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11 Attorneys for Plaintiffs

FILED
JAN 09 2008
FRESNO COUNTY SUPERIOR COURT
By _____
NAG DEPUTY

FILED BY FAX

12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

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

17 Plaintiffs,)

18 v.)

19 STATE OF CALIFORNIA; WILLIAM)
20 LOCKYER, Attorney General of the State of)
California; CALIFORNIA DEPARTMENT)
21 OF JUSTICE; Does 1-100;)

22 Defendants.)

CASE NO. 01CECG03182

**SUPPLEMENTAL DECLARATION
OF JASON A. DAVIS IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER; EXHIBITS "Q-
Y"**

Date: January 23, 2008
Time: 3:30 p.m.
Dept: 72

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25 Plaintiffs, Edward W. Hunt, et. al., submit the following declarations and exhibits in support
of Plaintiffs' Opposition to Defendants' Motion for Protective Order:

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DECLARATIONS

1. Supplemental Declaration of Jason A. Davis

EXHIBITS

Exhibit "Q" - Correspondence of Alison Merrilees from July 20, 2005 to December 6, 2006

Exhibit "R" - Correspondence of Mike Small from November 1, 1998 to May 15, 2006

Exhibit "S" - Correspondence of Jeff Amador from March 2, 2004 to August 14, 2006

Exhibit "T" - Information taken from the California Department of Justice's website relating to Micheal Guisto's law enforcement firearm training.

Exhibit "U" - Proposed Request for Clarification Governing Constitutional Standard on Constitutional Vagueness Claims

Exhibit "V" - Proposed Order Denying Plaintiffs' Motion for Summary Judgment

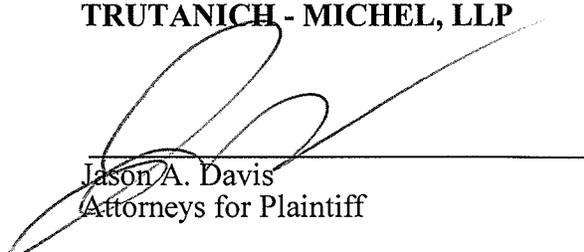
Exhibit "W" - Objections to Defendants' Proposed Order

Exhibit "X" - Deposition Transcripts of Ignatius Chinn dated December 11, 2007

Exhibit "Y" - Organizational Chart of the Bureau of Firearms

Date: January 9, 2008

TRUTANICH - MICHEL, LLP



Jason A. Davis
Attorneys for Plaintiff

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DECLARATION OF JASON A. DAVIS

I, the undersigned, declare as follows:

1. I am an attorney at law, duly licensed to practice and practicing before all the Courts of the State of California. I am an associate with the law firm of Trutanich•Michel, LLP, attorneys of record for Defendant in this action. I am one of the attorneys assigned to this matter and, as such, I am readily familiar with this litigation. The facts herein are within my personal knowledge and if called and sworn as a witness, I would and hereby do, testify competently thereto.

2. In response to this Court’s MSJ Order, and after inspecting thousand of documents obtained through Public Records Act requests (not provided in Defendants response to discovery requests), Plaintiffs identified a number of key people within the Bureau of Firearms that they believe have information likely to lead to the discovery of admissible evidence.

3. Plaintiffs noticed the following Department of Justice (“DOJ”) employees who provide ongoing advice and clarification to the general public, firearms dealers, and/or law enforcement agencies regarding the interpretation and enforcement of regulations under the AWCA: 1) Alison Merrilees; 2) Dale Ferranto; 3) Jim Biscailuz; 4) Steve Bufford; 5) Mike Gusto; 6) Brent George; 7) Mike Small; and 8) Jeff Amador.

4. Mike Small was formerly employed with the Permits Department of the Bureau of Firearms and communicated directly with the public regarding “Assault Weapons,” “Assault Weapons” permits, and applications for “Assault Weapons” permits. Jeff Amador is currently employed with the Permits Department of the Bureau of Firearms and communicated directly with the public regarding “Assault Weapons,” “Assault Weapons” permits, and applications for “Assault Weapons” permits. True and correct copies of examples of these communications of Mike Small and Jeff Amador are attached hereto as Exhibits “R” and “S.”

5. Alison Merrilees is a Deputy Attorney General within the Bureau of Firearms whose duties include providing clarification to the public regarding the application and interpretation of

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1 California's "Assault Weapons" Laws and Department of Justice regulations concerning assault
2 weapons. Examples of these communications are attached hereto as Exhibit "Q." Ms. Merrilees
3 has knowledge and information relating to prosecutions under the AWCA statutes and regulations
4 at issue in this case.

5 6. Steve Bufford and Dale Ferranto are employed within the California Department of
6 Justice, Bureau of Firearms. These individuals conduct education seminars concerning firearm
7 laws and regulations, and may have knowledge and information relating to prosecutions under the
8 AWCA statutes and regulations at issue in this case. A copy of the organizational chart for the
9 California Department of Justice, Bureau of Firearms is attached hereto as Exhibit "Y."

10 7. Michael F. Giusto is an instructor for the California Department of Justice California
11 Criminalistics Institute, which instructs law enforcement on various issues relating to firearms
12 manufacturing processes, firearms safety, *nomenclature*, and tool marks. As an instructor he has
13 communications with law enforcement regarding these topics. As well, he may have
14 communications with the public regarding these topics and/or knowledge and information relating
15 to prosecutions under the AWCA statutes and regulations at issue in this case. Information taken
16 from the world wide web in support of this is attached hereto as Exhibit "T."

17 8. Jim Biscailuz is an Agent within the Bureau of Firearms in a position similar to that held
18 by Chris Abad and Ignatius who have already been deposed by Plaintiffs and provided
19 information relevant to this proceeding. Mr. Biscailuz communicates with the public regarding
20 provisions of the AWCA and has additional knowledge and information relating to prosecutions
21 under the AWCA statutes and regulations at issue in this case.

22 9. Brent George engages in communications with the public regarding provisions of the
23 AWCA and responds to online submissions for requests for clarifications from the Department of
24 Justice website. As well, Mr. George may have knowledge and information relating to
25 prosecutions under the AWCA statutes and regulations at issue in this case.

26 10. After this Court ruled on the cross Motions for Summary Judgment, Defendants began
27 a six month long protracted attempt to depose these ten key employees with the DOJ (and

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1 Wilfredo Cid) that would have information likely to lead to admissible evidence. After six
2 months, Plaintiffs were able to depose two witnesses and subsequently declined to compel
3 Wilfredo Cid. (See Exhibits "A-O" in support of Plaintiffs' Motion to Compel.)

4 11. Defendants argue that Plaintiffs have prepared an additional 24 deposition notices.
5 This is false. Plaintiffs stated that there are an additional 24 persons that Plaintiffs have identified
6 as corresponding with the public and may be noticed if, and only if, information obtained from the
7 persons already noticed for depositions indicates that they would likely have information leading
8 to admissible evidence.

9 12. Plaintiffs' position regarding the constitutional standard of review is more fully detailed
10 in the attached proposed Request for Clarification as to the controlling constitutional standard of
11 review that Plaintiffs and Defendants jointly drafted, but was never filed. If the court had adopted
12 Defendants' position during litigation of the summary judgment issues, summary judgment would
13 likely have been granted in their favor. It was not. A true and correct copy of the most recent
14 version of the proposed Request for Clarification is attached hereto as Exhibit "U."

15 13. Defendants already argued their position regarding the governing constitutional
16 standard in their Proposed Order following the court's consideration of the motions for summary
17 judgment. A true and correct copy of the proposed order is attached hereto as Exhibit "V."

18 14. Plaintiffs' objected to Defendants' position whereafter the court rejected Defendants'
19 position in a one sentence opinion stating that the "Tentative Ruling became the order of the court
20 [and] no further order is necessary." A true and correct copy of Plaintiffs' objections to the
21 proposed order is attached hereto as "Exhibit W."

22 15. Defendants continue to insist that the standard of review issue must be resolved in order
23 for discovery or settlement discussions to move forward. Accordingly, in a cooperative effort to
24 move forward with discovery, Plaintiffs' agreed to join in the request for this court to clarify its
25 standard of review for the due process issues.

26 16. In honoring this agreement, Plaintiffs provided their brief on this issue to Defendants
27 almost four months ago. To date, Defendants have yet to file this request with the court or even

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1 informed Plaintiffs of if and when they still intend to do so. A true and correct copy of the most
2 recent version of the Request for Clarification is attached hereto as Exhibit “U.”

3 17. The MSJ Order indicates a concern over the lack of prosecution. In the two depositions
4 that have proceeded, multiple prosecutions have already been identified. Plaintiffs believe that the
5 noticed parties can provide additional information relating to prosecutions involving “flash
6 suppressors” and/or “high-capacity magazines – or the lack thereof due to the vagueness of the
7 provisions.

8 18. Testimony of DOJ employees about their communications with the public and law
9 enforcement agencies regarding their confusion over the regulations and differing interpretations
10 provided by the agency charged with promulgating these regulations is the only method short of a
11 state-wide survey that is *likely to lead to the discovery of admissible evidence* – including, but not
12 limited to:

- 13 • the number and frequency of public requests for clarification,
- 14 • the identity of persons who have sought clarification,
- 15 • the responses given by the DOJ to clarification requests,
- 16 • prosecutions of persons involving the subject matter of this litigation,
- 17 • conflicting communications with the public,
- 18 • witnesses who have relied upon the DOJ’s interpretations, and
- 19 • non-produced written discovery relating to the same.

20 True and correct copies of these communications are attached hereto as Exhibits “Q-T.”

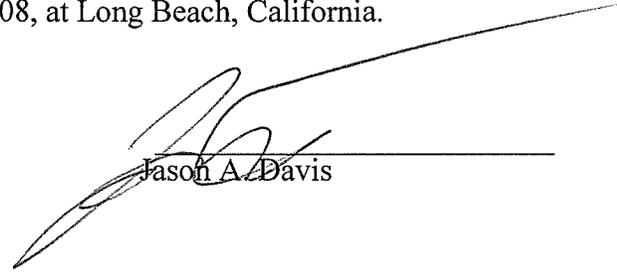
21 19. The DOJ “flash suppressor” regulation, and the lack of a regulation defining
22 “permanently alter” fail to provide adequate notice to the public or adequate guidance to law
23 enforcement regarding what conduct is prohibited by the Act. The Act subjects the public to
24 arbitrary and discriminatory enforcement of regulations that could lead to a felony conviction and
25 prison time for otherwise innocent behavior. The lack of an “actual knowledge” scienter
26 requirement exacerbates this problem.

27 20. The head of this agency is Attorney General Edmund G. Brown. Beneath the Attorney
28 General is the Law Enforcement Division headed by George Anderson. George Anderson oversees
the Bureau of Firearms which is headed by Wilfredo Cid. Dale Ferranto is an Assistant Bureau
Chief within the Bureau of Firearms under Wilfredo Cid. Below Mr. Ferranto sits Steve Bufford
within the Firearms Program Operations division. A true and correct copy of the organizational

1 chart of the California Department of Justice, Bureau of Firearms is attached hereto as Exhibit "Y."

2 I declare under penalty of perjury under the laws of the State of California that the foregoing
3 is true and correct.

4 Executed this 9th Day of January, 2008, at Long Beach, California.

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6  Jason A. Davis
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I
5 am over the age eighteen (18) years and am not a party to the within action. My business address is
180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

6 On January 9, 2008, I served the foregoing document(s) described as

7 **SUPPLEMENTAL DECLARATION OF JASON A. DAVIS IN SUPPORT**
8 **OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR**
9 **PROTECTIVE ORDER; EXHIBITS "Q-Y"**

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 Mr. Mark Beckington
14 Deputy Attorney General
Government Law Section
California Department of Justice
300 South Spring St., Ste. 1702
Los Angeles, CA 90013

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

Executed on January 9, 2008, at Long Beach, California.

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

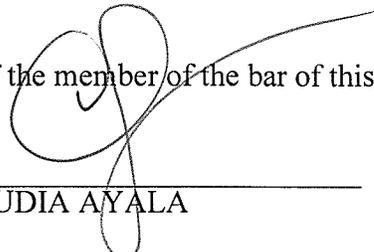
Executed on January 9, 2008, at Long Beach, California.

23 (PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of
the addressee.

Executed on January 9, 2008, at Long Beach, California.

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

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



CLAUDIA AYALA

EXHIBIT Q

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-4887

July 20, 2005

Mark Cc

RE: Walther P-22

Dear Mr. Cc

This correspondence is in response to your letter dated May 17th, 2005 in which you posed seven specific questions regarding the Walther P-22 issue. For your convenience, preceding each of the seven answers the corresponding question from your letter is re-stated.

Q1: Is the threaded barrel while attached to the handgun the sole violation of California Law?

A1: Yes, as originally manufactured.

Q2: In the letter, you mention that having the pistol modified to have the threads permanently covered complies with California law. Does this relate solely to California Statute 2003 Dangerous Weapons Controls Law Chapter 2.3, Article 1, section 12276.1 (a)(4)(A)?

A2: Yes, because it is pursuant to Penal Code section 12276.1(a)(4)(A), that the threaded barrel on the Walther P-22 make it an assault weapon.

Q3: What other options are available for me to bring this pistol into compliance with state law?

A3: Removal of the offending characteristic (threaded barrel) is the only option by which the Walther P-22 can be made lawful as a non-assault weapon.

Q4: Is the ability to modify the pistol exclusively that of Smith & Wesson's and if so, which statute/law makes that true?

A4: No. However, the Smith & Wesson retrofit is the only method that the Department of Justice has determined to be sufficient in eliminating the threaded barrel characteristic. As such, Walther P-22s retrofitted by Smith & Wesson do not require any additional examination by DOJ. While any person with the needed gunsmithing skills may perform the alteration to remove the threaded barrel characteristic, such alteration would require individual examination by DOJ Firearm experts to ensure the alteration suffices in making the P-22 compliant with state law. Additionally, as you are well aware, the Smith & Wesson alteration is being offered to Walther P-22 owners free of charge.

Mark Condes
July 20, 2005
Page 2

Q5: Has there been some sort of legal extension granted to the owners of the Walther P-22 with threaded barrel, so we escape any legal action for the 45 days you have listed on my letter? Where may I get a copy of this directive?

A5: California law does not provide any exception or extension for owners of Walther P-22s. As stated in the DOJ letter to Walther P-22 owners, the retrofit "will protect you from any enforcement action relating to the assault weapon statute for the pistol that has been retrofitted." Prior to completion of the retrofit making the P-22 a lawful firearm, the Department does not have statutory authority to grant any sort of formal exception to existing law. However, based on the unfortunate circumstances in which P-22 purchasers were not at fault in acquiring a firearm later determined to be illegal, we are confident that local law enforcement and district attorneys throughout the state will follow the Department's lead in not taking any arrest/prosecution action against P-22 owners participating in the Smith & Wesson retrofitting program.

Q6: If this violation is purely about the threaded barrel, can I just send the barrel out of state but keep the rest of the pistol?

A6: Yes. Because the threaded barrel was the only characteristic that made the Walther P-22 illegal for sale, purchase or possession in California, removing the barrel and sending it out of state would make the pistol lawful.

Q7: Other than the issue of the threaded barrel, does the Walther P-22 meet all other safety requirements for handguns allowed to be sold in this state?

A7: Yes.

If you have any additional questions regarding this issue, please feel free to contact me at (916) 263-0802.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-4887

August 04, 2005

Edwin C. Mann
Attorney at Law
2589 Carpenter Street
Thousand Oaks, CA 91362

DET DAN GLOZER
TO: ~~SGT ATKINSON~~
FM: ED MANN
(805) 368-4014

RE: Civil War Artillery

Dear Mr. Mann:

This letter is in response to your letter dated May 18, 2005 requesting reconsideration of our previous direction regarding "fixed ammunition" and muzzleloading cannons. After conducting exhaustive research on the issue, we have concluded that although historically accurate, our previous definition of "fixed ammunition" was not consistent with modern use of the term and its application to Penal Code (PC) section 12301. We believe the federal definition of "fixed ammunition" (a self-contained unit consisting of the case, primer, propellant charge, and projectile or projectiles) accurately represents the intended meaning of the term as it is used throughout the California Penal Code and specifically in section 12301 PC.

You also requested clarification on the distinction between "antique cannons" and "replica antique cannons" as mentioned in our May 11, 2005 correspondence. Section 12301(a)(3) PC clearly defines "antique cannons" while excluding them from being considered destructive devices. For purposes of identifying destructive devices pursuant to PC section 12301 "non-antique" cannons, including "antique replicas", would be excluded provided they do not fire fixed ammunition. Generally, "muzzleloading" black powder cannons (antique and non-antique) would not be considered destructive devices because they do not fire fixed ammunition.

Once again, we caution that local District Attorneys are duly elected constitutional officers and may disagree with our interpretation of PC Section 12301. Therefore, we strongly advise individuals who possess muzzleloading cannons to consult with their local authorities regarding the lawful ownership and use of such weapons. We thank you for your dedicated attention to this matter and encourage you to contact us if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General
Firearms Division

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-6275

September 27, 2005

Mr. Benjamin Cannon
1083 Vine Street, #215
Healdsburg, CA 95448

Re: JP Rifles CTR-02

Dear Mr. Cannon:

I am writing in response to your letter to Tim Rieger dated September 20, 2005. You asked about the legality of purchasing and possessing a JP Rifles CTR-02 in California. As you pointed out in your letter, that particular make and model is not listed as an assault weapon in the list promulgated by the Department in response to the *Harrot v. County of Kings* case.

As long as the rifle does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3), it is legal to purchase and possess in California. You should be aware, however, that the JP Rifles CTR-02 is virtually identical to rifles that are now listed as assault weapons by the Department, and may be considered an assault weapon in the near future.

Please feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-4887

October 6, 2005

Sergeant Daryl Noonan
4309 NW Ridgecrest Drive
Lawton, Oklahoma 73505

Re: High Capacity Magazines

Dear Sergeant Noonan:

Thank you for your letter to the Firearms Division of the California Department of Justice. In response to your inquiry, it is not illegal to possess "high capacity magazines" (with the ability to hold more than 10 rounds) in California. However it is illegal to import them into the state. Under California Penal Code section 12020(a)(2), a person who "manufactures... imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends, any large-capacity magazine" is guilty of a crime that is punishable by imprisonment in the county jail not exceeding one year or in the state prison. You may legally possess the large-capacity magazines in California, as long as you do not sell, or otherwise transfer them.

If you altered the magazines so that they held no more than 10 rounds before moving to California, you could lawfully import them into the state. Once you were in California, you could lawfully possess them. However, you could not legally convert them back into large-capacity magazines without violating 12020(a)(2).

I hope this information is helpful. Please feel free to email or call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-4887

November 1, 2005

Mr. Matthew P. Foose
95 South Market Street, Suite 300
San Jose, CA 95113

Dear Mr. Foose:

I am writing in response to your letter dated October 4, 2005 regarding the sale of 80% completed firearms receivers in California. You asked about two different types of receivers: an AR-15, and a Government Model 1911. The answer to your question depends upon the type of receiver at issue.

As you pointed out in your letter, the manufacture and sale of AR-15's is illegal in California pursuant to Penal Code 12280. It is also illegal to possess an unregistered AR-15 rifle in California, whether the rifle is a Colt AR-15, or another version of that model. It is also illegal to "cause" an assault rifle "to be manufactured." Therefore, it would be illegal to sell AR-15 receivers in California to persons intending to "manufacture" their own AR-15 rifles, even if the receivers were only 80% completed.

Government Model 1911 pistols, on the other hand, are legal to own in California. Receivers for 1911 models that are 80% completed may be sold to purchasers who intend to "manufacture" their own pistols. When the firearms are complete, the owners will need to apply for a serial number from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives. The completed pistols cannot be sold by a California licensed firearms dealer, however, unless they are tested by a DOJ-certified laboratory, and listed for sale on the DOJ Roster of handguns that are approved for sale in the state. A person cannot "manufacture" more than five firearms per year without a state firearms manufacturing license.

I hope that this information was helpful. Feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-6275

November 10, 2005

Re: Clarification of California Law Regarding Large-Capacity Magazines

Dear [REDACTED]

I am writing in response to your letter (undated) regarding large-capacity ammunition magazines. You had a number of questions:

Q1: Can you import newly manufactured parts to repair a legally obtained hi-cap magazine?

A1: Yes.

Q2: Are there any restrictions on which parts can and cannot be imported?

A2: No.

Q3: Can you import all the parts of a single hi-cap magazine at once, provided they are unassembled?

A3: Yes.

Q4: Can a California resident travel to another state, purchase a hi-cap magazine in that state, disassemble it and ship the required replacement parts back to themselves in California?

A4: Penal Code section 12020(a)(2) makes it illegal to import a large capacity magazine into the state of California. If you traveled to another state in order to import a large capacity magazine, you would be guilty of a felony, even if you disassembled the large capacity magazine before returning to California. If you disassembled the large capacity magazine with the intent to use it only as repair parts, you could lawfully bring the parts in to California. In either case, you would test the limits of the law, and be at risk of criminal prosecution.

