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11
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF FRESNO

14 EDWARD W. HUNT, in his official
capacity as District Attorney of Fresno
15 County, and in his personal capacity as a
citizen and taxpayer, et. al.,

16 Plaintiffs,

17 v.

18 STATE OF CALIFORNIA; WILLIAM
19 LOCKYER, Attorney General of the State of
California, et. al.,

20 Defendants.

) CASE NO. 01CECG03182
)
) **PLAINTIFFS' REQUEST**
) **FOR JUDICIAL NOTICE**
)
) Date: April 10, 2002
) Time: 3:00 p.m.
) Dept.: 98A

21
22 Pursuant to Code of Civil Procedures §430.70, Evidence Code §452 and 453, and Rules
23 of Court Rule 323, Plaintiffs hereby requests that this court take judicial notice of the following:

- 24 1. **Request for Judicial Notice of Documents Attached to Agent Chinn's**
25 **Declaration**

26 Plaintiffs object to the admissibility of the Chinn declaration itself, and/or certain parts
27 thereof, as specified in Plaintiffs Objection to the Declaration of Ignatius Chinn served and filed
28 herewith.

1 ///

2 Plaintiffs do not, however, ask that the documents attached to Mr. Chinn's declaration be
3 stricken from the record. Rather, plaintiffs request that they be considered by the Court for certain
4 purposes, as specified below:

5 Paragraph 3 of the Chinn Declaration does explain what defendants were endeavoring to
6 prove by these attachments: "the fact that even within the firearms community itself there are
7 varied and often conflicting definitions of flash suppressor, flash hider, muzzle brake, and
8 compensator." (Chinn dec., p. 3:6-7.) But a review of these documents crucially supports plaintiffs
9 case! Not one of the different definitions supplied by the Chinn declaration supports the
10 challenged portion of defendants' regulation purporting to define as a flash suppressor all devices
11 that "redirect flash from the shooter's field of vision." Thus defendants' own submission confirms
12 the following assertion of plaintiff's expert:

13 ... DOJ's definition of "flash suppressor" expressly applies that term not just where
14 flash is actually reduced but also where it has merely been "redirected." In
15 introducing the redirection concept, DOJ's definition departs from **all** definitions of
16 "flash suppressor" I can find in the technical literature, **including** dictionaries,
17 glossaries and materials DOJ itself listed as the basis for its definition. **All** define
18 what a flash suppressor seeks to do as "reduce" flash -- not "redirect" it.¹

19 Defendants' submission of the documents supports judicial notice of two additional facts:

20 1) That defendants have attempted to submit various definitions of "flash suppressor", but 2) not
21 even one of those definitions supports the portion of defendants' regulation defining that phrase to
22 include devices that "redirect flash from the shooter's field of vision."

23
24 2. **Reporter's Transcript of Proceedings held August 18, 1999 in the case of**
25 ***People v. Scott William Mills*, Case number KA 044547, County of Los**
Angeles, Pomona Judicial District. (Exhibit A)

26 At this hearing, Agent Chinn testified that one part of a firearm, the "trigger group," was
27

28 ¹ Declaration of Torrey Johnson, ¶ 5, emphasis in original, footnote deleted.

1 actually a different part of the firearm, the "receiver." Unless the part that was possessed by the
2 defendant was a "receiver," no crime had been committed. The Court found that Mr. Chinn was
3 wrong, and dismissed all charges against the defendant, finding:

4 *"Based on the federal regulation and common usage and understanding, the court rejects*
5 *that portion of Mr. Chinn's testimony and accepts that portion of Mr. Guy's testimony wherein*
6 *Mr. Guy stated, and the court finds, that People's One is not a frame or receiver."* Transcript,
7 page 35, lines 6-11.

8
9 **3. Reporter's Transcript of Proceedings held August 23, 2000, in the case of**
10 ***People v. Atilano*, case number KA 046436, Los Angeles County Superior**
Court (Exhibit B)

11 At this Penal Code section 995 hearing on review of a preliminary hearing transcript and
12 ruling [at which Agent Chinn testified that an unmarked firearm was actually a "Galil" model
13 firearm, thus covered by the 1989 assault weapon law, Penal Code section 12276] the Court
14 determined that *"I don't believe that the bare assertion of Agent Chinn, whose training leaves a*
15 *bit to be desired, that in his opinion that weapon is a Galil of the sort banned under the California*
16 *law can withstand much scrutiny. The reason he went through this sale is pretty clear to the court*
17 *and probably to the parties out here. He misread what was on the weapon. He believed he saw*
18 *one thing on the weapon, and went through with this purchase and then later learned it wasn't*
19 *marked as he thought it was. But rather than back off and say 'Better luck next time, that one got*
20 *away, now that weapon, even though he misread it, becomes a Galil weapon."* Transcript, pages
21 8-9, lines 23-15.

22
23 **4. Defendant's Motion to Traverse/Quash Search Warrant in the case of *People***
24 ***v. Atilano*, case number DJ00CF0066, Orange County Superior Court, Santa**
25 **Ana Justice Center, dated March 16th 2001 (Exhibit C); and the Court's**
Order thereon, dated May 8, 2001. (Exhibit D)

26 *In the Court's Order granting defendant's motion, the Court found that "the defendant*
27 *has made a substantial preliminary showing that material in the search warrant affidavit*
28 *[prepared by Agent Chinn] was false and that the cause of that information may have been*

1 *reckless disregard [for the truth].*” Court Order, page 2, lines 1-4.

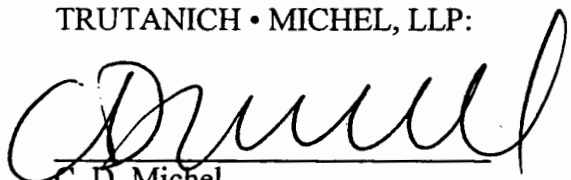
2 The Court further found that defendant had made a prima facia showing that: “(1) None of
3 the three weapons identified in the search warrant affidavit were illegal as of the date of the
4 affidavit; (2) there was nothing else in the affidavit upon which a reasonable magistrate could
5 know otherwise; and (3) the statutory language of Section 12276, available supporting
6 documentation from the State Attorney General, as well as experience in the field, would have
7 placed Agent Chinn on notice of the need to make further information available to the magistrate
8 at the time of the seeking of the search warrant.” Court Order, page 2-3, lines 26-7.

9 All of these Court records are judicially noticeable, and should be considered by the Court
10 as they bear on the credibility and expertise of Agent Chinn, and the determinations and
11 conclusions set out in his Declaration.

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Date: April 3, 2002

TRUTANICH • MICHEL, LLP:



C. D. Michel
Attorneys for Plaintiffs

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- 5. I am an attorney at law duly licensed to practice before all Courts of the State of California, and am attorney of record for Defendants herein.
- 6. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness I could and would competently testify thereto. I am submitting this Declaration in support of the PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE in connection with this action.
- 7. Attached hereto as Exhibit "A" is a true and correct copy of Reporter's Transcript of Proceedings held August 18, 1999 in the case of *People v. Scott William Mills*, Case number KA 044547, County of Los Angeles, Pomona Judicial District.
- 8. Attached hereto as Exhibit "B" is a true and correct copy of Reporter's Transcript of Proceedings held August 23, 2000, in the case of *People v. Atilano*, case number KA 046436, Los Angeles County Superior Court.
- 9. Attached hereto as Exhibit "C" is a true and correct copy of Defendant's Motion to Traverse/Quash Search Warrant in the case of *People v. Atilano*, case number DJ00CF0066, Orange County Superior Court, Santa Ana Justice Center, dated March 16th 2001.
- 10. Attached hereto as Exhibit "D" is a true and correct copy of and the Court's Order of Defendant's Motion to Traverse/Quash Search Warrant thereon, dated May 8, 2001.

I declare under penalty of perjury tinder the laws of the State of California that the foregoing is true and correct. Executed on this 3rd day of April, 2002, at San Pedro, California.

4/3/02

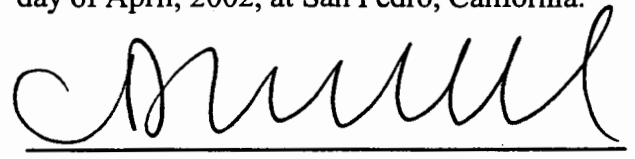

C. D. MICHEL
Declarant

EXHIBIT "A"

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I N D E X

<u>PEOPLE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u>
CHINN, IGNATIUS	4	13			DIRE

E X H I B I T S

		<u>IN</u>	
<u>PEOPLE'S EXHIBITS:</u>	<u>FOR</u>	<u>EVIDENCE OR</u>	<u>WITHDRAWN/</u>
2 - AR-15 RECEIVER	<u>I.D.</u>	<u>BY REFERENCE</u>	<u>REJECTED</u>
	10		

<u>DEFENSE EXHIBITS:</u>	
A - DOCUMENT	17

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POMONA, CALIFORNIA; WEDNESDAY, AUGUST 18, 1999

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(PARTIAL TRANSCRIPT OF PRELIMINARY
HEARING.)

THE COURT: THANK YOU, MR. LACEY. YOU CAN STEP
DOWN.

YOUR NEXT WITNESS.

MR. GALLON: YOUR HONOR, THE PEOPLE WOULD CALL
MR. IGNATIUS CHINN.

IGNATIUS CHINN,

CALLED AS A WITNESS BY AND FOR THE PEOPLE TESTIFIED AS
FOLLOWS:

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY
YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED. STATE YOUR FULL
NAME AND SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: IGNATIUS CHINN, I G-N-A-T-I-U-S,
C-H-I-N-N.

MR. GALLON: YOUR HONOR, MAY I HAVE ONE MOMENT

1 TO SHOW COUNSEL AN ITEM THAT I WISH TO QUESTION THE
2 EXPERT ON?

3 THE COURT: YES.

4

5

6

DIRECT EXAMINATION

7

8 BY MR. GALLON:

9 Q MR. CHINN, WHAT IS YOUR PRESENT
10 OCCUPATION?

11 A I'M A SPECIAL AGENT WITH THE CALIFORNIA
12 BUREAU OF INVESTIGATION LOCATED IN SAN FRANCISCO FIELD
13 OFFICE.

14 Q AND COULD YOU STATE ANY SPECIALIZED
15 TRAINING OR EXPERIENCE THAT YOU HAVE IN FIREARMS, MOST
16 NOTABLY AUTOMATIC FIREARMS.

17 A YES.

18 I WAS TRAINED IN THE SEVENTIES BY THE FBI
19 ON THE M-16 AR-15, QUALIFIED WITH THE WEAPON AND CARRIED
20 IT AS MY DUTY WEAPON WHILE I WAS ON THE OAKLAND POLICE
21 DEPARTMENT S.W.A.T. TEAM.

22 AND IN 1993 I ATTENDED THE BUREAU OF
23 NARCOTIC ENFORCEMENT WEEK-LONG MP-5 SCHOOL IN HUNTINGTON
24 BEACH, CALIFORNIA.

25 I ATTENDED THE H AND K MP-5 OPERATOR AND
26 INSTRUCTORS SCHOOL IN 1997 AUGUST.

27 AND I ATTENDED THE -- IN 1997 I ALSO
28 ATTENDED THE M-4 AND M-16 AR-15 ARMOR SCHOOL, AT THE

1 CONTRA COSTA COUNTY SHERIFFS DEPARTMENT PUT ON BY ITL.

2 AND I'VE SEIZED A NUMBER OF MACHINE GUNS
3 OVER THE LAST 28 YEARS 7 MONTHS AS A LAW ENFORCEMENT
4 OFFICER FOR THE CITY OF OAKLAND AND FOR THE CALIFORNIA
5 DEPARTMENT OF JUSTICE.

6 Q AND THOSE WEAPONS ALSO INCLUDE EXPERIENCE
7 IN EXAMINING OR LOOKING AT THE HK MP-5?

8 A YES. THE HK WEAPONS GROUP WAS A SUBJECT
9 OF MINE BACK IN 1989 AND '90 WHEN I WAS UNDERCOVER ON A
10 RETIRED OAKLAND POLICE SERGEANT BY THE NAME OF FRED
11 LISKEY. HE REQUIRED ME TO ADJUST AND ALTER TWO MP -- A
12 HK 91 AND AN HK 93 TRIGGER GROUP HE HAD STOLEN FROM THE
13 OAKLAND POLICE DESTRUCTION BARREL. HE WANTED ME TO
14 ALTER THE GUN, THE TRIGGER GROUPS TO FIRE FULL AUTO AND
15 TO ADJUST HIS 91 AND 93 TO ACCEPT THE GUNS, THE TRIGGER
16 GROUPS. I MANUFACTURED A SILENT SHOTGUN SHELL FOR HIM.
17 I ACQUIRED A SILENCED RUTGER .22 STANDARD PISTOL FOR HIM
18 AND A SILENCED .22 RIFLE FOR HIM. AND WE ARRESTED HIM
19 WHEN I DELIVERED ALL OF THE WEAPONS. PRIOR TO
20 DELIVERING THE HK MODIFIED WEAPONS TO HIM, I TESTED THEM
21 AND THEY ALL FIRED FULL AUTOMATIC.

22 Q AS IT PERTAINS TO AUTOMATIC WEAPONS,
23 MACHINE GUNS, WHAT IS A FRAME OR RECEIVER?

24 A IT'S PART OF THE GUN THAT CONTAINS THE
25 INTEGRAL PART THAT IS NECESSARY FOR THE FIRING OF THE
26 WEAPON.

27 Q AND WHAT IS CONSIDERED TO BE A CONVERTER?

28 A IT'S A UNIT OR PIECES THAT IS PLACED INTO

1 A SEMIAUTOMATIC WEAPON TO MAKE IT FIRE FULL AUTOMATIC.

2 MR. GALLON: YOUR HONOR, MAY I APPROACH THE
3 WITNESS?

4 THE COURT: YES.

5 Q BY MR. GALLON: SIR, SHOWING YOU WHAT HAS
6 BEEN PREVIOUSLY MARKED AS PEOPLE'S 1. DO YOU RECOGNIZE
7 WHAT THAT ITEM IS?

8 A YES. THIS IS THE EMPTY 5 TRIGGER GROUP
9 THAT WAS GIVEN TO ME TO EXAMINE BY SPECIAL AGENT ABAD.

10 Q DO YOU CONSIDER THE MP-5 TRIGGER GROUP A
11 CONVERTER?

12 A YES.

13 Q AND THAT'S BASED ON YOUR TRAINING AND
14 EXPERIENCE?

15 A YES.

16 Q AND HOW IS THE MP-5 TRIGGER ASSEMBLY
17 GROUP HOW IS THAT CLASSIFIED AS A CONVERTER?

18 A IT'S NECESSARY TO FIRE THE WEAPON. THE
19 SEMIAUTOMATIC OR THE MP-5 FULL AUTOMATIC VERSION
20 CONTROLS THE MODE OF FIRE IN THE GUN.

21 Q THAT PARTICULAR MP-5 TRIGGER GROUP COULD
22 THAT BE USED AS A CONVERTER TO CHANGE A SEMIAUTOMATIC
23 WEAPON INTO A FULLY AUTOMATIC WEAPON?

24 A YES.

25 Q AND HOW COULD ONE -- IF I WANT TO
26 PURCHASE THAT MP-5 TRIGGER ASSEMBLY GROUP, HOW COULD
27 THAT BE USED TO CONVERT A SEMIAUTOMATIC WEAPON INTO A
28 FULLY AUTOMATIC WEAPON?

1 A AS IN THE WEAPONS I HAVE RECOVERED AND
2 EXAMINED, YOU NEED TO CUT A RECTANGULAR PORTION OF THE
3 FRONT OF THE TRIGGER HOUSING AND CASE AND YOU NEED TO
4 THIN OUT THE FLANGES HERE THAT WOULD NORMALLY RECEIVE
5 THE TAKEDOWN PIN FOR THE FRONT TRIGGER GROUP. FOR THE
6 M-94 THAT'S ALL THE EXTERIOR MODIFICATIONS YOU NEED TO
7 DO TO GET IT TO FIT. AFTER YOU GET IT IN, YOU NEED TO
8 PUT IN AN ALTERED BOLT CARRIER OR A FULL MP-5 BOLT
9 CARRIER, PUT IT ALL TOGETHER AND IT FIRES FULL
10 AUTOMATIC.

