.

14 Q It is your testimony that you didn't continue to protect  
15 the trademark in any way thereafter?

16 A Not unless you've got a document dated further than  
17 that. I have no idea.

18 Q Well, isn't it the case, Mrs. Daniel, that in 1987, when  
19 S.W.D.'s five-year license from Mr. Daniel, which went from  
20 1982 to 1987, in 1987 when that license expired, didn't Wayne  
21 Daniel grant S.W.D. an exclusive license of the Cobray  
22 trademark?

23 A I don't believe so. He may have, but I don't believe  
24 so. Unless you got a copy of it.

25 Q Well, I won't be surprised if we do.

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1 I hand you what has been marked as Plaintiffs'  
2 Exhibit 138 (handing). Does it not say, Mrs. Daniel -- first  
3 I should say this is a document signed by Wayne Daniel,  
4 correct?

5 A Correct, and Sylvia Daniel for S.W. Daniel Incorporated.

6 Q That is your signature?

7 A Correct, and it is dated December 21, 1987.

8 Q It says, "Whereas S.W. Daniel, Inc., a corporation of the  
9 State of Georgia, doing business at" -- read that if you  
10 like, Mrs. Daniel --"is desirous of using the trademark on  
11 the products and all rights associated with said mark,  
12 including, but not limited to, goodwill, commercial, and  
13 economic opportunity, any and all intangible assets in  
14 interest of and to the said trademark and said registration  
15 associated with, and including R.P.B. Industries, Inc.,  
16 recreated in said registration, and whereas the said Wayne  
17 Daniel is willing to grant an exclusive license to the said  
18 S.W. Daniel, Inc., to use said trademark on said products.  
19 Know, therefore, the parties hereto agree as follows: One,  
20 the said Wayne Daniel hereby grants a royalty free, exclusive  
21 license to said S.W. Daniel, Inc., for use on said products  
22 for a term of five years from the date hereof."

23 So that would be from 1987 to 1992.

24 A That would be the globe and serpent, right, but not the  
25 verbiage.

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1 Q The trademark may be used on products, and all rights  
2 associated with said mark, including, but not limited to,  
3 goodwill, commercial, and economic opportunity, any and/all  
4 intangible assets and interests in, and to the said trademark  
5 and said registration associated with and including R.P.B.  
6 Industries, Inc., shall be licensed to S.W. Daniel, Inc.,  
7 correct?

8 A Correct.

9 You are talking about the globe and serpent?

10 Q The trademark.

11 A Which was the globe and serpent, which was not the  
12 verbiage, correct.

13 Q Well, Mrs. Daniel, I am talking about all of it,  
14 actually?

15 A Mr. Daniel didn't own the verbiage, did he?

16 Q Am I correct, you sued, you said before, Euclid Sales and  
17 others for the word mark as well?

18 A I believe you said last time it was in '85. I believe  
19 that's what you said.

20 Q Mrs. Daniel, I just want to show you what has been marked  
21 as Plaintiffs' Exhibit 404. Is this a Cobray advertisement?

22 A It looks to be, yes.

23 MS. GOLDSTEIN: I offer 404 into evidence.

24 THE COURT: Admitted.

25 (Plaintiffs' Exhibit 404 in evidence.)

1 Q Mrs. Daniel, this is an August 20, 1990 ad, right, of  
2 Cobray Firearms?

3 A Correct.

4 Q Do you see here the trademark with the word mark Cobray  
5 and the little "R" symbolizing registered trademark?

6 A Uh-huh.

7 MR. KANE: What is your exhibit number?

8 MS. GOLDSTEIN: 404.

9 Q Mrs. Daniel, Mr. Kane showed you earlier some corporate  
10 documents from the corporations. The documents that he showed  
11 you, let's take for example -- I think you have it over  
12 there -- Defendant's Exhibit 68, which is, I think, S.W.D.  
13 documents, and Defendant's Exhibit 71, which I believe are  
14 some Cobray documents. You didn't actually keep those,  
15 right?

16 A Excuse me?

17 Q These don't come from your offices; correct?

18 A No. I believe these came from Mr. Kane's office, or out  
19 of my accountant's office.

20 Q They were not records that you kept?

21 A Excuse me?

22 Q These are not records, Defendant's Exhibit 68 and  
23 Defendant's Exhibit 61 are not records you kept?

24 A The records that I had were destroyed in the flood, or  
25 not the flood, in the pipes that burst. S.W. Daniel and

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1 Cobray Firearms.

2 Q What does S.W. Daniel stand for?

3 A Sylvia Williams Daniel.

4 Q And it is not Sylvia and Wayne?

5 A Sylvia Williams Daniel.

6 Q It was incorporated on April 2nd of 1982, right?

7 A If that's what it says. I don't have the documents in  
8 front of me. If that's what it says, I guess that would be  
9 correct.

10 Q And Mr. Kane incorporated?

11 A Correct. S.W. first started out as a knife manufacturer,  
12 small hand-fitted, high quality pocket knife that was sold  
13 under the name of Brown & Farr.

14 Q Mrs. Daniel, when S.W.D. ceased its operations, when was  
15 that?

16 A I don't have my records in front of me. I am going to  
17 say early '90s, late '80s, early '90s, somewhere in there.

18 Q Okay.

19 You didn't file any articles of dissolution, did  
20 you?

21 A That would be on advice of my accountant.

22 Q You didn't follow any corporate formalities at all when  
23 dissolving S.W.D., correct?

24 A My accountant would have done that, whatever he did.

25 Q So you don't know one way or the other whether it was

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1 formally dissolved?

2 A I am not sure, no, ma'am. My accountant would know  
3 that.

4 Q Was your accountant responsible for keeping the corporate  
5 formalities or not keeping the corporate formalities?

6 A No. He was responsible for filing the documents that  
7 needed to be filed, though.

8 Q I show you what has been marked as Plaintiffs' Exhibit  
9 114. I think we will remark it because Mr. Daniel has showed  
10 you all these other documents. The only thing he didn't show  
11 you was this last document, so we will mark that as  
12 Plaintiffs' Exhibit 114.

13 Mr. Daniel, what is that?

14 A Secretary of State, Corporation Division, for '82. This  
15 is the same one that I have? It says that the Court has under  
16 Title of the official code of Georgia, it was involuntarily  
17 and administratively dissolved or revoked by the Office of the  
18 Secretary of the State on the date stated above for failure to  
19 file. That would have been 7/23/95.

20 Q So S.W.D. was administratively involuntarily or  
21 administratively dissolved or revoked by the Office of the  
22 Secretary of State, correct?

23 A That would have happened through the advice of my  
24 accountant, that is correct.

25 THE COURT: Are you offering 114.

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1 MS. GOLDSTEIN: Yes, your Honor. I offer 114 in  
2 evidence.

3 THE COURT: Okay. Admitted.

4 (Plaintiffs' Exhibit 114 in evidence)

5 Q Mrs. Daniel, the same thing happened with Cobray  
6 Firearms, Inc., that no corporate formalities were kept when  
7 the company was dissolved.