- Q5: Can you replace the magazine body with one marked "For Law Enforcement Only?"
- A5: While theoretically you could use such a part to repair a lawfully owned large capacity magazine, most dealers would be unlikely to sell you such a magazine body, unless you were a law enforcement officer.
- Q6: *Is there any limitation to the number of parts you can replace in a legally obtained hi-cap magazine? (Scenario: if on successive days I replace each individual part of a legally obtained hi-cap magazine, am I guilty of assembling a new hi-cap magazine once the final part is replaced?)*
- A6: Whether the scenario you describe constitutes repairing or manufacturing a large capacity magazine depends upon the legal opinion of the prosecutor in the jurisdiction where the acts occur. There are 58 district attorneys in California's 58 counties. They could elect to prosecute you for a felony (Penal Code 12280(a)(2)), if they believed that you were manufacturing a large capacity magazine.
- Q7: *If the magazine body is replaced with one clearly manufactured after 2000 . . . is there any burden of proof upon a California resident that they did in fact replace a worn/obsolete part and did not illegally purchase/import a new hi-cap magazine.*
- A7: A California resident who repairs a large capacity magazine that was owned before January 1, 2000 does not have any "burden of proof" that the magazine was repaired, rather than replaced with a new magazine. However, it would be prudent in such a case to keep records documenting the purchase of the part necessary for the repair in order to demonstrate that the large capacity magazine was repaired, not replaced.
- Q8: *Can you use parts designed for a 10-round magazine to repair a legally obtained hi-cap magazine?*
- A8: If parts designed for a 10-round magazine are interchangeable with parts of a legally obtained large capacity magazine, there is no legal barrier to using them.
- Q9: *Can you have enough spare parts to assemble a new hi-cap magazine provided they are unassembled and intended for use as replacement parts?*
- A9: Whether the scenario you describe constitutes possession of magazine parts with the intent to manufacture or with the intent to repair a large capacity magazine depends upon the legal opinion of the prosecutor in the jurisdiction where the acts occur. You could be charged with a felony (Penal Code 12280(a)(2)), if a prosecutor believed that you were manufacturing a large capacity magazine.

I hope that this information was helpful. Please feel free to contact me again if you have any additional questions.

Sincerely,



ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-6275

November 10, 2005

Robin Yang
30152 Bridgeview Way
Hayward, CA 94544

Re: Clarification of California Law Regarding Large-Capacity Magazines

Dear Robin Yang:

I am writing in response to your letter (undated) regarding large-capacity ammunition magazines. You had a number of questions:

Q1: Can you import newly manufactured parts to repair a legally obtained hi-cap magazine?

A1: Yes.

Q2: Are there any restrictions on which parts can and cannot be imported?

A2: No.

Q3: Can you import all the parts of a single hi-cap magazine at once, provided they are unassembled?

A3: Yes.

Q4: Can a California resident travel to another state, purchase a hi-cap magazine in that state, disassemble it and ship the required replacement parts back to themselves in California?

A4: Penal Code section 12020(a)(2) makes it illegal to import a large capacity magazine into the state of California. If you traveled to another state in order to import a large capacity magazine, you would be guilty of a felony, even if you disassembled the large capacity magazine before returning to California. If you disassembled the large capacity magazine with the intent to use it only as repair parts, you could lawfully bring the parts in to California. In either case, you would test the limits of the law, and be at risk of criminal prosecution.

Q5: Can you replace the magazine body with one marked "For Law Enforcement Only?"

A5: While theoretically you could use such a part to repair a lawfully owned large capacity magazine, most dealers would be unlikely to sell you such a magazine body, unless you were a law enforcement officer.

Q6: *Is there any limitation to the number of parts you can replace in a legally obtained hi-cap magazine? (Scenario: if on successive days I replace each individual part of a legally obtained hi-cap magazine, am I guilty of assembling a new hi-cap magazine once the final part is replaced?)*

A6: Whether the scenario you describe constitutes repairing or manufacturing a large capacity magazine depends upon the legal opinion of the prosecutor in the jurisdiction where the acts occur. There are 58 district attorneys in California's 58 counties. They could elect to prosecute you for a felony (Penal Code 12280(a)(2)), if they believed that you were manufacturing a large capacity magazine.

Q7: *If the magazine body is replaced with one clearly manufactured after 2000 . . . is there any burden of proof upon a California resident that they did in fact replace a worn/obsolete part and did not illegally purchase/import a new hi-cap magazine.*

A7: A California resident who repairs a large capacity magazine that was owned before January 1, 2000 does not have any "burden of proof" that the magazine was repaired, rather than replaced with a new magazine. However, it would be prudent in such a case to keep records documenting the purchase of the part necessary for the repair in order to demonstrate that the large capacity magazine was repaired, not replaced.

Q8: *Can you use parts designed for a 10-round magazine to repair a legally obtained hi-cap magazine?*

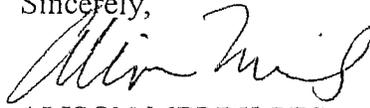
A8: If parts designed for a 10-round magazine are interchangeable with parts of a legally obtained large capacity magazine, there is no legal barrier to using them.

Q9: *Can you have enough spare parts to assemble a new hi-cap magazine provided they are unassembled and intended for use as replacement parts?*

A9: Whether the scenario you describe constitutes possession of magazine parts with the intent to manufacture or with the intent to repair a large capacity magazine depends upon the legal opinion of the prosecutor in the jurisdiction where the acts occur. You could be charged with a felony (Penal Code 12280(a)(2)), if a prosecutor believed that you were manufacturing a large capacity magazine.

I hope that this information was helpful. Please feel free to contact me again if you have any additional questions.

Sincerely,



ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-4887

December 7, 2005

Mr. Elliot Pembrook
739 Glen Avenue
Glendale, CA 91206

Re: CMMG MOD4SA Semi-Auto AR-15 Type Lower Receiver

Dear Mr. Pembrook:

I am writing in response to your letter (undated) regarding the above-referenced firearm. You asked about the legality of purchasing and possessing a "CMMG MOD4SA semi-auto AR-15 type lower receiver."

We are not familiar with that particular make and model of firearm, so cannot give a definitive opinion about whether or not it is legal in California. We would be happy to examine the firearm itself, or a photo thereof, in order to render an opinion.

You should be aware, however, that the receiver may be illegal if it has any of the characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could decide to prosecute you for possession of an assault weapon, regardless of our opinion about the legality of the firearm.

Please feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 12, 2005

Ms. Amanda Sitar
Stag Arms
515 John Downey Drive
New Britain, CT 06051
Fax: (860) 229-3738
Phone: (860) 229-9994

Re: Importation of Stag-15 Lower Receiver into California

Dear Ms. Sitar:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now listed as assault weapons by the Department. It will be added shortly to the DOJ Assault Weapons Identification Guide and will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

December 19, 2005

okay?
OK

Mr. Gene Maly
MMS
256 Figueroa Street, #3
Monterey, CA 93940

Re: Your letter to the Firearms Division

Dear Mr. Maly,

I am writing in response to your letter dated November 1, 2005, requesting clarification about producing and selling partially completed AR-15 type lower receivers in California. You asked at what "point of completion (i.e. 0%, 40%, 80%, 99%, or only fully completed) is an AR-15 type lower receiver, not listed on the DOJ roster by name, considered to be an assault weapon in California?" It does not really matter how close a receiver is to being complete. The determination of whether a manufacturer is operating within the law depends on the product that is manufactured. If a lower receiver that is virtually identical to a lower receiver already banned in California is being manufactured, the manufacturer could face liability under Penal Code 12280(a), regardless of how much of the receiver is completed.

You also asked "at which point of completion would the magazine have to be pinned or welded in an AR type lower receiver, so that it would not be considered an assault weapon even if not completed?" Again, the relevant question is what product is being manufactured? If a lower receiver has more than minor differences from a banned assault weapon, it probably does not matter when the magazine of the receiver are pinned and welded. On the other hand, the manufacturer could face criminal liability under Penal Code 12280(a) for manufacturing a lower receiver with only minor differences from an assault weapon, even after pinning or welding the magazine.

We would be happy to render an opinion about the legality of a lower receiver you intend to produce, but can only do so if you provide a prototype of the lower receiver to our office. If you would like to submit a sample for examination, please contact me for instructions about how to do so.

I hope that this information is helpful.

Sincerely,

ALISON MERRILEES
Deputy Attorney General

For

BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916) 263-0676

December 12, 2005

Mr. Clint McKee
Fulton Armory
8725 Bollman Place, #1
Savage, MD 20763

Re: Importation of FAR-15 Lower Receiver into California

Dear Mr. McKee:

I am writing in response to your inquiry about whether it is legal to send a FAR-15 lower receiver to California.

The FAR-15 is not listed as a Category One assault rifle in California Penal Code 12276. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the FAR-15 lower receiver is virtually identical to rifles that are now listed as assault weapons by the Department. It will be added shortly to the DOJ Assault Weapons Identification Guide and will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the FAR-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



P.O. BOX 160487
SACRAMENTO, CA 95816-0487

Facsimile: (916) 263-0676
(916) 263-0802

December 21, 2005

Mr. Richard Garvey
7009 Fernhill Drive
Malibu, CA 90265

RE: The Legality of Certain AR-15 Series Receivers

Dear Mr. Garvey:

I am writing in response to your letter dated October 14, 2005. In your letter, you posed a number of questions about the legality in California of certain AR-15 series receivers in California.

First, you inquired about whether you could modify an AR-15 series receiver so that it would have more than "minor differences" from the original banned receiver. Specifically, you inquired about obtaining an AR-15 receiver with a fixed magazine from an out-of-state manufacturer or distributor and having that receiver delivered to a federally licensed firearms dealer (FFL) in California. Whether such a receiver would be legal to buy and own in California depends upon the manner in which the magazine is affixed. We cannot offer an opinion about a receiver we have not examined. You might consider importing an AR-15 receiver that we have already approved, such as the FAB-10, Hess or the Vulcan Arms.

You also asked about manufacturing a "homebuilt rifle receiver," by attaching a magazine that would not be readily detachable and would accept no more than ten rounds of ammunition. Whether such a receiver would be legal to build and own in California depends on the manner in which the magazine is affixed. While we would be happy to offer our opinion about such a modification, we can only do so after examining the modified receiver itself. If you would like to submit a sample for examination, please contact me for instructions about how to do so.

Also, you should be aware that a local district attorney who believed you were manufacturing an assault weapon could file charges against you for violating Penal Code 12280(a). Finally, you should consult with our office and the federal Bureau of Alcohol, Tobacco, Firearms and Explosives to ensure that you are in compliance with all state and federal laws regarding the manufacture of firearms, before you begin any manufacturing operations.

You asked about a number of specific ways to attach a magazine to a lower receiver. While we would be happy to offer our opinion about such a modification, we can only do so after examining the modified lower receiver. Again, please contact me for instructions, if you would like to submit a sample for examination.

Richard Garvey
December 21, 2005
Page 2

Finally, you asked about whether a "receiver that is neither a Category 1 nor a Category 2 weapon...is also not subject to Category 3 compliance." A receiver with a magazine that is not "readily detachable" is not subject to the ban on generic characteristic set forth in section 12276.1(a)(1).

I hope that this information is helpful. Please feel free to contact me again if you have any additional questions.

Sincerely,



ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



December 21, 2005

Mr. Gene Maly
MMS
256 Figueroa Street, #3
Monterey, CA 93940

RE: Your letter to the Firearms Division

Dear Mr. Maly:

I am writing in response to your letter dated November 1, 2005, requesting clarification about producing and selling partially completed AR-15 type lower receivers in California. You asked at what "point of completion (i.e. 0%, 40%, 80%, 99%, or only fully completed) is an AR-15 type lower receiver, not listed on the DOJ roster by name, considered to be an assault weapon in California?" It does not really matter how close a receiver is to being complete. The determination of whether a manufacturer is operating within the law depends on the product that is manufactured. If a lower receiver that is virtually identical to a lower receiver already banned in California is being manufactured, the manufacturer could face liability under Penal Code 12280(a), regardless of how much of the receiver is completed.

You also asked "at which point of completion would the magazine have to be pinned or welded in an AR type lower receiver, so that it would not be considered an assault weapon even if not completed?" Again, the relevant question is what product is being manufactured? If a lower receiver has more than minor differences from a banned assault weapon, it probably does not matter when the magazine of the receiver are pinned and welded. On the other hand, the manufacturer could face criminal liability under Penal Code 12280(a) for manufacturing a lower receiver with only minor differences from an assault weapon, even after pinning or welding the magazine.

We would be happy to render an opinion about the legality of a lower receiver you intend to produce, but can only do so if you provide a prototype of the lower receiver to our office. If you would like to submit a sample for examination, please contact me for instructions about how to do so.

I hope that this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



December 21, 2005

Mr. Matthew P. Foose
95 South Market Street, Suite 300
San Jose, CA 95113

RE: Additional Information about Manufacture of 80% Receivers

Dear Mr. Foose:

I am writing in response to your letter dated November 9, 2005, requesting additional information.

First, you asked whether it is legal to manufacture 80% completed AR-15 receivers in California that are only offered for sale outside of the state. The prohibition in Penal Code 12280 against the manufacture of assault weapons does not distinguish between assault weapons that are to be sold within the state of California and those that are to be sold outside of the state. The prohibition in section 12280 is against the *manufacture* of assault weapons "*within the state.*"

The determination of whether a manufacturer is operating within the law depends on the product that is manufactured, not how close the product is to being completed. If a lower receiver that is virtually identical to a banned assault weapon is being produced in California, the manufacturer could face liability under Penal Code 12280(a), regardless of how complete (or incomplete) the receiver may be.

Second, you asked about manufacturing an AR-15 lower receiver with a blocked or otherwise modified magazine well. While we would be happy to offer an opinion about the legality of a particular modification, we cannot do so without physically examining the modified receiver itself. If you would like to submit a sample for examination, please contact me for instructions about how to do so.

I hope that this information was helpful. Feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



P.O. BOX 160487
SACRAMENTO, CA 95816-0487

Facsimile: (916) 263-0676
(916) 263-0802

December 21, 2005

Mr. Carlos Lopez
237 Grayson Way, Unit A
Upland, CA 91786

RE: Assault Weapons

Dear Mr. Lopez:

This correspondence is in response to your letter (undated) in which you posed a number of questions regarding the regulation of assault weapons in California under the Roberti-Roos Assault Weapons Control Act of 1989 and subsequent legislation.

Your first question was about the effect of *Kasler v. Lockyer* (2000) 23 Cal. 4th 472 on California assault weapons law. *Kasler* upheld the original Roberti-Roos Assault Weapons Control Act of 1989, including the add-on provisions in Penal Code (PC) section 12276.5 that were amended into the law in 1999 by Senate Bill 23. The court in *Kasler* ruled that none of the assault weapons provisions violated constitutional guarantees of equal protection, separation of powers, or due process.

You asked "whether receivers that are not on the Roberti-Roos list, or are not "ak" and "ar" series are legal to buy and own in California." Receivers that are not listed in Penal Code section 12276 are still illegal to buy and own in California if they are listed in the Assault Weapons Identification Guide published by the California Department of Justice (DOJ), or if they have certain generic characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could file charges under 12276(e) for possession of an assault weapon because the firearm that is virtually identical to a listed assault weapon, even if the firearm is not identified by DOJ, and does not have any of the banned characteristics.

Specifically, you asked about the PTR-91 receiver, which is not listed in Penal Code 12276. The PTR-91 is illegal in California under Penal Code 12276.1 because it has a pistol grip. You are correct that it would not be considered by DOJ to be a Category One or Two Assault Weapon. However, as mentioned above, a local prosecutor could file charges under 12276(e), even if the firearm was not identified by DOJ, and did not have any of the banned characteristics.

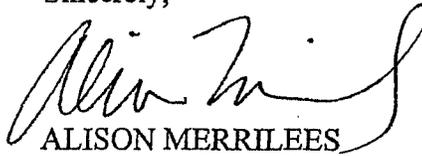
Finally, you asked whether the PTR-91 receiver would comply with California law if it had a fixed magazine "or no pistol grip or flash-hider." Subject to local

Carlos Lopez
December 21, 2005
Page 2

prosecutorial discretion to file charges under Penal Code 12276(e), the PTR-91 may be legal for sale in California if it lacks all of the generic characteristics listed in Penal Code 12276.1.

I hope that this information was helpful. If you have any additional questions regarding this issue, please feel free to contact me at (916) 263-0802.

Sincerely,



ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Benjamin Cannon
1083 Vine Street, #215
Healdsburg, CA 95448

Re: High Capacity Magazine Replacement Parts

Dear Mr. Cannon:

I am writing in response to your letter dated October 31, 2005. You asked about repairing large capacity magazines by replacing all the components of the magazines in question. Whether the scenario you describe constitutes repairing or manufacturing a large capacity magazine depends upon the legal opinion of the prosecutor in the jurisdiction where the acts occur. There are 58 district attorneys in California's 58 counties. They could elect to prosecute you for a felony (Penal Code 12280(a)(2)), if they believed that you were manufacturing a large capacity magazine.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Benjamin Cannon
1083 Vine Street, #215
Healdsburg, CA 95448

Re: 10 Round Magazines with Sub-Caliber Ammunition

Dear Mr. Cannon:

I am writing in response to your letter dated October 30, 2005. You asked about the legality of retrofitting ten round magazines to hold more than ten rounds of sub-caliber ammunition. I understand that you have a letter from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) indicating that alteration of a ten round magazine to hold more than ten rounds of sub-caliber ammunition did not violate *federal law* in place at the time the letter was written.

If you altered a ten round magazine to hold more than ten rounds of sub-caliber ammunition, you could be charged with violating Penal Code 12020(a)(2) if a prosecutor believed that you had manufactured a large-capacity magazine, regardless of the ATF opinion.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Benjamin Cannon
1083 Vine Street, #215
Healdsburg, CA 95448

Re: Curio and Relic Firearms

Dear Mr. Cannon:

I am writing in response to your letter dated October 31, 2005. You asked about the extent to which curio and relic firearms are exempt from certain California laws. Generally speaking, curios and relics are subject to the provisions of the California Penal Code regulating dangerous weapons, unless specifically exempted. California has adopted the federal definition of curios and relics, found at Title 27 of the Federal Code of Regulations, in section 178.11.

You asked about specific provisions of the Penal Code:

Q: Must a Curio and Relic firearm pass the Handgun Safety Test if it is a handgun?

A: Pursuant to Penal Code 12131, only handguns that are listed on the roster of "not unsafe handguns" may be sold in California. Penal Code 12132(g) exempts curios and relics from that requirement.

Q: May a Curio and Relic firearm be a California Assault Weapon?

A: Antique firearms (manufactured prior to January 1, 1899) are specifically exempted from the definition of "assault weapons," pursuant to the provisions of Penal Code 12276.1(c)(1). However, curios and relics are not exempt from that definition. Therefore, a curio or relic would only be exempt if it were an antique.

Q: May a Curio and Relic firearm be a Machinegun in accordance with federal law?

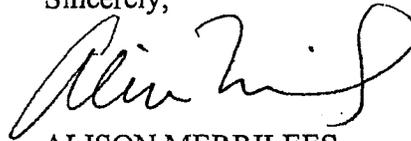
A: Neither antiques, nor curios and relics, are exempt from the definition of a "machinegun" in Penal Code 12200.

Q: May a Curio and Relic firearm possess and/or be a silencer in accordance with federal law?

A: Neither antiques, nor curios and relics, are exempt from the definition of a silencer in Penal Code 12500

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Christopher Kjellberg
6225 Garfield Court
Rocklin, CA 95765

Re: Importation of Stag-6.8 Lower Receiver into California

Dear Mr. Kjellberg:

I am writing in response to your inquiry about whether it is legal to send a Stag-6.8 lower receiver to California.

The Stag-6.8 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-6.8 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-6.8 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-6.8 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Kirk P. Haley
7389 Pocket Road
Sacramento, CA 95822

Re: L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver

Dear Mr. Haley:

I am writing in response to your letter dated December 5, 2005, inquiring about the L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver. You asked about the legality of purchasing and possessing a L.A.R. Manufacturing Inc. Grizzly .223 CAL receiver in California. We are not familiar with that particular make and model of firearm, so cannot give a definitive opinion about whether or not it is legal in California. We would be happy to examine the firearm itself, or a photo thereof, in order to render an opinion.

You should be aware, however, that the receiver may be illegal if it has any of the characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could decide to prosecute you for possession of an assault weapon, regardless of our opinion about the legality of the firearm.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Peter Bui
2014 W. Victoria Avenue
Anaheim, CA 92804

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Bui:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Peter Bui
2014 W. Victoria Avenue
Anaheim, CA 92804

Re: Importation of DSA ZM4 Lower Receiver into California

Dear Mr. Bui:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Anthony Boccanfuso
5556 Panama Drive
Buena Park, CA 90620

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Boccanfuso:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

J.J. Sinkking
4590 State Route 133
Batavia, OH 45103

Re: Inheritance Gun Rules

Dear Mr. Sinkking:

I am writing in response to your letter dated October 21, 2005.

You asked whether California law allows you to transfer your Browning "Automatic 5" shotgun to your adult son living in Irvine, California. California Penal Code section (PC) 12078(c)(1) allows you to transfer a long-gun to an "immediate family member," without processing the transaction through a firearms dealer, as long as the "immediate family member" is an adult and is not prohibited from possessing firearms by either California or federal law.

Your son would be considered an "immediate family member" under PC 12078(c)(3). The Browning "Automatic 5" is legal to possess and transfer in California.