11 Q NOW WHAT TYPE OF WEAPON, IF YOU MODIFY
12 THAT AND PUT THAT IN, COULD BE CHANGED FROM A
13 SEMIAUTOMATIC TO FULLY AUTOMATIC?

14 A YOU CAN CONVERT THE SB-89 PISTOL WHICH IS
15 STILL AVAILABLE TODAY AND SOLD AS RETAIL, AND IF YOU
16 LEGALLY HAVE OR ILLEGALLY HAD A MODEL 94 CARBINE YOU CAN
17 CONVERT. THOSE ARE SEMIAUTOMATIC VERSIONS AND YOU CAN
18 USE THIS TO CONVERT IT.

19 Q HOW LONG WOULD THAT TAKE TO CHANGE THAT
20 IF YOU WERE TO BUY THAT AND INSERT IT INTO A WEAPON?
21 HOW LONG WOULD THE PROCESS TAKE TO CHANGE A
22 SEMIAUTOMATIC INTO A FULLY AUTOMATIC?

23 A WITHOUT HAVING TO ALTER THE BOLT CARRIER,
24 LESS THAN AN HOUR, HOUR AND A HALF.

25 Q GOING TO THE CONCEPT OF A FRAME OR
26 RECEIVER WHAT IS YOUR DEFINITION OF A FRAME OR RECEIVER
27 OF A MACHINE GUN?

28 A IT'S THE PORTION OF THE GUN THAT HOLDS

1 THE INTEGRAL PART THAT'S NECESSARY FOR FIRING.

2 Q DO YOU CONSIDER THE TRIGGER ASSEMBLY
3 GROUP TO BE AN INTEGRAL PART OF A MACHINE GUN, A
4 DEFINITION OF FRAME OR RECEIVER?

5 A YES.

6 Q DO YOU CONSIDER IT TO BE THE LOWER
7 RECEIVER?

8 A YES.

9 Q NOW ARE YOU FAMILIAR WITH THE PRODUCTS
10 PUT OUT BY HK?

11 A YES.

12 Q AND FOR THE RECORD HK IS?

13 A HECKLER, H-E-C-K-L-E-R, AND KOCH,
14 K-O-C-H.

15 Q WHAT DOES HECKLER AND KOCH CALL THAT
16 PARTICULAR PORTION OF THE WEAPON?

17 A THE TRIGGER GROUP.

18 Q AND WHAT DO THEY LABEL ANOTHER PORTION OF
19 THE WEAPON?

20 A THE RECEIVER.

21 Q DOES THAT AFFECT YOUR OPINION THAT THIS
22 IS AN INTEGRAL PART OF THE WEAPON TO BE CONSIDERED A
23 LOWER RECEIVER?

24 A YES, YOU NEED THIS TO FIRE THE GUN.

25 Q BUT DOES THE FACT THAT HECKLER AND KOCH
26 CALLS THAT THE TRIGGER ASSEMBLY GROUP AND NOT THE LOWER
27 RECEIVER DOES THAT CHANGE YOUR OPINION AT ALL THAT THAT
28 IS IN FACT THE LOWER RECEIVER OF THIS PARTICULAR TYPE OF

1 MACHINE GUN?

2 A NO.

3 Q AND HAVE YOU HAD ANY DISCUSSIONS WITH
4 REPRESENTATIVES IN YOUR EXPERT CAPACITY?

5 A YES.

6 Q AND WHAT IF ANYTHING -- OR WHO DO YOU
7 SPEAK WITH?

8 A I SPOKE WITH THE CALIFORNIA LAW
9 ENFORCEMENT REPRESENTATIVE AND TRAINER FOR HECKLER AND
10 KOCH. HE IS A RETIRED LASO DEPUTY BY THE NAME OF DAN
11 CUSSIDER (PHONETIC) AND HE ADVISED THAT THESE ARE NOT TO
12 BE SOLD TO ANYBODY ELSE OTHER THAN PEOPLE HOLDING NFA'S,
13 NATIONAL FIREARMS ACT LICENSES FOR MACHINE GUNS.

14 Q AND --

15 MR. COLODNY: OBJECTION. HEARSAY. MOVE TO
16 STRIKE.

17 THE COURT: OVERRULED.

18 Q BY MR. GALLON: NOW THERE'S ANOTHER ITEM
19 THAT YOU HAVE IN FRONT OF YOU. COULD YOU HOLD THAT UP.

20 A (WITNESS COMPLIES.)

21 MR. GALLON: YOUR HONOR, FOR THE RECORD, THE
22 WITNESS IS HOLDING UP WHAT APPEARS TO BE A LOWER
23 RECEIVER FOR AN AR-15 THAT HAS BEEN MODIFIED.

24 MR. COLODNY: OBJECTION. THE DISTRICT ATTORNEY
25 IS OFFERING TESTIMONY.

26 THE COURT: SUSTAINED.

27 MR. GALLON: THE ITEM THAT HE'S HOLDING UP
28 APPEARS TO BE A LOWER PORTION OF A WEAPON. MAY I HAVE

1 IT MARKED AS PEOPLE'S 2 FOR IDENTIFICATION?

2 MR. COLODNY: SAME OBJECTION.

3 THE COURT: MR. GALLON, WE APPRECIATE ANY PRIOR
4 KNOWLEDGE YOU HAVE CONCERNING POSSIBLE EXHIBITS, BUT WE
5 DO HAVE A WITNESS ON THE STAND AND IT'S THE FUNCTION OF
6 THE WITNESS TO TELL US WHAT ITEMS ARE. I BELIEVE THAT'S
7 MR. COLODNY'S POINT. SO WHY DON'T YOU START OVER.

8 MR. GALLON: I APOLOGIZE. I'M NOT TRYING TO
9 TESTIFY.

10 THE METALLIC OBJECT.

11 THE COURT: THAT'S SATISFACTORY.

12 MR. GALLON: THANK YOU.

13 MR. GALLON: THE OBJECT THAT YOU ARE HOLDING UP,
14 THE METALLIC OBJECT, IT'S BLACK IN NATURE. MAY I HAVE
15 THAT MARKED AS PEOPLE'S 2 FOR IDENTIFICATION?

16 THE COURT: MARKED.

17 Q BY MR. GALLON: PEOPLE'S 2, SIR, WHAT IS
18 THAT?

19 A IT'S A EAGLE AR-15 RECEIVER THAT HAS BEEN
20 CONVERTED TO ACCEPT M-16 FULL AUTOMATIC PARTS. I
21 RECOVERED THIS IN 1990 DURING AN ORGANIZED CRIME CASE
22 THAT I INVESTIGATED. WE PURCHASED THIS WEAPON AND
23 ANOTHER WEAPON FROM TWO UNIT CITY PANOI (PHONETIC) GANG
24 MEMBERS RIGHT OFF OF THE NAVY BASE IN ALAMEDA.

25 MR. COLODNY: OBJECTION. MOVE TO STRIKE.
26 RELEVANCE.

27 THE PART HAS NO RELATIONSHIP TO THE
28 CHARGES AGAINST MR. MILLS. IT'S NOT CONNECTED WITH HIM.

1 IT'S A DIFFERENT MANUFACTURER, DIFFERENT TYPE OF
2 FIREARM.

3 THE COURT: NOW YOU'RE TESTIFYING. WE DON'T --
4 I'M AS MUCH AT A LOSS AS TO THE RELEVANCE OF THIS
5 TESTIMONY AS YOU ARE. HOWEVER, IT APPEARS THAT IT MIGHT
6 BE BRIEF IN NATURE. WHAT I'LL DO IS RESERVE RULING ON
7 YOUR OBJECTION AND SEE IF IT APPEARS TO HAVE ANY
8 RELEVANCE AFTER MR. GALLON FINISHES.

9 MR. COLODNY: THANK YOU.

10 THE COURT: PROCEED.

11 Q BY MR. GALLON: THAT PORTION IS THAT
12 CONSIDERED A LOWER RECEIVER?

13 A YES.

14 Q IS THAT -- WHO GIVES THAT DEFINITION TO
15 THAT AS A LOWER RECEIVER?

16 A EAGLE, COLT, BUSHMASTER, ARMOR LIGHT, ANY
17 OF THE MANUFACTURERS NAME AS THE LOWER RECEIVER PORTION
18 RIGHT HERE.

19 Q COMPARING PEOPLE'S 2 TO PEOPLE'S 1 ARE
20 THOSE SUBSTANTIALLY SIMILAR PORTIONS OF A MACHINE GUN OR
21 WEAPON?

22 A YES.

23 Q IN WHAT MANNER?

24 A THEY CONTROL THE INTEGRAL PART TO THE
25 FIRING OF THE GUN AS THE TRIGGER CONTROL AREA.

26 Q AND WOULD YOU CONSIDER PEOPLE'S 2, THE
27 AR-15 LOWER RECEIVER, WOULD YOU CONSIDER THAT TO BE A
28 FRAME OR RECEIVER OF A MACHINE GUN?

1 A YES.

2 Q AND WHY WOULD YOU CONSIDER THAT TO BE A
3 FRAME OR RECEIVER OF A MACHINE GUN?

4 A IT HOLDS THE TRIGGER GROUP THAT IS
5 INTEGRAL IN FIRING THE WEAPON.

6 Q AND COLT CLASSIFIES IT AS SUCH?

7 A AS A LOWER RECEIVER, RIGHT.

8 Q HK DOES NOT CALL THAT A LOWER RECEIVER?

9 A THAT'S CORRECT.

10 Q BUT YOUR OPINION IS THAT PEOPLE'S 1 IS A
11 LOWER RECEIVER?

12 A YES.

13 MR. GALLON: I HAVE NO FURTHER QUESTIONS.

14 THE COURT: ALL RIGHT, BEFORE WE PROCEED TO
15 CROSS-EXAMINATION IS IT YOUR TESTIMONY THAT HECKLER KOCH
16 IS THE MANUFACTURER OF SOME KIND OF WEAPON?

17 THE WITNESS: THEY MANUFACTURE A TOTAL WEAPON
18 SYSTEM FROM 7.6 BY 51 ALL THE WAY DOWN TO NINE
19 MILLIMETER THAT IS SOLD TO LAW ENFORCEMENT AND THE
20 MILITARY.

21 THE COURT: DIRECTING YOUR ATTENTION TO PEOPLE'S
22 1. THE PREVIOUS LABEL PUT ON THAT ITEM WAS HK MP-5. IN
23 YOUR OPINION DOES THAT MEAN THAT HECKLER KOCH
24 MANUFACTURED THAT PARTICULAR ITEM?

25 THE WITNESS: YES.

26 THE COURT: THANK YOU.

27 ALL RIGHT, THE COURT WILL NOW RULE ON THE
28 RELEVANCY OBJECTION THAT'S PENDING. THE OBJECTION IS

1 OVERRULED.

2 YOU MAY PROCEED.

3 MR. COLODNY: THANK YOU.

4

5

6

CROSS EXAMINATION

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8 BY MR. COLODNY:

9

Q AGENT CHINN, YOU GAVE TESTIMONY ON DIRECT
10 AS TO YOUR DEFINITION OF A FRAME OR RECEIVER. AS I
11 UNDERSTOOD YOUR DEFINITION IS THAT A FRAME OR RECEIVER
12 IS A PART OF A FIREARM THAT CONTAINS A PART INTEGRAL TO
13 THE FIRING OF THE FIREARM.

14

A YES.

15

Q IS THAT YOUR PERSONAL DEFINITION?

16

A YES.

17

Q IS THERE A DEFINITION OF A FIREARM FRAME
18 OR RECEIVER CONTAINED IN THE UNITED STATES CODE?

19

MR. GALLON: OBJECTION. RELEVANCY.

20

THE COURT: OVERRULED. YOU MAY ANSWER.

21

THE WITNESS: I CAN'T TESTIFY TO THE U.S. CODE.

22

Q BY MR. COLODNY: IS THERE A DEFINITION OF
23 A FRAME OR RECEIVER IN THE CALIFORNIA PENAL CODE?

24

A NO.

25

Q IS THERE A DEFINITION OF A FRAME OR
26 RECEIVER THAT APPEARS ANYWHERE ELSE IN CALIFORNIA
27 STATUTORY LAW?

28

A NO, I DON'T KNOW.

1 Q IS THERE A DEFINITION OF A FRAME --
2 FIREARMS FRAME OR RECEIVER THAT APPEARS ANYWHERE IN
3 CALIFORNIA REGULATORY LAW?

4 A I DON'T KNOW.

5 Q NOW YOU'RE FAMILIAR WITH THE HK SYSTEM OF
6 WEAPONS, CORRECT?

7 A YES, SIR.

8 Q NOW WHAT IS YOUR DEF -- AND YOU ARE
9 FAMILIAR WITH THE MP-5 IN PARTICULAR?

10 A YES, SIR.

11 Q ISN'T IT TRUE THAT PEOPLE'S 1 IS NOT THE
12 RECEIVER AS IDENTIFIED BY HECKLER AND KOCH?

13 A IT'S IDENTIFIED BY THEM AS A TRIGGER
14 GROUP.

15 Q SO THEY DON'T CALL IT A RECEIVER?

16 A THAT'S CORRECT.

17 Q AND THEY DON'T REFER TO IT AS A FRAME
18 EITHER?

19 A NO, I DON'T BELIEVE SO.

20 Q YOU'RE A FIREARMS EXPERT, CORRECT?

21 A I BELIEVE SO, YES.

22 Q ISN'T IT TRUE THAT BY FEDERAL LAW THE
23 FRAME OR RECEIVER OF A FIREARM MUST BEAR A UNIQUE SERIAL
24 NUMBER?

25 A I CAN'T TESTIFY TO FEDERAL LAW.

26 Q YOU'VE EXAMINED NUMEROUS FIREARMS IN YOUR
27 CAPACITY AS A FIREARMS EXPERT?

28 A YES.

1 Q HAS EACH OF THESE FIREARMS HAD EITHER A
2 FRAME OR RECEIVER?

3 A YES.

4 Q IN YOUR EXPERIENCE OF PRE-1968 LONG GUNS
5 HAS EACH OF THESE RECEIVERS OR FRAMES HAD A SERIAL
6 NUMBER ON IT?

7 A YES.

8 Q SO PEOPLE'S 1 -- YOU'VE EXAMINED PEOPLE'S
9 1, THE HK TRIGGER GROUP?

10 A YES.

11 Q ISN'T IT TRUE THAT IT DOES NOT BEAR A
12 SERIAL NUMBER?

13 A IT DOES NOT.

14 Q IS THERE ANY EVIDENCE ON PEOPLE'S 1 OF A
15 SERIAL NUMBER HAVING BEEN REMOVED OR OBLITERATED?

16 A NO.

17 Q DOES PEOPLE'S 1 BEAR THE MANUFACTURER'S
18 NAME?

19 A NO.

20 Q IN YOUR EXPERIENCE HAVEN'T YOU FOUND THAT
21 THE FRAME OR RECEIVER OF A FIREARM NORMALLY IS MARKED
22 WITH A SERIAL NUMBER AS WELL AS THE MANUFACTURER'S NAME?