8 A That would be my understanding, but until I see the  
9 document, I can't tell you that.

10 Q Okay. Let me show what you has been marked as  
11 Plaintiffs' Exhibit 115.

12 A Okay. It would be the same except the dated would be  
13 7/6/97.

14 Q Again, it was administratively dissolved?

15 A Correct.

16 Q Thank you.

17 THE COURT: Are you offering these in evidence?

18 MS. GOLDSTEIN: Yes. I offer 115 into evidence.

19 THE COURT: Admitted.

20 (Plaintiffs' Exhibit 115 in evidence).

21 Q Mrs. Daniel, you talked before Ultra Force, Inc. and  
22 Ultra Force Organization. You consider those the same  
23 company?

24 A I consider Ultra Force Organization, UFO or Ultra Force  
25 in Nevada to be the same company. The difference is the EIN

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1 number, the employment number, employee's identification  
2 number. If you look on the tax returns, that's the  
3 difference. I don't know where they are.

4 Q Mrs. Daniel, Ultra Force, Inc., which was the Georgia  
5 corporation-- right --

6 A Ultra Force Incorporated.

7 Q That too was administratively dissolved, no corporate  
8 formalities?

9 A I believe that would be correct.

10 Q I show you Plaintiffs' Exhibit 118 and ask you whether  
11 that is reflected in this document?

12 A Yes, it is.

13 MS. GOLDSTEIN: Your Honor, I offer Plaintiffs'  
14 Exhibit 118 into evidence.

15 THE COURT: Admitted.

16 (Plaintiffs' Exhibit 118 in evidence)

17 Q Mrs. Daniel, you mentioned before that you had some tax  
18 returns. I would like to show you what has been marked as  
19 Plaintiffs' Exhibit 183, which I believe is the same thing as  
20 Defendant's Exhibit 75. You could either look at my copy or  
21 that copy. They are the exact same document.

22 A 75, you said?

23 Q 75, yes.

24 THE COURT: Are you offering 73 or not?

25 MS. GOLDSTEIN: Certainly, yes.

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1 (Plaintiffs' Exhibit 73 in evidence)

2 THE WITNESS: I don't have 73.

3 Q Why don't I give you 183. Why don't you tell me what  
4 these are. What are these, Mrs. Daniel?

5 A This would be S.W.D. Incorporated tax returns.

6 Q Mrs. Daniel, is it true that in 1982 you had gross  
7 receipts of \$737,559, right?

8 A Correct.

9 Q And taxable income, income upon which you pay taxes, of  
10 \$9,463, correct?

11 A Correct.

12 Q Is it true that in 1983 you had gross receipts of  
13 \$1,623,357, correct?

14 A Correct.

15 Q And taxable income of negative \$90,096, correct?

16 A Correct.

17 Q Is it true that in 1984, you had gross receipts of  
18 \$1,981,394. Correct?

19 A Correct.

20 Q And taxable income of \$93,790, correct?

21 A Correct.

22 MR. KANE: If I may voice an objection. What the  
23 gross income was and what the taxable income was, I would  
24 submit, it is irrelevant. The relevant issue is whether or  
25 not the corporate entity filed a corporate tax return.

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1 THE COURT: You can make that point, certainly, but  
2 it is irrelevant, I believe.

3 Q Mrs. Daniel, turn to 1995?

4 THE COURT: Only on the point of how these businesses  
5 were being run. Poor, rich, big, small corporations are all  
6 treated equally in this court. You understand that?

7 (Jurors nod.)

8 THE COURT: Go ahead.

9 Q Mrs. Daniel, in 1985 isn't it the case that you had gross  
10 receipts of \$2,715,283, correct?

11 A Correct.

12 Q And taxable income of \$37,6843?

13 A Correct.

14 Q Mrs. Daniel, in 1986, is it correct that you had gross  
15 receipts of \$3,650,987, correct?

16 A Correct.

17 Q And taxable income of \$32,737,000?

18 A Correct.

19 Q In 1987, you had gross receipts of \$2,935,212; correct?

20 A Correct.

21 Q And taxable income of negative \$1,573; correct?

22 A Correct.

23 Q In 1988, Mrs. Daniel, is it correct that you had gross  
24 receipts of \$1,246,389?

25 A Correct.

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- 1 Q And taxable income of \$8,231, correct?
- 2 A Correct.
- 3 Q And in 1989, you had gross receipts of \$802,710, correct?
- 4 A Correct.
- 5 Q Taxable income of negative \$14,230, correct?
- 6 A Correct.
- 7 Q In 1990, you had gross receipts of \$791,166, correct?
- 8 A Correct.
- 9 Q And taxable income of \$41,794, correct?
- 10 A Correct.
- 11 Q That in 1991, you had gross receipts of \$792,604,
- 12 correct?
- 13 A Correct.
- 14 Q And taxable income of negative \$1,037, correct?
- 15 A Correct.
- 16 Q In 1992, you had gross receipts of \$1,120,836, correct?
- 17 A Correct.
- 18 Q And you had taxable income of \$894, correct?
- 19 A Correct.
- 20 Q And lastly, in 1993, you had gross receipts of \$510,420,
- 21 correct?
- 22 A Correct.
- 23 Q And taxable income of negative \$18,473, correct?
- 24 A Correct.
- 25 Q So Mrs. Daniel, you had, between the years 1982 to 1993,

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1 total gross receipts of \$18,907,970 and had taxable income of  
2 \$9,087. Is that correct?

3 A I don't know if you are adding up correct. I guess it  
4 would be right. You said \$9,000?

5 Q \$9,087?

6 A I had \$9,463 in '82.

7 Q You did. You had a negative \$90,000 in 1983 and  
8 negatives in some other years.

9 A If you figured it up, I guess that would be right.

10 Q That was S.W.D., Inc., right?

11 A Correct.

12 Q Mrs. Daniel, I would like to show you what has been  
13 marked as Plaintiffs' Exhibit 184, and what are these?

14 A Looks like the corporate tax returns of Cobray Firearms.

15 MS. GOLDSTEIN: Your Honor, I offer Plaintiffs'  
16 Exhibit 184 into evidence.

17 THE COURT: Admitted.

18 (Plaintiffs' Exhibit 184 in evidence)

19 Q Mrs. Daniel, in 1987, this is now Cobray Firearms, Inc.,  
20 is it correct that you had gross receipts of \$1,002,721 and  
21 taxable income of negative \$10,689, correct?

22 A Correct.

23 Q I will go through some of the years, Mrs. Daniel.

24 In 1988, is it correct you had gross receipts of  
25 \$3,672,065, correct?

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1 A Correct.

2 Q And taxable income of negative \$11,414, correct?

3 A Correct.

4 Q Would it be fair to say, Mrs. Daniel, that in 1989, 1990,  
5 1991, 1992, you had in excess of \$3 million gross receipts in  
6 each of those years, and in 1992, \$4.5 million, close to \$5  
7 million; is that correct?

8 A You said \$5 million?

9 Q In 1992, you had \$4.596 million, correct?

10 A Correct. In '94, I had \$115,000.

11 Q In 1992, when you had gross receipts of \$4,596,827, you  
12 had taxable income of negative \$33,639, correct?

13 A Correct.

14 MS. GOLDSTEIN: Mrs. Daniel, I have no further  
15 questions.

16 MR. DAVIS: I have a few questions.

17 CROSS EXAMINATION

18 BY MR. DAVIS:

19 Q Mrs. Daniel, prior to March 1, 1994, you were aware of  
20 the fact that the M-11/9 completed weapon, M-11/9 had been  
21 used in a number of violent crimes, isn't that correct?