I hope this information was helpful. Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Carlos Lopez
237 Grayson Way, Unit A
Upland, CA 91786

Re: Romak 3 receiver

Dear Mr. Lopez:

I am writing in response to your letter dated November 28, 2005, inquiring about the Romak 3 receiver. You asked about the legality of purchasing and possessing a Romak 3 receiver in California. The Romak 3 is considered to be an assault weapon in California. It is listed in the Assault Weapons Identification Guide published by the California Department of Justice, as "Ohio Ordinance Works ROMAK 991." The Romak 3 is another name for the Romak 991.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Carlos Lopez
237 Grayson Way, Unit A
Upland, CA 91786

Re: Ewbanks EMAK 7.62x39 receiver

Dear Mr. Lopez:

I am writing in response to your letter dated November 28, 2005, inquiring about the Ewbanks EMAK 7.62x39 receiver. You asked about the legality of purchasing and possessing a Ewbanks EMAK 7.62x39 receiver in California. We are not familiar with that particular make and model of firearm, so cannot give a definitive opinion about whether or not it is legal in California. We would be happy to examine the firearm itself, or a photo thereof, in order to render an opinion.

You should be aware, however, that the receiver may be illegal if it has any of the characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could decide to prosecute you for possession of an assault weapon, regardless of our opinion about the legality of the firearm.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
Facsimile: (916)263-0676

December 27, 2005

Mr. Christopher Kjellberg
6525 Garfield Court
Rocklin, CA 95765

Re: Armory USA & Global Trades Co - Type 2 - 1.0mm Receiver

Dear Mr. Kjellberg:

I am writing in response to your letter dated November 28, 2005, inquiring about the Armory USA & Global Trades Co - Type 2 - 1.0mm receiver. You asked about the legality of purchasing and possessing an Armory USA & Global Trades Co - Type 2 - 1.0mm receiver in California. We are not familiar with that particular make and model of firearm, so cannot give a definitive opinion about whether or not it is legal in California. We would be happy to examine the firearm itself, or a photo thereof, in order to render an opinion.

You should be aware, however, that the receiver may be illegal if it has any of the characteristics listed in Penal Code 12276.1. Also, a local prosecutor in one of California's 58 counties could decide to prosecute you for possession of an assault weapon, regardless of our opinion about the legality of the firearm.

Please feel free to contact me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Chris Van Zandt
P.O. Box 794
Joshua Tree, CA 92252

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Van Zandt:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Bradley Stinson
35445 Cleremont Drive
Newark, CA 94560

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Stinson:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Ramon Rangel Jr.
227 North Avenue 63
Los Angeles, CA 90042

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Rangel Jr.:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Scott A. Peterson
815 W. Hacienda Drive
Corona, CA 92882

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Peterson:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

William Jason Paige
4436 Sierra Express Drive
Camino, CA 95709

Re: Importation of DSA ZM4 Lower Receiver into California

Dear Mr. Paige:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees", written in a cursive style.

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Mark A. Mitzel
486 Medanos Court
Fremont, CA 94539

Re: Importation of FAR-15 Lower Receiver into California.

Dear Mr. Mitzel:

I am writing in response to your inquiry about whether it is legal to send a FAR-15 lower receiver to California.

The FAR-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the FAR-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the FAR-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the FAR-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Mark A. Mitzel
486 Medanos Court
Fremont, CA 94539

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Mitzel:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Matthew C. Masuda
1182 N. Abbott Avenue
Milpitas, CA 95035

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Masuda:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Eugene Maly
256 Figueroa Street
Monterey, CA 93940

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Maly:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Chris Lym
3384 Napoli Loop
San Jose, CA 95135

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Lym:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Carlos G. Lopez
237 Grayson Way, Unit A
Upland, CA 91786

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Lopez:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For : BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Christopher Kjellberg
6525 Garfield Court
Rocklin, CA 95765

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. Kjellberg:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Kirk P. Haley
7389 Pocket Road
Sacramento, CA 95822

Re: Importation of FAR-15 Lower Receiver into California

Dear Mr. Haley:

I am writing in response to your inquiry about whether it is legal to send a FAR-15 lower receiver to California.

The FAR-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the FAR-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the FAR-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the FAR-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

December 28, 2005

Hilda Flores
5556 Panama Drive
Buena Park, CA 90620

Re: Importation of DSA ZM4 Lower Receiver into California

Dear Ms. Flores:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General

DRAFT -- Let's Discuss on 1/5/06!

DOJ -

January 5, 2006

Mr. Chuck Michel

180 East Ocean Blvd., Suite 200
Long Beach, California 90802

Re: Your email

Dear Mr. Michel:

I am writing in response to your email dated January 4, 2006, requesting information on behalf of your client, the California Association of Firearms Dealers. You asked a number of questions in your email.

What AR /AK series frames has the DOJ opined to be legal at this time? (I understand that the DOJ is sending and has sent some letters regarding this, but this request also goes to those AR / AK series firearms that have not received written letters from the DOJ.)

As you know, the Firearms Division is statutorily responsible for identifying illegal AR and AK-series firearms. As a service, we also offer advice to the public and law enforcement about whether certain firearms are legal to purchase and possess in California. We do not maintain a list of AR/AK series frames that are legal to own.

We respond to inquiries by determining whether the firearm/receiver is listed by make and model in Penal Code section 12276 or identified in the Attorney General's Assault Weapons Identification Guide. If so, it is an illegal assault weapon. If it is not listed and we are not familiar with the firearm, we cannot give an opinion about the legality of the firearm without examining the firearm itself, or a photograph thereof.

If we are familiar with a firearm/receiver that is not listed, but the firearm/receiver has features listed in Penal Code section 12276.1, it is an illegal assault weapon. If it does not have the features, but is virtually identical to a listed assault weapon, it is our position that the firearm/receiver is technically legal to purchase and possess in California. However, our opinion is not conclusive about the legality of the firearm/receiver. A local prosecutor in one of California's 58 counties could decide to prosecute anyone who purchases or possesses such a firearm/receiver, or the gun dealer who orders it for illegal importation of an assault weapon, regardless of our opinion.

What firearms / receivers does the DOJ contemplate will be added series lists?

What firearms / receivers does the DOJ contemplate may be added to the series lists?

As of today's date, there has been no final decision by the Attorney General to add series weapons to the Assault Weapons Identification Guide.

When will the list of proposed firearms to be added to the series lists be finalized?

As of today's date, the Attorney General has not decided whether or when to update the list of series weapons in the Assault Weapons Identification Guide.

Will the proposed new additions to the series list be subject to public comment?

No. According to the California Supreme Court, "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." Harrott v. County of Kings (2003) 25 Cal. 4th 1138, 1155. The legislature granted DOJ the authority to identify "series" assault weapons and add them to the Attorney General's Assault Weapons Identification Guide pursuant to Penal Code without a court hearing, or public comment, because of the inherent danger and killing power of series weapons.

Do the additions to the list have to be approved by Office of Administrative Law?

No. Pursuant to Penal Code section 12276.5(h), an updated list merely needs to be filed with the California Secretary of State for publication in the California Code of Regulations. The Administrative Procedures Act does not apply to the submission and publication of the updated list of series assault weapons according to 12276.5(h).

Once the new additions list is final, I assume sales will no longer be allowed. What must occur before it becomes final? Any idea when it would become final?

Sales of newly designated series weapons are illegal on the date when the list is published.

I assume that there would be a 90 day registration period; would people only be allowed to register the newly designated series guns during that period?

Individuals who owned newly designated series weapons before the date of publication would have 90 days to register their firearms with the Department of Justice

When is the new list being published?

An updated list must be published within ten days of submission to the California Secretary of State [need cite].

What methods of publication and public notice does the DOJ intend to implement?

Has the DOJ done or is it doing an information bulletin on the addition of firearms to the series list?

If DOJ were to update the Assault Weapons Identification Guide, DOJ would use all reasonable methods to inform the public about the change in the law, including but not limited to, Informational Bulletins.

What else is DOJ doing with this issue?

We continue in our effort to enforce existing firearm laws in order to protect and enhance public safety. I hope this information was helpful. Please feel free to contact me again if you have additional questions.

Sincerely,

AYM

From: Luis Tolley [REDACTED]
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/9/2006 7:16:03 PM
Subject: Re: CA assault weapons - introduction

Hi Alison:

Oh my, I just read through part of the CalGuns thread. The gun guys are upset aren't they. Sounds like you did good.

They may have a point in the question of how a revised definition of "capacity to accept a detachable magazine" impacts weapons that were formerly approved by DOJ. We would not want anything that opens up a new registration process if that process enables them to add features prohibited by SB 23. I'm not quite sure how that all works out.

Luis Tolley
Project Concern International

[REDACTED]
[REDACTED]
----- Original Message -----

From: Alison Merrilees
To: Brian Siebel
Cc: Ellyne Bell ; [REDACTED]
Sent: Wednesday, May 10, 2006 6:41 AM
Subject: Re: CA assault weapons - introduction

FYI -

We posted an updated memo on our website today.
<http://caag.state.ca.us/firearms/forms/pdf/AWpolicyrev4.pdf>

Of course, the gun guys are going nuts about it,
<http://www.calguns.net/calgunforum/showthread.php?t=33601>

We feel confident that our plan will hold up to any legal challenges.

>>> Brian Siebel <[REDACTED]> 05/09/06 12:39 PM >>>

Friday may work better for all concerned. Ellyne is going to try to set up a call.

In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

Thanks, Brian. I look forward to speaking with you. I am available on

From: Alison Merrilees
To: Luis Tolley
Date: 5/10/2006 9:43:03 AM
Subject: Re: CA assault weapons - introduction

Luis,

Hi Luis,

We don't think there is any "taking" issue that would require compensation/registration. We believe that our interpretation of "capacity to accept" is consistent with current law and regulations. We have never given our blessing to any of the temporary fixes that these guys now ASSUME are legal. We are eagerly awaiting a test case on this, because we think we'll win.

The gun guys bragged repeatedly that they could restore their "California legal AR's" to fully functional AW's in a matter of seconds. I don't think a judge or jury would find that such a configuration complies with the letter or the intent of the law.

A few of them clearly are on our side, but I expect them to get worn down and stop speaking up. That does not bother me. They are never going to be happy as long as we say they can't have what they want : AW's that are legal. Our current position is pretty easy to defend. I'm not worried.

>>> Luis Tolley <[REDACTED]> 05/09/06 6:46 PM >>>

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Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

Thanks, Brian. I look forward to speaking with you. I am available on Friday at 1 p.m.

I regularly check in with the calguns guys, but had not seen the one you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

By the way, I am also available today until 1 p.m. our time if you want to try and catch me today.

Thanks.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

>>> Brian Siebel <[REDACTED]> 05/09/06 11:20 AM >>>

Alison:

I am sending this e-mail by way of introduction. I have been receiving information from your office by way of Luis Tolley and Ellyne Bell. I am a Senior Attorney with the Brady Center, and have been here almost ten years. During my tenure, I have been involved extensively with the assault weapons issue in California. For example, I was involved in the Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman cases, the 101 California Street lawsuit, and other issues. I also represented the 12 city and county plaintiffs in the municipal gun suit.

From: Luis Tolley <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/10/2006 9:15:58 PM
Subject: Re: CA assault weapons - SKS question

Thanks Alison. Interesting distinction between "capacity to accept" and "detachable magazine." I appreciate all you are doing to settle this issue and make sure the gun guys don't open up a big hole in the law.

Luis Tolley
Project Concern International
Phone: 62-21-739-9708
Handphone: 0812-100-5685
Fax: 62-21-722-1136

----- Original Message -----

From: "Alison Merrilees" <Alison.Merrilees@doj.ca.gov>
To: [REDACTED]
Sent: Thursday, May 11, 2006 10:45 AM
Subject: Re: CA assault weapons - SKS question

> Luis,

>

> Our intent is not to affect the SKS issue in any way. I think we can do
> that because the definition of a "detachable magazine" (a magazine that
> can be removed without the use of a tool) can be distinguished from the
> definition of "capacity to accept" which we intend to define as being
> able to accommodate a magazine (versus being permanently altered not to
> accommodate a magazine). We'll run the language past you before we
> publish it as a proposed reg.

>

> Alison Y. Merrilees
> Deputy Attorney General
> Counsel, Firearms Division
> California Department of Justice
> (916)263-0802
> Fax- (916)263-0676

>>>> Luis Tolley <[REDACTED]> 05/10/06 6:41 PM >>>

> Thanks Alison.

>

> I assume this also means that any new regulation defining "capacity to
> accept a detachable magazine" won't impact on the Roberti-Roos laws ban
> on "SKS with detachable magazine" because the SKS with fixed magazines
> have been legal since 1989 (no pistol grip). Are the "fixed" magazines
> on the SKS different from what the gunners are now trying to do with the
> AW receiver clones?

>

> Luis Tolley
> Project Concern International

>

>

>

> ----- Original Message -----

> From: Alison Merrilees

> To: Luis Tolley

> Sent: Wednesday, May 10, 2006 11:43 PM

> Subject: Re: CA assault weapons - introduction
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> Hi Luis,
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> >>> Luis Tolley [REDACTED] 05/09/06 6:46 PM >>>
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>
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> Project Concern International
> [REDACTED]
> [REDACTED]
> ----- Original Message -----
> From: Alison Merrilees
> To: Brian Siebel
> Cc: Ellyne Bell ; [REDACTED]
> Sent: Wednesday, May 10, 2006 6:41 AM
> Subject: Re: CA assault weapons - introduction
>
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>

Alison Merrilees - Re: Assault weapons

From: Alison Merrilees
To: Mark ChekalBain; [REDACTED]
Date: 5/10/2006 10:06 AM
Subject: Re: Assault weapons
CC: Alison.Merrilees@sen.ca.gov; Steve Coony

Irwin,

The receiver issue is only relevant for named weapons. We propose to amend PC 12001 to add 12276 and 12276.5, but NOT 12276.1. Therefore, if someone has a Colt AR-15 receiver (or a receiver of any other model *named* in statute or regulation) with no other parts attached, and that receiver is unregistered, that person can be prosecuted for violating 12280(b). This is a clarifying amendment that really does not expand existing law.

I do not think that there is any issue of "DOJ making or creating the perception of hunting guns as assault weapons." How/why would we be doing that? All of the individuals who bought these knock-off AR's have known for six years that they cannot build AW's. We have not changed the rules.

ATF did not consider named receivers to be AW's. They had a published ATF Opinion that said so.

Yes, a large number of receivers were DROS'ed. They were legally DROS'ed. According to the *Harrott* decision, they were legal because they were not named as series weapons by DOJ. Our proposal will not change that because the receivers are still not named AW's. They could not and cannot be built into AW's that meet the SB 23 definition. Our proposal does not change that.

It really is not our problem that the receivers may not be useable. They are as useable now as they were when they were purchased. Purchasers can have them modified so that they have permanently fixed magazines. We can refer them to machinists who do that in a legal manner. They can also build the receivers into functioning weapons with detachable mag's as long as they do not add the features, such as pistol grips.

Regarding the nuisance language, I'll take a look at it. We'd be happy to work with you to clarify that AW's that are seized can be destroyed as nuisances. I'm not sure that we want to get into expanding much further than that. Perhaps there should be a crime of possession of parts with intent to manufacture.

I have already talked to Erin in Perata's Office. She says to get her our language.

>>> <[REDACTED] 05/09/06 9:30 PM >>>

As I indicated on the phone with Mark and Alison before I got called into a meeting with Cedillo, I want to review all proposals before I make a specific comment. However, here are my preliminary concerns and recommendations. As a recommendation before anything is done Bill needs to talk to Arnold personally and in depth about this issue so there is no uncertainty about this in terms of what he will and will not sign.

As to specifics, I don't have a problem with repealing the add on procedure - in fact the NRA would probably support that. Don proposed that based on my recommendation in one of the various bills that he introduced.

Two, as to frames and receivers, I do have two problems. One is the issue of making or creating the perception of hunting guns as assault weapons and the implications thereof. When the 1994 importation - manufacturing federal ban went into effect, someone should find

out how that was handled as frames or receivers are considered the gun for GCA purposes. The second issue is that DOJ permitted a large number of AR 15 receivers to be DROS'd. Those receivers are unusable and I am very concerned as to what happens to those people.

That is why I would rather have the nuisance language that Don had in one of the bills and rather than the frame or receiver and I would not be adverse if there is an issue providing that a combination of parts to make a gun into an assault weapon or a .50 BMG be covered.

Given that we are past the fiscal deadline, this requires a gut and amend of an AB in the Senate or vice-versa. Once you have a proposal that I can review and the due diligence is done by Bill with the Guv, then I can comment. In addition, I would want a meeting where Shelley Curran from Don's office is present in the room BEFORE a gut and amend is done.

Alison Merrilees - Re: CA assault weapons - SKS question

From: Luis Tolley <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/10/2006 6:43 PM
Subject: Re: CA assault weapons - SKS question
CC: Brian Siebel <[REDACTED]>

Thanks Alison.

I assume this also means that any new regulation defining "capacity to accept a detachable magazine" won't impact on the Roberti-Roos laws ban on "SKS with detachable magazine" because the SKS with fixed magazines have been legal since 1989 (no pistol grip). Are the "fixed" magazines on the SKS different from what the gunners are now trying to do with the AW receiver clones?

Luis Tolley
 Project Concern International
 [REDACTED]

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Sent: Wednesday, May 10, 2006 11:43 PM
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opens up a new registration process if that process enables them to add features prohibited by SB 23. I'm not quite sure how that all works out.

Luis Tolley
Project Concern International
Phone: [REDACTED]
Handphone: [REDACTED]
Fax: [REDACTED]

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From: Alison Merrilees
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Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

Thanks, Brian. I look forward to speaking with you. I am available on Friday at 1 p.m.

I regularly check in with the calguns guys, but had not seen the one you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

By the way, I am also available today until 1 p.m. our time if you want to try and catch me today.

Thanks.

Alison

Alison Merrilees - Fwd: Amendments to the AW Statutes

From: Alison Merrilees
To: [REDACTED]
Date: 5/12/2006 5:17 PM
Subject: Fwd: Amendments to the AW Statutes
CC: Randy Rossi

Erin,

Attached you will find our draft of the AW clean-up bill we discussed. Okay, we went a tad beyond clean-up, but the new crime for possession with intent to manufacture/assemble an AW is optional.

We've sent it to Irwin for his blessing. So far, he's on board....a mixed blessing, I realize, but better than him being against us.

Thanks,

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

>>> Aaron Maguire 05/12/06 5:09 PM >>>

Here are the changes to the assault weapons statutes as we have discussed. Let me know if you have any questions or concerns.

Aaron Maguire
Deputy Attorney General / Legislative Advocate
Office of Legislative Affairs
California Department of Justice
Office of the Attorney General
Phone: 916-324-5494
Fax: 916-322-2630

From: Brian Siebel <[REDACTED]>
To: <Alison.Merrilees@doj.ca.gov>
Date: 5/15/2006 9:20:47 AM
Subject: Detachable magazine letters?

Alison,

Luis Tolley suggested I ask you for copies of any letters that DOJ may have sent out over the last couple of years on whether specific firearms did NOT violate SB23 because they weren't considered to have the "capacity to accept detachable magazines." I am in agreement on DOJ's approach on this issue but wonder if there are letters out there that may be construed as in conflict with the new regulations.

As for a new law on AW receivers, I'd need to know more clearly what you are proposing before I can comment. On this issue, the devil is probably in the details. Without the details, you don't know what is covered and what isn't. It is the same overinclusive/underinclusive challenge that we always face with assault weapons.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[REDACTED]

In addition to our website at www.gunlawsuits.org, please visit our new websites at www.stopthenra.com and www.nrablacklist.com
This communication and any attachments may contain information that is confidential and protected from disclosure by the attorney-client privilege, as attorney work product, or by other applicable privileges. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or communication of this message is strictly prohibited. If you have received this communication in error, please notify me and delete this message.

CC: Ellyne Bell <[REDACTED]>

Alison Merrilees - Re: Detachable magazine letters?

From: Alison Merrilees
To: Brian Siebel
Date: 5/15/2006 9:43 AM
Subject: Re: Detachable magazine letters?
CC: Ellyne Bell

Brian,

The only letters that fit your description have been sent to manufacturers of fixed-magazine AR-clones, such as the FAB-10 and the Vulcan. I will look for them and either email or fax them to you.

As far as the receiver issue, we are probably just going to amend PC 12001 (definitions of terms in the dangerous weapons chapter, including "firearm"). It refers to specific sections in which "receiver" means "firearm," but does not refer to any of the AW laws. We would add 12276 and 12276.5 to the list. That way, there is no question that possession of an unregistered AW that is listed either in statute or regulation can be prosecuted as possession of an AW.

>>> Brian Siebel [REDACTED] 05/15/06 9:19 AM >>>
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In addition to our website at www.gunlawsuits.org, please visit our new

websites at www.stopthenra.com and www.nrablacklist.com

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From: Brian Siebel <[REDACTED]>
To: <Alison.Merrilees@doj.ca.gov>
Date: 5/15/2006 11:12:23 AM
Subject: Re: Detachable magazine letters?