23 A YES.

24 Q IN YOUR OPINION WHAT PART IS THE --
25 STRIKE THAT.

26 IN YOUR OPINION DOES THE HK MP-5 FIREARM
27 HAVE A FRAME OR RECEIVER?

28 A RECEIVER.

1 Q DO YOU LIMIT THE USE OF THE TERM FRAME AS
2 APPLIED TO FIREARMS TO HANDGUNS?

3 A YES.

4 Q NOW IS PEOPLE'S 1 THE RECEIVER, AS THAT
5 TERM IS APPLIED TO THE HK MP-5 FIREARM?

6 A PEOPLE'S 1 IS THE TRIGGER GROUP
7 IDENTIFIED BY H AND K, BUT TO ME IT'S A LOWER RECEIVER.

8 Q BUT IT'S NOT THE RECEIVER -- STRIKE THAT.
9 YOU'RE FAMILIAR WITH CALIFORNIA FIREARMS
10 LAW?

11 A YES.

12 Q ISN'T IT TRUE THAT IN CALIFORNIA A
13 FIREARMS RECEIVER IS TREATED THE SAME AS A COMPLETE
14 FIREARM FOR PURPOSES OF SALE?

15 A YES.

16 Q SO IF AN INDIVIDUAL WENT IN TO PURCHASE,
17 FOR EXAMPLE, A SEMIAUTOMATIC AR-15 CONFIGURATION ONLY
18 RECEIVER MANUFACTURED, SAY, BY ARMOR LIGHT, THAT FIREARM
19 WOULD BE -- THAT TRANSACTION WOULD BE TREATED AS THE
20 SAME TRANSACTION AS THOUGH IT WERE A COMPLETE FIREARM?

21 A YES.

22 Q AGAIN, THE HK MP-5 FIREARM HAS A
23 DIFFERENT PART THAT THE MANUFACTURERS REFER TO AS A
24 RECEIVER, CORRECT?

25 A YES.

26 Q AND ISN'T IT TRUE THAT THAT PART NORMALLY
27 HAS A SERIAL NUMBER AS PLACED UPON IT BY THE
28 MANUFACTURER?

1 A YES.

2 MR. COLODNY: YOUR HONOR, MAY I BE EXCUSED LONG
3 ENOUGH TO RETRIEVE A DRAWING FROM ONE OF MY WITNESSES?

4 THE COURT: YES.

5 MR. COLODNY: YOUR HONOR, MAY I APPROACH THE
6 WITNESS?

7 THE COURT: YES.

8 MR. COLODNY: AGENT CHINN, I'M GOING TO HAND YOU
9 A DOCUMENT WHICH IS LABELED ACROSS THE TOP "SUBMACHINE
10 MP-5 A2/A3 CALIBER NINE MILLIMETER X19." AFTER YOU HAVE
11 HAD A CHANCE TO EXAMINE THAT, IF YOU WILL INDICATE SO I
12 CAN QUESTION YOU.

13 YOUR HONOR, IF I MIGHT HAVE THIS DOCUMENT
14 MARKED FOR IDENTIFICATION PERHAPS AS DEFENSE 101 OR
15 DEFENSE A.

16 THE COURT: DEFENSE A SO MARKED.

17 Q BY MR. COLODNY: AGENT CHINN, I WILL
18 REFER TO THIS AS AN EXPLODED DRAWING. WOULD YOU AGREE
19 THAT'S A CORRECT TERM?

20 A YES.

21 Q ARE YOU FAMILIAR WITH SUCH EXPLODED
22 DRAWINGS OR DIAGRAMS?

23 A YES.

24 Q AND YOU'VE WORKED WITH THEM IN YOUR
25 CAPACITY AS A FIREARMS EXPERT?

26 A YES.

27 Q DOES THIS APPEAR TO BE AN EXPLODED
28 DRAWING OF AN HK MP-5 SUBMACHINE?

1 A YES.

2 Q DO YOU RECOGNIZE A PART ON THIS DRAWING
3 AS THE RECEIVER OF THE HK MP-5 SUBMACHINE?

4 A YES.

5 Q WOULD YOU POINT THAT -- POINT OUT WHICH
6 PART IT IS.

7 A IT'S THE PART RIGHT HERE (INDICATING),
8 THE MAIN SECTION OF THE GUN WHICH HAS THE SIGHT MOUNT
9 AND THE MAGAZINE WELL.

10 Q NOW THAT'S LABELED AS PART 11.1?

11 A YES, SIR.

12 Q ISN'T IT TRUE THAT EXPLODED DRAWING LISTS
13 THAT AS -- DESCRIBES IT AS A RECEIVER?

14 A YES, SIR.

15 Q DO YOU RECOGNIZE THE PART YOU HAVE
16 PREVIOUSLY CALLED THE TRIGGER GROUP?

17 A YES, SIR.

18 Q WHICH PART IS THAT?

19 A THAT'S THE ONE THAT'S MARKED --
20 GROUPING-WISE I BELIEVE IT'S ALL THE 3'S, 3.1 TO 3.2.21.

21 Q AND WOULD YOU POINT OUT THOSE ON THE
22 EXPLODED DIAGRAM.

23 A (INDICATING).

24 Q AND NONE OF THOSE PARTS ARE REFERRED TO
25 AS A RECEIVER?

26 A NO.

27 Q NOR ARE THEY REFERRED TO AS A FRAME?

28 A NO -- WELL, HOLD ON A SECOND. TRIGGER

1 HOUSING 3.21 RIGHT THERE.

2 Q TRIGGER HOUSING. BUT THE WORD FRAME, THE
3 WORDS FRAME OR RECEIVER DON'T APPEAR IN THAT DESCRIPTION
4 DO THEY?

5 A NO.

6 Q NOW THE RECEIVER ON AN MP-5 SUBMACHINE
7 CONTAINS AN INTEGRAL PART, A PART INTEGRAL TO THE FIRING
8 OF THE WEAPON, CORRECT?

9 A YES.

10 Q THAT WOULD BE THE BARREL?

11 A YES.

12 Q ANY OTHER PARTS?

13 A MAGAZINE WELLS, SIGHTS.

14 Q NOW IS IT YOUR TESTIMONY THAT A FIREARM
15 CAN HAVE MORE THAN ONE RECEIVER?

16 A YES.

17 Q HOW MANY RECEIVERS CAN A FIREARM HAVE?

18 A WELL, THE COLT HERE OR THE EAGLE HERE HAS
19 AN UPPER AND A LOWER.

20 Q IN YOUR OPINION HOW MANY RECEIVERS DOES
21 THE MP-5 SUBMACHINE GUN HAVE?

22 A WELL, TWO.

23 Q THE MP-5 SUBMACHINE FIRES -- ARE YOU
24 FAMILIAR WITH THE TERMS "FIRING FROM A CLOSED BOLT",
25 "FIRING FROM AN OPEN BOLT"?

26 A YES, SIR.

27 Q ISN'T IT TRUE THE MP-5 FIRES FROM A
28 CLOSED BOLT?

1 A YES, SIR.

2 Q NOW THAT MEANS THAT THE BOLT CONTAINS A
3 STRIKER AND A STRIKER PIN, CORRECT?

4 A IT'S NOT CALLED THAT.

5 Q A FIRING PIN?

6 A YES, SIR.

7 Q SO THE BOLT CONTAINS A FIRING PIN AND A
8 FIRING PIN SPRING, CORRECT?

9 A CORRECT.

10 Q NOW THOSE, THE FIRING PIN AND FIRING PIN
11 SPRING, THOSE ARE PARTS INTEGRAL TO THE FIRING OF THE
12 GUN, CORRECT?

13 A YES, SIR.

14 Q SO BY YOUR DEFINITION THE BOLT COULD BE
15 CALLED A RECEIVER AS WELL?

16 A IN THAT DEFINITION, YES.

17 Q SO AT THIS POINT WE HAVE THREE PARTS OF
18 THE MP-5 MACHINE GUN BY YOUR DEFINITION ARE A RECEIVER,
19 THE RECEIVER AS DEFINED BY THE MANUFACTURER, THE TRIGGER
20 GROUP PISTOL GRIP ASSEMBLY PEOPLE'S 1, AND THE BOLT?

21 A YES, SIR.

22 Q NOW HOW MANY OF THOSE PARTS -- AND YOU
23 ARE FAMILIAR WITH ALL THREE OF THOSE PARTS?

24 A YES, SIR.

25 Q IN YOUR EXPERIENCE WHICH OF THOSE PARTS
26 ARE MARKED WITH SERIAL NUMBERS?

27 A THE RECEIVER.

28 Q THE RECEIVER ONLY. THE RECEIVER AS NOTED

1 BY THE MANUFACTURER ON THE EXPLODED DRAWING, CORRECT?

2 A YES, SIR.

3 Q ARE YOU FAMILIAR WITH THE FIREARMS
4 INDUSTRY AND TRADE?

5 A IS THAT AN ORGANIZATION OR --

6 Q I'M TALKING ABOUT THE FIREARMS INDUSTRY
7 MADE UP OF VARIOUS MANUFACTURERS SUCH AS H AND K, COLT,
8 SMITH AND WESSON, SPRINGFIELD.

9 A YES, SIR.

10 Q AND THEIR DISTRIBUTION SYSTEM,
11 WHOLESALERS, RETAIL GUNSHOPS?

12 A YES, SIR.

13 Q DOES THE TERM FRAME OR RECEIVER -- DOES
14 THE TERM RECEIVER HAVE A MEANING WITHIN THE FIREARMS
15 TRADE AND INDUSTRY?

16 A YES, SIR.

17 Q WHAT IS THAT MEANING?

18 A THE PART OF THE GUN THAT'S SERIALIZED.

19 Q THE CONTROLLED PART, CORRECT?

20 A YES.

21 Q ISN'T IT TRUE THAT PARTS FOR FIREARMS CAN
22 BE PURCHASED EVEN THROUGH THE MAIL PROVIDED THEY ARE NOT
23 A FRAME OR RECEIVER?

24 A NO.

25 Q LET ME REPHRASE THE QUESTION AND LIMIT IT
26 TO CONVENTIONAL FIREARMS NOT CAPABLE OF FULLY AUTOMATIC
27 FIRE.

28 ISN'T IT TRUE THAT ANY PART FOR A

1 CONVENTIONAL NONAUTOMATIC FIREARM CAN BE PURCHASED
2 THROUGH THE MAIL OTHER THAN THE FRAME OR RECEIVER?

3 A DEPENDS ON THE COMPANY POLICY.

4 Q BUT FROM A LEGAL STAND POINT YOU CAN
5 PURCHASE ANY TYPE, ANY PART FOR A CONVENTIONAL FIREARM
6 OTHER THAN THE FRAME OR RECEIVER WITHOUT CONTROL?

7 A I WOULD NOT GO THAT FAR TO SAY THAT, SIR.

8 Q ISN'T IT TRUE YOU CAN PURCHASE A BARREL
9 WITH NO CONTROL?

10 A FOR WHAT GUN?

11 Q AN HK 94.

12 A YES.

13 Q AND YOU COULD PURCHASE A BOLT AS WELL,
14 CORRECT? NO CONTROLS?

15 A IT DEPENDS.

16 Q DEPENDS ON WHAT?

17 A WELL, THERE'S BEEN SOME MISLEADING
18 INFORMATION AT THE SCHOOL THAT THE 94 BOLT HAS NO
19 ROLLERS, BUT EVERY ONE OF THE SEMIAUTOMATIC, THE H AND K
20 WEAPONS I HAVE FOUND HAVE DELAYED ROLLING LOCKING BOLT
21 SYSTEM IN IT. SO YOU HAVE TO SPECIFY WHETHER IT IS A
22 LOW BACK BOLT OR DELAYED LOCKING BOLT SYSTEM. I DON'T
23 BELIEVE THE DELAYED LOCKING BOLT SYSTEM ARE FOR SALE TO
24 CIVILIANS.

25 Q NOW PEOPLE'S 2 YOU IDENTIFIED THIS ON
26 DIRECT EXAMINATION AS AN AR-15 LOWER?

27 A IT'S AN EAGLE AR-15 LOWER.

28 Q MAY I SEE PEOPLE'S 2, PLEASE?

1 A YES.

2 Q NOW THIS GUN BEARS CERTAIN MARKINGS ON
3 THE LEFT SIDE, CORRECT?

4 A YES, SIR.

5 Q IN YOUR OPINION DID THIS PART ORIGINALLY
6 CONTAIN A SERIAL NUMBER?

7 A YES, SIR.

8 Q AND DID IT CONTAIN A MODEL DESIGNATION?

9 A IT STILL DOES CALLED A J-15.

10 Q NOT AN AR-15.

11 NOW YOUR TESTIMONY ON DIRECT IS THIS PART
12 HAS BEEN MODIFIED, CORRECT?

13 A YES.

14 Q THAT WAS AN ILLEGAL MODIFICATION?

15 A YES, SIR.

16 Q WOULD THAT MODIFICATION BE THE DRILLING
17 OF A HOLE TO ACCEPT A MILITARY STYLE M-16?

18 A AUTOMATIC SEAR.

19 Q THAT PART, THAT HOLE WAS DRILLED AFTER
20 THE -- IS IT YOUR OPINION THIS HOLE WAS DRILLED AFTER
21 THE FIREARM LEFT THE MANUFACTURER?

22 A YES.

23 Q AND WAS DRILLING THAT HOLE A VIOLATION OF
24 CALIFORNIA LAW?

25 A FEDERAL.

26 Q HOW ABOUT CALIFORNIA LAW?

27 A NO.

28 Q SO UNDER CALIFORNIA LAW YOU CAN MODIFY A

1 SEMIAUTOMATIC RECEIVER TO ACCEPT FULLY AUTOMATIC PARTS
2 FOR PURPOSES OF CONVERTING IT INTO A MACHINE GUN?

3 A WELL, IF YOU DRILL A HOLE YOU STILL HAVE
4 TO REDUCE THE WALL RADIUS THICKNESSES HERE. IF YOU
5 DON'T DO THAT, THE AUTOMATIC SEAR WON'T FILL.

6 Q SO YOU HAVE TO MILL OUT RELIEF CUTS?

7 A YOU HAVE TO MILL THIS OUT. FOR
8 CALIFORNIA ALL THE PIECES AND PARTS HAVE TO BE IN,
9 UNLIKE FEDERAL LAW.

10 Q IS THERE A CODE SECTION YOU CAN CITE TO
11 ON THAT?

12 A IT'S WHAT WE HAVE BEEN FOLLOWING IN OUR
13 PROCEDURES FOR CHARGING.

14 Q SO YOU CAN'T CITE TO A CODE SECTION?

15 A IT'S DEFINED UNDER 12200.

16 Q WHAT DOES 12200 -- YOU ARE REFERRING TO
17 THE PENAL CODE?

18 A YES.

19 Q DOES 12200 OF THE PENAL CODE CONTAIN
20 DEFINITIONS OF A MACHINE GUN?

21 A YES, SIR.

22 Q AND CAN YOU STATE ALL OF THE DEFINITIONS
23 OF THE MACHINE GUN CONTAINED IN 12200 OF THE PENAL CODE?

24 A MACHINE GUN AND PARTS OR PIECES TO
25 CONVERT TO A MACHINE GUN. I CAN'T SAY VERBATIM, BUT IT
26 DEFINES A MACHINE GUN.

27 Q HOW MANY DEFINITIONS DOES 12200 CONTAIN,
28 DEFINITIONS OF A MACHINE GUN?

1 A I THINK FOUR.

2 Q CAN YOU JUST PARAPHRASE AND LIST ALL FOUR
3 OF THEM?

4 A WELL, THE MACHINE GUN AND THE PARTS AND
5 PIECES TO CONVERT THOSE ARE THE ONLY TWO I KNOW.

6 Q SO THEN A RECEIVER ALONE IS NOT A MACHINE
7 GUN UNDER CALIFORNIA LAW?

8 A UNDER CALIFORNIA LAW WE NEED THE PARTS
9 AND PIECES INSIDE OF IT.

10 Q YOU TESTIFIED A MOMENT AGO, AS I
11 UNDERSTOOD IT, THAT THE DEFINITION OF A MACHINE GUN IN
12 CALIFORNIA UNDER 12200 INCLUDES PARTS TO CONVERT,
13 CORRECT?