22 A Not really, no, sir.

23 Q You didn't have any such knowledge?

24 A Not really. Only what you hear, what you see on TV.

25 Q Do you have any personal information that the M-11/9

1 before March 1, 1994, had been involved in any crimes at all?

2 A Personal information, no, sir.

3 Q Had you ever been contacted by A.T.F. about the  
4 possibility that any of your weapons had been used in any  
5 kinds of crimes?

6 A No, sir.

7 Q So that when Dean Fox talked about 3,074 traces of S.W.D.  
8 M-11/9s relating to guns made by S.W.D. during the period of  
9 1988 to 1993, you weren't aware of any of those traces?

10 A Was I aware of traces? Of course, I'm aware of tracing.  
11 All manufacturers have to comply with A.T.F. in tracing, sir.

12 Q You were aware?

13 A A.T.F. came over and traced guns, yes.

14 Q They came over 3,000 times for guns related to those  
15 years, are you aware of that?

16 A No, I am not aware of that. They knock on the door.  
17 They say, can we do some tracings? So they come in and do  
18 them.

19 Q You didn't have any notion that any of those traces had  
20 anything to do with murders or other violent crimes?

21 A No, sir. I didn't know if they had been picked up, there  
22 had been an accident and they ran a check on it to see if it  
23 was registered to someone or not.

24 Q You thought most of those were just accident cases, is  
25 that what you are saying?

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1 A No, sir. That's not what I am saying. I am saying ATF  
2 would knock on the door. They would want to come in, look at  
3 my bound books. They would want to run tracers to see what  
4 FFL dealer I had shipped a firearm to. They would write that  
5 down and they would take it back with us and say have a nice  
6 day. And that would be it.

7 Q You didn't have any knowledge over 300 of your guns were  
8 traced in connection with homicide investigations?

9 A Absolutely not.

10 Q And no knowledge that over a hundred of your guns were  
11 traced in connection with other violent crimes, including the  
12 homicides?

13 MR. KANE: I object to the form of the question.  
14 First of all, he is saying "your guns." They are not her  
15 guns. Second of all, just because an M-11/9 was traced, if it  
16 was at all, doesn't mean it was used in a crime and it doesn't  
17 mean that it was one of the companies that Ms. Daniel owned  
18 stock in that manufactured it.

19 So the form of the question is objectionable. I  
20 would ask counsel to rephrase it.

21 MR. DAVIS: The testimony of Dean Fox was that all  
22 3,074 traces for the M-11/9 relating to guns manufactured  
23 between '88 to '93 was of S.W.D. weapons.

24 THE COURT: Frame it as that kind of weapon, rather  
25 than her weapons.

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1 I take it, that's the gist of the objection.

2 MR. DAVIS: It is.

3 MR. KANE: Also, Mr. Fox who is now the dean--.

4 MR. DAVIS: He was the dean before.

5 MR. KANE: -- said he made an assumption that a  
6 tracing was used in a crime. There was no testimony ever that  
7 that was conclusive. Tracing doesn't necessarily have  
8 anything to do with a crime. Now on this recross it becomes  
9 criminal conduct that precipitates a tracing. That's not the  
10 testimony of Mr. Fox.

11 MR. DAVIS: We will argue Dean Fox's testimony at  
12 summation, your Honor.

13 THE COURT: Frame your question to comport with the  
14 evidence, please.

15 Q Mrs. Daniel, are you aware at all that the M-11/9s before  
16 March 1, 1994, had been used by drug dealers in having turf  
17 fights?

18 A Not really, no. Personal knowledge? No, sir.

19 Q Did you hear about that in news stories?

20 A Well, if it was on the TV, I probably heard it. If there  
21 were, I don't remember what it was.

22 Q Do you remember hearing anything like that?

23 A No. No, I do not.

24 Q Do you remember reading in any newspaper story about the  
25 M-11/9 being used by drug dealers in connection with turf

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1 wars?

2 A The only knowledge I have of that is what BATF went over  
3 in the early '80s and told Wayne Daniel, that UPS drivers were  
4 being stopped, held at gunpoint and packages stolen that were  
5 addressed to gun shops in Miami, in South Florida.

6 Q It is on the basis of that conversation with Wayne Daniel  
7 that S.W.D. put in the ad that Ms. Goldstein showed you about  
8 the M-11/9?

9 A Actually it wasn't a conversation I had with Wayne  
10 Daniel. It was a conversation I overheard BATF have with  
11 Wayne Daniel.

12 Q But it is because of this issue about post office  
13 robberies down in Miami, that that's why you put in your ads  
14 or your ad that Ms. Goldstein showed you about the use of  
15 M-11/9's by drug dealers?

16 MR. KANE: Objection to the form of the question.  
17 There has been no testimony about post office robberies.

18 MR. DAVIS: I thought she said that's what the issue  
19 was.

20 MR. KANE: No, UPS drivers.

21 Q I apologize. Based on the information about UPS?

22 A That's the only personal knowledge I have, sir.

23 Q That's the only personal knowledge?

24 A Only personal knowledge.

25 Could I take you back one step to a couple of

1 questions ago. You asked me about tracing. ATF has called me  
2 on the phone and asked me to trace a serial number for them.  
3 I go and look in my bound books. I say, okay, the gun is  
4 here. I call them and I say the gun hasn't gone anywhere, it  
5 is here. They say there is no way. I said, come on over.  
6 They come over. They go in the vault. They look and see the  
7 gun is there. They go back and say okay. So they have traced  
8 a gun that hasn't even been shipped.

9 Q Did that 375--

10 A It happened numerous times.

11 Q Did that happen 37--

12 A I would say it happened 200 or 300, yes. Not 3,000, but  
13 200 or 300, but it doesn't mean it was used in a crime. But  
14 it does mean they did trace it.

15 Q I understand your position. I understand your argument.  
16 Let me give you a copy of this volume. This is the  
17 compilation of 201 and 265.

18 You have a copy already. Cobray sold kit guns, did  
19 they not?

20 A Cobray sold M-11/9 replacement part sets.

21 Q They sold kit guns, didn't they?

22 A Is there an ad that says they sold kit guns?

23 Q You guess correctly.

24 Why don't you turn to Exhibit 223.

25 A 223.

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1 Q That's a Cobray ad for a kit gun?

2 A For an individual to build a Title 1 semiautomatic  
3 pistol.

4 Q 224 is another kit gun ad by Cobray?

5 A Correct, they are about the same ad. They are on a  
6 different day.

7 Q I won't go on.

8 You can see, if you turn the pages, there are a  
9 number of other Cobray kit gun ads; is that correct?

10 A Correct. For an individual to build a Title One firearm,  
11 semiautomatic.

12 Q Looking at that ad, it says-- if you see where it says,  
13 looking at the ad, the right hand side, it says we include the  
14 side pieces and drawings of the sheet metal center portion.  
15 Do you see where it says that?