On the receiver issue, that would work for the named weapons of 12276. If you repeal 12276.5, it would not enable DOJ to add other guns (and other receivers) to the list, however. It would be interesting to see what would happen if 12276.5 were repealed and you tried to apply the "series" language of 12276(e) to AK and AR "series" guns in light of Kasler's language that all citizens have to do is consult the AG's list. ("[W] need not and do not reach the question whether it would be unconstitutionally vague if ordinary citizens were required to apply it." Kasler at 353.) Perhaps the courts would be forced to decide what "series" guns really are, thereby banning the receivers of those weapons at the same time.

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/15/2006 12:43:53 PM >>>
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CC: Ellyne Bell <[REDACTED]>

Alison Merrilees - Re: Detachable magazine letters?

From: Alison Merrilees
To: Brian Siebel
Date: 5/15/2006 11:22 AM
Subject: Re: Detachable magazine letters?

Although I am tempted to do something that would take the whole "series" thing back to the courts (because the Harrott decision was so bad), I think it's too late. The cat is out of the bag. We cannot buy back all of the series clones. We do not want to allow registration, so I think we're stuck with SB 23 being the vehicle to regulate them.

As for the *Kasler* list that was promulgated pursuant to 12276.5, we think it will remain in place. I will send you our draft of amends. We think the amendments would remove the ability to add on in the future, but keep the *Kasler* list in place so that the named weapons are illegal to own if not registered.

>>> Brian Siebel <[REDACTED]> 05/15/06 11:11 AM >>>
 On the receiver issue, that would work for the named weapons of 12276. If you repeal 12276.5, it would not enable DOJ to add other guns (and other receivers) to the list, however. It would be interesting to see what would happen if 12276.5 were repealed and you tried to apply the "series" language of 12276(e) to AK and AR "series" guns in light of *Kasler's* language that all citizens have to do is consult the AG's list. ("[W] need not and do not reach the question whether it would be unconstitutionally vague if ordinary citizens were required to apply it." *Kasler* at 353.) Perhaps the courts would be forced to decide what "series" guns really are, thereby banning the receivers of those weapons at the same time.

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/15/2006 12:43:53 PM >>>
 Brian,

The only letters that fit your description have been sent to manufacturers of fixed-magazine AR-clones, such as the FAB-10 and the Vulcan. I will look for them and either email or fax them to you.

As far as the receiver issue, we are probably just going to amend PC 12001 (definitions of terms in the dangerous weapons chapter, including "firearm"). It refers to specific sections in which "receiver" means "firearm," but does not refer to any of the AW laws. We would add 12276 and 12276.5 to the list. That way, there is no question that possession of an unregistered AW that is listed either in statute or regulation can be prosecuted as possession of an AW.

>>> Brian Siebel <[REDACTED]> 05/15/06 9:19 AM >>>

Alison,

Luis Tolley suggested I ask you for copies of any letters that DOJ may have sent out over the last couple of years on whether specific firearms did NOT violate SB23 because they weren't considered to have the "capacity to accept detachable magazines." I am in agreement on DOJ's approach on this issue but wonder if there are letters out there that may be construed as in conflict with the new regulations.

As for a new law on AW receivers, I'd need to know more clearly what you are proposing before I can comment. On this issue, the devil is probably in the details. Without the details, you don't know what is covered and what isn't. It is the same overinclusive/underinclusive challenge that we always face with assault weapons.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax


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PART # 3

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Sincerely,

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Brady Center to Prevent Gun Violence
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Suite 1100
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Alison Merrilees - Fwd: FW: AWs

From: Alison Merrilees
To: Brian Siebel; Ellyne Bell <ebell@bradymall.org>
Date: 8/1/2006 1:10 PM
Subject: Fwd: FW: AWs

From: C D Michel
Sent: Monday, July 31, 2006 4:24 PM
To: Randy Rossi
Cc: Ignatius Chinn; 'Aison.Merrilees@doj.ca.gov'
Subject: RE: AWs

Randy

Alison is doing what she can, but with all due respect, this is not about the process of adopting the regs. We will comment on the necessity, clarity, etc., of those regulations as a part of the administrative process.

In the meantime, however, the DOJ has told us that the regs are declaratory of existing law. The FFLs that the DOJ licenses are trying to figure out what existing law is so they can comply with it -- now.

A May DOJ bulletin says: "Semiautomatic centerfire rifles that are modified to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, are assault weapons if they have any of the features listed in section 12276.1(a)(1). The Department intends to exercise its power pursuant to Penal Code section 12276.5(I) to adopt regulations as "necessary and proper to carry out the purpose and intent" of California law to ban assault weapons in the state."

The DSArms, the SKS, and a host of other "Semiautomatic centerfire rifles . . . are modified [or manufactured] to be temporarily incapable of accepting detachable magazines, but can be restored to accommodate detachable magazines, . . ." this would seem to indicate that they "are assault weapons if they have any of the features listed in section 12276.1(a)(1)."

Can't you see how this would terrify dealers?

The FFLs are asking DOJ, their licensing agency, to explain existing law, so they can determine their legal and licensing obligations - right now.

If the new regs will not make the DSArms FNFAL illegal - even though it has a retrofitted device that requires a tool to remove the magazine, we need to understand why.

If it doesn't make the SKS retrofitted with a fixed magazine that can easily be converted back to a detachable magazine rifle illegal, we need to understand why.

I assume the objective here is to make it so people cannot add a device to the recently imported AR receivers that makes it so a tool is needed to remove the magazine, and thereby makes the features legal to put on. I can see how you would want that modification to be permanent before the features could be added.

But yes, the reasoning seems inconsistent. Other guns with a feature can be retrofitted with a detachable magazine, i.e., are not permanently altered. So what is the distinction?

Iggy - can you weigh in here?

Randy, please call me when you have a moment to discuss this, or perhaps we should have a conference call to address this. Please let me know.

Thanks.

Chuck

C. D. Michel

TRUTANICH-MICHEL, LLP

Attorneys at Law

Port of Los Angeles Office

180 East Ocean Blvd., Suite 200

Long Beach, CA 90802

Phone: 562-216-4441

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Email: cmichel@tmlp.com

Website: www.tmlp.com

Gun law info: www.calgunlaws.com

From: Allison Merrilees [mailto:Alison.Merrilees@doj.ca.gov]
Sent: Monday, July 31, 2006 12:04 PM
To: C D Michel
Cc: Ignatius Chinn; Randy Rossi
Subject: RE: AWA

Our new reg's will not change our previously expressed opinion that the FN FAL and SKS (w/fixed mag) are legal. We consider those rifles to be incapable of accomodating a detachable magazine. If you have concerns about the consistency of our reasoning, we encourage you to express-those concerns in the normal public comment period.

I'm not sure what kind of stories about dealers being prosecuted you are referring to. I guarantee you that DOJ is not arresting or prosecuting dealers for selling the SKS or FN FAL.

>>> C D Michel <cmichel@tmllp.com> 7/31/2006 9:56:46 AM >>>

My dealer clients are freaking out over the new regs because they have SKS rifles, DSArms rifles and a whole bunch of other rifles that are not "permanently altered" (depending on what that means perhaps) so they can't accommodate a detachable magazine.

Every day they see another story about a dealer being prosecuted, and often DOJ is doing the prosecuting.

The bigger questions I outlined last week. But for starters I need an answer to this specific question: The DOJ has previously expressly approved the sale of DSArms FN FAL rifles and SKS rifles which have a SB 23 feature but which have been modified so it takes a tool to remove the magazine (the DSArms) or retrofitted with a fixed mag (the SKSs). But neither of these changes are irreversible. So it would appear to me these are not "permanent alterations."

These are sitting on dealer shelves for sale right now - with DOJ's previous blessing.

Has the DOJ's position on the legality of these firearms changed? Why or why not?

C. D. Michel
TRUTANICH-MICHEL, LLP
Attorneys at Law
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Phone: 562-216-4441
Fax: 562-216-4445
Email: cmichel@tmllp.com
Website: www.tmllp.com
Gun law info: www.calgunlaws.com

-----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Monday, July 31, 2006 9:26 AM
To: C D Michel
Subject: RE: AWs

Today won't work. Iggy is out and I am supposed to be on vacation. Maybe tomorrow? I can email you in the morning. What is so urgent?

>>> C D Michel <cmichel@tmllp.com> 07/31/06 8:53 AM >>>
I need to speak with you today. Where can I call you?

C. D. Michel

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Gun law info: www.caigunlaws.com

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Friday, July 28, 2006 2:34 PM
To: C D Michel
Subject: RE: AWs

Maybe, but maybe not. It depends on the characteristics (I use that word in the general sense, not in the 12276.1 sense) of the individual firearm.

For years, Iggy has been using the "disassembly or destruction" standard in giving his opinion to manufacturers who want our approval for the firearms they are manufacturing. We do not intend to get into the business of approving/disapproving individual modifications, although we have said that the Evans modification permanently alters firearms that were originally manufactured to be capable of accepting a detachable magazine so that they can no longer accommodate a detachable magazine.

Anyone who alters a fixed mag semi-auto rifle so that it is capable of accomodating a detachable magazine is way too close to the line . . . and probably over it.

>>> C D Michel <cmichel@tmlp.com> 7/28/2006 2:25 PM >>>

My clients, aka DOJ's licensees, really want to know now since DOJ is saying its existing law and dealers are getting scrutinized all over the state and country.

To make it simple - there are lots of guns in dealer inventories with a feature and a non-detachable magazine

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that can easily be retrofitted with a detachable magazine with minor disassembly and reassembly.

In fact, companies sell after-market detachable magazines for many fixed magazine guns.

Are these guns AWs?

C. D. Michel
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From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Friday, July 28, 2006 1:57 PM
To: C D Michel
Subject: RE: AWs

This is a little too technical for me. I can talk to you next week when Iggy is in the office, or we can try to address your question in the public comment process.

>>> C D Michel <cmichel@tmlp.com> 7/28/2006 1:54 PM >>>

What about model firearms that have an SB 23 feature, that are manufactured with a non-detachable magazine in place, but that can fairly easily be retrofitted with an after-market detachable magazine. Are these legal or

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not?

The legality of the firearm depends on its capability to accommodate a detachable magazine, regardless of whether it was originally manufactured or was subsequently altered to do so. If it can accommodate a detachable magazine without disassembly or destruction of the firearm, it is illegal. If it cannot, it is legal.

Okay. Retrofitting with a fixed magazine typically requires minor disassembly. For example, swinging or dropping the trigger group out of the receiver, and dropping a fixed magazine down through the top of the group till it won't go any farther. The group is then put back into the receiver, and the new magazine hangs out below the receiver. The replacement magazine cannot be pulled off the gun once put back together.

So if you take a gun with a detachable magazine, open the receiver up, drop in the fixed magazine, and close the receiver, that gun then cannot "accommodate a detachable magazine" even though the detachable magazine can be put back in simply by reversing the process?

Is "disassembly or destruction" somehow related to "permanently altered?"

C. D. Michel

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From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Friday, July 28, 2006 1:36 PM
To: C D Michel
Subject: Re: AWs

If a gun is manufactured with a detachable magazine, and then retrofitted with a non-detachable magazine, I take it DOJ's position is the gun would be legal if the alteration was "permanent" but not legal if the alteration was not "permanent?" Correct?

Yes.

What about model firearms that have an SB 23 feature, that are manufactured with a non-detachable magazine in place, but that can fairly easily be retrofitted with an after-market detachable magazine. Are these legal or not?

The legality of the firearm depends on its capability to accommodate a detachable magazine, regardless of whether it was originally manufactured or was subsequently altered to do so. If it can accommodate a detachable magazine without disassembly or destruction of the firearm, it is illegal. If it cannot, it is legal.

>>> C D Michel <cmichel@tmlp.com> 7/28/2006 1:25 PM >>>

I need to figure out what the DOJ's position is on the current state of the law concerning detachable magazines that the regulations are designed to address. We have a whole lot of dealers quaking because 1/2 their inventory could be illegal.

If a gun is manufactured with a detachable magazine, and then retrofitted with a non-detachable magazine, I take it DOJ's position is the gun would be legal if the alteration was "permanent" but not legal if the alteration was not "permanent?" Correct?

What about model firearms that have an SB 23 feature, that are manufactured with a non-detachable magazine in place, but that can fairly easily be retrofitted with an after-market detachable magazine. Are these legal or not?

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From: Alison Merrilees
To: Irwin Nowick
Date: 8/9/2006 4:34:35 PM
Subject: RE: Question

If you need a tool to remove the magazine, then the magazine is not detachable. However, that does not answer the question of whether the rifle is capable of accepting a detachable magazine. That depends on the characteristics of the individual firearm. The SKS with fixed magazine is not capable of accepting a detachable magazine.

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/9/2006 4:05:46 PM >>>

If you need a tool to remove the magazine, is the gun capable of accepting a detachable magazine under the regs? -----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Wednesday, August 09, 2006 3:27 PM
To: Nowick, Irwin
Subject: RE: Question According to our AW expert -

The presence of a bayonet would be irrelevant, because it is not a characteristic of assault weapons listed in PC 12276.1(a)(1). It used to be a characteristic under federal law.

The magazine that you described requires a tool to remove, therefore the rifle would not fit in the category of "SKS with detachable magazine" in PC 12276(a)(11).

When Iggy is back in the office next week, maybe we can talk over the phone about any other concerns you have.

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/8/2006 3:31:09 PM >>>

There are SKS rifles that were sold as curio and relics. Some came with a bayonet mount but had a fixed magazine as made in the sense that the magazine dropped down when a lever was pulled but the holder was attached to the gun. I want a specific answer on this. If the bayonet is gone from the gun, is it OK? -----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Tuesday, August 08, 2006 1:45 PM
To: Nowick, Irwin
Cc: Steve Coony

Subject: Re: Question Whether the rifle you described would be considered "capable of accepting a detachable magazine" depends on the method by which the magazine is attached to the rifle. If it is a temporary fix, it is still capable of accepting a detachable mag. If it is permanently affixed, it is not. Generally, we consider welding to be permanent.

The SKS is a different issue, because it is banned by PC 12276(a)(11): "SKS with detachable magazine." If an SKS magazine requires a tool to remove, it is not an AW as defined in 12276(a)(11). The issue in the *Dingman* case was whether an SKS that was manufactured to have a fixed mag, but was altered to have a detachable mag, was an AW as defined by 12276(a)(11). The DAG for the Firearms Division at the time said no, because it was manufactured with a fixed mag. The D.A.'s office and court in Santa Clara said yes. We changed our interpretation in response to *Dingman*.

The Winchester or Remington rifles that are capable of accepting detachable magazines do not have any AW features. Antique firearms, of course, are not AW's, per 12276(c)(1).

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/8/2006 10:52 AM >>>

Alison: If someone owns a semi auto rifle that you load from the top and its magazine opens up at the bottom but is attached to the gun is that gun covered by the new definition of capable of accommodating a detachable magazines. The reason I ask is if the answer is yes, then a number of SKS curio and relics,

Winchesters and Remingtons that come that way could be in jeopardy. If the concern is the Dingman issue, what happened to Dingman??? Irwin

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>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/8/2006 10:52 AM >>>

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From: Alison Merrilees
To: Irwin Nowick
Date: 8/10/2006 12:43:41 PM
Subject: RE: Question

Why don't we talk with Iggy about it next week when he is back in the office. When should we call you?
What number should we call?

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/10/2006 12:41 PM >>>
I don't know - I want to know if the proposed reg affects them.

-----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Wednesday, August 09, 2006 8:13 PM
To: Nowick, Irwin
Subject: RE: Question

What AW features does it have?

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 08/09/06 5:03 PM >>>
How fixed is fixed is the question. This is the gun. Under the proposed regs does this gun become a 12776.1(a) AW. It is a curio and relic. Go to <http://www.surplusrifle.com/sks/index.asp>

-----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Wednesday, August 09, 2006 4:34 PM
To: Nowick, Irwin
Subject: RE: Question

If you need a tool to remove the magazine, then the magazine is not detachable. However, that does not answer the question of whether the rifle is capable of accepting a detachable magazine. That depends on the characteristics of the individual firearm. The SKS with fixed magazine is not capable of accepting a detachable magazine.

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/9/2006 4:05:46 PM >>>

If you need a tool to remove the magazine, is the gun capable of accepting a detachable magazine under the regs?

-----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Wednesday, August 09, 2006 3:27 PM
To: Nowick, Irwin
Subject: RE: Question

According to our AW expert -

The presence of a bayonet would be irrelevant, because it is not a characteristic of assault weapons listed in PC 12276.1(a)(1). It used to be a characteristic under federal law.

The magazine that you described requires a tool to remove, therefore the rifle would not fit in the category of "SKS with detachable magazine" in PC 12276(a)(11).

When Iggy is back in the office next week, maybe we can talk over the phone about any other concerns you have.

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/8/2006 3:31:09 PM >>>

There are SKS rifles that were sold as curio and relics. Some came with a bayonet mount but had a fixed magazine as made in the sense that the magazine dropped down when a lever was pulled but the holder was attached to the gun. I want a specific answer on this. If the bayonet is gone from the gun, is it OK?

-----Original Message-----

From: Alison Merrilees (<mailto:Alison.Merrilees@doj.ca.gov>)
Sent: Tuesday, August 08, 2006 1:45 PM
To: Nowick, Irwin
Cc: Steve Coony
Subject: Re: Question

Whether the rifle you described would be considered "capable of accepting a detachable magazine" depends on the method by which the magazine is attached to the rifle. If it is a temporary fix, it is still capable of accepting a detachable mag. If it is permanently affixed, it is not. Generally, we consider welding to be permanent.

The SKS is a different issue, because it is banned by PC 12276(a)(11): "SKS with detachable magazine." If an SKS magazine requires a tool to remove, it is not an AW as defined in 12276(a)(11). The issue in the Dingman case was whether an SKS that was manufactured to have a fixed mag, but was altered to have a detachable mag, was an AW as defined by 12276(a)(11). The DAG for the Firearms Division at the time said no, because it was manufactured with a fixed mag. The D.A.'s office and court in Santa Clara said yes. We changed our interpretation in response to Dingman.

The Winchester or Remington rifles that are capable of accepting detachable magazines do not have any AW features. Antique firearms, of course, are not AW's, per 12276(c)(1).

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/8/2006 10:52 AM >>>

Alison:

If someone owns a semi auto rifle that you load from the top and its magazine opens up at the bottom but is attached to the gun is that gun covered by the new definition of capable of accommodating a detachable magazines. The reason I ask is if the answer is yes, then a number of SKS curio and relics, Winchesters and Remingtons that come that way could be in jeopardy.

If the concern is the Dingman issue, what happened to Dingman???

Irwin

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From: Alison Merrilees
To: Irwin Nowick
Date: 8/10/2006 12:44:42 PM
Subject: RE: Question

If no features, then they are not AW's now and would not be AW's under the proposed reg's. So the reg's don't affect them.

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 8/10/2006 12:41 PM >>>
I don't know - I want to know if the proposed reg affects them.

-----Original Message-----

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>]
Sent: Wednesday, August 09, 2006 8:13 PM
To: Nowick, Irwin
Subject: RE: Question

What AW features does it have?

>>> "Nowick, Irwin" <Irwin.Nowick@SEN.CA.GOV> 08/09/06 5:03 PM >>>
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Sent: Tuesday, August 08, 2006 1:45 PM
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BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

August 25, 2006

Mr. Wesley Morris
Ten Percent Firearms
1277 Kern Street
Taft, CA 93268

Re: Seized lower receivers – update

Dear Mr. Morris:

I am writing to follow up on my letter dated August 9, 2006, regarding the status of lower receivers that were seized from your licensed premises by DOJ on January 4, 2006.

The receivers were seized as evidence of a possible crime. Our dangerous weapons expert has examined the receivers. We have also consulted with firearms experts from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) about the receivers. We have determined that the receivers are “machineguns” for purposes of state and federal law because the grip flange on each receiver has two screw holes: one for the pistol grip and another to interrupt the disconnect of the firearm and cause the firearm to fire in a full automatic fashion. This adaptation has been considered illegal by ATF since the early 1980’s, when ATF issued a cease and desist order to Olympic Arms regarding the manufacture of receivers that were virtually identical to those seized from your premises. Your receivers are also marked as machine guns with the word “AUTO” on the rear position of the selector switch.

Except as authorized by law, it is illegal to possess a machinegun in the state. (California Penal Code §12220(a).) It is a felony to offer a machinegun for sale in California. (Penal Code §12220(b).) Because the receivers are illegal to possess and offer for sale under both state and federal law, they cannot be returned to you.

It is possible that criminal charges could be filed against you in the future, and/or the receivers could be ordered destroyed pursuant to Penal Code §12251. Furthermore, administrative action could be taken against your firearms license because of violations of law. If criminal charges, nuisance proceedings, or administrative proceedings are initiated, you will be notified and have an opportunity to respond to all allegations, as required by law.

Mr. Morris
August 25, 2006
Page 2

I hope that this information adequately answers your question about the status of the receivers.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

August 25, 2006

Mr. Hector Garcia
Cold War Shooters
29085 Greenspot Road
Highland, CA 92346

Re: Your Letter to the Firearms Division Dated May 24, 2006

Dear Mr. Garcia:

I am writing in response to your letter dated May 24, 2006, regarding my letter dated April 20, 2006 about Cold War Shooters' activities at the Del Mar Crossroads Gun Show. I apologize for not responding sooner.