14 A CORRECT.

15 Q ISN'T IT TRUE THAT THE PARTS NEEDED TO
16 CONVERT ARE PARTS THAT ARE A COMBINATION OF PARTS
17 DESIGNED AND INTENDED FOR USING IN CONVERTING A WEAPON
18 INTO A MACHINE GUN?

19 A YES.

20 THE COURT: EXCUSE ME, BECAUSE OF THAT DELAY I
21 LOST THE FULL IMPORT OF THE QUESTION. WOULD YOU RESTATE
22 THAT FOR ME.

23 MR. COLODNY: YES, YOUR HONOR.

24 THE COURT: YOU STARTED AND STOPPED WHEN YOU
25 CONTINUED.

26 Q BY MR. COLODNY: ISN'T IT TRUE THAT IN
27 CALIFORNIA UNDER PENAL CODE 12200 THE DEFINITION THAT
28 YOU ARE REFERRING TO IS A COMBINATION OF PARTS DESIGNED

1 AND INTENDED FOR USE IN CONVERTING A WEAPON INTO A
2 MACHINE GUN?

3 A YES.

4 Q NOW PEOPLE'S 1, THE MP, I'M GOING TO ASK
5 YOU SOME QUESTIONS ABOUT PEOPLE'S 1, THE MP-5 TRIGGER
6 GROUP.

7 ISN'T IT TRUE THAT THAT IS AN MP-5
8 TRIGGER GROUP, CORRECT?

9 A YES. IT'S AN S.E.F. MP.

10 Q WHAT DOES S.E.F. MEAN?

11 A SAFE, EIN, AND FULL.

12 Q H AND K ALSO MANUFACTURES -- HAS
13 MANUFACTURED AN HK 94 FIREARM, CORRECT?

14 A YES.

15 Q YOU ARE FAMILIAR WITH THE HK 94?

16 A YES.

17 Q ISN'T IT A CORRECT STATEMENT THAT THE HK
18 94 IS SIMILAR IN APPEARANCE TO THE MP-5 SUBMACHINE,
19 SIMILAR IN ITS OUTWARD APPEARANCE?

20 A EXCEPT FOR THE 16 INCH BARREL AND THE
21 MISSING FRONT LOCKING PIN FOR THE TRIGGER GROUP, YES.

22 Q AND THE HK 94 WAS MANUFACTURED BY HK AND
23 MARKETED AS A SEMIAUTOMATIC ONLY FIREARM FOR CIVILIAN
24 SALES, CORRECT?

25 A YES.

26 Q AND THE MP-5 IS MANUFACTURED BY HK AS A
27 SELECTIVE FIREARM, CORRECT?

28 A AND SEMIAUTOMATIC ONLY ON SAFE AND FIRE

1 FOR ATF.

2 Q BUT THE BULK OF MP-5 HK MACHINE GUNS ARE
3 MANUFACTURED WITH FULLY AUTOMATIC FIRE CAPABILITY?

4 A YES, SIR.

5 Q AND ISN'T IT TRUE THERE ARE SUBSTANTIAL
6 DIFFERENCES IN THE FIRE CONTROL COMPONENTS BETWEEN THE
7 MP-5 AND HK 94 FIREARMS?

8 A SUBSTANTIALLY, YES.

9 Q AND ISN'T IT TRUE THAT THE HK 94 USES A
10 DIFFERENT TRIGGER GROUP PISTOL GRIP ASSEMBLY?

11 A YES.

12 Q AND ISN'T IT TRUE THAT PEOPLE'S 1 AS IT
13 EXISTS TODAY CANNOT BE INSTALLED INTO AN HK 94?

14 A AS IT SITS WITHOUT THE MODIFICATIONS, NO,
15 IT CANNOT.

16 Q AND THOSE MODIFICATIONS REQUIRE MACHINING
17 AND REMOVAL OF METAL FROM THAT PART, CORRECT?

18 A YES.

19 Q AND A CERTAIN LEVEL OF SKILL AND
20 KNOWLEDGE IS REQUIRED FOR THAT, CORRECT?

21 A MINIMAL, YES.

22 Q IS EQUIPMENT REQUIRED TO DO THAT?

23 A HAND DRILL, BAND SAW, A BELT SANDER.

24 Q AND THAT WOULD BE SUFFICIENT TO MACHINE
25 PEOPLE'S 1 TO FIT INTO AN HK 94?

26 A YES, SIR.

27 Q AND IF THAT WORK WAS PERFORMED AS YOU
28 DESCRIBED IT AND THE PART WAS INSTALLED INTO AN HK 94

1 WOULD THAT PRODUCE FULLY AUTOMATIC FIRE?

2 A WITH THE BOLT CARRIER ADJUSTED, YES.

3 Q NOW PEOPLE'S 1 IS DESIGNED AND INTENDED
4 TO FIT INTO AN MP-5 NOT AN HK 94, CORRECT?

5 A CORRECT.

6 Q SO IT'S NOT DESIGNED AND INTENDED TO
7 CONVERT AN HK 94 INTO A MACHINE GUN IS IT?

8 A NOT INTENDED, NO.

9 Q IN FACT ISN'T IT TRUE THAT HK PURPOSELY
10 REDESIGNED THE MP-5 FIRE CONTROL COMPONENTS TO MAKE IT
11 DIFFICULT TO INSTALL INTO AN HK 94?

12 A THEY CHANGED IT TO MAKE IT DIFFERENT,
13 YES.

14 Q ONE OF THE REASONS THEY DID THAT IS
15 BECAUSE IT'S AN IMPORTED FIREARM, IT HAD TO MEET THE ATF
16 CRITERIA FOR SPORTING PURPOSES FOR IT TO BE IMPORTED
17 INTO THIS COUNTRY, CORRECT?

18 A I CAN'T TESTIFY TO THAT.

19 Q ISN'T IT CORRECT THAT PEOPLE'S 1 IS NOT
20 DESIGNED AND INTENDED TO CONVERT AN HK 94 INTO A MACHINE
21 GUN?

22 A AS IT SJTS HERE UNALTERED IT WILL NOT.

23 Q WAS IT -- WAS PEOPLE'S 1 UNALTERED DESIGN
24 -- STRIKE THAT.

25 WAS PEOPLE'S 1 DESIGNED AND INTENDED TO
26 CONVERT A SEMIAUTOMATIC FIREARM INTO A MACHINE GUN?

27 THE COURT: I THINK I'M GOING TO SUSTAIN MY OWN
28 OBJECTION. YOU'RE ASKING THE WITNESS, ALBEIT HE HAS

1 BEEN ACCEPTED AS AN EXPERT, TO SOMEHOW MAKE A DECISION
2 AS TO WHAT THE DESIGNER OF THAT PARTICULAR ITEM HAD IN
3 HIS MIND WHEN HE OR SHE DESIGNED IT. I THINK THAT'S
4 BEYOND HIS EXPERTISE SO I'LL SUSTAIN MY OWN OBJECTION.

5 MR. COLODNY: IF THE COURT WILL ALLOW ME A
6 LITTLE BIT OF LEEWAY, I WILL CHANGE DIRECTION AND LINK
7 IT UP.

8 THE COURT: IF I UNDERSTAND YOUR PREVIOUS
9 QUESTIONS, YOU'VE ALREADY ASKED THE WITNESS WHETHER OR
10 NOT PEOPLE'S 1 AS IT LEFT THE MANUFACTURER WAS IN FACT
11 AN ITEM THAT COULD CONVERT THE HK 94 WITHOUT
12 MODIFICATION AND HE SAID "YOU'RE CORRECT, IT CANNOT."
13 SO MENTALITY OF THE DESIGNER CANNOT POSSIBLY BE
14 RELEVANT.

15 MR. COLODNY: I UNDERSTAND, YOUR HONOR. THERE'S
16 A POINT I'D LIKE TO MAKE IF THE COURT WOULD ALLOW ME.

17 THE COURT: GIVE ME AN OFFER OF PROOF.

18 MR. COLODNY: I'D LIKE TO ASK THE WITNESS SOME
19 QUESTIONS ABOUT PEOPLE'S 2 WHICH IS A REPRESENTATIVE OF
20 THE AR-15 M-16 SERIES OF FIREARMS AND A PART KNOWN AS A
21 DROP-IN AUTO SEAR. AND I WOULD ASSERT THAT THAT PART IS
22 A PART THAT IS SPECIFICALLY DESIGNED AND INTENDED TO
23 CONVERT, AS OPPOSED TO PEOPLE'S 1 WHICH IS MERELY A
24 REPLACEMENT OR AN UPGRADE PART.

25 THE COURT: THAT'S FINE. WHY DON'T YOU ASK HIM
26 ABOUT THAT. DOESN'T HAVE ANYTHING TO DO WITH WHAT WAS
27 IN THE DESIGNER'S MIND WHEN HE DESIGNED PEOPLE'S 1, IN
28 MY OPINION.

1 GO AHEAD.

2 Q BY MR. COLODNY: AGENT CHINN, YOU ARE
3 FAMILIAR WITH THE AR-15 M-16 SERIES OF FIREARMS,
4 CORRECT?

5 A YES, SIR.

6 Q ARE YOU FAMILIAR WITH THE ILLEGAL,
7 MODIFICATIONS TO THAT SERIES OF FIREARMS?

8 A YES, SIR.

9 Q ARE YOU FAMILIAR WITH A PART KNOWN AS THE
10 DROP-IN AUTO SEAR?

11 A YES, SIR.

12 Q AND ISN'T IT TRUE THAT THAT PART IS
13 SPECIFICALLY DESIGNED AND INTENDED FOR CONVERSION OF A
14 SEMIAUTOMATIC FIREARM TO A FULL AUTOMATIC FIREARM?

15 A BY ITSELF, NO.

16 Q WHAT IS THE PURPOSE OF THE DROP-IN AUTO
17 SEAR?

18 A IT'S TO HELP YOU GAIN SELECT FIRE IN A
19 SEMIAUTOMATIC WEAPON. BUT YOU STILL NEED TO CHANGE THE
20 TRIGGER AND THE DISCONNECT AND THE HAMMER ON THE AR-15
21 TO ALLOW THE AUTO SEAR TO WORK.

22 MR. COLODNY: OBJECTION. MOVE TO STRIKE THE
23 LATTER PORTION OF THE WITNESS'S ANSWER AS NONRESPONSIVE.
24 THE QUESTION WAS SIMPLY "WHAT IS THE PURPOSE OF THE
25 DROP-IN AUTO SEAR?"

26 THE COURT: WELL, I AGREE THAT TECHNICALLY IT
27 WAS AN EXTENDED ANSWER; HOWEVER, IT DID CLARIFY THE
28 WITNESS'S POSITION ON THIS AND OBIVIATES THE NECESSITY OF

1 ANY FURTHER QUESTIONS ALONG THAT LINE. SO I'LL OVERRULE
2 THE OBJECTION FOR THOSE REASONS.

3 Q BY MR. COLODNY: IN AN ATTEMPT TO SUM UP,
4 AGENT CHINN, ISN'T IT TRUE THAT A DISTINCTION CAN BE
5 DRAWN BETWEEN A DROP-IN AUTO SEAR AS BEING A PART WHOSE
6 SOLE PURPOSE IS TO CONVERT A SEMIAUTOMATIC TO A FULL
7 AUTO AND PEOPLE'S 1 WHICH IS NOT INTENDED FOR THAT
8 PURPOSE?

9 A I DON'T DRAW A DISTINCTION, NO.

10 Q IS THERE A USE FOR PEOPLE'S 1 OTHER THAN,
11 AS YOU'VE STATED AN OPINION, TO CONVERT A SEMI-AUTO TO A
12 FULL AUTO?

13 A TO FIRE A FULL AUTOMATIC MP-5. THAT'S
14 THE ORIGINAL USE.

15 Q ISN'T IT TRUE THAT HK MAKES VARIATIONS OF
16 THE TRIGGER GROUP PISTOL GRIP ASSEMBLY FOR THE MP-5
17 SERIES OF FIREARMS?

18 A YES.

19 Q AND WHAT WE HAVE IN PEOPLE'S 1 IS THE
20 STANDARD SAFE SEMI-FULL VARIATION, CORRECT?

21 A YES.

22 Q THE BASIC MODEL?

23 A YES.

24 Q ISN'T IT TRUE HK ALSO MAKES A THREE AND
25 FOUR POSITION TRIGGER GROUP ASSEMBLY?

26 A THEY MAKE A THREE ROUND BURST, A FULL,
27 AND THEN TWO ROUND BURST.

28 Q IN YOUR EXPERT OPINION ISN'T IT

1 CONCEIVABLE THAT A POLICE DEPARTMENT MIGHT WISH TO
2 PURCHASE A PART LIKE PEOPLE'S 1 TO REPLACE A TRIGGER
3 GROUP ASSEMBLY THAT HAS BURST CONTROL?

4 A YES, BUT THEY WOULD PURCHASE IT FROM H
5 AND K.

6 Q SO THERE IS A USE FOR PEOPLE'S 1 OTHER
7 THAN TO CONVERT SEMI-AUTO TO FULL AUTO, CORRECT?

8 A YES, TO REPLACE BROKEN PARTS ON LEGALLY
9 POSSESSED NFA AND POLICE WEAPONS.

10 Q NOW ISN'T IT TRUE THAT ONE OF THE REASONS
11 THE DEPARTMENT MIGHT WISH TO REPLACE THREE -- STRIKE
12 THAT.

13 ONE OF THE REASONS A DEPARTMENT, POLICE
14 DEPARTMENT, MIGHT WISH TO REPLACE A FOUR POSITION
15 TRIGGER GROUP ASSEMBLY PISTOL WITH SOMETHING LIKE
16 PEOPLE'S 1 WOULD BE TO SIMPLIFY TRAINING; IS THAT A
17 LEGITIMATE USE?

18 A NOT -- NO. THIS IS A HARDER TRIGGER
19 GROUP TO MANIPULATE. IT'S ONLY ONE-SIDED. IT'S NOT
20 AMBIDEXTROUS. WITH PEOPLE WITH SMALL HANDS IT NORMALLY
21 TAKES THEM OVER THE RECEIVER MOUNT POSITION TO ACTIVATE
22 IT INTO FULL AND TO COME OFF. THEY WOULD NORMALLY GO TO
23 THE NEWER MODELS WHICH ARE AMBIDEXTROUS AND HAVE AN
24 EASIER TOUCH ON IT.

25 Q ISN'T IT TRUE, AGENT CHINN, THAT IF THE
26 POLICE DEPARTMENT HAD AN MP-5 EQUIPPED WITH BURST
27 CAPABILITY AND THEY WISHED TO ELIMINATE THAT CAPABILITY
28 FOR WHATEVER REASON, THEY COULD DO THAT BY SIMPLY

1 PURCHASING AN ITEM SIMILAR, IDENTICAL TO PEOPLE'S 1 AND
2 CHANGE THAT RATHER THAN PURCHASING AN ENTIRE NEW
3 FIREARM?

4 A YES, THEY COULD PICK UP THE S AND F, THE
5 SAFE AND FIRE MODE.

6 Q SO THERE IS A LEGITIMATE LAWFUL USE FOR
7 AN ITEM IDENTICAL TO PEOPLE'S 1, CORRECT?

8 A THE SAFE AND FIRE MODE IS NOT IDENTICAL
9 TO THIS. THE SAFE AND FIRE MODE ONLY HAS TWO POSITIONS.

10 Q AGENT CHINN, IN YOUR OPINION IS THERE A
11 LEGITIMATE LAWFUL USE BY ANY PERSON OR ENTITY FOR
12 PEOPLE'S 1?

13 A TO REPAIR LEGALLY OWNED NFA OR POLICE
14 AGENT.

15 Q THAT'S AN AFFIRMATIVE ANSWER?

16 A YES.

17 MR. COLODNY: IF I COULD HAVE A MOMENT.

18 NO FURTHER CROSS AT THIS TIME, YOUR
19 HONOR.

20 THE COURT: ANYTHING ELSE OF THE WITNESS, MR.
21 GALLON?

22 MR. GALLON: NO, YOUR HONOR.

23 THE COURT: THANK YOU, MR. CHINN. YOU CAN STEP
24 DOWN.

25 MR. COLODNY: YOUR HONOR, COULD I ASK THE
26 WITNESS ONE MORE QUESTION VERY BRIEF?

27 THE COURT: YES.

28 Q BY MR. COLODNY: AGENT CHINN, DO YOU

CONSIDER PEOPLE'S 1 TO BE AN UNLAWFUL PART IN AND OF ITSELF UNDER THE LAW OF THE STATE OF CALIFORNIA?