16 A Correct. Right.

17 Q That relates to the way that you are telling people that  
18 they can build what becomes the frame?

19 A In order to make a Title 1 firearm.

20 Q And so there are two side pieces that were included in  
21 this that would not have a serial number, is that correct?

22 A Correct.

23 Q And you weren't supplying the middle piece. You were  
24 just supplying a drawing for that; is that correct?

25 A According to that, correct.

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1 Q If somebody got the side piece and then followed your  
2 drawings and then got all the pieces in the diagram on the  
3 left, they would be able to make an M-11/9 semiautomatic; is  
4 that correct?

5 A Semiautomatic for their own use, not for resale.

6 Q If you look at 205, do you see there is a picture of a  
7 flat?

8 A Correct.

9 Q And the flat doesn't contain a serial number, does it?

10 A No, it does not. It is a flat head, flat piece of  
11 metal. It is not formed.

12 Q It is not the frame or the lower receiver?

13 A No, sir, it is not.

14 Q When you bend the sides up, then it becomes the frame,  
15 and that's why you sell it to somebody, so that they can do it  
16 and create, make their own frame in that way?

17 A It becomes a Title 1 at that point.

18 Q It becomes a--

19 A Title 1.

20 Q If you look at this ad, aren't you also selling the parts  
21 kit for the submachine gun?

22 A Yeah, but once you form a flat, it becomes a Title 1  
23 firearm.

24 Q I understand.

25 My question is, if you got the all the parts from a

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1 submachine gun kit, and then you got this flat and folded it  
2 up, would you be able to build your own submachine gun?

3 A Well, it says, "warning, completion of the frame flat  
4 requires prior ATF approval," in the ad.

5 Q That's what you are telling that person, they would have  
6 to get approval, right?

7 A No. They would have to apply for a Form 1 to build a  
8 machine gun.

9 Q But you have already sent them, meaning S.W.D., has  
10 already sent them the parts kit and the flat before they have  
11 to apply for it; is that correct?

12 A That's correct.

13 Q So you --

14 A Until it is actually assembled into a firearm, sir, it is  
15 nothing but parts.

16 Q I understand it. I understand that. All I am saying --

17 A Until you assemble it, at that point you would file your  
18 Form 41.

19 Q Did you have any procedures to follow up to somebody you  
20 sent these things to see if they did go and file the  
21 necessarily form?

22 MR. KANE: If counsel could define what the  
23 procedures are in reference to and address to us to the Code  
24 of the Federal Regulations.

25 Objection.

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1 MR. DAVIS: This isn't an issue of the Code of  
2 Federal Regulations.

3 THE COURT: I take the word "procedures" is being  
4 used in a lay sense?

5 MR. DAVIS: In a lay sense.

6 THE COURT: Overruled.

7 A Repeat the question.

8 Q Let me take you a step back.

9 Did you have any procedures to determine whether  
10 anybody who you had sent the flat and the submachine gun kit  
11 to had actually made the necessary application to ATF after  
12 they got it from you?

13 A Sir, in the machine gun parts we would include a Form 1.  
14 It would be up to the end user to submit that to Washington.

15 Q I understand. You would send them a Form 1. Did you  
16 have any procedures to see whether they ever did file a  
17 Form 1?

18 A Parts are not controlled, sir.

19 Q I guess the answer is you had no such procedures; is that  
20 correct?

21 A That's correct. Parts are not controlled. They are not  
22 a controlled item.

23 Q Now, it might be easier for you. I will give you a copy  
24 of Plaintiffs' Exhibit 42, which is a 4473 (handing).

25 When an individual buys a weapon -- when I say an

1 individual, I mean somebody who is not a holder of a Federal  
2 Firearms License -- they have to fill out a 4473; do they  
3 not?

4 A That's my understanding. If an individual purchases a  
5 firearm from an FFL dealer, that is correct. That's part of  
6 the federal guidelines. That is correct.

7 Q They have to indicate whether they have been convicted of  
8 a crime?

9 A Correct.

10 Q They have to indicate whether they have any drug  
11 addiction problems?

12 A Correct.

13 Q They have to indicate whether they have any particular  
14 kind of mental problems that's lead to them being in a mental  
15 institution?

16 A Correct.

17 Q The form also requires the person selling the gun to take  
18 certain steps, does it not?

19 A Excuse me? Yeah. There is portions on here for the  
20 dealer to fill out, that's correct.

21 Q And the dealer is required to get a piece of  
22 identification which shows the name, date of birth, place of  
23 residence and signature of the purchaser. Isn't that correct?

24 A That's correct, but S.W.D. and Cobray Firearms, Inc.  
25 never sold to the end user. I only sold to those

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1 corporations, to qualified federal firearms licensees. I  
2 never sold --

3 Q That's completed weapons?

4 A You say weapons.

5 Q I understand.

6 A Yes. That's the weapon.

7 Q I understand. I understand. I just want to make sure  
8 you understood and we were agreeing on what was required with  
9 this form.

10 Now, when you sold somebody the kits and the flat,  
11 the kit and flat described in 205 or the kit and the side  
12 pieces of the diagram described in 223, you didn't ask them,  
13 whether it was Cobray or S.W.D., didn't ask them to physically  
14 see a driver's license or some other piece of identification  
15 showing the name, date of birth, place of residence and  
16 signature; did you?

17 A 95 percent of the parts and pieces that I sold were sold  
18 to FFL dealers. A hundred percent of the firearms that I sold  
19 were sold to FFL dealers.

20 Q I've heard you state that numerous times. Could you  
21 answer the question, however?

22 A And the question being?

23 Q The question being that when you sold, meaning S.W.D. or  
24 Cobray, sold either the parts kit and the flat described in  
25 205 in the case of S.W.D., or the parts kit and the two side

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1 pieces in the drawing by Cobray described in 223, you didn't,  
2 meaning S.W.D. and Cobray, didn't ask to physically see a  
3 driver's license or identification which shows the name, date  
4 of birth, place of residence and signature of the buyer; did  
5 you?

6 A I asked for a shipping address.

7 Q That's all you asked for, shipping address. But you  
8 didn't see any kind of identification that I have been  
9 describing, did you?

10 A Sir, you can't see through a telephone line.

11 Q That's correct. You can't see through a telephone line.

12 When an individual, non-licensees, called up one of  
13 your companies and said they wanted to buy this kit, the flat  
14 or the kits and the two side pieces in the drawing, you didn't  
15 make any effort to determine whether they had a criminal  
16 record; did you?

17 A Most of the time, as I said earlier, a customer would  
18 call up and he would tell you he had a Glock or he had a Smith  
19 & Wesson, and he had all these other firearms. So when you  
20 are talking with this customer on the phone, you know he's got  
21 legal firearms.

22 Q That's because--

23 A -- he told you that.

24 Q You assume that because somebody says I have a firearm  
25 that they don't have a criminal record; is that correct?

1 A That's correct. I believe that 99 percent of the  
2 American people are honest, decent people.

3 Q So, therefore, your practice, meaning S.W.D.'s and  
4 Cobray's, wasn't to make any inquiry, ask any questions about  
5 a criminal record; was it?