In your May 24th letter, you assert that allowing individuals who are not peace officers to handle assault weapons that are displayed for sale "violates no law or regulation." You also assert that such conduct is specifically authorized by Penal Code §12090. Finally, you allege that "neither your letter nor Ignatius Chinn have indicated that 'assault weapons' were exposed for sale to inappropriate persons – because they were not."

"Any person who, within this state, possesses any assault weapon, except as provided in this chapter, is punishable by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison." (California Penal Code (hereafter "Pen. Code") §12280(b).) Although certain individuals, such as peace officers, individuals who timely registered the firearms in their possession pursuant to Pen. Code §12285, and assault weapons permit holders are exempt from this provision, there is no exemption for civilians to possess assault weapons displayed for sale at gun shows. When no specific exemption is set forth in the assault weapons law, one cannot be created or implied. (*See Jackson v. Department of Justice* (2001) 85 Cal. App. 4th 1334, 1347.) Therefore, it is illegal for civilians to possess assault weapons that are on display at gun shows.

You imply that this position somehow conflicts with the previously expressed opinion of our office that persons who are authorized to purchase and possess assault weapons may do so in the presence of an agent, or employee, of an assault weapons permit holder as long as the permit holder is physically on the premises. In fact, the situations are entirely different. We have stated in the past that individuals who are authorized by statute to purchase or possess assault weapons, such as peace officers, may possess assault weapons in the presence of an agent of a permit holder, as long as the permit holder is physically present on the premises. We have done so because that activity is specifically authorized by statute. (*See, e.g.* Pen. Code §12280(e).) We

Mr. Garcia
August 25, 2006
Page 2

have never stated that unauthorized persons may possess assault weapons in the presence of an agent or employee of the permit holder.

Any person "who gives or lends any assault weapon . . . is guilty of a felony, and upon conviction, shall be punished by imprisonment in the state prison for four, six, or eight years." (Pen. Code §12280(a)(1).) Certain individuals, such as "a person acting in accordance with Section 12286, 12287, or 12290," (Pen. Code §12280(n)) are exempt from this provision. (Pen. Code §§12280(e) - (h), 12280(j), 12280(l) - (p), 12280(t).) However, a person cannot be "acting in accordance with Section 12286, or 12287 if the person is engaging in activities that are not authorized by the terms and conditions of his or her permit issued by DOJ.

As stated in my letter dated April 20th, "[y]our permit does not allow you to either display, or advertise the sale of or sell assault weapons to civilian customers." Nevertheless, you displayed assault weapons that were not clearly marked as only for law enforcement sale, and allowed civilians to possess assault weapons. Because you engaged in activity that was not authorized by your permit at the Del Mar Crossroads Gun Show on April 18, 2006, you were not acting in accordance with Pen. Code §12287.

Contrary to your assertion in your May 24th letter, Pen. Code §12290 does not authorize a licensed gun dealer who lawfully possesses an assault weapon to give or lend that assault weapon to a person who is not authorized to possess it. Section 12290(a) merely authorizes such a dealer to "display" an assault weapon "at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286."

You imply in your letter that this position somehow conflicts with the previously expressed opinion of our office that an assault weapon may be loaned by a prop masters who has an assault weapons permit and an entertainment firearms permit to authorized participants in a motion picture, television or video production by an authorized employee or agent if the entity producing that production or event, as long as the prop masters are present during the production. Again, this situation is distinguishable from your conduct at the Del Mar Crossroads Gun Show, because unlike your activity, it is specifically authorized by statute and is in accordance with the terms and conditions of the prop master's assault weapons permit. (Pen. Code §12280(n).)

While you claim that "neither your letter nor Ignatius Chinn have indicated that 'assault weapons' were exposed for sale to inappropriate persons," my letter dated April 20, 2006 specifically stated that "you displayed six fully assembled assault weapons at the Del Mar Gun show," refused to "mark each assault weapon with a tag stating that it was not for sale, and was for law enforcement only" as requested by DOJ Special Agent Supervisor Chinn, and allowed civilian customers to handle your assault weapons. In doing so, you were not only violating Pen. Code §12280(b), but you were also exposing assault weapons for sale to inappropriate persons in

Mr. Garcia
August 25, 2006
Page 3

violation of Pen. Code §12280(a).

I hope this information adequately clarifies our position about the laws and regulations that were violated on April 18, 2006.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: C.D. Michel, Attorney at Law

Email: cmichel@tmllp.com

Website: www.tmllp.com

Gun law info: www.calgunlaws.com

From: Alison Merrilees [mailto:Alison.Merrilees@doj.ca.gov]
Sent: Monday, July 31, 2006 12:04 PM
To: C D Michel
Cc: Ignatius Chinn; Randy Rossi
Subject: RE: AWs

Our new reg's will not change our previously expressed opinion that the FN FAL and SKS (w/fixed mag) are legal. We consider those rifles to be incapable of accomodating a detachable magazine. If you have concerns about the consistency of our reasoning, we encourage you to express those concerns in the normal public comment period.

I'm not sure what kind of stories about dealers being prosecuted you are referring to. I guarantee you that DOJ is not arresting or prosecuting dealers for selling the SKS or FN FAL.

>>> C D Michel <cmichel@tmllp.com> 7/31/2006 9:56:46 AM >>>

My dealer clients are freaking out over the new regs because they have SKS rifles, DSArms rifles and a whole bunch of other rifles that are not "permanently altered" (depending on what that means perhaps) so they can't accommodate a detachable magazine.

Every day they see another story about a dealer being prosecuted, and often DOJ is doing the prosecuting.

The bigger questions I outlined last week. But for starters I need an answer to this specific question: The DOJ has previously expressly approved the sale of DSArms FN FAL rifles and SKS rifles which have a SB 23 feature but which have been modified so it takes a tool to remove the magazine (the DSArms) or retrofitted with a fixed mag (the SKSs). But neither of these changes are irreversible. So it would appear to me these are not "permanent alterations."

These are sitting on dealer shelves for sale right now - with DOJ's previous blessing.

Has the DOJ's position on the legality of these firearms changed? Why or why not?

C. D. Michel
TRUTANICH-MICHEL, LLP
Attorneys at Law
Port of Los Angeles Office

180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Phone: 562-216-4441
Fax: 562-216-4445
Email: cmichel@tmlp.com
Website: www.tmlp.com
Gun law info: www.calgunlaws.com

-----Original Message-----

From: Alison Merrilees [mailto:Alison.Merrilees@doj.ca.gov] <mailto:Alison.Merrilees@doj.ca.gov%5d>
Sent: Monday, July 31, 2006 9:26 AM
To: C D Michel
Subject: RE: AWs

Today won't work. Iggy is out and I am supposed to be on vacation. Maybe tomorrow? I can email you in the morning. What is so urgent?

>>> C D Michel <cmichel@tmlp.com> 07/31/06 8:53 AM >>>
I need to speak with you today. Where can I call you?

C. D. Michel

TRUTANICH-MICHEL, LLP

Attorneys at Law

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Long Beach, CA 90802

Phone: 562-216-4441

Fax: 562-216-4445

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Gun law info: www.calgunlaws.com

From: Alison Merrilees [mailto:Alison.Merrilees@doj.ca.gov] <mailto:Alison.Merrilees@doj.ca.gov%5d>
Sent: Friday, July 28, 2006 2:34 PM
To: C D Michel
Subject: RE: AWs

Maybe, but maybe not. It depends on the characteristics (I use that word in the general sense, not in the

12276.1 sense) of the individual firearm.

For years, Iggy has been using the "disassembly or destruction" standard in giving his opinion to manufacturers who want our approval for the firearms they are manufacturing. We do not intend to get into the business of approving/disapproving individual modifications, although we have said that the Evans modification permanently alters firearms that were originally manufactured to be capable of accepting a detachable magazine so that they can no longer accommodate a detachable magazine.

Anyone who alters a fixed mag semi-auto rifle so that it is capable of accomodating a detachable magazine is way too close to the line . . . and probably over it.

>>> C D Michel <cmichel@tmllp.com> 7/28/2006 2:25 PM >>>

My clients, aka DOJ's licensees, really want to know now since DOJ is saying its existing law and dealers are getting scrutinized all over the state and country.

To make it simple - there are lots of guns in dealer inventories with a feature and a non-detachable magazine that can easily be retrofitted with a detachable magazine with minor disassembly and reassembly.

In fact, companies sell after-market detachable magazines for many fixed magazine guns.

Are these guns AWs?

C. D. Michel

TRUTANICH-MICHEL, LLP

Attorneys at Law

Port of Los Angeles Office

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Phone: 562-216-4441

Fax: 562-216-4445

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Gun law info: www.calgunlaws.com

From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>] <<mailto:Alison.Merrilees@doj.ca.gov%5d>>
Sent: Friday, July 28, 2006 1:57 PM
To: C D Michel
Subject: RE: AWs

This is a little too technical for me. I can talk to you next week when Iggy is in the office, or we can try to address your question in the public comment process.

>>> C D Michel <cmichel@tmlp.com> 7/28/2006 1:54 PM >>>

What about model firearms that have an SB 23 feature, that are manufactured with a non-detachable magazine in place, but that can fairly easily be retrofitted with an after-market detachable magazine. Are these legal or not?

The legality of the firearm depends on its capability to accommodate a detachable magazine, regardless of whether it was originally manufactured or was subsequently altered to do so. If it can accommodate a detachable magazine without disassembly or destruction of the firearm, it is illegal. If it cannot, it is legal.

Okay. Retrofitting with a fixed magazine typically requires minor disassembly. For example, swinging or dropping the trigger group out of the receiver, and dropping a fixed magazine down through the top of the group till it won't go any farther. The group is then put back into the receiver, and the new magazine hangs out below the receiver. The replacement magazine cannot be pulled off the gun once put back together.

So if you take a gun with a detachable magazine, open the receiver up, drop in the fixed magazine, and close the receiver, that gun then cannot "accommodate a detachable magazine" even though the detachable magazine can be put back in simply by reversing the process?

Is "disassembly or destruction" somehow related to "permanently altered?"

C. D. Michel

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From: Alison Merrilees [<mailto:Alison.Merrilees@doj.ca.gov>] <<mailto:Alison.Merrilees@doj.ca.gov%5d>>
Sent: Friday, July 28, 2006 1:36 PM
To: C D Michel
Subject: Re: AWs

If a gun is manufactured with a detachable magazine, and then retrofitted with a non-detachable magazine, I take it DOJ's position is the gun would be legal if the alteration was "permanent" but not legal if the alteration was not "permanent?" Correct?

Yes.

What about model firearms that have an SB 23 feature, that are manufactured with a non-detachable magazine in place, but that can fairly easily be retrofitted with an after-market detachable magazine. Are these legal or not?

The legality of the firearm depends on its capability to accommodate a detachable magazine, regardless of whether it was originally manufactured or was subsequently altered to do so. If it can accommodate a detachable magazine without disassembly or destruction of the firearm, it is illegal. If it cannot, it is legal.

>>> C D Michel <cmichel@tmlp.com> 7/28/2006 1:25 PM >>>

I need to figure out what the DOJ's position is on the current state of the law concerning detachable magazines that the regulations are designed to address. We have a whole lot of dealers quaking because

½ their inventory could be illegal.

If a gun is manufactured with a detachable magazine, and then retrofitted with a non-detachable magazine, I take it DOJ's position is the gun would be legal if the alteration was "permanent" but not legal if the alteration was not "permanent?" Correct?

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✓
BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

October 18, 2006

Mr. Scott Toland
2743 Waverly Drive, #8
Los Angeles, CA 90039

Re: Your Letter Inquiring about California Law Regarding Assault Weapons

Dear Mr. Toland:

I am writing in response to your letter (undated) that we received on October 5, 2006, inquiring about current California law regarding assault weapons. In your letter, you asked several specific questions about a rifle pictured in your letter. We cannot give you an opinion about the legality of firearms that we have not individually examined. Nevertheless, I can offer some very general information in response to your inquiries.

If a firearm/receiver is listed by make and model in Penal Code section 12276 or identified in the Attorney General's Assault Weapons Identification Guide, it is an illegal assault weapon. If we are not familiar with the firearm, we cannot give an opinion about whether the firearm is listed in Penal Code section 12276 without examining the firearm itself.

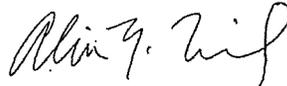
If a semi-automatic centerfire rifle is not listed in Penal Code section 12276, but it meets the generic definition of an assault weapon in Penal Code section 12276.1(a) because it has the capacity to accept a detachable magazine and has any of the features listed in Penal Code section 12276.1(a)(1), it is an illegal assault weapon. You might find it helpful to review DOJ's regulations that further define the features listed in Penal Code section 12276.1. You can find the regulations on the Firearms Division website at <http://ag.ca.gov/firearms/regs/>.

Please understand that even if we were able to give you an opinion about whether a firearm is named in Penal Code section 12276, and whether it meets the generic definition of an assault weapon set forth in Penal Code section 12276.1, our opinion is not conclusive about the legality of the firearm/receiver because it is not binding on local law enforcement. A local prosecutor in one of California's 58 counties could have a different opinion about the legality of the firearm.

Mr. Toland
October 18, 2006
Page 2

I hope that this information is helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

VJ
BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

October 12, 2006

Mr. Kevin Thomason
221 Main Street, Suite 1460
San Francisco, CA 94105

Re: Public Records Act Request – September 12, 2006

Dear Mr. Thomason:

I am writing in response to your request made pursuant to the California Public Records Act (PRA) set forth in California Government Code §6250 et seq. sent via email on September 12, 2006. In your email, you requested "communications between anyone at the DOJ and anyone at DS Arms (DSA), Entreprise, or any other company that sells "California-legal" FAL rifles."

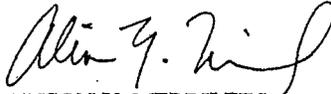
We are unable to comply with your request for all "communications between *anyone* at the DOJ and *anyone* at DS Arms (DSA), Entreprise, or any other company that sells "California-legal" FAL rifles," because it would be impossible for us to determine whether any DOJ employee in the state has communicated with a company that manufactures FAL-style rifles. As you are aware, the Attorney General is the head of the Department of Justice. The Offices of the Attorney General are located in six different cities. In addition to these six offices, there are other law enforcement divisions. In order to respond to your request, each division of the Department of Justice, including each section, branch, unit or bureau would have to be canvassed, requiring each individual deputy attorney general or the head of each section, branch, unit or bureau, or staff thereof, to review each and every individual matter assigned to that deputy attorney general or the head of each section, branch, unit or bureau, or staff thereof, to determine if they have any documents responsive to your request.

However, in a good faith effort to comply with your request, we have reviewed the documents in the possession of the Firearms Division of DOJ and determined that the Firearms Division has sent two letters to manufacturers of FAL-style rifles stating our opinion that the two models of FAL-style rifles manufactured by these companies are not "assault weapons" under the definition set forth in Penal Code Section 12276.1(a)(1). One of the letters, written to Vulcan Arms and dated May 5, 2005, is attached. We are unable to locate the other document that expressed our opinion that an exemplar manufactured by DSA was not an assault weapon under the definition set forth in Penal Code Section 12276.1(a)(1). However, because DSA refused to

Mr. Thomason
October 12, 2006
Page 2

allow us to retain an exemplar of that model, we can not reaffirm our opinion about that model.
We believe the letter was written to DSA in 2002.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

Attachment

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
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Facsimile: (916) 263-0676
(916) 263-0699

September 8, 2006

Mr. Kevin Thomason
221 Main Street, Suite 1460
San Francisco, CA 94105

Re: Public Records Act Request – August 30, 2006

Dear Mr. Thomason:

I am writing in response to your request made pursuant to the California Public Records Act (PRA) set forth in California Government Code §6250 et seq. sent via email on August 30, 2006. In your email, you requested "photo exemplars or other information relating to the approved methods of affixing a magazine to an IMBEL/DSA FAL rifle." You also requested "photo exemplars or other information relating to IMBEL/DSA FALs that have been converted to remove the pistol grip."

We are unable to locate any "photo exemplars or other information relating to the approved methods of affixing a magazine to an IMBEL/DSA FAL rifle," although we have previously indicated that a DSA FAL rifle modified to have an ammunition magazine that is not detachable was not an assault weapon pursuant to California Penal Code §12276.1(a).

We do not have any "photo exemplars or other information relating to IMBEL/DSA FALs that have been converted to remove the pistol grip."

Sincerely,

A handwritten signature in black ink that reads "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

From: Kevin Thomason <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 9/12/2006 2:39:36 PM
Subject: Re: confirming our conversation yesterday re: my PRA request

Dear Ms. Merrilees,

Thank you for the attached letter in which you state that you do not have any "photo exemplars or other information relating to the approved method of affixing a magazine to an IMBEL/DSA FAL rifle."

It appears that you read my PRAR a little too literally.

What I am seeking are certain communications between anyone at the DOJ and anyone at DS Arms (DSA), Entreprise, or *any* other company that sells "California-legal" FAL rifles. Specifically, I am seeking communications that reference, refer or relate to the exact method of affixing a magazine such that a FAL rifle becomes "California-legal."

I would assume that the DOJ has communicated with DSA, Entreprise, and other firearms manufacturers on this issue. In fact, it is impossible that you have not.

Thank you in advance for your expected cooperation.

Regards,

Kevin L. Thomason, Esq.

On 8/30/06, Alison Merrilees <Alison.Merrilees@doj.ca.gov> wrote:

>
> We wil consider this a request for document made pursuant to the Public
> Records Act and respond accordingly.
>
> >>> Kevin Thomason <[REDACTED]> 8/30/2006 4:27 PM >>>
>
>
> No problem on the email, I do that myself sometimes!
>
> I appreciate the additional information:
>
> Do you have photo exemplars or other information relating to the approved
> methods of affixing a magazine to an IMBEL/DSA FAL rifle?
>
> Do you also have photo exemplars or other infomation relating to IMBEL/DSA
> FALs that have been converted to remove the pistol grip.
>
> If so, I would like to make a PRA request for them, assuming they were not
> in the documents that you have already provided to me, and which I have not
> fully reviewed.
>
> It is my intention and desire to stay fully legal, and the above documents
> will help.
>
>
> On 8/30/06, Alison Merrilees < Alison.Merrilees@doj.ca.gov> wrote:

>>

>> I'm sorry, Mr. Thomason. I was having trouble with my computer and
>> inadvertently sent the incomprehensible message below.

>>

>> This is what I intended to convey to you:

>>

>> If you build such a firearm, you do so at your legal peril. We have
>> approved commercially manufactured firearms, such as the FAB-10, the Vulcan
>> and the California legal FN-FAL. We have also approved a commercial method
>> of modifying a firearm with an open magazine well performed by Evans
>> Manufacturing. But we have never approved a non-commercial modification of
>> a firearm with an open magazine well, such as the methods you described.
>> Whether or not your firearm were permanently incapable of accepting a
>> detachable magazine could be up to local law enforcement, and ultimately a
>> jury of twelve citizens.

>>

>> Good luck.

>>

>> >>> Kevin Thomason <kevin.sheila@gmail.com> 8/30/2006 3:34 PM >>>

>>

>> Thank you Alison for the information. Have a good day.

>>

>> On 8/30/06, Alison Merrilees <Alison.Merrilees@doj.ca.gov > wrote:

>>>

>>> Mr. Thomason,

>>>

>>> I am replying to your email because it appears that you are under the
>>> misimpression that do so at your legal peril. We have only approved one
>>> after-market method of permanently affixing a detachable magazine and that
>>> is performed by a commercial

>>>

>>> >>> Kevin Thomason <[REDACTED]> 8/30/2006 1:02:03 PM >>>

>>>

>>> Dear Ms. Merrilees,

>>>

>>> Thank you for returning my call. I did in fact speak with Mr Chin
>>> yesterday regarding the legality of the Imbel flash-hider. Mr. Chin was
>>> quite cordial and helpful. However, at no point did I say to you or Mr.
>>> Chin that it was my intention to build anything with a *detachable*
>>> magazine.

>>>

>>> In fact, I recall telling you that I was planning to possibly build a
>>> "Cali-legal pinned magazine rifle." I am not certain where you got the idea
>>> that I intended to do anything else.

>>>

>>> Your voicemail indicates that you may have made this erroneous
>>> assumption, and I thus am correcting it via this email. . .

>>>

>>> If I do build my FAL, I fully intend to permantly affix the magazine,
>>> either with epoxy or via welding, and thus comply with current California
>>> law.

>>>

>>> k

>>>

>>> -----

>>> Kevin L. Thomason

From: Alison Merrilees
To: [REDACTED]
Date: 5/5/2006 7:25:57 AM
Subject: AW issue

Erin,

Sorry to bug you. Randy and I are hoping for the opportunity to talk to you and Senator Perata about an issue that's been developing over the past few months. Irwin may have tried to get your attention about it by yelling crazy stuff at you from down the hall. I'm hoping we can get your attention in a less anti-social manner.

First, a little background. Since the expiration of the federal assault weapon ban in 2004, the supply of assault weapons and assault weapon parts outside California's borders has exploded. While SB 23 prevents fully assembled firearms with the characteristics of assault weapons from being imported into the state, it does not preclude the importation of receivers (frames) of assault weapons. Roberti-Roos and other aspects of AW law don't prevent it either, as long as the receivers are not already identified as assault weapons, either in statute or in regulation.