A YES.

THE COURT: THANK YOU VERY MUCH. YOU CAN STEP DOWN.

(OTHER WITNESS'S TESTIMONY AND ARGUMENT; NOT TRANSCRIBED FOR PARTIAL TRANSCRIPT.)

THE COURT: PEOPLE VERSUS MILLS. WE ARE BACK ON THE RECORD. EVERYONE IS PRESENT.

INSOFAR AS THE TESTIMONY OF THE WITNESSES WHO HAVE BEEN HEARD AT THIS PRELIMINARY HEARING, THE COURT ACCEPTS THE TESTIMONY OF WITNESSES LACEY, CHINN, AND GUY. THE COURT WILL NOT CONSIDER ANY OF THE TESTIMONY OF MR. KNEA.

MR. MILLS IS CHARGED WITH VIOLATING 12220(B) OF THE PENAL CODE WHICH IS AN ALTERNATIVE SECTION. THAT PARTICULAR STATUTE PROSCRIBES THE INTENTIONAL CONVERSION OF A FIREARM INTO A MACHINE GUN. IT'S QUITE CLEAR THAT THIS IS NOT THE CASE IN THIS INSTANCE.

WE ARE THEREFORE LEFT WITH THE ALTERNATIVE, THAT MR. MILLS SOLD A MACHINE GUN. IN CONSIDERING THE DEFINITION IN SECTION 12200 OF THE PENAL CODE, THE FIRST AND FOURTH PARTS ARE NOT APPLICABLE.

THE SECOND PART OF THE DEFINITION REQUIRES A FRAME OR RECEIVER. CALIFORNIA LAW APPARENTLY HAS NO DEFINITION OF THOSE TERMS.

1 THE COURT RECEIVED EXHIBIT DEFENDANT'S C
2 FOR THE PURPOSE OF HAVING SOME GUIDELINE OR REFERENCE.

3 THE COURT RECOGNIZES THAT MR. CHINN
4 PROFFERED AN OPINION THAT THE EXHIBIT, PEOPLE'S 1, CAME
5 WITHIN THE DEFINITION OF FRAME AND RECEIVER.

6 BASED UPON THE FEDERAL REGULATION AND
7 COMMON USAGE AND UNDERSTANDING, THE COURT REJECTS THAT
8 PORTION OF MR. CHINN'S TESTIMONY AND ACCEPTS THAT
9 PORTION OF MR. GUY'S TESTIMONY WHEREIN MR. GUY STATED,
10 AND THE COURT FINDS, THAT PEOPLE'S 1 IS NOT A FRAME OR
11 RECEIVER.

12 THAT LEAVES US WITH THE THIRD PORTION OF
13 THE DEFINITION OF A MACHINE GUN AND THAT REQUIRES THAT
14 THE PART BE DESIGNED.

15 IT'S VERY CLEAR FROM THE EVIDENCE THAT
16 THE PART WAS NOT DESIGNED IN THAT MANNER, THAT IT WOULD
17 REQUIRE A MODIFICATION. WHETHER OR NOT MODIFICATION
18 REQUIRES, IN THE WORDS OF MR. CHINN, MINIMAL SKILL OR,
19 IN THE WORDS OF MR. GUY, EXCEPTIONAL SKILL IS NOT
20 RELEVANT. THE RELEVANT FACT IS THAT THE ITEM HAS TO BE
21 MODIFIED. IF IT HAS TO BE MODIFIED, A FORTIORI, IT WAS
22 NOT DESIGNED FOR THAT PURPOSE. THEREFORE, THE MOTION TO
23 DISMISS IS GRANTED.

24 AND THE CASH BAIL IS EXONERATED.

25 ALL EXHIBITS ARE ORDERED RETURNED TO THE
26 RESPECTIVE PARTIES.

27 THANK YOU, GENTLEMEN, FOR A VERY
28 INTERESTING AND INFORMATIVE HEARING.

1 MR. COLODNY: THANK YOU VERY MUCH, YOUR HONOR.

2 MAY I ASK IF THE COURT WOULD ENTERTAIN A
3 MOTION UNDER 851.8 FOR A FINDING OF FACTUAL INNOCENCE
4 AND ORDER SEALING AND DESTROYING MR. MILLS' ARREST
5 RECORD? HE'S IN THE PROCESS OF MOVING HIS BUSINESS TO
6 ANOTHER STATE. HE WILL HAVE TO BE RELICENSED AND HE
7 ANTICIPATES THIS ARREST WILL CAUSE HIM CONSIDERABLE
8 DIFFICULTY IN RENEWING HIS LICENSE. HE CURRENTLY HOLDS
9 SIX REGULATORY LICENSES.

10 THE COURT: MR. GALLON?

11 MR. GALLON: COULD I ...

12 THE COURT: HAVE NOTICE ON THAT AND TIME TO
13 THINK ABOUT IT?

14 MR. GALLON: YES, YOUR HONOR.

15 THE COURT: THAT'S REASONABLE.

16 YES, I'LL ENTERTAIN A MOTION IF YOU
17 KINDLY -- IS THE ORAL NOTICE SUFFICIENT?

18 MR. GALLON: ACTUALLY PEOPLE WOULD REQUEST A
19 WRITTEN MOTION ON THAT, YOUR HONOR.

20 THE COURT: ALL RIGHT, FILE YOUR MOTION AND SET
21 A DATE FOR HEARING, SIR.

22 TEN DAYS NOTICE, MR. GALLON?

23 MR. GALLON: YES.

24 (END OF PROCEEDINGS.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY THAT I AM AN OFFICIAL
SHORTHAND REPORTER OF THE POMONA MUNICIPAL COURT; THAT
PURSUANT TO THE ORDER AND INSTRUCTION OF THE COURT, I
WAS ASSIGNED TO REPORT AND DID CORRECTLY REPORT THE
TESTIMONY AND PROCEEDINGS CONTAINED HEREIN; THAT THE
FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF MY SAID
NOTES, AND A FULL, TRUE AND CORRECT STATEMENT OF SAID
TESTIMONY AND PROCEEDINGS.

DATED THIS 5TH DAY OF JANUARY, 2000.



MARIE JAMES VILLA-LOVOS.
CSR# 6883
OFFICIAL REPORTER

EXHIBIT "B"

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INDEX

<u>DAY</u>	<u>DATE</u>	<u>PAGE</u>
WEDNESDAY	AUGUST 23, 2000	1

1 POMONA, CALIFORNIA; WEDNESDAY, AUGUST 23, 2000

2 9:25 A.M.

3 DEPARTMENT NO. EAH HON. CHARLES E. HORAN, JUDGE

4
5 APPEARANCES:

6 THE DEFENDANT, BEING PRESENT AND IN
7 COURT WITH COUNSEL, BRUCE COLODNY,
8 ATTORNEY AT LAW; THE PEOPLE BEING
9 PRESENT AND REPRESENTED BY MICHELE
10 HANISEE, DEPUTY DISTRICT ATTORNEY
11 FOR LOS ANGELES COUNTY; THE FOLLOWING
12 PROCEEDINGS WERE HELD IN OPEN COURT:
13 (YVONNE GALLEGOS, CSR NO. 7521,
14 OFFICIAL REPORTER)

15
16 THE COURT: THIS IS PEOPLE VERSUS
17 ATILANO.

18 THE DEFENDANT IS PRESENT WITH
19 COUNSEL.

20 PEOPLE REPRESENTED.

21 THE MATTER IS HERE FOR MOTION, 995.

22 THE COURT HAS READ THE MOTION TO SET
23 ASIDE THE INFORMATION.

24 I HAVE READ THE PEOPLE'S OPPOSITION.
25 MOVING PARTY, I WILL HEAR YOUR
26 ARGUMENT.

27 MR. COLODNY: YOUR HONOR, THERE ISN'T
28 MUCH FOR ME TO ADD BEYOND WHAT I PUT IN MY MOVING

1 PAPERS.

2 DOES THE COURT HAVE ANY SPECIFIC
3 AREAS THAT IT WOULD LIKE ME TO ADDRESS?

4 THE COURT: LET YOUR CONSCIENCE BE YOUR
5 GUIDE.

6 MR. COLODNY: VERY WELL, YOUR HONOR.

7 THE COURT: PROCEED AS YOU SEE FIT.

8 MR. COLODNY: WELL, FIRST OFF WE HAVE
9 AGENT CHINN, WHO I BELIEVE IS NOT QUALIFIED.

10 CERTAINLY, HE HAS SOME FIREARMS
11 TRAINING AND, IN MY OPINION, THE STANDARD FOR
12 EXPERT TESTIMONY, THE BAR IS NOT PLACED VERY
13 HIGH. HOWEVER, IN THIS CASE HE HAS NO SPECIFIC
14 TRAINING WITH THE ISSUES.

15 YES, HE HAS TAKEN TRAINING ON THE
16 IDENTIFYING OF FIREARMS LIKE THE AR-15, WHICH IS
17 CLASSIFIED DIFFERENTLY. IT IS A SERIOUS GUN.
18 THE GALIL IS NOT. BUT HE HAS NO TRAINING ON
19 GALILS.

20 SO HE IS FLYING BY THE SEAT OF HIS
21 PANTS, IN MY OPINION.

22 HIS REFERENCE, FOR THE BASIS OF
23 OPINION, ON DIRECT IS THAT IT IS A DESCRIPTOR
24 RATHER THAN A COMPANY NAME OR MODEL.

25 I DON'T KNOW WHAT A DESCRIPTOR IS
26 AND I DON'T KNOW IF THE COURT KNOWS WHAT A
27 DESCRIPTOR IS.

28 THEN HE REFERS TO IT BEING AN

1 ISRAELI KALISHNIKOV.

2 NO TESTIMONY CAME OUT TO ESTABLISH
3 THAT IT WAS BASED ON THE RUSSIAN KALISHNIKOV
4 DESIGN.

5 AND THEN HE REFERS TO THE JAMES
6 WEAPONS DICTIONARY AND I THINK HE WAS TALKING
7 ABOUT THE JANES DICTIONARY WHICH WAS A BRITISH
8 PUBLICATION.

9 NEITHER OF THESE HAVE ANY RELEVANCE
10 WITH THE CLASSIFICATION SCHEME ESTABLISHED BY THE
11 ROBERTI-ROOS ASSAULT WEAPONS CONTROL ACT.

12 THEN WHEN I ATTEMPTED TO
13 CROSS-EXAMINE HIM AT THE PRELIMINARY HEARING, I
14 WAS BASICALLY SHUT DOWN ON GROUNDS THAT I WAS
15 ASKING FOR A LEGAL OPINION.

16 IN THIS CASE, EVEN THOUGH AGENT
17 CHINN IS NOT AN ATTORNEY, THE SUBJECT OF HIS
18 DIRECT TESTIMONY WAS THE CLASSIFICATION OF THIS
19 GUN UNDER THE ACT AND YET I HAD NO OPPORTUNITY
20 WHATSOEVER TO CROSS-EXAMINE HIM FOR THE BASIS OF
21 THAT OPINION.

22 I WAS COMPLETELY SHUT DOWN AND I
23 THINK THAT I WAS DENIED A SUBSTANTIAL RIGHT ON
24 BEHALF OF MY CLIENT.

25 THE OTHER ISSUES ARE THE RECEIPT,
26 THE MANUAL, THE TRACE.

27 I HAVE LAID THAT OUT HOPEFULLY
28 SUCCINCTLY IN MY MOVING PAPERS.

1 AS TO THE MANUAL, I THINK MY
2 OBJECTION SHOULD HAVE BEEN SUSTAINED BECAUSE
3 THERE WAS NO BASIS MADE FOR THE ATF REPORT OR HAD
4 INSPECTED THE SUBJECT FIREARM, NO FOUNDATION TO
5 SHOW THAT THE MAKER OF THAT REPORT WAS QUALIFIED
6 TO CLASSIFY IT AS A GALIL, OR AS I POINTED OUT,
7 THAT THE FEDERAL DETERMINATION THAT IT IS A GALIL
8 IF THAT APPLIES UNDER CALIFORNIA LAW.

9 I THINK THAT IT WAS IMPROPERLY
10 INTRODUCED.

11 I THINK THE CUSTODIAN OF RECORDS
12 SHOULD HAVE BEEN THERE IN COURT TO INTRODUCE IT
13 AND THERE WAS NO STIPULATION TO THE CONTRARY.

14 I THINK THE MANUAL IS A LITTLE
15 EASIER TO DEAL WITH BECAUSE THERE IS ABSOLUTELY
16 NO TESTIMONY WHATSOEVER TO ASSOCIATE IT WITH THE
17 FIREARM THAT IS IN QUESTION IN THIS CASE.

18 I FIND MYSELF REPEATING WHAT I HAVE
19 PUT IN MY MOVING PAPERS.

20 AGAIN, I WILL ASK THE COURT IF THERE
21 IS ANYTHING THAT THE COURT WISHES ME TO ADDRESS
22 IN PARTICULAR.

23 THE COURT: NO.

24 IF I DO, I WILL COME BACK.

25 MR. COLODNY: I STRIVE NOT TO DO THAT,
26 BUT I FIND MYSELF DOING THAT THIS MORNING.

27 I JUST THINK THIS IS AN APPROPRIATE
28 CASE FOR THE COURT TO GRANT THE 995 MOTION.

1 THERE IS JUST NOT SUFFICIENT
2 EVIDENCE FOR JUDGE MOORE TO HAVE BOUND HIM OVER.

3 I THINK I WOULD ASK THE COURT TO
4 CONSIDER THAT JUDGE MOORE MADE NO COMMENTS
5 WHATSOEVER AFTER HEARING ARGUMENT. HE SIMPLY
6 USED WHAT I WOULD RESPECTFULLY BUT AS AN ADVOCATE
7 FOR MY CLIENT CHARACTERIZE AS BOILER PLATE
8 LANGUAGE WHEN HE MADE HIS RULING TO BIND HIM
9 OVER.

10 THE COURT: THAT IS OFTEN THE SAFEST WAY
11 TO PROCEED --

12 MR. COLODNY: I UNDERSTAND, YOUR HONOR.

13 THE COURT: -- AS A BENCH OFFICER.

14 MR. COLODNY: BUT IT GIVES US NO
15 ENLIGHTENMENT.

16 WITH ALL RESPECT, I WOULD ASK THE
17 COURT TO GRANT THIS MOTION.

18 THE COURT: ALL RIGHT.

19 THANK YOU.

20 PEOPLE, I WILL HEAR YOU.

21 MS. HANISEE: BRIEFLY.

22 AS THE PEOPLE STATED IN THEIR MOVING
23 PAPERS, THE DEFENSE'S PRIMARY COMPLAINT IS HE IS
24 ASKING BOTH THE DEFENSE EXPERT AND THE PEOPLE'S
25 EXPERT TO INTERPRET THE LAW.

26 THAT IS, I DON'T THINK, THE SCOPE OF
27 THEIR ABILITIES AS EXPERTS AND THEIR EXPERTISE
28 SHOULD BE LIMITED TO WHAT THE GUN IS WHICH IS WHY

1 THEY WERE CALLED TO TESTIFY.

2 THE ONLY THING THAT I DID NOT
3 ADDRESS IN MY MOVING PAPERS IS THE DEFENSE'S
4 SUGGESTION THAT THERE IS NOTHING TO TIE THE
5 MANUAL TO THE GUN.