6 A About criminal records?

7 Q Okay.

8 A The majority of them were sold to FFL dealers.

9 Q I understand.

10 A So they would not have had a criminal record, because the  
11 Bureau of Alcohol, Tobacco, and Firearms would not have  
12 licensed them. They would not have given them a license to  
13 deal in firearms if they had had a criminal record.

14 Q Mrs. Daniel, with all due respect, we've heard you make  
15 that argument many times today.

16 My question really is, when you are dealing with a  
17 non-federal firearms licensed holder, it is true, is it not,  
18 that your companies did not ask whether people had criminal  
19 records or take any steps to determine what they did?

20 A The staff that answered the phones, it was their judgment  
21 call if the merchandise was shipped or not. If you will go  
22 back to my deposition, it says that.

23 Q You don't recall saying in your deposition that no effort  
24 was made to determine whether individuals had a criminal  
25 record?

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1 A In those words, no, sir, I don't remember saying that.

2 Q Page 123.

3 A You got a copy of it?

4 Q I will be happy to read it to you, and then if you like,  
5 we have an extra copy.

6 THE COURT: Yes. Your associate is giving you one.

7 A 123.

8 Q 123, line 6.

9 "QUESTION: Did you make any effort to determine  
10 whether they have a criminal record?

11 "ANSWER: Replacement parts are not controlled by  
12 ATF.

13 "QUESTION: So the answer is no?

14 "ANSWER: The replacement parts, it would be up to  
15 the end user.

16 "QUESTION: The answer to my question is no?

17 "ANSWER: Correct."

18 Did you give those answers during the course of your  
19 deposition?

20 A Yes, I did.

21 Q And were they true?

22 A Yes. Replacements parts are not a control item.

23 Q What about the other part of your answer in which you  
24 acknowledge that you don't make efforts to determine whether  
25 the person on the phone has a criminal record? Is that true,

1 also?

2 MR. KANE: Wait a minute. Objection. Asked and  
3 answered half a dozen times.

4 THE COURT: Overruled.

5 Q Would you like me to read it again?

6 A I believe Mr. Barr asked me, do you make an effort to  
7 determine whether they have a criminal record. My answer was  
8 replacement parts are not controlled by ATF. Gun parts are  
9 not controlled.

10 Q Maybe we better do this again.

11 123, line 6: "Do you make any effort to determine  
12 whether they have a criminal record?"

13 "ANSWER: The replacement parts are not controlled  
14 by ATF.

15 "QUESTION: So the answer is no?"

16 "ANSWER: The replacement parts, it would be up to  
17 the end user.

18 "So the answer to my question is no?"

19 "ANSWER: Correct."

20 A Correct.

21 Q That was true when you testified?

22 A Correct. It is still true. ATF does not control parts.

23 Q So you are denying that in this testimony you were saying  
24 that you don't make any effort to determine whether people  
25 have criminal records?

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1 A No, sir, I am not denying it. I am telling you I sold 95  
2 percent of my firearms to FFL dealers. The other 5 percent I  
3 would have sold to individuals as yourself, sir, if you had  
4 placed an order with me.

5 Replacement parts are not controlled by ATF. Gun  
6 parts are not controlled by ATF. The lower receiver would be  
7 controlled because it would be considered as a firearm, which  
8 would be the serialized part.

9 Q Are you finished?

10 A Yes.

11 Q Now, you understood that you could not sell a completed  
12 gun directly to a New York citizen; isn't that correct?

13 A Completed gun?

14 Q Right.

15 A I sell a hundred of the firearms that I make to federal  
16 firearms licensees. I'm sorry, that's not going to change no  
17 matter how you want to change the question.

18 Q I know your answer isn't going to change. I just would  
19 like an answer to my question.

20 My question is, and I think you can answer this  
21 fairly "yes" or "no," is it true that you cannot sell a  
22 completed gun to a New York citizen who did not hold a Federal  
23 Firearms License? Yes or no?

24 A I can't sell a completed gun to someone in Texas if they  
25 don't have a Federal Firearms License, sir.

1 Q Okay.

2 A I sell to federal firearms licensees, a hundred percent  
3 of the firearms that were manufactured and produced through  
4 S.W. Daniel Incorporated as well as Cobray Firearms,  
5 Incorporated.

6 Q All right.

7 So you understand, I gather from your answer that you  
8 could not sell the completed gun to a New York citizen who  
9 didn't have a federal firearms license?

10 MR. KANE: Objection. That's not what the witness  
11 testified to. That's just not the answer counsel wanted.

12 THE COURT: I will allow the question. She can  
13 answer it however she feels is most appropriate.

14 A Would you repeat the question.

15 Q Mrs. Daniel, do you understand that you, meaning S.W.D.  
16 and Cobray, were not allowed to sell a completed gun to a New  
17 York citizen who did not have a federal firearm license?

18 A Sir, S.W. Daniel Incorporated, Cobray Firearms  
19 Incorporated, sold 100 percent of the firearms that were  
20 manufactured and produced to federal firearms licensees.

21 I'm sorry, that answer is not going to change.

22 Q I am not asking you about your practice.

23 I am asking whether you understood that it was  
24 legally permissible? Did you Mrs. Daniel, understand that it  
25 would not be legally permissible for S.W. Daniel or Cobray to

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

1 sell a completed gun to a New York citizen who was not a  
2 Federal Firearms Licensee?

3 A Sir, S.W. Daniel, Inc., Cobray Firearms, Inc., sold 100  
4 percent of the products that were manufactured and produced  
5 only to FFL dealers.

6 Q So you don't want to answer the question about what your  
7 understanding of the legal obligation was? Is that what you  
8 are saying?

9 A The question doesn't apply anywhere to me. I sold my  
10 product to federal firearms licensees who were governed by the  
11 Bureau of Alcohol, Tobacco, and Firearms.

12 Q That's because --

13 A I ran my corporations under the guidelines of the Bureau  
14 of Alcohol, Tobacco, and Firearms.

15 Q That's because you were legally required to?

16 A Absolutely.

17 Q Is that correct?

18 Now, you sold the kits and the flats and the side  
19 pieces described in these ads to people in New York without  
20 federal firearms licenses. Did you ever give --

21 A Do you have a document to that effect. ?

22 Q Well, you didn't have any Cobray documents, did you?

23 A They were destroyed in a sewage--

24 Q You don't have any S.W.D. document?

25 A They were destroyed in the water.

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1 Q You don't have a document to that effect. You are saying  
2 Cobray, S.W.D. never sold any parts kit to anybody?

3 A Sylvia Daniel, personally, never sold parts kits to  
4 anybody, sir.

5 Q Let me take out New York State, okay.

6 S.W. Daniel and Cobray Firearms are located in  
7 Georgia, correct?

8 A Correct.

9 Q You sold parts kits and flats and parts pieces, we have  
10 been discussing, to people without federal firearm licenses  
11 outside the State of Georgia, isn't that correct?

12 A Approximately 5 percent.

13 Q Do you ever give any thought to the possibility that your  
14 willingness to sell those products interstate where people  
15 couldn't buy guns, that that way would be attractive to  
16 criminals?