As a result, the gun "enthusiasts" in California have been importing thousands of AW receivers into the state. These are identical in every way to the Colt AR-15 and AK 47's that the legislature tried to ban years ago, but for minor differences in markings on the frames. Because of a 2001 decision by the CA Supreme Court, they are legal until identified as AW's by DOJ.

If we identify them as AW's, the owners get 90 days to register them as AW's. Then what? Do they get to build them into full AW's and be compliant with SB 23 because the weapons are registered? Maybe.

While the Department previously indicated that the models would be identified as assault weapons pursuant to its authority to identify "series" weapons, the Department now believes that the public and law enforcement are better served by relying upon the generic definition set forth in SB 23, rather than the outdated scheme to identify assault weapons by name. We also intend to update our reg's to ensure that the weapons do not have the capacity to accept detachable mag's when they are assembled.

Still, the fact that a future AG could list such receivers is disturbing. We would like to talk to you about a small legislative fix - to remove DOJ's authority to identify series weapons. This is an approach that is consistent with Senator Perata's SB 23. It makes the most sense in the long run to regulated AW's under a generic characteristics scheme, considering that manufacturers will always be able to avoid being subject to our list by changing names of models.

So how about a little non-controversial AW bill? It will help clarify and simplify the law and take away a little power from DOJ. The Reeps should love it!

I am out of the office most of the day today, but can check my email this afternoon. Or, we can talk next week.

I know you and Senator Perata are SUPER busy. We really appreciate your time.

Thanks,

Alison
[REDACTED]

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

From: Alison Merrilees
To: Brian Siebel
Date: 5/9/2006 1:13:32 PM
Subject: Re: CA assault weapons - introduction

Brian,

A memo was prepared. It was written by attorneys from Gibson Dunn. We did not get a copy, however. We were concerned about it being subject to disclosure pursuant to the California Public Records Act. You may be able to get a copy from LCAV. The memo concluded that we could list receivers and adopt regulations to prevent registrants from configuring newly registered assault weapons as assault weapons.

I don't really have anything else in writing that I can share. Our office has concluded that we may not have the authority to list bare receivers. Penal Code section 12001 lists some sections of the Penal Code for which the term "firearm" includes the frame or receiver of the firearm. The assault weapon sections are not listed. Also, the Roberti-Roos list includes only assembled AW's, not receivers.

At the same time, we believe that SB 23 supercedes our ability to list fully assembled assault weapons. SB 23 required that assault weapons meeting its generic criteria had to be registered before 1/1/01. If we were to list newly identified AW's, we would have to open a registration period, which seems to conflict with SB 23's provisions and its intent. And of course, there is the ongoing problem of new models with slightly different names. We will never win that name game.

The *Harrott* decision really put us in a bind, as the dissent in that case predicted it would. As a result, the best approach seems to be to consider the add-on provisions to be outdated and superceded by SB 23.

Thanks,

Alison

>>> Brian Siebel <[REDACTED]> 05/09/06 12:39 PM >>>

Friday may work better for all concerned. Ellyne is going to try to set up a call.

In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

Thanks, Brian. I look forward to speaking with you. I am available on Friday at 1 p.m.

I regularly check in with the calguns guys, but had not seen the one you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

By the way, I am also available today until 1 p.m. our time if you want to try and catch me today.

Thanks.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

>>> Brian Siebel [REDACTED] 05/09/06 11:20 AM >>>

Alison:

I am sending this e-mail by way of introduction. I have been receiving information from your office by way of Luis Tolley and Ellyne Bell. I am a Senior Attorney with the Brady Center, and have been here almost ten years. During my tenure, I have been involved extensively with the assault weapons issue in California. For example, I was involved in the Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman cases, the 101 California Street lawsuit, and other issues. I also represented the 12 city and county plaintiffs in the municipal gun suit.

You should be aware of some of what is being said on various gun-nut message boards about DOJ's plans. Here is a sample of one such discussion. <http://www.calguns.net/calgunforum/showthread.php?t=33533>

My direct contact information is below. I understand Ellyne is trying to set up a conference call for Friday of this week (I'm traveling tomorrow and Thursday). I look forward to speaking with you on the phone and offering my expertise to the Attorney General.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax


In addition to our website at www.gunlawsuits.org, please visit our new

websites at www.stopthenra.com and www.nrablacklist.com

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Alison Merrilees - Re: CA assault weapons - introduction

From: Luis Tolley <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/9/2006 7:16 PM
Subject: Re: CA assault weapons - introduction

Hi Alison:

Oh my, I just read through part of the CalGuns thread. The gun guys are upset aren't they. Sounds like you did good.

They may have a point in the question of how a revised definition of "capacity to accept a detachable magazine" impacts weapons that were formerly approved by DOJ. We would not want anything that opens up a new registration process if that process enables them to add features prohibited by SB 23. I'm not quite sure how that all works out.

Luis Tolley
 Project Concern International
 [REDACTED]
 [REDACTED]

----- Original Message -----

From: Alison Merrilees
To: Brian Siebel
Cc: Ellyne Bell; [REDACTED]
Sent: Wednesday, May 10, 2006 6:41 AM
Subject: Re: CA assault weapons - introduction

FYI -

We posted an updated memo on our website today.
<http://caag.state.ca.us/firearms/forms/pdf/AWpolicyrev4.pdf>

Of course, the gun guys are going nuts about it, <http://www.calguns.net/calgunforum/showthread.php?t=33601>

We feel confident that our plan will hold up to any legal challenges.

>>> Brian Siebel <[REDACTED]> 05/09/06 12:39 PM >>>
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In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

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BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

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By the way, I am also available today until 1 p.m. our time if you want to try and catch me today.

Thanks.

Alison

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From: Alison Merrilees
To: [REDACTED]
Date: 5/5/2006 7:29:45 AM
Subject: info re: receivers

Ellyn,

I enjoyed our conversation yesterday. Here is more info about the receiver issue.

Background:

The California state legislature intended to ban all assault weapons under the Robert-Roos Assault Weapons Control Act in 1989, the first time as the California Supreme Court observed in *Kasler v. Locky* compromise. Rather than defining assault weapons by name, including the "Colt AR-15 series" and the "Avtomat Kalashnik

The short-comings of Robert-Roos soon became clear when manufacturers used the names of their products to evade the law. In 1991, the legislature identified and listed "series" weapons that are "only variations with minor differences." However, the Department did not exercise that authority and manufacturers continued to make cosmetic changes to firearms. Laws banning their weapons by name, basically playing the "name

In 1999, the legislature finally enacted a comprehensive law banning assault weapons, when it passed SB 23. Unfortunately, SB 23 did not clarify the effect of SB 23 upon those provisions. Perhaps the legislature intended those provisions because the Department never utilized them prior to the California Supreme Court did not analyze the effect of SB 23 on those provisions in either the *Kasler* case, or the 2001 Harrott decision. As a result, the state has two different schemes for controlling assault weapons that are not reconciled in statutory or decisional law.

Current Problem:

Since the expiration of the federal assault weapon ban in 2004, the supply of assault weapons and assault weapon parts outside California's borders has exploded. While SB 23 prevents fully assembled firearms with the characteristics of assault weapons from being imported into the state, it does not preclude the importation of receivers (frames) of assault weapons, as long as they have not been previously identified as assault weapons, either in statute or in regulation.

While the Department previously indicated that the models would be identified as assault weapons, pursuant to its authority to identify "series" weapons, the Department now believes that the public and law enforcement are better served by relying upon the generic definition set forth in SB 23, rather than the outdated scheme to identify assault weapons by name.

The Department's Policy:

The Department intends to enforce the provisions of SB 23, including the position that a semiautomatic centerfire rifle with a magazine that is temporarily fixed, but readily restorable to have the capacity to accept a detachable magazine, is an assault weapon if it has any of the features listed in 12276.1(a)(1). The Department intends to adopt formal regulations to clarify the law as necessary and proper to carry out the purposes and intent of California's assault weapons control laws.

Feel free to call me with any questions.

Alison

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

From: Brian Siebel [REDACTED]
To: <Alison.Merrilees@doj.ca.gov>
Date: 5/9/2006 12:40:15 PM
Subject: Re: CA assault weapons - introduction

Friday may work better for all concerned. Ellyne is going to try to set up a call.

In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

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>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

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CC: Elyne Bell [REDACTED]

From: Alison Merrilees
To: Brian Siebel
Date: 5/9/2006 4:41:04 PM
Subject: Re: CA assault weapons - introduction

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CC:

Ellyne Bell; 

From: Alison Merrilees
To: Mark ChekalBain; [REDACTED]
Date: 5/10/2006 10:06:53 AM
Subject: Re: Assault weapons

Irwin,

The receiver issue is only relevant for named weapons. We propose to amend PC 12001 to add 12276 and 12276.5, but NOT 12276.1. Therefore, if someone has a Colt AR-15 receiver (or a receiver of any other model *named* in statute or regulation) with no other parts attached, and that receiver is unregistered, that person can be prosecuted for violating 12280(b). This is a clarifying amendment that really does not expand existing law.

I do not think that there is any issue of "DOJ making or creating the perception of hunting guns as assault weapons." How/why would we be doing that? All of the individuals who bought these knock-off AR's have known for six years that they cannot build AW's. We have not changed the rules.

ATF did not consider named receivers to be AW's. They had a published ATF Opinion that said so.

Yes, a large number of receivers were DROS'ed. They were legally DROS'ed. According to the *Harrott* decision, they were legal because they were not named as series weapons by DOJ. Our proposal will not change that because the receivers are still not named AW's. They could not and cannot be built into AW's that meet the SB 23 definition. Our proposal does not change that.

It really is not our problem that the receivers may not be useable. They are as useable now as they were when they were purchased. Purchasers can have them modified so that they have permanently fixed magazines. We can refer them to machinists who do that in a legal manner. They can also build the receivers into functioning weapons with detachable mag's as long as they do not add the features, such as pistol grips.

Regarding the nuisance language, I'll take a look at it. We'd be happy to work with you to clarify that AW's that are seized can be destroyed as nuisances. I'm not sure that we want to get into expanding much further than that. Perhaps there should be a crime of possession of parts with intent to manufacture.

I have already talked to Erin in Perata's Office. She says to get her our language.

>>> [REDACTED] 05/09/06 9:30 PM >>>

As I indicated on the phone with Mark and Alison before I got called into a meeting with Cedillo, I want to review all proposals before I make a specific comment. However, here are my preliminary concerns and recommendations. As a recommendation before anything is done Bill needs to talk to Arnold personally and in depth about this issue so there is no uncertainty about this in terms of what he will and will not sign.

As to specifics, I don't have a problem with repealing the add on procedure - in fact the NRA would probably support that. Don proposed that based on my recommendation in one of the various bills that he introduced.

Two, as to frames and receivers, I do have two problems. One is the issue of making or creating the perception of hunting guns as assault weapons and the implications thereof. When the 1994 importation-manufacturing federal ban went into effect, someone should find out how that was handled as frames or receivers are considered the gun for GCA purposes. The second issue is that DOJ permitted a large number of AR 15 receivers to be DROS'd. Those receivers are unusable and I am very concerned as to what happens to those people.

That is why I would rather have the nuisance language that Don had in one of the bills and rather than the frame or receiver and I would not be adverse if there is an issue providing that a combination of parts to

make a gun into an assault weapon or a .50 BMG be covered.

Given that we are past the fiscal deadline, this requires a gut and amend of an AB in the Senate or vice-versa. Once you have a proposal that I can review and the due diligence is done by Bill with the Guv, then I can comment. In addition, I would want a meeting where Shelley Curran from Don's office is present in the room BEFORE a gut and amend is done.

CC: Alison.Merrilees@sen.ca.gov; Steve Coony

From: Alison Merrilees
To: [REDACTED]
Date: 5/10/2006 8:45:57 PM
Subject: Re: CA assault weapons - SKS question

Luis,

Our intent is not to affect the SKS issue in any way. I think we can do that because the definition of a "detachable magazine" (a magazine that can be removed without the use of a tool) can be distinguished from the definition of "capacity to accept" which we intend to define as being able to accommodate a magazine (versus being permanently altered not to accommodate a magazine). We'll run the language past you before we publish it as a proposed reg.

Alison Y. Merrilees
Deputy Attorney General
Counsel, Firearms Division
California Department of Justice
(916)263-0802
Fax- (916)263-0676

>>> Luis Tolley <[REDACTED]> 05/10/06 6:41 PM >>>
Thanks Alison.

I assume this also means that any new regulation defining "capacity to accept a detachable magazine" won't impact on the Roberti-Roos laws ban on "SKS with detachable magazine" because the SKS with fixed magazines have been legal since 1989 (no pistol grip). Are the "fixed" magazines on the SKS different from what the gunners are now trying to do with the AW receiver clones?

Luis Tolley
Project Concern International

----- Original Message -----

From: Alison Merrilees
To: Luis Tolley
Sent: Wednesday, May 10, 2006 11:43 PM
Subject: Re: CA assault weapons - introduction

Luis,

Hi Luis,

We don't think there is any "taking" issue that would require compensation/registration. We believe that our interpretation of "capacity to accept" is consistent with current law and regulations. We have never given our blessing to any of the temporary fixes that these guys now ASSUME are legal. We are eagerly awaiting a test case on this, because we think we'll win.

The gun guys bragged repeatedly that they could restore their "California legal AR's" to fully functional AW's in a matter of seconds. I don't think a judge or jury would find that such a configuration complies with the letter or the intent of the law.

A few of them clearly are on our side, but I expect them to get worn down and stop speaking up. That does not bother me. They are never going to be happy as long as we say they can't have what they want : AW's that are legal. Our current position is pretty easy to defend. I'm not worried.

>>> Luis Tolley <[REDACTED]> 05/09/06 6:46 PM >>>

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Luis Tolley
Project Concern International

[REDACTED]

----- Original Message -----

From: Alison Merrilees

To: Brian Siebel

Cc: Ellyne Bell <[REDACTED]>

Sent: Wednesday, May 10, 2006 6:41 AM

Subject: Re: CA assault weapons - introduction

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Of course, the gun guys are going nuts about it,
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We feel confident that our plan will hold up to any legal challenges.

>>> Brian Siebel <[REDACTED]> 05/09/06 12:39 PM >>>

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In advance of that, did LCAV prepare a memo for the Attorney General on the AW receivers and detachable magazine issues? I'd appreciate reading anything you can share with me in advance of our call.

Thank you,

BJS

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006 2:43:42 PM >>>

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you sent me. I get a lot of useful information from them, at least to the extent that I can tolerate their rantings!

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(916)263-0802
Fax- (916)263-0676

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You should be aware of some of what is being said on various gun-nut message boards about DOJ's plans. Here is a sample of one such discussion. <http://www.calguns.net/calgunforum/showthread.php?t=33533>

My direct contact information is below. I understand Ellyne is trying to set up a conference call for Friday of this week (I'm traveling tomorrow and Thursday). I look forward to speaking with you on the phone and offering my expertise to the Attorney General.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence

From: Alison Merrilees
To: Luis Tolley
Date: 5/10/2006 9:43:03 AM
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Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[REDACTED]

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From: Luis Tolley <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/10/2006 6:43:17 PM
Subject: Re: CA assault weapons - SKS question

Thanks Alison.

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[REDACTED]
[REDACTED]

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CC: Alison.Merrilees@sen.ca.gov; Steve Coony

From: Luis Tolley <[REDACTED]>
To: Alison Merrilees <Alison.Merrilees@doj.ca.gov>
Date: 5/10/2006 9:15:58 PM
Subject: Re: CA assault weapons - SKS question

Thanks Alison. Interesting distinction between "capacity to accept" and "detachable magazine." I appreciate all you are doing to settle this issue and make sure the gun guys don't open up a big hole in the law.

Luis Tolley
Project Concern International
Phone: 62-21-739-9708
Handphone: 0812-100-5685
Fax: 62-21-722-1136

----- Original Message -----

From: "Alison Merrilees" <Alison.Merrilees@doj.ca.gov>
To: [REDACTED]
Sent: Thursday, May 11, 2006 10:45 AM
Subject: Re: CA assault weapons - SKS question

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> Alison Y. Merrilees
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> the AW receivers and detachable magazine issues? I'd appreciate
> reading
> anything you can share with me in advance of our call.
>
> Thank you,
>
> BJS
>
> >>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/9/2006
> 2:43:42
> PM >>>
> Thanks, Brian. I look forward to speaking with you. I am available
> on
> Friday at 1 p.m.
>
> I regularly check in with the calguns guys, but had not seen the one
> you sent me. I get a lot of useful information from them, at least
> to
> the extent that I can tolerate their rantings!
>
> By the way, I am also available today until 1 p.m. our time if you
> want
> to try and catch me today.
>
> Thanks.
>
> Alison
>
> Alison Y. Merrilees
> Deputy Attorney General
> Counsel, Firearms Division
> California Department of Justice
> (916)263-0802
> Fax- (916)263-0676
>
> >>> Brian Siebel <[REDACTED]> 05/09/06 11:20 AM >>>
>
> Alison:
>
> I am sending this e-mail by way of introduction. I have been
> receiving

> information from your office by way of Luis Tolley and Ellyne Bell.
> I
> am a Senior Attorney with the Brady Center, and have been here
> almost
> ten years. During my tenure, I have been involved extensively with
> the
> assault weapons issue in California. For example, I was involved in
> the
> Kasler v. Lungren, Harrott v. County of Kings, and People v. Dingman
> cases, the 101 California Street lawsuit, and other issues. I also
> represented the 12 city and county plaintiffs in the municipal gun
> suit.
>
>
> You should be aware of some of what is being said on various gun-nut
> message boards about DOJ's plans. Here is a sample of one such
> discussion.
> <http://www.calguns.net/calgunforum/showthread.php?t=33533>
>
>
>
> My direct contact information is below. I understand Ellyne is
> trying
> to set up a conference call for Friday of this week (I'm traveling
> tomorrow and Thursday). I look forward to speaking with you on the
> phone and offering my expertise to the Attorney General.
>
> Sincerely,
>
>
>
>
>
> Brian J. Siebel
> Brady Center to Prevent Gun Violence
> Legal Action Project
> 1225 Eye Street, N.W.
> Suite 1100
> Washington, D.C. 20005
> (202) 218-4642
> (202) 898-0059 fax
> [REDACTED]
>
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> websites at www.stopthenra.com and www.nrablacklist.com
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>

Alison Merrilees - Re: Detachable magazine letters?

From: Alison Merrilees
To: Brian Siebel
Date: 5/15/2006 9:43 AM
Subject: Re: Detachable magazine letters?
CC: Ellyne Bell

Brian,

The only letters that fit your description have been sent to manufacturers of fixed-magazine AR-clones, such as the FAB-10 and the Vulcan. I will look for them and either email or fax them to you.

As far as the receiver issue, we are probably just going to amend PC 12001 (definitions of terms in the dangerous weapons chapter, including "firearm"). It refers to specific sections in which "receiver" means "firearm," but does not refer to any of the AW laws. We would add 12276 and 12276.5 to the list. That way, there is no question that possession of an unregistered AW that is listed either in statute or regulation can be prosecuted as possession of an AW.

>>> Brian Siebel <[REDACTED]> 05/15/06 9:19 AM >>>
Alison,

Luis Tolley suggested I ask you for copies of any letters that DOJ may have sent out over the last couple of years on whether specific firearms did NOT violate SB23 because they weren't considered to have the "capacity to accept detachable magazines." I am in agreement on DOJ's approach on this issue but wonder if there are letters out there that may be construed as in conflict with the new regulations.

As for a new law on AW receivers, I'd need to know more clearly what you are proposing before I can comment. On this issue, the devil is probably in the details. Without the details, you don't know what is covered and what isn't. It is the same overinclusive/underinclusive challenge that we always face with assault weapons.

Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[REDACTED]

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websites at www.stopthenra.com and www.nrablacklist.com

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From: Brian Siebel <[REDACTED]>
To: <Alison.Merrilees@doj.ca.gov>
Date: 5/15/2006 11:12:23 AM
Subject: Re: Detachable magazine letters?

On the receiver issue, that would work for the named weapons of 12276. If you repeal 12276.5, it would not enable DOJ to add other guns (and other receivers) to the list, however. It would be interesting to see what would happen if 12276.5 were repealed and you tried to apply the "series" language of 12276(e) to AK and AR "series" guns in light of Kasler's language that all citizens have to do is consult the AG's list. ("[W] need not and do not reach the question whether it would be unconstitutionally vague if ordinary citizens were required to apply it." Kasler at 353.) Perhaps the courts would be forced to decide what "series" guns really are, thereby banning the receivers of those weapons at the same time.

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/15/2006 12:43:53 PM >>>
Brian,

The only letters that fit your description have been sent to manufacturers of fixed-magazine AR-clones, such as the FAB-10 and the Vulcan. I will look for them and either email or fax them to you.

As far as the receiver issue, we are probably just going to amend PC 12001 (definitions of terms in the dangerous weapons chapter, including "firearm"). It refers to specific sections in which "receiver" means "firearm," but does not refer to any of the AW laws. We would add 12276 and 12276.5 to the list. That way, there is no question that possession of an unregistered AW that is listed either in statute or regulation can be prosecuted as possession of an AW.

>>> Brian Siebel <[REDACTED]> 05/15/06 9:19 AM >>>

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Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[REDACTED]

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CC: Ellyne Bell <[REDACTED]>

Alison Merrilees - Re: Detachable magazine letters?