6 I WOULD INDICATE TO THE COURT
7 THAT THE MANUAL WAS PROVIDED TO AGENT CHINN WHEN
8 HE PURCHASED THE GUN AS PART OF THE GUN
9 ACCESSORIES.

10 I WILL SUBMIT ON MY MOVING PAPERS.

11 MR. COLODNY: YOUR HONOR --

12 THE COURT: GO AHEAD, DEFENSE.

13 MR. COLODNY: THEY ARE TALKING ABOUT
14 IDENTIFYING.

15 I CAN REFER TO THE TRANSCRIPT IN
16 GENERAL. BOTH EXPERTS ARE GIVING TESTIMONY
17 ABOUT WHETHER OR NOT THIS GUN IS A ROBERTI-ROOS
18 ASSAULT WEAPON.

19 SO BY NECESSITY THEY ARE GIVING
20 LEGAL OPINION.

21 I THINK IT WAS IMPROPER FOR JUDGE
22 MOORE TO HAVE SUSTAINED MY OBJECTION -- TO HAVE
23 SUSTAINED THE OBJECTION WHEN I ATTEMPTED TO
24 CROSS-EXAMINE AGENT CHINN.

25 I WAS NOT ALLOWED TO HAVE EFFECTIVE
26 CROSS-EXAMINATION OF AGENT CHINN.

27 I THINK THAT HIS OPINION WAS NOT --

28 I THINK HIS OPINION WAS INCORRECT

1 AND I WAS NOT ALLOWED TO EXPLORE THAT AND IT IS A
2 DENIAL OF A SUBSTANTIAL RIGHT.

3 THE COURT: ANYTHING ELSE, EITHER SIDE?

4 MS. HANISEE: SUBMIT IT.

5 MR. COLODNY: SUBMIT IT, YOUR HONOR.

6 THE COURT: IT IS AN INTERESTING CASE
7 AND HAS BEEN FROM THE GET GO.

8 MOTION IS GRANTED, TWO GROUNDS.

9 FIRST OF ALL, IT SEEMS TO ME, AND I
10 HAVE READ IT THREE TIMES, I HAVE READ THE
11 PRELIMINARY HEARING TRANSCRIPT THREE TIMES AND
12 BEEN THROUGH THAT TRANSCRIPT AS CAREFULLY AS I
13 CAN GO THROUGH IT.

14 IT SEEMS TO ME IN ORDER FOR THE
15 PEOPLE TO PREVAIL THERE MUST BE SOME EVIDENCE
16 THAT THE WEAPON POSSESSED AND SOLD BY THE
17 DEFENDANT IS ONE OF THE BANNED WEAPONS.

18 IT FURTHER APPEARS TO ME THAT IN
19 ORDER TO CLASSIFY THE WEAPON INVOLVED IN THIS
20 CASE AS A GALIL, QUOTE UNQUOTE GALIL WEAPON, AS
21 THAT TERM IS USED UNDER THE STATUTE WITHOUT THAT
22 WEAPON BEARING ANY INDICIA THAT IT IS SUCH A
23 WEAPON WOULD BE AN IMPERMISSIBLE AND
24 UNCONSTITUTIONAL USE OF THE STATUTE.

25 I DO BELIEVE BASED ON WHAT THE
26 SUPREME COURT HAS RECENTLY INDICATED, OUR SUPREME
27 COURT, THAT WEAPONS THAT ARE IDENTIFIABLE AS
28 BEING ON THAT BANNED LIST, THE POSSESSION

1 THEREFORE AND THE SALE THEREFORE CAN BE
2 CRIMINALIZED AND HAS BEEN CRIMINALIZED.

3 THERE IS STILL A DUE PROCESS NOTICE
4 REQUIREMENT.

5 WHAT IS A GALIL?

6 TO SHOW YOU HOW COMPLICATED THIS LAW
7 IS SOMETIMES IS YOU HAVE TWO PEOPLE OPERATING IN
8 ABSOLUTE GOOD FAITH. AGENT CHINN AND THE DEFENSE
9 EXPERT THAT WAS CALLED WHO HELPED PUT TOGETHER
10 AND WAS INVOLVED IN THE DRAFTING OF THE LAW AND
11 INVOLVED IN TRAINING LAW ENFORCEMENT OFFICERS AS
12 TO WHAT WAS BANNED AND WHAT WAS NOT, I DO NOT
13 WANT TO GET IN THE BUSINESS OF SUBSTITUTING MY
14 JUDGMENT FOR THAT OF MAGISTRATES OR DEFENSE
15 COUNSEL OR PROSECUTORS, BUT THERE IS A POINT THAT
16 I BELIEVE WE HAVE REACHED HERE WHERE TO PROSECUTE
17 AN INDIVIDUAL AND THREATEN HIM WITH PRISON BASED
18 ON THE POSSESSION OF AN ITEM THAT EXPERTS CAN'T
19 AGREE WHETHER IT IS ILLEGAL OR NOT IS
20 IMPERMISSIBLE AND IS NOT A GOOD USE OF THE
21 COURT'S TIME AND NOT A FAIR USE OF THE
22 PROSECUTION'S TIME.

23 I DON'T BELIEVE THAT THE BEAR
24 ASSERTION BY AGENT CHINN, WHOSE TRAINING LEAVES A
25 BIT TO BE DESIRED, THAT IN HIS OPINION THAT
26 WEAPON IS A GALIL OF THE SORT BANNED UNDER THE
27 CALIFORNIA LAW CAN WITHSTAND MUCH SCRUTINY.

28 THE REASON HE WENT THROUGH THIS SALE

1 IS PRETTY CLEAR TO THE COURT AND PROBABLY TO THE
2 PARTIES OUT HERE.

3 HE MISREAD WHAT HE THOUGHT WAS ON
4 THE WEAPON.

5 HE BELIEVED HE SAW ONE THING ON THE
6 WEAPON AND WENT THROUGH WITH THIS PURCHASE AND
7 THEN LATER LEARNED IT WASN'T MARKED AS HE THOUGHT
8 IT WAS.

9 BUT RATHER THAN BACK OFF AND SAY,
10 BETTER LUCK NEXT
11 TIME, ONE GOT AWAY,
12 NOW THAT WEAPON, EVEN THOUGH HE MISREAD IT, NOW
13 BECOMES A GALIL WEAPON.

14 IT IS INDISTINGUISHABLE, I BELIEVE,
15 FROM A GALIL WEAPON.

16 I THINK IF YOU PUT THE PARTS IN THE
17 BAG AND REASSEMBLE, YOU CAN REASSEMBLE THE WEAPON
18 AND THEN STAMP IT WITH A GALIL. PROBABLY THE
19 MANUFACTURER COULD NOT TELL THE DIFFERENCE.

20 BUT THE BOTTOM LINE IS ON THAT -- IN
21 THAT STATUTE, THE LEGISLATURE ATTEMPTED TO BAN
22 SOME GUNS BY SERIES OR BY LOOK ALIKE AND SO FORTH
23 AND OTHERS THEY DIDN'T.

24 THEY JUST SAID,

25 A GALIL IS BANNED, OR

26 UZI,

27 NOT A LOOK-ALIKE UZI.

28 THERE IS SOME PROVISION WHERE THOSE

1 LOOK ALIKE GUNS MIGHT BE BANNED IF THE ATTORNEY
2 GENERAL GOES TO A JUDGE AND SAYS,

3 NOW THEY ARE SELLING
4 THIS GALIL, JUDGE, AND
5 THEY ARE CALLING IT A
6 MODEL 44,
7 OR WHATEVER IT IS,

8 WE NEED TO PUT IT ON
9 THE LIST.

10 THE SUPREME COURT SAYS THAT IS A
11 VALID USE OF POLICE POWER AND THE COURTS CAN GET
12 INVOLVED IN THAT AND WHETHER I DISAGREE OR AGREE
13 IS OF NO MOMENT.

14 BUT THE STATUTE ALLOWS AN EXPANSION
15 OF THE TERM GALIL TO COVER THINGS THAT LOOK LIKE
16 A GALIL BUT AREN'T.

17 WHAT I AM CONVINCED HAPPENED IS THAT
18 THE DEFENDANT SOLD AN ITEM THAT WAS
19 REMANUFACTURED SO THAT IT WOULD NOT BE A QUOTE
20 UNQUOTE GALIL BUT AS SIMILAR AS ONE CAN GET
21 WITHOUT BEING THE REAL THING AND THAT IS
22 BECAUSE -- AND THE REASON THAT HAPPENS IS BECAUSE
23 THE LAW IS WRITTEN TO INVITE THAT SORT OF
24 RESPONSE.

25 COLT DID IT AND A LOT OF
26 MANUFACTURES DID THE SAME THING.

27 THE RESPONSE OF THE LEGISLATURE HAS
28 BEEN TO PASS ANOTHER LAW THAT NOW BANS GUNS BY

1 GENERIC CHARACTERISTICS AND THAT WAS TO MAKE UP
2 FOR SOME OF THE LACKING OF SOME OF THE OBVIOUS
3 FAILINGS OF THE LAW THAT WE ARE DEALING WITH
4 HERE, AND PERHAPS IT WILL DEAL BETTER IN TERMS OF
5 CLARITY.

6 PEOPLE ARE ON NOTICE NOW AS TO WHAT
7 IT IS THEY CAN HAVE AND CAN'T HAVE, WHAT THEY CAN
8 SELL AND CANNOT SELL.

9 I SAY THAT UNTIL THE NEXT DISPUTE
10 ARISES, AND WE WILL SEE.

11 BUT IN OUR CASE IT SEEMS TO ME THAT
12 TO PROSECUTE ATILANO FOR THIS WEAPON WOULD BE
13 INAPPROPRIATE DUE TO THE FACT THAT REASONABLE
14 PEOPLE HAVE TO GUESS AS TO WHAT IS BEING BANNED
15 HERE.

16 UNLIKE A COLT AR-15 THAT SAYS COLT
17 AR-15, IF YOU HAVE TO GUESS WHETHER YOU ARE
18 BREAKING THE LAW, THAT PARTICULAR APPLICATION OF
19 THE LAW IS INAPPROPRIATE, IT SEEMS TO ME.

20 IT IS UNCONSTITUTIONAL AND VIOLATIVE
21 OF DUE PROCESS, ET CETERA.

22 THAT IS NOT TO SAY THE ENTIRE
23 STATUTE IS BAD.

24 WE WENT THROUGH THAT.

25 PEOPLE, YOU CONVINCED ME THE STATUTE
26 IS NOT UNCONSTITUTIONAL, BUT AS APPLIED IN THIS
27 CASE WHERE ALL IT TAKES IS SOMEBODY FROM THE
28 ATTORNEY GENERAL'S OFFICE TO DECIDE AFTER THE

1 JURY TRIAL BASED UPON AN UNSUPPORTED ASSERTION
2 THAT SOMETHING IS OTHER THAN WHAT IT APPEARS TO
3 BE ON ITS FACE, I THINK YOU RUN INTO
4 CONSTITUTIONAL PROBLEMS.

5 THE MERE FACT THAT AGENT CHINN SAYS,
6 I'M AN EXPERT IN
7 FRUITS AND VEGETABLES,
8 AND CALLS AN APPLE AN ORANGE DOES NOT MAKE IT AN
9 ORANGE.

10 I WOULD BE CLOSING MY EYES IF I SAID
11 OTHERWISE.

12 A SECOND REASON EXISTS HERE. AND I
13 WILL DISMISS THIS CASE 1385 P.C.

14 WE HAVE BEEN IN COURT A NUMBER
15 OF TIMES ON IT. BOTH SIDES HAVE DONE VERY
16 GOOD WORK AND HAVE ARGUED THE CASE PERSUASIVELY
17 FROM THEIR POINTS OF VIEW, BUT IT SEEMS TO ME
18 THAT AT THIS STAGE IT IS NOT IN THE INTEREST
19 OF JUSTICE TO GO FORWARD AGAINST THIS
20 DEFENDANT GIVEN THE FACTS SHOWN AT THE
21 PRELIMINARY HEARING WHICH AT THE BEST, AT THE
22 VERY BEST, FROM THE PEOPLE'S POINT OF VIEW
23 SHOWS AN ABSOLUTE DISAGREEMENT AMONG PEOPLE THAT
24 AREN'T USUALLY ON OPPOSITE SIDES OF THE FENCE ON
25 THESE DISPUTES.

26 TWO LAW ENFORCEMENT FOLKS HAVE
27 LOOKED AT THIS WEAPON AND COME TO DRASTICALLY
28 DIFFERENT OPINIONS ABOUT WHETHER IT IS OR IS NOT

1 ILLEGAL.

2 IT SEEMS TO ME THAT 1385 P.C. SAYS
3 YOU GIVE THE BENEFIT OF THAT DOUBT TO THE
4 DEFENDANT RATHER THAN KEEP HIM COMING BACK TO
5 COURT AND FACING THREAT OF PRISON ON A GUN THAT
6 THE EXPERTS CANNOT AGREE WHETHER IT IS LAWFUL OR
7 UNLAWFUL.

8 SO THE CASE WILL BE DISMISSED.

9 995 AND COURT'S OWN MOTION,
10 1385 P.C.

11 ANYTHING ELSE TODAY?

12 MR. COLODNY: THANK YOU VERY MUCH, YOUR
13 HONOR.

14 WOULD THE COURT ORDER --

15 I GUESS I HAVE TO PAY FOR MY OWN
16 TRANSCRIPT.

17 THE COURT: I GUESS, UNLESS YOUR CLIENT
18 IS INDIGENT.

19 MR. COLODNY: NO.

20 THE COURT: ALL RIGHT.

21 MR. COLODNY: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 IF YOU WANT TO ORDER A TRANSCRIPT,
24 YOU WILL HAVE TO SEE THE REPORTER.

25 MR. COLODNY: I WILL DO THAT, YOUR
26 HONOR.

27 THE COURT: ALL RIGHT.

28 BAIL IS EXONERATED IF HE HAS BAIL UP.

EXHIBIT "C"

1 BRUCE COLODNY-SBN107125
LAW OFFICES OF BRUCE COLODNY
2 290 North D St., Suite 704
P.O. Box 10787
3 San Bernardino, California 92423-0787
(909) 862-3113

4 Attorney for Defendant Edgar Padilla Atilano
5

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
10

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,
13 Plaintiff,
14 vs.
15 EDGAR PADILLA ATILANO,
16 Defendant

) Case No.: DJ00CF0066
)
) MOTION TO TRAVERSE/QUASH SEARCH
) WARRANT AND SUPPRESS EVIDENCE
) AND FOR RETURN OF PROPERTY;
) MEMO OF POINTS AND AUTHORITIES;
) and SUPPORTING DECLARATIONS [Penal
) Code Section 1538.5] TESTIMONY
) REQUESTED
)

17
18 TO TONY RACKAUCKAS, DISTRICT ATTORNEY OF ORANGE COUNTY AND HIS
19 AGENTS AND REPRESENTATIVES:

20 PLEASE TAKE NOTICE that on March 30, 2001 at 9:00 a.m., or as soon thereafter as
21 the matter may be heard in the above-entitled court, defendant EDGAR PADILLA ATILANO
22 ("ATILNAO"), by and through his counsel, Bruce Colodny, will move for an order suppressing
23 as evidence all items listed in the return (copy attached hereto as Exhibit 1) to the search warrant
24 issued in this case by the Honorable David T. McEachern on November 10, 1999 seized at 1235
25 Lincoln Avenue #409, Anaheim, California.
26

27 ATILANO will further move the court for an order permitting cross-examination of
28 former California Department of Justice ("DOJ") Agent Joan Young ("YOUNG"), the affiant in

1 the affidavit (copy attached hereto as Exhibit 2) filed in support of search warrant, issued and
2 executed in this case, and for a further order permitting the defendant to present evidence to
3 controvert the factual allegations of this affidavit. Such evidence will include, but not be limited
4 to: Testimony of DOJ Agent Ignatius Chinn (whose undercover purchase from Atilano of one
5 and observation of two more alleged unlawful firearms displayed by Atilano forms virtually the
6 entire basis of the search warrant affidavit of former DOJ Agent Young); Testimony of Randy
7 Rossi, Director of the DOJ Firearms Unit, Testimony by Deputy Attorney General Tim Rieger
8 (who advises Randy Rossi); Documents concerning the DOJ's 10 year practice of identification
9 of firearms as assault weapons (requiring registration and being restricted as to sale) only by the
10 markings upon the receivers or frames of firearms and treating firearms similar in appearance
11 and function as not being assault weapons if such firearms do not bear the specified receiver or
12 frame markings; and Testimony of Dwight Van Horn, former law enforcement forensic firearms
13 expert, who will testify that all the three firearms of the firearms mentioned in the search warrant
14 affidavit were legal on October 30, 1999 when they were purchased and/or observed by CHINN.