17 A No, sir.

18 I believe that if an individual intends on breaking  
19 the law, he will break the law.

20 Q You didn't give any thought to that?

21 A Whether it is with a firearm or a knife or an  
22 automobile.

23 Q We have referenced the 4473, both parts, the part the  
24 buyer has to fill out making certain assertions and the seller  
25 has to fill out in connection with certain identification that

1 they have seen.

2 Do you recall we just discussed that?

3 A Correct.

4 (Continued on next page.).

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S. Daniel-cross-Davis

1 EXAMINATION CONTINUES

2 BY MR. DAVIS:

3 Q And did you ever give a -- when you sold the kit I think  
4 your position is clear, but let's -- you sold the kit and the  
5 that's, and the side pieces, you weren't required to have  
6 people fill out a 4473. That's correct, isn't it?

7 A Parts are not a controlled component by Bureau of  
8 Alcohol, Tobacco and Firearms.

9 Q I understand.

10 A That's correct, sir.

11 Q So my question is when you gave buyers the kits to the  
12 flats and the side pieces, the ability to buy these products  
13 without providing any of the information that they would have  
14 had to provide in a 4473, for completed gun, did you ever give  
15 any thought to the possibility that people who couldn't  
16 legally buy a gun might find that attractive?

17 A No, sir. Because I believe some of the parts that were  
18 sold were also replacement parts for existing firearms.

19 Q So you never gave the slightest consideration to whether  
20 that method of marketing would be attractive to criminals, did  
21 you?

22 A No, sir, never crossed my mind.

23 Q Did you ever give any thought -- you -- excuse me.

24 Withdrawn.

25 You saw Juan Torres here, didn't you?

1 A Who is he?

2 Q He was the criminal.

3 A Oh, the guy that set his friends up. I know who you are  
4 talking about.

5 Q That's right, the criminal.

6 Did you ever give any thought when you were selling  
7 these kits and flats, side pieces and diagrams for the bottom  
8 piece, that people like Juan Torres who wanted to get them  
9 with his partner Hanratty, put them together and sell them to  
10 criminals, did you ever give any thought to the possibility  
11 that they might find that attractive?

12 A Sir, I don't associate with people like that.

13 Q But did you ever give any thought to the possibility that  
14 your method of marketing might help people like that?

15 A Absolutely not, no.

16 Q You just assumed that if somebody called, maybe they  
17 owned already a firearm, and therefore you would send out the  
18 parts kit, flats, the frame -- excuse me. Not the frame. The  
19 flats, the side pieces and you would just send it out as long  
20 as they could pay, is that correct?

21 A Well, if you look at my deposition on page 125, it says  
22 that the majority -- the staff that worked with me, the girls  
23 that worked with me used their own judgment in shipping  
24 merchandise. And they would come to me and they would say I  
25 don't want to ship this merchandise. The credit card may be

1 stolen or I just don't feel right about it. Then I would tell  
2 them, use your judgment. If you don't want to ship it, we  
3 won't ship it. It's no big deal.

4 THE COURT: Excuse me.

5 How long are we going to go over this?

6 MR. DAVIS: Just a couple of minutes.

7 THE COURT: Did you ever tell any of your employees,  
8 directly, to ask a question like this?

9 THE WITNESS: Ask the question of what, sir?

10 THE COURT: About whether the purchaser was possibly  
11 a criminal? Were they instructed? Did they have questions to  
12 ask?

13 THE WITNESS: No, sir. They did not have questions  
14 to ask but they knew --

15 THE COURT: Did you ever -- listen to my question,  
16 please.

17 Did you ever instruct a person answering your  
18 telephone calls to inquire about whether these people had a  
19 criminal background? That is the question.

20 THE WITNESS: The staff --

21 THE COURT: Excuse me. Listen to my question and  
22 don't tell me about, please, your staff having discretion. I  
23 ask you whether you ever instructed your employees with  
24 respect to questions they were to ask about criminal or other  
25 background of people who would telephone with orders.

1 THE WITNESS: Yes.

2 THE COURT: What did you instruct them?

3 THE WITNESS: The staff was instructed to talk to the  
4 people and if they felt good about it, then to ship the  
5 merchandise.

6 THE COURT: You didn't tell them to ask certain  
7 questions?

8 THE WITNESS: Sir, they would start talking about the  
9 other guns that they would own.

10 THE COURT: Did you instruct them with respect to  
11 specific questions and answers? That's what these questions  
12 have been directed at. Or did you leave it completely to the  
13 discretion of your employees? That's what the questions are  
14 about. I would like to terminate these questions so you can  
15 go about your business.

16 THE WITNESS: Well, I would too, sir. But yes, they  
17 would ask certain questions.

18 THE COURT: Did you instruct them with respect to the  
19 questions they were to ask?

20 THE WITNESS: Yes, probably.

21 THE COURT: What did you tell them?

22 THE WITNESS: Feel the customer out.

23 THE COURT: What?

24 THE WITNESS: Ask the customer if he knows what the  
25 guidelines are.

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1 THE COURT: What guidelines?

2 THE WITNESS: The federal guidelines. If he knows he  
3 has to fill a form one. Or if he knows he needs to check with  
4 his state and local ordinance. Yes, sir, those questions were  
5 asked.

6 THE COURT: You instructed your employees to ask  
7 those questions?

8 THE WITNESS: Absolutely.

9 THE COURT: Now continue and let's get specific  
10 questions so that we can get on with this case.

11 EXAMINATION CONTINUES

12 BY MR. DAVIS:

13 Q Mrs. Daniel, you --

14 THE COURT: You understand, ladies and gentlemen, I  
15 have no view of this case and how it should be decided. I  
16 want to move the case forward. I don't want to go over and  
17 over the same materials.

18 Be direct now and terminate this as soon as you can.  
19 It is 20 to five.

20 MR. DAVIS: I will, Your Honor.

21 EXAMINATION CONTINUES

22 BY MR. DAVIS:

23 Q You didn't instruct your staff to get all the information  
24 that would have been required in a 4473, is that correct?

25 A Did I ask my staff to read a 4473?

## S. Daniel-redirect-Harfenist

1 Q To get all the information that would be required in a  
2 4473.

3 A No, sir.

4 Q And you have no records of any of the purchasers of these  
5 kits from any time from Cobray or from SWD?

6 A No, sir, I do not.

7 Q So you don't have the slightest idea of whether one of  
8 the people on the phone was or was not Rashid Baz, is that  
9 correct?

10 A No, sir.

11 THE COURT: I am not going to restrict you. Let's  
12 try to finish the witness by 5:00 o'clock, if possible.

13 MR. HARFENIST: Judge, I won't have any problem doing  
14 that.

15 THE COURT: Good.

16 REDIRECT EXAMINATION

17 BY MR. HARFENIST:

18 Q Mrs. Daniel, you are familiar with the form one?

19 A Yes, sir.

20 Q Are you familiar with the form 4473?

21 A Yes, sir.

22 Q Is there any portion of those -- or any part of those  
23 documents that indicates that parts are to be included on  
24 the -- sale of parts is to be included on those documents?