From: Alison Merrilees
To: Brian Siebel
Date: 5/15/2006 11:22 AM
Subject: Re: Detachable magazine letters?

Although I am tempted to do something that would take the whole "series" thing back to the courts (because the Harrott decision was so bad), I think it's too late. The cat is out of the bag. We cannot buy back all of the series clones. We do not want to allow registration, so I think we're stuck with SB 23 being the vehicle to regulate them.

As for the *Kasler* list that was promulgated pursuant to 12276.5, we think it will remain in place. I will send you our draft of amends. We think the amendments would remove the ability to add on in the future, but keep the Kasler list in place so that the named weapons are illegal to own if not registered.

>>> Brian Siebel <[REDACTED]> 05/15/06 11:11 AM >>>
On the receiver issue, that would work for the named weapons of 12276. If you repeal 12276.5, it would not enable DOJ to add other guns (and other receivers) to the list, however. It would be interesting to see what would happen if 12276.5 were repealed and you tried to apply the "series" language of 12276(e) to AK and AR "series" guns in light of Kasler's language that all citizens have to do is consult the AG's list. ("[W] need not and do not reach the question whether it would be unconstitutionally vague if ordinary citizens were required to apply it." Kasler at 353.] Perhaps the courts would be forced to decide what "series" guns really are, thereby banning the receivers of those weapons at the same time.

>>> "Alison Merrilees" <Alison.Merrilees@doj.ca.gov> 5/15/2006 12:43:53 PM >>>
Brian,

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>>> Brian Siebel <[REDACTED]> 05/15/06 9:19 AM >>>

Alison,

COPY

PART # 3

Luis Tolley suggested I ask you for copies of any letters that DOJ may have sent out over the last couple of years on whether specific firearms did NOT violate SB23 because they weren't considered to have the "capacity to accept detachable magazines." I am in agreement on DOJ's approach on this issue but wonder if there are letters out there that may be construed as in conflict with the new regulations.

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Sincerely,

Brian J. Siebel
Brady Center to Prevent Gun Violence
Legal Action Project
1225 Eye Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 218-4642
(202) 898-0059 fax
[REDACTED]

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Brian,

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>>> Brian Siebel <[REDACTED]> 05/15/06 9:19 AM >>>
Alison,

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Sincerely,

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From: Alison Merrilees
To: Aaron Maguire; Irwin Nowick
Date: 5/15/2006 9:22:54 AM
Subject: RE: Amendments to the AW Statutes

Irwin,

Thanks for your comments. A meeting's fine.

Why do you think we refer to the wrong sections in 12001? 12276 defines AW's with the RR list. Listing 12276 in 12001 clarifies that an unregistered named receiver is an unregistered AW. Same with 12276.5, except that applies to the *Kasler* list.

I'm sure that LC can fix the wobbler language. Should we get the draft to LC to get things under way?

Thanks,

Alison

>>> "Nowick, Irwin" <[REDACTED]> 05/13/06 5:04 PM >>>

We need to have a meeting on this - for starters I am not sure that the 12001 language is correct because you refer to the wrong sections.

In addition, the wobbler language is wrong in the new sections. I will look over and respond by Monday morning. Also, are all the Cr's correct???

-----Original Message-----

From: Aaron Maguire [mailto:Aaron.Maguire@doj.ca.gov]
Sent: Friday, May 12, 2006 5:09 PM
To: Alison Merrilees
Cc: Mark ChekalBain; Nowick, Irwin
Subject: Amendments to the AW Statutes

Here are the changes to the assault weapons statutes as we have discussed. Let me know if you have any questions or concerns.

Aaron Maguire
Deputy Attorney General / Legislative Advocate
Office of Legislative Affairs
California Department of Justice
Office of the Attorney General
Phone: 916-324-5494
Fax: 916-322-2630

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CC: Mark ChekalBain

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

May 30, 2006

Mr. John Alexander
[REDACTED]

RE: DPMS VRS

Dear Mr. Alexander:

At your request, our staff examined the DPMS model VRS in .223 caliber. Due to its single shot design, absence of magazine well, and lack of capacity to accept a detachable magazine, it is our opinion that this design is not compatible with the Stoner X-15 design, which is also commonly known as the Colt AR-15 series design. Therefore, it is our opinion, as earlier rendered for the DPMS Company, that this model is not a "series" firearm.

You should be aware, however, that local law enforcement agencies could have different opinions about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal possession or importation of assault weapons, regardless of this letter.

I hope this information is helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,


ALISON Y. MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

February 1, 2006

Mr. C.D. Michel
Trutanich - Michel, LLP
Attorneys at Law
180 East Ocean Blvd., Suite 200
Long Beach, California 90802

RE: PRA Request - DOJ Opinion Letters Regarding Assault Weapons and Destructive Devices

Dear Mr. Michel:

Enclosed please find documents in response to your request for DOJ Opinion Letters regarding assault weapons and destructive devices. Your request was a follow-up to your previous request for DOJ opinion letters regarding assault weapons. We provided the original materials to you on November 14, 2005. I have enclosed the following documents.

- All the letters I have written regarding assault weapons and destructive devices since October 6, 2005.
- Five letters written by Ignatius Chinn that were inadvertently omitted from the materials provided to you on November 14, 2005.

Because we failed to provide these documents to you in a timely fashion, we will waive the cost of reproducing the documents for this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0802

February 8, 2006

Mr. Robert Hesse
c/o Vulcan Arms
Post Office Box 2473
SSP, MN 55076-8473

RE: Additional Magazine Modifications Necessary – Vulcan Lower Receiver

Dear Mr. Hesse:

I am writing to follow up on my letter dated January 19, 2006. In that letter, I brought to your attention the fact that several of your California customers have removed fixed magazines, and re-installed detachable AR-15 magazines, in your receivers, thus manufacturing unregistered assault weapons. As the letter explained, this is the situation we sought to avoid when we approved your exemplars.

My letter informed you on January 19th that in order to fully comply with California law, you need to secure your magazines with a rivet affixed to the front of the magazine housing that is secured through the magazine body. The letter requests that you submit a new exemplar with the aforementioned modification so that we can return your previous exemplar.

As of today's date, you have failed to respond. If we do not hear from you within 30 days of the date of this letter, we will notify all firearm dealers in California that your firearms cannot be sold in the state. If you have any questions, please feel free to call me at (916) 263-0802.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

U.S. Postal Service
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SSP, MN 55076-8473
PS Form 3800, July 1999 See Reverse for Instructions

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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P.O. BOX 160487
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Facsimile: (916) 263-0676
(916) 263-0802

February 10, 2006

Mr. Benjamin Cannon
[REDACTED]

RE: You letter dated February 6, 2006

Dear Mr. Cannon:

I am writing in response to your letter dated February 6, 2006, which I received yesterday. You asked about the return of your property, Lauer Custom Weaponry, Model LCW-15, an AR-15 style lower receiver marked with serial number SML 2122, seized by Department of Justice agents. The receiver was seized along with hundreds of other AR-15 style lower receivers from RMB Enterprises, located at 1000 Jacklin Road, Milpitas, California, during a routine inspection of RMB on January 27, 2006.

The receivers were seized because they were not "secured" under the definition in Penal Code section 12071(a)(20)(G)(ii), as required by Penal Code section 12071(a)(14). The receivers will not be returned until the Department determines, during a follow-up inspection, that RMB is in compliance with state and federal law regarding the storage and sale of firearms.

We apologize for any inconvenience or additional fees that RMB's failure to comply with state law may cause to you and others.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

cc: Jason Davis

From: Ignatius Chinn
To: Alison Merrilees
Date: 2/24/2006 10:18:08 AM
Subject: Fwd: Re: Confirmation of non-Assault Weapon Status

ALison series is not effected by caliber the DPMS and Eagle have model numbers on their firearms and Eagle doesn't have an AR-10 the connected firm Aralite has the AR-10 / DPMS model is unknown to me I'll need to see it IG

>>> Alison Merrilees 2/23/2006 5:16 PM >>>
Igggy,

*Panther-all
Panther Makes DPMS makes
DPMS Panther*

This guy wrote me a letter about these two lower receivers. Your original opinion is that they are both banned by name. He says no, not the same name. What do you think? Do you think a conviction would hold up for these two models? I understand that he really does not need this much excitement in his life, but he won't go away!

Thanks,
Alison

*stones sold to ~~gov~~
US gov if
u give
Kied*

*Eagle makes
AR-10
=Armalite AR-10*

>>> Jason Paige <[redacted]> 01/25/06 7:39 PM >>>

Mrs. Merrilees,

Thank you so much for your response. Unfortunately your response has left me more confused than before. In Harrott V. Kings County, the Supreme Court held that banned (listed) weapons had to be banned by specific makes and models on a publicized state-maintained list. Neither the DPMS model "LR-308" nor the Eagle Arms model "AR-10" are listed by make and model.

Your response is in direct conflict with the many letters you have sent out to others (including myself) in regards to items not on the list of banned items. On August 4, 2005 you replied to Dr. Cumberland: "Your second question was whether the receiver of a semiautomatic rifle could be an "assault weapon" if it does not have any characteristics specified in PC section 12276.1 and it is not listed in PC section 12276. The answer is "yes". As affirmed in Harrott, the receiver of a semiautomatic rifle would be considered an "assault weapon" if it were specifically listed by the Department of Justice in the California Code of Regulations (CCR), as authorized under PC 12276.5(h).

Your final question was whether it is lawful under California law to purchase a stripped DSA "ZM4" receiver. The DSA "ZM4" is not listed in PC Section 12276 nor is it listed in CCR Section 979.11 (Title 11, Division 1, Chapter 12.9). Therefore, assuming it does not meet the characteristics criteria specified in PC section 12276.1 (such as a "pistol grip that protrudes conspicuously beneath the action of the weapon"), it could lawfully be purchased (or possessed) in California. If it did meet the characteristics criteria, it would be a prohibited assault weapon per PC section 12276.1(a)(1)." On September 27, 2005 you replied to Mr. Benjamin Cannon:

"As you pointed out in your letter, that particular make and model is not listed as an assault weapon in the list promulgated by the Department of Justice in response to the Harrott V. County of Kings case." On December 28, 2005 you replied to me, William Paige:

"The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons."

While the DPMS "LR-308" and the Eagle Arms "AR-10" do share some design features as other listed items, including the DSA "ZM4" and the JP Rifles "CTR-02", they are not listed by make and model on the assault weapon guide.

→ as far as we know, these are banned models. We would be happy to examine them, however an exemption however

So I must ask again, is it lawful under California law to purchase a stripped DPMS "LR-308" and a Eagle Arms "AR-10" receiver? Neither is listed in PC section 12276 nor are they listed in CCR section 979.11 (Title 11, Division 1, Chapter 12.9). Neither item meets the characteristic criteria specified in PC section 12276.1.

Thank you for your time and patience,
William Paige

----- Original Message -----

From: Alison Merrilees

To: [REDACTED]

Sent: Wednesday, January 25, 2006 12:06 PM

Subject: Re: Confirmation of non-Assault Weapon Status

Mr. Paige,

Both the receivers about which you inquired are illegal. The Eagle Arms AR-10 has all the same design features as the M15 that is listed in the Assault Weapons Identification Guide, published by the California Attorney General, except for certain dimensional differences which do not change its status as an assault weapon. The caliber of a weapon is not germane to the determination of its legality.

Likewise, the DPMS LR-308 has all the same design features as the DPMS Panther that is listed in the Assault Weapons Identification Guide, except for certain dimensional differences which do not change its status as an assault weapon.

Yours Truly,

Alison Merrilees
Deputy Attorney General

>>> Jason Paige <[REDACTED]> 01/24/06 9:45 PM >>>

W. Jason Paige
4436 Sierra Express Drive
Camino, California 95709

Alison Merrilees
Deputy Attorney General, Firearms Division
California Department of Justice
Sacramento, CA
Tuesday, January 24
RE: Confirmation of non-Assault Weapon Status

Dear Ms. Merrilees: Thank you in advance for your answers to my questions regarding some California Assault Weapons ("AW") legal matters. I wish to receive confirmation of the legality of importing into California (through a federally licensed firearms dealer) and possession of a "Eagle Arms" model "AR-10" and the "DPMS" model "LR-308" bare lower receivers for my personal use (in other words, this is not an assault weapon. Do note this receiver will not be used to illegally create an illegal assault weapon or "unsafe handgun". The following paragraphs summarize the pertinent legal issues: Category I Assault Weapons: The 1989 Roberti-Roos Assault Weapon Control Act ("AWCA '89"), as amended, declares firearms specifically named assault weapons. These "named" firearms are AWs regardless of presence or absence of various characteristics (that is, whether or not the firearm is configured with items such as pistol grips, folding stocks, flash hiders, etc.). These fifty-plus named Roberti-Roos weapons were known as "Category I" AWs after passage of SB23 1999. Category II Assault Weapons: Due to "series" language in AWCA '89 pertaining only to AR- and AK- weapons, the Kasler v. Lockyer decision determined term

"series" to contain all similar weapons. Kasler in essence stated models with only minor differences from the AK and AR15 are considered AWs, regardless of make, model or characteristics. These 'series' guns form "Category II" AWs. Category III Assault Weapons: The enactment of SB23 defined and banned 'generic' AWs - those with certain characteristics including (but not limited to) both "the capacity to accept a detachable magazine", and a "pistol grip that protrudes conspicuously beneath the action of the weapon." These generically defined firearms were grouped as "Category III" assault weapons. Harrott v. County of Kings decision: This key decision clarified AR/AK "series" membership; it established the requirement that these "series" AWs be specifically promulgated in detail by DOJ. Weapons identified by DOJ as AR or AK series members must be individually described by specific manufacturer names and model numbers. To this end, DOJ published the Roster of AK and AR15 Series Weapons, with the same items also listed within California Code of Regulation (Section 979.11). Weapons not specifically named in this list are not to be considered assault weapons (unless, of course, other characteristic features render them as Category III assault weapons).

With regard to the "Eagle Arms" model "AR-10" and the "DPMS" model "LR-308" lower receivers of which I am inquiring, it should be noted that this receiver: • is not listed on the original Roberti-Roos list of "named" weapons;

- is not listed in the DOJ publication, Roster of AK and AR15 Series Weapons, nor in relevant California Code of Regulations; (both DPMS and Eagle Arms brands are listed, but not the specific model numbers are not, as required by the Harrott v. County of Kings decision.)
- is not a Category III 'generic' assault weapon, due to its being a bare receiver with no characteristic banned assault weapon features. Thus, provided that a long gun's bare receiver (frame) does not have any assault weapon characteristics at time of importation, and is not named in the above-mentioned DOJ Roster, it indeed must be treated like any other 'normal' long gun. Do please note I have no intention to add a pistol grip while this receiver has the ability to accept a detachable magazine (i.e., with open magazine well). Also, if a non-detachable 10-round magazine were to be affixed - either screw-in, or pinned-in-place - before a pistol grip were to be mounted, this configuration would not be considered an assault weapon under the above-referenced statutes and case law. Recent prior DOJ Firearms Division approval of other related and essentially similar designs also supports this. I do further understand that the receiver may not have an open magazine well accepting of a detachable magazine at any time while there is a pistol grip attached to this receiver, even for momentary repairs. I also understand that upon constructing a complete, legal rifle using this receiver, I of course could not add any other characteristics causing this rifle to be regarded as a Category III "generic" assault weapon. I can be contacted at the above address; I would appreciate a written reply confirming DOJ agrees this receiver is legal to import and possess as well as and e-mail if you would be so kind. Sincerely, W. Jason Paige

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

So I must ask again, is it lawful under California law to purchase a stripped DPMS "LR-308" and a Eagle Arms "AR-10" receiver? Neither is listed in PC section 12276 nor are they listed in CCR section 979.11 (Title 11, Division 1, Chapter 12.9). Neither item meets the characteristic criteria specified in PC section 12276.1.

Thank you for your time and patience,
William Paige

----- Original Message -----

From: Alison Merrilees

To: [REDACTED]

Sent: Wednesday, January 25, 2006 12:06 PM

Subject: Re: Confirmation of non-Assault Weapon Status

Mr. Paige,

Both the receivers about which you inquired are illegal. The Eagle Arms AR-10 has all the same design features as the M15 that is listed in the Assault Weapons Identification Guide, published by the California Attorney General, except for certain dimensional differences which do not change its status as an assault weapon. The caliber of a weapon is not germane to the determination of its legality.

Likewise, the DPMS LR-308 has all the same design features as the DPMS Panther that is listed in the Assault Weapons Identification Guide, except for certain dimensional differences which do not change its status as an assault weapon.

Yours Truly,

Alison Merrilees
Deputy Attorney General

>>> Jason Paige <[REDACTED]> 01/24/06 9:45 PM >>>

W. Jason Paige
4436 Sierra Express Drive
Camino, California 95709

Alison Merrilees
Deputy Attorney General, Firearms Division
California Department of Justice
Sacramento, CA
Tuesday, January 24
RE: Confirmation of non-Assault Weapon Status

Dear Ms. Merrilees: Thank you in advance for your answers to my questions regarding some California Assault Weapons ("AW") legal matters. I wish to receive confirmation of the legality of importing into California (through a federally licensed firearms dealer) and possession of a "Eagle Arms" model "AR-10" and the "DPMS" model "LR-308" bare lower receivers for my personal use (in other words, this is not an assault weapon. Do note this receiver will not be used to illegally create an illegal assault weapon or "unsafe handgun". The following paragraphs summarize the pertinent legal issues: Category I Assault Weapons: The 1989 Roberti-Roos Assault Weapon Control Act ("AWCA '89"), as amended, declares firearms specifically named assault weapons. These "named" firearms are AWs regardless of presence or absence of various characteristics (that is, whether or not the firearm is configured with items such as pistol grips, folding stocks, flash hiders, etc.). These fifty-plus named Roberti-Roos weapons were known as "Category I" AWs after passage of SB23 1999. Category II Assault Weapons: Due to "series" language in AWCA '89 pertaining only to AR- and AK- weapons, the Kasler v. Lockyer decision determined term

"series" to contain all similar weapons. Kasler in essence stated models with only minor differences from the AK and AR15 are considered AWs, regardless of make, model or characteristics. These 'series' guns form "Category II" AWs. Category III Assault Weapons: The enactment of SB23 defined and banned 'generic' AWs - those with certain characteristics including (but not limited to) both "the capacity to accept a detachable magazine", and a "pistol grip that protrudes conspicuously beneath the action of the weapon." These generically defined firearms were grouped as "Category III" assault weapons. Harrott v. County of Kings decision: This key decision clarified AR/AK "series" membership; it established the requirement that these "series" AWs be specifically promulgated in detail by DOJ. Weapons identified by DOJ as AR or AK series members must be individually described by specific manufacturer names and model numbers. To this end, DOJ published the Roster of AK and AR15 Series Weapons, with the same items also listed within California Code of Regulation (Section 979.11). Weapons not specifically named in this list are not to be considered assault weapons (unless, of course, other characteristic features render them as Category III assault weapons).

With regard to the "Eagle Arms" model "AR-10" and the "DPMS" model "LR-308" lower receivers of which I am inquiring, it should be noted that this receiver: is not listed on the original Roberti-Roos list of "named" weapons;

- is not listed in the DOJ publication, Roster of AK and AR15 Series Weapons, nor in relevant California Code of Regulations; (both DPMS and Eagle Arms brands are listed, but not the specific model numbers are not, as required by the Harrott v. County of Kings decision.)
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FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 5, 2006

Mr. Chuck Michel
180 East Ocean Blvd., Suite 200
Long Beach, California 90802

Re: Your email

Dear Mr. Michel:

I am writing in response to your email dated January 4, 2006, requesting information on behalf of your client, the California Association of Firearms Dealers. You asked a number of questions in your email.

What AR /AK series frames has the DOJ opined to be legal at this time? (I understand that the DOJ is sending and has sent some letters regarding this, but this request also goes to those AR / AK series firearms that have not received written letters from the DOJ.)

As you know, the Firearms Division is statutorily responsible for identifying illegal AR and AK-series firearms. As a service, we also offer advice to the public and law enforcement about whether certain firearms are legal to purchase and possess in California. We do not maintain a list of AR/AK series frames that are legal to own.

We respond to inquiries by determining whether the firearm/receiver is listed by make and model in Penal Code section 12276 or identified in the Attorney General's Assault Weapons Identification Guide. If so, it is an illegal assault weapon. If it is not listed and we are not familiar with the firearm, we cannot give an opinion about the legality of the firearm without examining the firearm itself, or a photograph thereof.

If we are familiar with a firearm/receiver that is not listed, but the firearm/receiver has features listed in Penal Code section 12276.1, it is an illegal assault weapon. If it does not have the features, but is virtually identical to a listed assault weapon, it is our position that the firearm/receiver is technically legal to purchase and possess in California. However, our opinion is not conclusive about the legality of the firearm/receiver. A local prosecutor in one of California's 58 counties could decide to prosecute anyone who purchases or possesses such a firearm/receiver, or the gun dealer who orders it for illegal importation of an assault weapon, regardless of our opinion.

What firearms / receivers does the DOJ contemplate will be added series lists?

What firearms / receivers does the DOJ contemplate may be added to the series lists?

As of today's date, there has been no final decision by the Attorney General to add series weapons to the Assault Weapons Identification Guide.

When will the list of proposed firearms to be added to the series lists be finalized?