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17
18 Said motion will be made pursuant to California Penal Code Section 1538.5, and will be based
19 on this notice of motion, the memorandum of points and authorities served and filed herewith, on
20 such supplemental memoranda of points and authorities as may hereafter be filed with the court
21 or stated orally at the conclusion of the hearing, on all the papers and records on file in this
22 action, on the transcript of the preliminary hearing, and on such oral and documentary evidence
23 as may be presented at the hearing of the motion.

24
25 DATED: March 16, 2001

26 _____
27 BRUCE COLODNY, Attorney for
28 Defendant

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ISSUE PRESENTED

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A search warrant may be traversed if the supporting affidavit contains misstatements or omits material information. Did YOUNG and CHINN include intentionally or recklessly include false or misleading information in the affidavit requiring a traversal of the search warrant? More specifically, the affidavit claims that ATILANO (it is undisputed that ATILANO was a duly licensed firearms who observed all the California and Federal requirements for a retail firearms sale) sold one illegal firearm to CHINN and displayed two more illegal firearms. ATILANO claims that all three firearms were legal to sell or possess on October 30, 1999, the date on which CHINN claims to have purchased the alleged illegal firearm and observed the other two alleged illegal firearms.

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STATEMENT OF ANTICIPATED FACTS

Upon interviewing CHINN's report and preliminary hearing testimony (both in this case, which arises from the alleged unlawful firearms and firearms parts seized during the execution of the search warrant at ATILANO's Anaheim apartment (his licensed premises), and the now-dismissed companion case (People v Atilano, Los Angeles Superior Court Case No. KA046436) arising from ATILANO's sale (as a duly-licensed firearms dealer with completion of the required California and Federal forms and observation of the required 10-day wait) of a firearm alleged to be an assault weapon, and a review of YOUNG'S affidavit in support of the search warrant at issue, the following evidence was deduced, and will be presented at the hearing on this motion:

On October 30, 1999, ATILANO was a duly licensed firearms dealer lawfully displaying firearms for sale at a gun show in Pomona, California. (see Exhibit 2, SW A7: 24-25, SW A8: 10-12, SW A9: 16-17). ATILANO conducted the sale in a lawful manner requiring CHINN both to complete the required California and Federal sales forms (SW A6: 9-10) and to observe the 10 day waiting period before delivery (SW A6:9-10).

In his reports, CHINN states that he observed the Israeli rifle that he purchased to be marked "Galil". However, it was later determined that the word "Galil" did not appear anywhere on the subject firearm. This is very significant, in that the 1989 Roberti-Roos Assault Weapon

1 Control Act ("RRAWCA") which was the only assault weapon statute in effect in 1999,
2 identified assault weapons only by make or model rather than generically by features as does
3 current law. The foreword (copy attached hereto as Exhibit 3) to the Assault Weapon
4 Identification Guide ("AWIG"), which the DOJ was required by statute to publish (PC
5 12276.5(g)) and distribute to law enforcement, concedes that firearms are, "...physically
6 identified as assault weapons by the markings that appear on them" and that "...firearms which
7 may appear identical to specified "assault weapons", but which have different identification
8 markings, are not "assault weapons" within the meaning of the California Penal Code.". This
9 lack of a "Galil" marking was the basis of the Judge's decision to grant the 995 motion in the
10 companion prosecution of Mr. Atilano in the Pomona court (People v Atilano, Los Angeles
11 County Superior Court Case No. KA046346). DOJ documents (see copy of May 6, 1997 letter
12 DOJ Firearms Section Employee Dennis Hilburn attached as Exhibit 4) from have confirmed
13 that the DOJ had previously rejected assault weapon applications for rifles such as Mr. Atilano's
14 which are marked as an "Action Arms IMI Model 331" rather than "Galil". The DOJ never
15 caused the "Action Arms IMI Model 331" rifle to be declared an assault weapon pursuant to PC
16 12276.5 (a-f) nor did the DOJ ever cause a list of identified assault weapons to be published in
17 the California Code of Regulations as required by PC 12276.5(h).

18 As set forth in the attached supporting declaration of Dwight Van Horn (a copy of Mr.
19 Van Horn's resume is attached as Exhibit 5) , until January 1, 2000 (when the new law, PC
20 12276.1 became effective defining assault weapons generically by features) firearms were
21 identified only by the markings on their receivers or frames despite that many firearms existed
22 that were virtually identical in appearance and utilized interchangeable parts. Mr. Van Horn
23 will testify and, the defense counsel expects Mr. Rieger to agree that RRAWCA was lawfully
24 circumvented by manufacturers who responded by marketing renamed but similar semi-
25 automatic firearms until the new generic assault weapon act (PC 12276.1) took effect on January
26 1, 2000. Mr. Van Horn will testify that until that time, it was the custom and practice of licensed
27 California firearms dealers to identify military semi-automatic firearms as lawful for sale by
28 means of their lack of the identification markings set forth in PC 12276. None of this is

1 mentioned in the affidavit. Thus, it was reasonable for ATILANO to conclude that this subject
2 Israeli rifle was legal to sell as it was not marked "Galil".

3 The search warrant affidavit falsely states that Agent Chinn observed Mr. Atilano at the
4 gun show displaying a "pre-Roberti-Roos 16" barrel Uzi with a folding stock and a AK-47 short
5 barrel rifle" which were unregistered assault weapons (SW A7:10-12 and SW A9:12-15). Yet in
6 his preliminary hearing testimony in this case, Agent Chinn admitted that this "pre-Roberti-Roos
7 16" barrel Uzi" that he saw at the gun show was actually a Group Industries firearm that was not
8 marked "Uzi" (RT 67:2-68:17). Further, in his preliminary hearing testimony in this case, Agent
9 Chinn also admitted that the "AK-47 short barrel rifle" that he saw at the gun show was actually
10 a MARS pistol. This is very significant as the DOJ itself admitted in it's August 22, 2000
11 Information Bulletin No. 2000-04-FD (copy attached hereto as Exhibit 6) that this particular
12 firearm was not classified as an assault weapon and could legally be sold up to and including
13 August 16, 2000 (more 9 months after it was displayed by Mr. Atilano).

14 CHINN acted in bad faith in that he had previously demonstrated a failure to familiarize
15 himself with the intricacies of the very complex California firearms laws. On August 18, 1999,
16 two months before he claims to have purchased from and observed the display Atilano of alleged
17 illegal firearms, CHINN testified as an expert witness in the unsuccessful prosecution in People
18 v Scott William Mills, Los Angeles County Superior Court Case No. KA 044547. In the Mills
19 case, CHINN testified that a machine pistol grip-trigger group assembly purchased in an
20 undercover operation at the May, 1999 Great Western Gun Show in Pomona, was actually a
21 machine gun. At the conclusion of that August 18, 1999 preliminary hearing, the Court
22 dismissed the case and further ruled that the subject component part met none of the four
23 definitions of a machine gun set forth in PC 12200 (see pages 8-10 of the reporter's transcript of
24 the Honorable Thomas A. Peterson's ruling at the conclusion of that preliminary hearing; Copy
25 attached hereto as Exhibit 7). This demonstrates bad faith in that just before the investigation of
26 ATILANO, CHINN ignored this notice that California firearms law is extremely complex and
27 that the distinction between lawful and unlawful firearms in this state often is determined by very
28 subtle technical differences.

1 The companion Los Angeles County prosecution of ATILANO mentioned above was
2 dismissed on August 23, 2000 by the Honorable Charles E. Horan (a copy of the reporter's
3 transcript is attached hereto as Exhibit 8). Judge Horan in granting ATILANO's 995 motion
4 criticized CHINN as follows:

5 "...the bear (sic) assertion by Agent Chinn, whose training leaves a little bit to be desired,
6 that in his opinion that weapon is a Galil of the sort to banned under the California law can
7 withstand much scrutiny." (RT 8:23-8:27)

8 "Chinn is no expert in assault weapons as far as the transcript shows. Although he might
9 be quite honest and diligent, he is no expert. Therefore, his bear (sic) assertion should carry little
10 weight.: (RT 12:23-12:27).

11 Finally, as set forth in the attached supporting declaration of defense counsel Bruce
12 Colodny, on March 15, 2001, assigned Deputy District Attorney Erin Rowe stated that the
13 People would not be proceeding with any of the counts alleging unlawful possession of "Galil"
14 rifles. Combined with the unsuccessful companion Los Angeles County prosecution (for selling
15 a firearm that was allegedly an illegal Galil) of ATILANO, this is a further recognition and a
16 concession by the People that ATILANO did sell an illegal weapon despite it's
17 mischaracterization as such by the affidavit.

18 **1.**
19 **A SEARCH WARRANT MAY NOT BE ISSUED EXCEPT UPON A SHOWING**
20 **OF PROBABLE CAUSE; UNDER GATES, THE MAGISTRATE MUST**
21 **CONDUCT A TOTALITY OF THE CIRCUMSTANCES ANALYSIS**

22 Both the Fourth Amendment of the United States Constitution and article I, section 13 of
23 the California Constitution guarantee the right of the people to be secure in their "persons,
24 houses, papers, and effects" against unreasonable searches and seizures. (U.S. Const., amend.
25 IV; Cal. Const., art. I, § 13.) In addition, both the federal and state constitutions require warrants
26 not to be issued except upon a showing of probable cause. (People v. Medina (1985) 165
27 Cal.App.3d 11, 15-16; U.S. Const., amend. IV; Cal. Const., art. I, § 13.)
28

1 This protection applies to all unreasonable government intrusions into legitimate
2 expectations of privacy. (United States v. Chadwick (1977) 433 U.S. 1, 7.) In particular,
3 residents of dwellings have a constitutional right of the highest order to be free from
4 unreasonable entries. (See v. Seattle (1967) 387 U.S. 541, 543.)

5
6 Since a warrant may be issued to search any property at which there is probable cause to
7 believe that fruits, instrumentalities, or evidence of a crime will be found (Zurcher v. Stanford
8 Daily (1978) 436 U.S. 547, 554), two conditions must be met in order for a search warrant to
9 issue: (1) there must be probable cause to believe a crime has been committed and that the
10 particular items sought to be seized are connected with criminal activity or will assist in a
11 particular apprehension or conviction; and (2) there must be probable cause to believe that the
12 items sought to be seized will be found in the place to be searched. (United States v. Harris
13 (1971) 403 U.S. 573, 584.)

14
15 In Illinois v. Gates (1983) 462 U.S. 213, the Supreme Court set forth a "totality of the
16 circumstances" test for determining probable cause to support a search warrant: probable cause
17 exists if, based upon a common sense consideration of all the circumstances set forth in the
18 supporting affidavit, there is a fair probability that contraband or evidence of a crime will be
19 found in a particular place. (Id., at 238.) Further, as the Gates court stated, probable cause is a
20 fluid concept which turns on the assessment of probabilities in particular factual contexts; as a
21 result, the concept is neither readily nor usefully reduced to a neat set of legal rules. (Id. at 230-
22 32.)

23
24
25 In making a determination concerning the existence of probable cause, the magistrate's
26 task is to decide whether the information in the affidavit accompanying the application presents
27 sufficient facts to justify a prudent person in the belief that there is a fair probability that
28

1 contraband or evidence of a crime will be found in a particular place. (Ibid.; United States v.
2 Depew (9th Cir. 1993) 8 F.3d 1424, 1428.)

3
4 **2.**

5 **THE AFFIANT INTENTIONALLY OR RECKLESSLY INCLUDED**
6 **FALSE OR MISLEADING INFORMATION IN THE AFFIDAVIT**
7 **REQUIRING A TRAVERSAL OF THE SEARCH WARRANT.**

8 A search warrant may be traversed on the ground that the supporting affidavit contains
9 misstatements or omits material information. People v. Glance, (1989) 209 Cal.App.3d 836.
10 Information is "material" if its omission would make the affidavit "substantially misleading."
11 People v. Siripongs, (1988) 45 Cal.3d 548; People v. Huston, (1989) 210 Cal.App.3d 192; see
12 also People v. Bradford, (1997) 15 Cal.4th 1229, 1297.

13 If the error was deliberate or made with reckless disregard for the truth, the reviewing
14 court may correct the affidavit, and then retest it. The omitted matters are added, and any
15 misstated matters are deleted, and the affidavit is reassessed to determine if probable cause still
16 exists. If it does, the warrant is upheld; if not, it is quashed. Franks v. Delaware, (1978) 438 U.S.
17 154; People v. Lamas, (1991) 229 Cal.App.3d 560, 567; People v. Bradford, (1997) 15 Cal.4th
18 1229, 1297; People v. Costello, (1988) 204 Cal.App.3d 431; People v. Mayer, (1987) 188
19 Cal.App.3d 1101.]6

20
21 The defendant need only prove that the "allegations of perjury or reckless disregard ... by a
22 preponderance of the evidence." Franks v. Delaware, (1978) 438 U.S. 154, 156. The defendant's
23 challenge to a search warrant based on misstatements or omissions is not precluded by U.S. v.
24 Leon, (1984) 468 U.S. 897, 914.

25
26 **3.**

27 **THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT**
28 **AUTHORIZING THE SEARCH OF 1235 LINCOLN AVENUE #409**
CONTAINS MATERIAL MISSTATEMENTS AND OMISSIONS

1 **AND THE RESTESTED AFFIDAVIT FAILS TO SUPPLY PROBABLE**
2 **CAUSE FOR THE SEARCH OF THE PREMISES**

3
4 In Franks v. Delaware (1978) 438 U.S. 154, the United States Supreme Court recognized
5 that a defendant has a Fourth Amendment right to a hearing to challenge the veracity of statements
6 in an affidavit for a search warrant. The Franks Court also set forth the procedure for controverting
7 factual allegations in search warrant affidavits. According to Franks, if a defendant makes a
8 substantial preliminary showing that the affiant intentionally or recklessly included false material
9 in the affidavit, the reviewing court must excise that information and review what information
10 remains to determine if it still supports probable cause. (Id. at 155-156.)

11
12 Similarly, if the defendant provides proof of material omissions, the reviewing court must
13 add to the affidavit such intentional or reckless omissions and re-evaluate the existence of probable
14 cause in light of this new information. (People v. Maestas (1988) 204 Cal.App.3d 1208, 1216.) If
15 the information remaining in the affidavit, (after deletion of false, or inclusion of omitted
16 information), is not sufficient to establish probable cause, then the evidence seized must be
17 suppressed. (People v. Sandlin (1991) 230 Cal.App.3d 1310, 1316; Franks, supra, 438 U.S. at 157;
18 People v. Luttenberger (1990) 50 Cal.3d 1, 10.)

19
20 As succinctly stated by the Supreme Court in Franks:

21
22 The requirement that a warrant not issue 'but upon probable cause, supported by
23 Oath or affirmation,' would be reduced to a nullity if a police officer was able to
24 use deliberately falsified allegations to demonstrate probable cause, and, having
25 misled the magistrate, then was able to remain confident that the ploy was
26 worthwhile. (Franks, supra, 438 U.S. at 168.)

27 In order to obtain a Franks evidentiary hearing, the attack on the affidavit must be more than
28 conclusory, and must be supported by more than simply a desire to cross-examine. (Id. at 171.) In

1 the instant case the attack upon the affidavit in support of the warrant for 1235 Lincoln Avenue
2 #409, Anaheim California is both specific and justified.