25 A No.

S. Daniel-redirect-Harfenist

1 Q How long have you been in the firearms sales business?

2 A Fourteen, 15 years.

3 Q All right. So you are fairly familiar with the  
4 requirements of the federal government?

5 A Correct.

6 Q All right. Does the federal government have any  
7 mechanism at all to report or document the sale of parts kits?

8 A No, sir.

9 Q So even if you wanted to record them, would there be a  
10 place to put them?

11 A No, sir.

12 Q Okay. That's what I thought.

13 Now --

14 THE COURT: No. Excuse me.

15 Strike that comment.

16 Q Now, I am going to show you what's been marked already  
17 D-3 for identification and in evidence by the defendants. It  
18 has been seen a million times.

19 It's a Shooters Equipment catalog dated 1991.

20 Have you seen this document before?

21 A Yes, sir.

22 Q Do you see this ad on page two?

23 A Yes, sir.

24 Q Is that your ad?

25 A No, sir.

## S. Daniel-redirect-Harfenist

1 Q Are -- is that your parts kit?

2 A No, sir.

3 MR. HARFENIST: Can I show this to the jury?

4 THE COURT: Yes.

5 I thought that had been done, but you may do it  
6 again.

7 MR. HARFENIST: Just --

8 MR. KANE: Give it to them.

9 (Exhibit to jurors.)

10 MR. HARFENIST: Your Honor I am going to try to make  
11 this point very briefly. There were some questions about some  
12 of the ads in Shotgun News.

13 THE COURT: I am not pressing you at all.

14 MR. HARFENIST: I will move as quickly as I can.

15 THE COURT: It is always a please sure to have you  
16 examine.

17 MR. HARFENIST: Thank you, Judge.

18 MR. KANE: We don't know whether you believe that.

19 THE COURT: I am very pleased to have eminent counsel  
20 on both sides.

21 Q I will show you now what's been marked as D-22, which is  
22 the November 20, 1992 issue of Shotgun News.

23 Do you own or have any relationship with Birmingham  
24 Pistol Wholesale Corporation?

25 A No, sir.

## S. Daniel-redirect-Harfenist

1 Q Will you take a look at this ad?

2 Have you soon these ads before?

3 A Yes.

4 Q Are any of the -- are any of the products in these ads  
5 yours?

6 A The M-11/9 semi would be mine.

7 Q In other words, they may have bought it from you?

8 A Correct.

9 Q Now, there are a couple of other products in here. You  
10 don't know if those are yours?

11 A No, sir.

12 Q All right. Would I be accurate in stating that these  
13 are -- this is an advertisement on November 20, 1992 of a  
14 corporation other than yours advertising with the Cobray  
15 trademark?

16 A Correct.

17 Q Showing you what's been marked D-23 in evidence,  
18 October 10, 1992 issue of Shotgun News. I will turn your  
19 attention to an advertisement of SOG International, Inc of  
20 Lebanon, Ohio.

21 Is that your entity?

22 Do you own any interest in that entity?

23 A No, sir, I do not.

24 Q Okay. Do you see that ad there?

25 A Yes.

## S. Daniel-redirect-Harfenist

1 Q Are they advertising Cobray M-11/9s in that  
2 advertisement?

3 A Yes, they are.

4 Q Okay. One more, though I can show you a lot more.

5 D-24, June 1, 1992 advertisement of RPB. Take a look  
6 at this advertisement.

7 Have you seen that before?

8 A Yes.

9 Q All right. Are any of the parts -- first of all, is RPB  
10 your entity?

11 A No, sir.

12 Q Do you know if the RPB in this advertisement with an  
13 address of Avondale Estates, Georgia, is the same RPB that's  
14 been referred to in association to Wayne Daniel?

15 A I don't believe it is, sir, no.

16 Q It is not.

17 Do you know who owns this RPB?

18 A I believe it's owned by a Russell Weeks.

19 Q Okay. You saw that there is some advertisement for  
20 M-11/9 part kits and flats in there?

21 A Correct.

22 Q Do you have anything to do with the sale of these parts?

23 A No, sir.

24 Q Now, I am going to refer you back to Plaintiff's Exhibit  
25 202, which is in this compilation of Shotgun News ads that

S. Daniel-redirect-Harfenist

1 everybody seems to have.

2 Let's see. Let's see if I can make this work.

3 Here we go. How do I zoom it in?

4 Here we go. I got it.

5 All right. Can you see the monitor, Ms. Daniel?

6 A Yes.

7 Q Do you see that box "beware"?

8 A Yes.

9 Q Can you read that for us?

10 Can you see it?

11 A Beware of counterfeit Cobray parts. There are those who  
12 would have you believe that their parts are original when  
13 actually they are cheap copies that will not work. Be sure  
14 the parts you buy are guaranteed to be original Cobray.

15 Q Okay. Why did you put that warning in your  
16 advertisement?

17 A Because customers were buying parts and pieces from other  
18 vendors sending them to me and wanting a refund for them.

19 Q All right. I think it's the same reason you said that --  
20 why you began to file lawsuits to protect your trademark?

21 A That's correct.

22 Q Now, you were the authorized licensee from Wayne Daniel  
23 or S.W. Daniel was the authorized licensee to use the Cobray,  
24 correct?

25 A Correct.

## S. Daniel-redirect-Harfenist

- 1 Q Nobody else?
- 2 A Not to my knowledge, no, sir.
- 3 Q Unless -- unless a part was manufactured -- well,  
4 withdrawn.
- 5 If a part was manufactured by someone else other than  
6 SWD, was it an authorized Cobray part?
- 7 A No, it was not.
- 8 Q Okay. Now, I saw a whole bunch of questions about SWD  
9 corporate tax returns.
- 10 Are you an accountant?
- 11 A No, sir. I am not.
- 12 Q All right. I assume S.W. Daniel had an accountant?
- 13 A Yes.
- 14 Q Who prepared S.W. Daniel's tax returns?
- 15 A Cutliff and Simons.
- 16 Q Are they certified public accountants?
- 17 A They are.
- 18 Q Was S.W. Daniel ever subject to an audit by the IRS?
- 19 A No, sir.
- 20 Q The best of your knowledge, no information on those tax  
21 returns have been questioned, is that correct?
- 22 A No, sir.
- 23 Q Now, there were some questions about whether you ever  
24 followed up to determine whether or not an end purchaser ever  
25 filed a form one or a form 4473.

S. Daniel-recross-Goldstein

1 Do you recall those questions?

2 A Yes, sir.

3 Q All right. Now, do you know if ATF will give you that  
4 information?

5 A Excuse me?

6 Q If you were to contact the Bureau of Alcohol, Tobacco and  
7 Firearms to attempt to obtain the information as to whether or  
8 not an individual filed a form one or a 4473, would they tell  
9 you that?

10 A No, sir.

11 That would be protected under the privacy act.

12 Q So even if you wanted to know they wouldn't tell you?

13 A No, sir.

14 MR. HARFENIST: I have no further questions.

15 THE COURT: Be very, very brief.

16 MS. GOLDSTEIN: Yes, Your Honor.

17 THE COURT: You've had a long time with this  
18 witness.

19 RE-CROSS-EXAMINATION

20 BY MS. GOLDSTEIN:

21 Q Mrs. Daniel, Mr. Harfenist has showed you defendant's  
22 Exhibit 3. Can you read -- can you read what this says here,  
23 please?

24 A Cobray is a registered trademark of Cobray Firearms  
25 Incorporated, Smyrna, Georgia, USA.

S. Daniel-recross-Davis

1 Q Mrs. Daniel, Mr. Harfenist showed you Defendant's Exhibit  
2 22. I will show you the same page he showed you.

3 Do you see anywhere here where Cobray parts kit is  
4 being advertised?

5 A No.

6 Q Mr. Harfenist showed you defendant's exhibit 23.

7 Do you see anywhere here where a Cobray M-11/9 parts  
8 kit is being advertised?

9 A No.

10 MS. GOLDSTEIN: I have no further questions.

11 MR. DAVIS: One question?

12 THE COURT: Okay. Go ahead. Right from there.

13 Don't move.

14 MR. DAVIS: I won't move.

15 RECROSS-EXAMINATION

16 BY MR. DAVIS:

17 Q Mrs. Daniel, are you aware of any law which prevents any  
18 of your companies from asking one of its customers any  
19 question they want?

20 A A law? No, sir.

21 MR. DAVIS: That's all.

22 THE COURT: Okay. 9:30 tomorrow, everybody.

23 (The following occurred in the absence of the jury.)

24 MR. KANE: I have two matters I'd like to address to  
25 the Court.

1 THE COURT: Yes.

2 MR. KANE: First is, I wanted to know if the Court  
3 had an opportunity to review the down loading of the Internet  
4 information.

5 THE COURT: I haven't -- it hasn't been presented to  
6 me. I thought you gave it to the plaintiffs.

7 MR. BARR: It's right here.

8 MR. KANE: May I bring it up to the Court?

9 THE COURT: Yes, please.  
10 Give it to Ms. Nowicki. She will give it to me.

11 (Pause.)

12 This is not marked but what number did you assign to  
13 it?

14 MR. KANE: 88.

15 THE COURT: 88?

16 MR. KANE: Yes.

17 THE COURT: It is marked effective March 5, 1997.

18 MR. KANE: That's right.

19 THE COURT: That seems to me to be much too long  
20 after the event.

21 MR. KANE: May I be heard?

22 THE COURT: Certainly.

23 MR. KANE: The --

24 THE COURT: I have kept out a whole box of material  
25 post 1994.

1 MR. BARR: Four.

2 THE COURT: As I recall.

3 MR. KANE: Yes, I think you did.

4 THE COURT: I think I went up to the end of March  
5 1994. Perhaps a little further.

6 MR. KANE: This exhibit would be tendered either from  
7 the Net or down loaded to show that the -- to show a number of  
8 things.

9 First of all, that the assault gun ban and the  
10 machine gun ban did not affect the legal sale of firearm parts  
11 from 1993 up to today; and second, to show that -- that  
12 plaintiffs have made a grave issue out of does anyone else  
13 sell parts, do you see any other vendors of parts in these  
14 advertisements.

15 It will show that there are vendors for the same  
16 parts for which they complain available today, not only  
17 through the print media, such as Shooters Equipment Company,  
18 but also through the electronic media.

19 THE COURT: I can't allow this to come in, even apart  
20 from the time sequence problem, because we don't know what, if  
21 anything, the Internet had to say about these events earlier.  
22 I don't know much about the Internet, but it is my impression  
23 that it is subject to constant change.

24 MS. FORREST: Your Honor, if I may?

25 THE COURT: I have ruled in your favor. If you want

1 to reargue it, I will be happy to hear you.

2 MR. KANE: The second application I have is that I'd  
3 like the record to reflect that the Court respectfully note  
4 that I motioned for a mistrial.

5 I say this respectfully, but I think the Court has  
6 moved from its position of objectivity to a position of  
7 advocacy when it turned to Ms. Daniel and interrogated her and  
8 I believe that was objectionable and that it prejudiced  
9 Ms. Daniel in the eyes of the jury.

10 So I'd like to record to reflect my motion.

11 THE COURT: Denied.

12 The record will reflect the patience of the Court  
13 over a full day with this witness.

14 MR. BARR: If I may say so, Your Honor? I thought in  
15 part your remarks were to chastise my distinguished fellow  
16 counsel.

17 THE COURT: They were intended, and I think taken by  
18 the jury, as impatience by the Court with plaintiff's  
19 extensive examination.

20 Go ahead. Next point.

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

22 MR. DAVIS: Your Honor, just we'd like to hand up a  
23 memorandum and something in connection with the jury  
24 instructions. You might look at it before we have the  
25 conference.

1           What it relates to is in our original jury  
2 instruction requests, the issue of Wayne and Sylvia Daniel, we  
3 had said they could be found liable on two alternative  
4 theories. One, if they personally participated in the  
5 negligent acts; and two, on piercing the government corporate  
6 veil theory.

7           Since the draft charge that we provided only included  
8 the piercing the corporate veil theory, we have a brief  
9 memorandum and an amplified charge on the other theory for  
10 Your Honor to consider.

11           THE COURT: Well, I will be glad to look at it. But  
12 I haven't seen prove yet of their acting on another theory.  
13 You may be right.

14           MR. DAVIS: I think --

15           THE COURT: You will have to go over the evidence. I  
16 have not seen all the documents.

17           MR. DAVIS: I think, Your Honor, when you -- we'll be  
18 happy to discuss that in the context of these cases.

19           THE COURT: All right. I will be happy to look at  
20 it.

21           MR. DAVIS: I think the cases make clear. Here is an  
22 original and a copy of each.

23           THE COURT: Anything further?

24           9:30 tomorrow. Be in a little early in case you have  
25 any further applications.

1 MR. DAVIS: Thank you, Your Honor.

2 MR. HARTENIST: Thank you, Judge.

3 THE LAW CLERK: Plaintiff's memorandum on personal  
4 liability is marked number Court Exhibit 14.

5 (So marked in evidence.)

6 MR. BARR: What time tomorrow, Your Honor?

7 THE COURT: 9:30.

8 MR. BARR: What time do we quit?

9 THE COURT: We will break around 12 and then my hope  
10 is that we will convene around 3:00 o'clock, to have a  
11 charging conference in preparation for Wednesday's  
12 summations. I'd like to know at that time how much time each  
13 side will require.

14 MR. BARR: We break at 12 and come back at 3:00  
15 o'clock for charging conference?

16 THE COURT: Correct.

17 MS. GUIDULI: Your Honor, I believe you have some  
18 originals of our exhibits that were handed up to you  
19 accidentally. I had intended --

20 THE COURT: You are free to take all of your  
21 exhibits.

22 MS. GUIDULI: I intended to hold on to them until we  
23 give them to the jury.

24 THE COURT: Yes. Take them all.

25 (Recess taken until 9:30, March 24, 1998.)

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| 1  | <b>WAYNE ERNEST DANIEL</b> .....   | 1141 |
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| 11 | Plaintiff's Exhibits 155, 156 and 157 in evidence.....                   | 1155 |
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| 13 | Plaintiffs' Exhibit 363 A for identification.....                        | 1176 |
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| 17 | Plaintiffs' Exhibit 118 in evidence.....                                 | 1323 |
|    | Plaintiffs' Exhibit 73 in evidence.....                                  | 1324 |
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