3 The rule enunciated in Franks is applicable, moreover, to affidavits marred by omissions
4 of fact. (United States v. Lefkowitz (9th Cir. 1980) 6118 F.2d 1313, 1317, n. 4.) Whether the
5 alleged judicial deception was brought about by material false statements or material omissions
6 is of no consequence. (United States v. Stanert (9th Cir. 1985) 762 F.2d 775, 781, as amended,
7 769 F.2d 1410. By "reporting less than the total story, an affiant can manipulate the inferences a
8 magistrate will draw." (Id., at 781.) To allow a magistrate to be misled in such a matter "could
9 denude the probable cause requirement of all real meaning." (Ibid.) Accordingly, a Fourth
10 Amendment violation occurs where "the affiant intentionally or recklessly omitted facts required
11 to prevent technically true statements in the affidavit from being misleading." (Ibid.)

12 As detailed herein in support of the motion to traverse, there are several important
13 instances of material misstatements and omissions in the search warrant affidavit for the 1235
14 Lincoln Avenue #409.

15 After making the necessary corrections to the information contained in YOUNG's
16 affidavit, there is undoubtedly insufficient information to support probable cause for issuance of
17 the warrant. (Franks, supra, 438 U.S. at 156.) The evidence obtained as a result the entry and
18 search of the residence at 1235 Lincoln Avenue #409 must therefore be suppressed.

19
20
21
22
23 4.

24 **THE GOOD FAITH EXCEPTION DOES NOT APPLY IN THE INSTANT CASE**
25 **A REASONABLE LAW ENFORCEMENT OFFICER COULD NOT**
26 **HARBOR A GOOD FAITH RELIANCE ON A SEARCH WARRANT**
27 **SO LACKING IN INDICIA OF PROBABLE CAUSE**

28 In United States v. Leon, (1984) 468 U.S. 897, the United States Supreme Court first
formulated the "good faith exception" to the exclusionary rule. According to Leon, the good faith

1 inquiry should be confined to the question of "whether a reasonably well-trained officer would
2 have known that the search was illegal despite the magistrate's authorization." (Id. at p. 922,
3 fn.23.) The fact that a magistrate signs a warrant which has an insufficient affidavit is entitled to
4 no weight in determining whether good faith exists. (People v. Camarella (1991) 54 Cal.3d 592,
5 604-605.) The prosecution bears the burden of proving the good faith reliance of the officers
6 involved. (United States v. Leon, supra, 468 U.S. at p. 924.)

7
8 The Leon court recognized that the good faith exception is only appropriate where an
9 officer's reliance on a warrant is objectively reasonable:

10
11 Nevertheless, the officer's reliance on the magistrate's probable-cause
12 determination and on the technical sufficiency of the warrant he issues must be
13 objectively reasonable (citations omitted) and it is clear that in some
14 circumstances the officer will have no reasonable grounds for believing that the
15 warrant was properly issued.

16 (Id. at pp. 922-923, emphasis added.)

17
18 Accordingly, the Leon court declared that the good faith exception is inapplicable when
19 any of the following are true: when (1) the magistrate "was misled by information in an affidavit
20 that the affiant knew was false or would have known was false except for his reckless disregard of
21 the truth"; (2) the magistrate "wholly abandoned his judicial role"; (3) the affidavit is "so lacking
22 in indicia of probable cause as to render official belief in its existence entirely unreasonable"; or
23 (4) the warrant itself is "so facially deficient - i.e. in failing to particularize the place to be searched
24 or the things to be seized - that the executing officers cannot reasonably presume it to be valid."

25
26 (Id. at p. 923.)

27
28 Reiterating the third and fourth situations above, the fact that a warrant was signed by a
magistrate does not absolve the police officer from exercising reasonable professional judgment, or

1 from having a reasonable knowledge of what the law prohibits. (People v. Johnson (1990) 220
2 Cal.App.3d 742, 749-750; People v. Maestas (1988) 204 Cal.App.3d 1208, 1214-1215; Malley v.
3 Briggs (1986) 475 U.S. 335, 345-346.) Clarifying the third situation above, if a well-trained police
4 officer reasonably could conclude that the question regarding whether probable cause existed was
5 close or debatable, Leon's third situation does not apply. (People v. Camarella, supra, Cal.3d at p.
6 606.) In Camarella, supra, the California Supreme Court stated that the test by which the
7 objective reasonableness of the officer's decision to submit an affidavit to a magistrate is
8 "whether a reasonable and well-trained officer 'would have *known* that his affidavit failed to
9 establish probable cause and that he should not have applied for the warrant.'" (People v.
10 Camarella (1991) 54 Cal.3d 592, 605-606.)

11
12
13 As recognized by the Court of Appeal in Bailey v. Superior Court (1992) 11 Cal.App.4th
14 1107, in which the court found the affidavit lacking and the good faith exception inapplicable:

15
16 Harried magistrates may not always take the care necessary to ensure
17 that the application for the warrant contains sufficient allegations of probable
18 cause. [Citation omitted.] **An officer may not shift all of the responsibility**
19 **for the protection of an accused's Fourth Amendment rights to the**
20 **magistrate.** [Citation.] Therefore, an officer applying for the warrant is
21 required to exercise reasonable professional judgement. (Id. at 1113-1114.)
22 (**emphasis added**)

23 Not only does the affidavit in the present case contain insufficient probable cause on its
24 face, it also contains information that is materially misleading. As pointed out in People v.
25 Maestas (1988) 204 Cal.App.3d 1208, if an officer includes misstatements or omissions in a search
26 warrant affidavit, such conduct raises considerable doubt as to the officer's own belief in the
27 existence of probable cause. As pointed out by the court:
28

1 Whether a well-trained officer could have harbored such an objectively reasonable belief
2 may turn on whether the officer's affidavit contains any misstatements or omissions, as an officer
3 who misrepresents the facts to the magistrate has less reason to believe in the existence of probable
4 cause than an officer who makes no such misrepresentation. In other words, misstatements or
5 omissions in the affidavit may bear upon whether the officer's belief in the existence of probable
6 cause was objectively reasonable regardless of whether they were material to the magistrate's
7 probable cause determination under Franks. [Citation.] (Id. at 1216.)

8 The "good faith" exception is thus inapplicable for the search of ATILANO's premises.
9 Numerous misstatements and omissions of material facts were included in the affidavit.
10 Knowing that the affidavit contained such information, the officers cannot now claim that they
11 relied in good faith on the warrant based thereupon. All evidence obtained as a result of the
12 entry, seizure, and search of the residence, together with all of the fruits thereof must therefore
13 be suppressed.
14

15 ARGUMENT AND CONCLUSION

16 In summary, ATILANO was a duly-licensed dealer who sold a firearm in a completely
17 lawful manner. CHINN insists that the firearm sold was actually a Galil although that word
18 appears nowhere on that firearm. The companion Los Angeles County prosecution of
19 ATILANO for sale of the alleged Galil was dismissed after granting of a 995 motion and, in this
20 case, the People have finally conceded that ATILANO had no Galil rifles by abandoning the
21 counts alleging possession of illegal Galil rifles. CHINN's own testimony, combined with DOJ
22 (the California state agency charged by statute with administering the assault weapon laws)
23 actions, conclusively establishes that the other two firearms that CHINN observed in
24 ATILANO's possession on October 30, 1999 were also not illegal.
25
26

27 Thus, the affidavit is based entirely on CHINN's unfounded assertions that ATILANO
28 sold one illegal firearm and displayed two other illegal firearms. As it has been demonstrated

1 that none of the three firearms falsely characterized in the affidavit are actually illegal, there was
2 no basis whatsoever for the search warrant to issue. Further, since CHINN has a past track
3 record of providing expert testimony that was disregarded and resulted in dismissal of recent
4 prosecutions for alleged illegal firearms activity, the search warrant cannot be saved by the
5 "good faith" holding in Leon, supra.
6

7 The defense respectfully requests that the affidavit and search warrant should be
8 traversed and/or quashed, the evidence suppressed and all lawful firearms and other property
9 seized from ATILANO should be ordered returned to him forthwith.
10

11
12 DATED: March 16, 2001

13 _____
14 BRUCE COLODNY, Attorney for
15 Defendant

16 ///

17 ///

18 SUPPORTING DECLARATION OF DWIGHT VAN HORN

19 I, DWIGHT VAN HORN, declare as follows:

20 I was employed for 13 1/2 years as a forensic firearms examiner by the Los Angeles
21 County Sheriff's Department. In that capacity I qualified and testified as an expert witness in over
22 350 cases. Since my retirement, I have worked as a private forensic firearms expert in civil cases
23 for almost two years. A true and correct copy of my current resume is attached hereto as Exhibit 5.

24 In 1989, I served on an ad hoc California Department of Justice committee convened to
25 study the issue of assault weapon identification.

26 In 1993, I completed a California Department of Justice seminar in Orange County
27 California where in the instructors stated that the DOJ policy was to identify firearms as assault
28 weapons by the means of the markings that appear on the receivers or the frames of the firearms.

1 The DOJ instructors also stated that firearms that appeared identical to the firearms listed as assault
2 weapons in California Penal Code Section 12276 were not considered to be assault weapon unless
3 they bore the specified markings on their receivers or frames as set forth in the list that appears in
4 Penal Code Section 12276.

5 I have reviewed the characteristics of the three firearms identified in the search warrant
6 affidavit in this case and in my professional opinion, none of these three firearms were assault
7 weaons as of October 30, 1999.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and that this declaration is executed at Saugus, California.

10
11 DATED: _____

_____ -
12 DWIGHT VAN HORN

13 ///

14 SUPPORTING DECLARATION OF BRUCE COLODNY

15
16 I, BRUCE COLODNY, declare as follows:

17 I am an attorney at law duly licensed to practice before all courts of the State of
18 California. I am attorney of record for the defendant in the above-entitled matter. If called as a
19 witness therein, I would testify as follows:

20 At approximately, 8:40 a.m., Thursday, March 15, 2001, I spoke by telephone with
21 Deputy District Attorney Erin Rowe. Ms. Rowe told me that the People would not be
22 proceeding with any of the Galil counts in the above-entitled matter.

23 I declare under penalty of perjury that the foregoing is true and correct and this
24 declaration is executed on March 16, 2001 at San Bernardino, California

25
26
27 _____
28 BRUCE COLODNY, Attorney for
Defendant

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EXHIBIT "D"

10-2001 12:58 PM BRUCE COLODNY LAW OFFICE 909 864 8243

P.02

May 10 01 12:24p

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copies mailed to counsel on 5-9-01 by Judge

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY - 9 2001

ALAN SLATER, Clerk of the Court

[Signature]
BY L. SUN

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
vs.
EDGAR PADILLA ATILANO,
Defendant.

Case No.00CF0065
ORDER

Defendant filed a motion to Traverse/Quash the Search Warrant and Suppress Evidence. The matter was briefed and argued on March 30, 2001. Appearing for the People was Brian F. Fitzpatrick, Deputy District Attorney; appearing for the defendant was Bruce Colodny. After hearing, the matter was submitted. Thereafter, with leave of court, the defendant lodged a copy of the California Attorney General's "Assault Weapons Identification Guide," April 1993 Edition. On April 6, 2001 the Court received defendant's Supplemental Memorandum of Points & Authorities. On April 11, 2001 the Court received the People's Supplemental Memorandum of Points & Authorities in Opposition. The matter having been submitted, the Court having considered all of the above materials, the Court rules as follows: The motion to traverse is GRANTED. The defendant's motion to suppress is DENIED, pending further evidentiary hearing.

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P.03

May 10 01 12:24p OfficeMax, Orange (075) 714 834 9200

P.2

1 Franks Hearing

2 The defendant has made a substantial preliminary showing that material in
3 the search warrant affidavit was false and that the cause of that
4 information may have been reckless disregard.

5 As a preliminary matter, the Court rejects any contention that it is
6 limited in its analysis to the conduct of the affiant officer. Rather,
7 case law provides that the Court must evaluate the Franks factors as to
8 the conduct of the affiant's source, if that source is identified clearly
9 as a fellow law enforcement agent. Under the principle elucidated in
10 United States v. Johns (9th Cir. 1988) 851 F.2d 1131, 1134, fn1, a
11 defendant may properly attack the veracity of the source of the affiant's
12 information, even if the affiant has a good faith belief in matter told to
13 her by another law enforcement officer.¹ That is what happened in the
14 case at bar. Agent Chinn told the affiant certain information, which the
15 affiant then recited into the affidavit and the magistrate later
16 considered.

17 Thus, the focus of this inquiry is whether the defendant has made a
18 prima facie showing, warranting a hearing on the question of whether Agent
19 Chinn's identification of three weapons as illegal "assault weapons" was
20 wrong and whether the material misstatements were the product of
21 intentional falsity or reckless disregard for the truth. Having
22 considered the motions papers and attachments, including the March 28,
23 2001 Declaration of Dwight D. Van Horn, the California Attorney General's
24 Assault Weapons Identification Guide, and the preliminary hearing
25 testimony, the Court concludes that the defendant has made a prima facie
26 showing that: (1) None of the 3 weapons identified in the search warrant

27

28 ¹ To this extent, the Court disagrees with the People's position,
stated at page 2 in their opposition brief. Search warrant affidavits
utilizing informant information are distinguishable from officer-to-
officer communications. Cf. People v. Sandlin (1991) 230 Cal.App.3d 1310.

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P.04

1 affidavit were illegal as of the date of the affidavit; (2) there was
2 nothing else in the affidavit upon which a reasonable magistrate could
3 know otherwise; and (3) the statutory language of Section 12276; available
4 supporting documentation from the State Attorney General, as well as
5 experience in the field, would have placed Agent Chinn on notice of the
6 need to make further information available to the magistrate at the time
7 of the seeking of the search warrant.

8 Accordingly, it is the order of this Court that the matter be set
9 for evidentiary ~~Frank's~~ hearing. Counsel shall meet and confer prior to
10 the next hearing date of May 11, 2001, so as to propose a date for such
11 hearing.

12 The Clerk shall serve a copy of this order on counsel.

13 SO ORDERED this 8th Day of May, 2001.

14
15
16 
17 ~~Nancy Wieben Stock, Judge~~

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Haydee Villegas, am employed in the City of San Pedro, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 407 North Harbor Boulevard, San Pedro, California 90731.

7 On April 3, 2002, I served the foregoing document(s) described as

8 **REQUEST FOR JUDICIAL NOTICE**

9 on the interested parties in this action by placing

10 the original

11 a true and correct copy

12 thereof enclosed in sealed envelope(s) addressed as follows:

13 Douglas J. Woods
14 Attorney General's Office
15 1300 "I" Street, Ste. 125
16 Sacramento, CA 94244-2550

17 (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under the practice it would be deposited with the
19 U.S. Postal Service on that same day with postage thereon fully prepaid at San Pedro,
20 California, in the ordinary course of business. I am aware that on motion of the party
21 served, service is presumed invalid if postal cancellation date is more than one day after
22 date of deposit for mailing an affidavit.

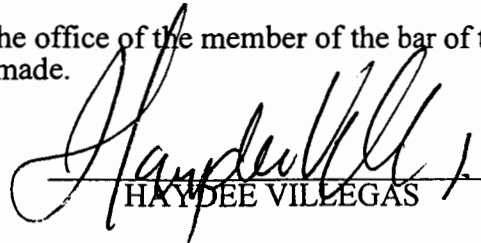
23 Executed on April 3, 2002, at San Pedro, California.

24 X (VIA OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of
25 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under
26 the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for
27 receipt on the same day in the ordinary course of business. Such envelope was sealed and
28 placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for
in accordance with ordinary business practices.

Executed on April 3, 2002, at San Pedro, California.

X (STATE) I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of the member of the bar of this
of this court at whose direction the service was made.


HAYDEE VILLEGAS