As of today's date, the Attorney General has not decided whether or when to update the list of series weapons in the Assault Weapons Identification Guide.

Will the proposed new additions to the series list be subject to public comment?

No. According to the California Supreme Court, "the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations...two types of firearms defined in section 12276 by the use of the term series, namely the AK-47 series and the Colt AR-15 series." Harrott v. County of Kings (2003) 25 Cal. 4th 1138, 1155. The legislature granted DOJ the authority to identify "series" assault weapons and add them to the Attorney General's Assault Weapons Identification Guide pursuant to Penal Code without a court hearing, or public comment, because of the inherent danger and killing power of series weapons.

Do the additions to the list have to be approved by Office of Administrative Law?

No. Pursuant to Penal Code section 12276.5(h), an updated list merely needs to be filed with the California Secretary of State for publication in the California Code of Regulations. The Administrative Procedures Act does not apply to the submission and publication of the updated list of series assault weapons according to 12276.5(h).

Once the new additions list is final, I assume sales will no longer be allowed. What must occur before it becomes final? Any idea when it would become final?

Sales of newly designated series weapons are illegal on the date when the list is published.

I assume that there would be a 90 day registration period; would people only be allowed to register the newly designated series guns during that period?

Individuals who owned newly designated series weapons before the date of publication would have 90 days to register their firearms with the Department of Justice

When is the new list being published?

An updated list must be published within ten days of submission to the California Secretary of State.

*What methods of publication and public notice does the DOJ intend to implement?
Has the DOJ done or is it doing an information bulletin on the addition of firearms to the series list?*

If DOJ were to update the Assault Weapons Identification Guide, DOJ would use all reasonable methods to inform the public about the change in the law, including but not limited to, Informational Bulletins.

What else is DOJ doing with this issue?

We continue in our effort to enforce existing firearm laws in order to protect and enhance public safety. I hope this information was helpful. Please feel free to contact me again if you have additional questions.

Sincerely,



ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

DRAFT – Let's Discuss on 1/5/06!

DOJ –

January 5, 2006

Mr. Chuck Michel

180 East Ocean Blvd., Suite 200
Long Beach, California 90802

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What else is DOJ doing with this issue?

We continue in our effort to enforce existing firearm laws in order to protect and enhance public safety. I hope this information was helpful. Please feel free to contact me again if you have additional questions.

Sincerely,

AYM

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile (916) 263-0676

January 18, 2006

J.A. Cervantes
10450 Albertworth Lane
Los Altos Hills, CA 94024

Re: Importation of DSA ZM4 Lower Receiver into California

Dear J.A. Cervantes:

I am writing in response to your inquiry about whether it is legal to send a DSA ZM4 lower receiver to California.

The DSA ZM4 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the DSA ZM4 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the DSA ZM4 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the DSA ZM4 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General
Firearms Division

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 18, 2006

BST Guns
A.J. Robello
1307 Scott Street, Suite D
Petaluma, CA 94954

Re: Importation of Unlisted Lower Receivers into California: Stag 15, Fulton Armory, Ameetec
Mega Gator, Superior, Sun Devil

Dear Mr. Robello:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487
Public: 916-263-0802
Facsimile: 916-263-0676

January 18, 2006

Mr. Frank Cruz
3030 Todd Court
Castro Valley, CA 94546

Re: Bushmaster AR-10 type .308 caliber lower receivers

Dear Mr. Cruz:

I am writing in response to your letter dated December 28, 2005. You inquired about the legality of importing a Bushmaster AR-10 type .308 caliber lower receiver into California. This receiver is considered to be an assault weapon in California. It cannot be purchased, imported, possessed or sold in the state pursuant to Penal Code section 12276 (a)(18), regardless of whether it has any of the features listed in Penal Code section 12276.1. Importation of an assault weapon, in violation of Penal Code 12280(a)(1), is a felony.

I hope that this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 19, 2006

Mr. Robert Hesse
c/o Vulcan Arms
Post Office Box 2473
SSP, MN 55076-8473

RE: Additional magazine modifications necessary

Dear Mr. Hesse:

It has come to our attention that several of your California customers have removed your fixed magazines, and re-installed detachable AR-15 magazines, thus manufacturing unregistered assault weapons. Of course, this is the situation we sought to avoid when we approved your exemplars.

In order to fully comply with California law, you need to secure your magazines with a rivet affixed to the front on the magazine housing all the way through the magazine body. Please submit an exemplar with the aforementioned modification and we will return your previous exemplar.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 19, 2006

William Whitaker
P.O. Box #1
Moorpark, CA 93021

Re: Importation of Unlisted Lower Receivers into California: Ameetec Arms, Mega Machine Shop

Dear Mr. Whitaker:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 20, 2006

Chief Frank Wills
West Covina Police Department
1444 West Covina, CA 91790-2716

Re: Assault Weapons to be Retained by Officers

Dear Chief Wills:

I am writing in response to an inquiry from your office about whether officers who separate from your department may legally retain assault weapons that are registered in their names. Under the provisions of Penal Code section 12280(e) and (f), officers who separate from employment by a law enforcement agency may retain assault weapons that are legally registered pursuant to Penal Code 12285, as long as they are not prohibited by law from possessing firearms.

I hope that this information is helpful.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

cc: Lt. David Barras

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0802

March 1, 2006

Mr. Timothy Jay Kniveton
[REDACTED]
[REDACTED]

RE: Request for Return of Property

Dear Mr. Kniveton:

I am writing in response to your letter dated February 13, 2006, which I received on February 23, 2006. You asked about the return of your property, two Lauer Custom Weaponry, Model LCW-15 AR-15 style lower receivers and two Doublestar STAR-15 AR-15 style lower receivers. While I do not have any information about any receivers you purchased, they may be among the hundreds of AR-15 style lower receivers that were seized by Department of Justice agents on January 27, 2006.

The receivers were originally seized from RMB Enterprises, located at 1000 Jacklin Road, Milpitas, California, during a routine inspection of RMB because they were not "secured" under the definition in Penal Code section 12071(a)(20)(G)(ii), as required by Penal Code section 12071(a)(14). They are now being held as evidence pending a follow-up investigation.

Individuals who purchased the seized receivers will likely have to pay additional fees prior to taking possession of the receivers. While it is unfortunate that purchasers will be inconvenienced and may have financial losses, those damages are the result of a failure to comply with state and federal law.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

March 13, 2006



RE: Recent Correspondence to the Firearms Division

Dear Mr. Boholst:

I am writing in response to your letter to the Firearms Division dated March 6, 2006, regarding your application to register four .50 caliber rifles.

The Firearms Division will accept your application to register the following rifles:

<u>SERIAL #</u>	<u>MAKE</u>	<u>MODEL</u>
392	TNW	.50 BMG/semi-auto
446	TNW	.50 BMG/semi-auto

The Department will not accept your application to register the following rifles without inspecting them.

<u>SERIAL #</u>	<u>MAKE</u>	<u>MODEL</u>
M50137R	R.A.P.	.50 BMG
50	PAUZA	.50 BMG

We realize that .50 caliber BMG rifles are very heavy, bulky, and difficult to transport. Therefore, two uniformed and properly identified agents from the Firearms Division went to your home on January 18, 2006 and offered to inspect all four of the above rifles. They were not allowed to inspect the rifles.

As Special Agent Supervisor Ignatius Chinn explained to you over the telephone on January 19, 2006, he will inspect these latter two rifles if you bring them to the Department of Justice facility at 4949 Broadway, Sacramento, California 95820. You must transport the rifles in compliance with California Penal Code section 12026.1. Please call Supervisor Chinn at (916) 263-0956 to arrange for an inspection. Otherwise, we will assume that you no longer wish to register the R.A.P. and Pauza rifles listed above.

Sincerely,

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
- SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

March 13, 2006

Mr. W. Jason Paige
[REDACTED]
[REDACTED]

RE: Eagle Arms AR-10; DPMS LR-308

Dear Mr. Paige:

I am writing in response to your letter dated January 26, 2006, inquiring whether the DPMS LR-308 and Eagle Arms AR-10 lower receivers are assault weapons under California law. It is our opinion that both models are banned by name under current law.

It is possible that we are mistaken. We would be happy to inspect an exemplar of one of these models that you claim is not an assault weapon. If you wish to submit a photograph (including all markings) for our review, please send it to P.O. Box 160487, Sacramento, CA 95816. You are also welcome to contact Special Agent Supervisor Ignatius Chinn at (916)263-0956 to arrange for an inspection of the receivers.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

March 13, 2006

Darin R. Dominguez
[REDACTED]
[REDACTED]

RE: Legal Clarification – Lauer Custom Weaponry LCW-15;
CN ROMARM SA CUGIR PAR-1;
CN ROMARM SA CUGIR PAR-2;
CN ROMARM SA CUGIR SAR-1;
CN ROMARM SA CUGIR SAR-2;
CN ROMARM SA CUGIR SAR-3;
Robinson Armament M96 Expeditionary Rifle;
Robinson Armament M96 Recon Rifle

Dear Mr. Dominguez:

I am writing in response to your letter dated January 31, 2006, inquiring about the legal status of the above-referenced lower receivers and rifles.

There are several definitions of assault weapons under existing California law. A firearm is an assault weapon if it is listed in California Penal Code section 12276, or identified by the Department in response to *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The California Supreme Court held in *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138, that this assault weapons identification scheme provides the public with due process notice whether or not a firearm is an assault weapon. A firearm can also be an assault weapon when it meets the generic definition of an assault weapon set forth in Penal Code 12276.1.

You should be aware that the lower receivers and rifles about which you inquired are virtually identical to firearms that are considered assault weapons under current California law. They have the capacity to accept a detachable magazine, and the capacity to accept other features listed in Penal Code section 12276.1, such as a pistol grip, thumbhole stock, and a folding or telescoping stock. They cannot be assembled with other parts in a manner that would make them assault weapons under the definition set forth in Penal Code section 12276.1.

I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script that reads "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

March 13, 2006

Mr. Benjamin Cannon
[REDACTED]
[REDACTED]

RE: Wilson Tactical, LLC-WT-15

Dear Mr. Cannon:

I am writing in response to your letter dated January 26, 2006, inquiring about the legal status of the above-referenced lower receiver.

There are several definitions of assault weapons under existing California law. A firearm is an assault weapon if it is listed in California Penal Code section 12276, or identified by the Department in response to *Kasler v. Lockyer* (2000) 23 Cal. 4th 472. The California Supreme Court held in *Harrott v. County of Kings* (2001) 25 Cal. 4th 1138, that this assault weapons identification scheme provides the public with due process notice whether or not a firearm is an assault weapon. A firearm can also be an assault weapon when it meets the generic definition of an assault weapon set forth in Penal Code 12276.1.

You should be aware that the lower receiver about which you inquired is virtually identical to receivers that are considered assault weapons under current California law. It has the capacity to accept a detachable magazine, and the capacity to accept other features listed in Penal Code section 12276.1, such as a pistol grip, thumbhole stock, and a folding or telescoping stock. The receiver cannot be assembled with other parts in a manner that would make it an assault weapon under the definition set forth in Penal Code section 12276.1.

I hope this information is helpful.

Sincerely,

A handwritten signature in cursive script that reads "Alison Y. Merrilees".

ALISON Y. MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

April 4, 2006

Mr. Jack Doriot II
[REDACTED]
[REDACTED]

RE: Eagle Arms AR-10/Armalite AR 10

Dear Mr. Doriot:

I am writing this letter to inform you that the "Eagle Arms AR-10" about which you recently inquired, is an illegal assault weapon.

The receiver you described as the "Eagle Arms AR-10" is actually marked "Armalite AR 10." In August of 2000, the Armalite AR 10 was listed as an assault weapon by the Department pursuant to the provisions of Penal Code 12276.5(h) and the *Kasler* decision. It is considered to be a Colt AR-15 "series" assault weapon, pursuant to Penal Code section 12276(a)(5). Unless it was lawfully possessed prior to August 16, 2000 and registered before January 23, 2001, the Armalite AR 10 is illegal to buy, sell or possess in California.

You misrepresented the Armalite AR 10 to Firearms Division Field Representative Kathy Quinn as an Eagle Arms AR-10 and made no mention of the markings on the receiver. As a result, Ms. Quinn wrote you a letter dated March 9, 2006, indicating that the Eagle Arms AR-10 is not an assault weapon. The letter was incorrect:

If you are in possession of an Armalite AR 10 receiver, you must surrender it to a law enforcement office for destruction, pursuant to Penal Code section 12288. If you have any questions, or would like to surrender the receiver to the Department, please call the Firearms Division at the phone number listed above.

Sincerely,


ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

SAMPLE

December 27, 2005

[Name & Address]

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. [Name]:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

April 20, 2006

Hector Garcia Jr
PGC, Inc, Cold War Shooters
29085 Greenspot Road
Highlands, CA 92346

RE: Cease and Desist Unauthorized Activity

Dear Mr. Garcia:

It has come to our attention that on April 8, 2006, you displayed six fully assembled assault weapons at the Del Mar Gun show to enhance your sales of unlisted AR-15 lowers to non-law enforcement customers.

The California Department of Justice (DOJ) issued you a permit pursuant to the provisions of California Penal Code section 12287 to sell assault weapons. The permit was issued to you for explicit activities which are enumerated under the conditions of the permit:

- (1) Sales and/or demonstration to law enforcement and government agencies.
- (2) Sales pursuant to Penal Code section 12280(g)(2) to authorized peace officers members of agencies specified in Penal Code section 12280(f)
- (3) Acquisition and possession of registered assault weapons and or .50 BMG rifles for the purposes of either: a) transferring said weapons to authorized out-of-state FFL holders, or b) selling those weapons to authorized peace officer members of agencies specified in Penal Code section 12280(f).

On April 8, 2006, DOJ Special Agent Supervisor Ignatius Chinn advised you to mark each assault weapon with a tag stating that it was not for sale, and was for law enforcement only.

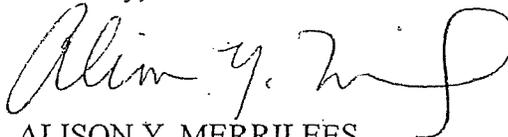
Throughout the duration of the gun show, DOJ agents observed customers picking up your assault weapons and looking down the sights. At no time did your staff ask these customers for their law enforcement identification. Agents also noted that you never put any tags or signs on the assault weapons identifying them as not being for sale, and available to law enforcement only.

Mr. Garcia
April 20, 2006
Page 2

Your permit does not allow you either display, advertise the sale of or sell assault weapons to civilian customers. Please cease and desist this unauthorized activity immediately. Penal Code section 12233 (applicable pursuant to Penal Code section 12287(b)) allows the Department to revoke a permit "at any time when it appears that ... the holder of the permit has used the firearms for purposes other than those allowed by the permit or that the holder of the permit has not exercised great care in retaining custody of any weapons possessed under the permit."

I hope this information is helpful. Please feel free to contact me if you have any questions.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION

P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

April 4, 2006

Mr. Jack Doriot II
[REDACTED]

RE: Eagle Arms AR-10/Armalite AR 10

Dear Mr. Doriot:

I am writing this letter to inform you that the "Eagle Arms AR-10" about which you recently inquired, is an illegal assault weapon.

The receiver you described as the "Eagle Arms AR-10" is actually marked "Armalite AR 10." In August of 2000, the Armalite AR 10 was listed as an assault weapon by the Department pursuant to the provisions of Penal Code 12276.5(h) and the *Kasler* decision. It is considered to be a Colt AR-15 "series" assault weapon, pursuant to Penal Code section 12276(a)(5). Unless it was lawfully possessed prior to August 16, 2000 and registered before January 23, 2001, the Armalite AR 10 is illegal to buy, sell or possess in California.

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If you are in possession of an Armalite AR 10 receiver, you must surrender it to a law enforcement office for destruction, pursuant to Penal Code section 12288. If you have any questions, or would like to surrender the receiver to the Department, please call the Firearms Division at the phone number listed above.

Sincerely,


ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

SAMPLE

December 27, 2005

[Name & Address]

Re: Importation of Stag-15 Lower Receiver into California

Dear Mr. [Name]:

I am writing in response to your inquiry about whether it is legal to send a Stag-15 lower receiver to California.

The Stag-15 is not listed as a Category One assault rifle in California Penal Code 12276, and is not yet a Category Two assault rifle. Although technically the receiver is legal to purchase and possess in California at this time (assuming it does not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that the Stag-15 lower receiver is virtually identical to rifles that are now illegal assault weapons. You should also be aware that we intend to add it soon to the DOJ Assault Weapons Identification Guide. Therefore, the Stag-15 will soon be classified as an assault weapon.

Also, please realize that this opinion is not conclusive about the legality of the firearm. A local prosecutor in one of California's 58 counties could decide to prosecute you, or the gun dealer who orders the Stag-15 for illegal importation of an assault weapon, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

ALISON MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

April 20, 2006

Hector Garcia Jr
PGC, Inc, Cold War Shooters
29085 Greenspot Road
Highlands, CA 92346

RE: Cease and Desist Unauthorized Activity

Dear Mr. Garcia:

It has come to our attention that on April 8, 2006, you displayed six fully assembled assault weapons at the Del Mar Gun show to enhance your sales of unlisted AR-15 lowers to non-law enforcement customers.

The California Department of Justice (DOJ) issued you a permit pursuant to the provisions of California Penal Code section 12287 to sell assault weapons. The permit was issued to you for explicit activities which are enumerated under the conditions of the permit:

- (1) Sales and/or demonstration to law enforcement and government agencies.
- (2) Sales pursuant to Penal Code section 12280(g)(2) to authorized peace officers members of agencies specified in Penal Code section 12280(f)
- (3) Acquisition and possession of registered assault weapons and or .50 BMG rifles for the purposes of either: a) transferring said weapons to authorized out-of-state FFL holders, or b) selling those weapons to authorized peace officer members of agencies specified in Penal Code section 12280(f).

On April 8, 2006, DOJ Special Agent Supervisor Ignatius Chinn advised you to mark each assault weapon with a tag stating that it was not for sale, and was for law enforcement only.

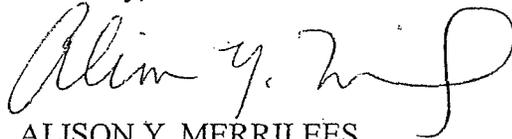
Throughout the duration of the gun show, DOJ agents observed customers picking up your assault weapons and looking down the sights. At no time did your staff ask these customers for their law enforcement identification. Agents also noted that you never put any tags or signs on the assault weapons identifying them as not being for sale, and available to law enforcement only.

Mr. Garcia
April 20, 2006
Page 2

Your permit does not allow you either display, advertise the sale of or sell assault weapons to civilian customers. Please cease and desist this unauthorized activity immediately. Penal Code section 12233 (applicable pursuant to Penal Code section 12287(b)) allows the Department to revoke a permit "at any time when it appears that ... the holder of the permit has used the firearms for purposes other than those allowed by the permit or that the holder of the permit has not exercised great care in retaining custody of any weapons possessed under the permit."

I hope this information is helpful. Please feel free to contact me if you have any questions.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 19, 2006

William Whitaker
P.O. Box #1
Moorpark, CA 93021

Re: Importation of Unlisted Lower Receivers into California: Ametec Arms, Mega Machine Shop

Dear Mr. Whitaker:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

The receivers about which you inquired are not listed as Category One assault rifles in California Penal Code 12276, and are not yet named as Category Two assault rifles. Although technically the receivers are legal to purchase and possess in California at this time (assuming they do not have the characteristics listed in Penal Code section 12276.1(a)(1), (a)(2) or (a)(3)), you should be aware that they are virtually identical to assault weapons that are now illegal in California. You should also be aware that we may add them soon to the DOJ Assault Weapons Identification Guide. Therefore, the lower receivers may soon be classified as assault weapons.

Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. Box 160487
Sacramento, CA 95816-0487

Public: 916-263-0802
Facsimile: 916-263-0676

January 19, 2006

William Whitaker
P.O. Box #1
Moorpark, CA 93021

Re: Importation of Unlisted Lower Receivers into California: Ameetec Arms, Mega Machine Shop

Dear Mr. Whitaker:

I am writing in response to your inquiry about whether it is legal to send the unlisted AR-15 lower receivers listed above, into California.

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Also, please realize that this opinion is not conclusive about the legality of the receivers. A local prosecutor in one of California's 58 counties could decide to prosecute you for illegal importation of assault weapons, regardless of this letter.

I hope this information was helpful. Please feel free to write to me again if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Alison Merrilees".

ALISON MERRILEES
Deputy Attorney General

For **BILL LOCKYER**
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

December 6, 2006

Mr. C.D. Michel
Attorney at Law
180 East Ocean Blvd, Suite 200
Long Beach, CA 90802

Re: Public Records Act Request – MAAS Muzzle Attachment 102506

Dear Mr. Michel:

I am writing in response to the above request made pursuant to the California Public Records Act (PRA) set forth in California Government Code §6250 et seq. received by the Firearms Division of the California Department of Justice (DOJ) via email on October 25, 2006.

In MAAS Muzzle Attachment 102506, you requested “everything DOJ has on the issue . . . [of] the legality of the muzzle attachment on the MAAS bolt action rifle.” We do not have any documents that satisfy the terms and conditions of your request. However, we have other documents that are related to your request.

You asked about “DOJ’s position on the legality of the muzzle attachment on the MAAS bolt action rifle.” The muzzle attachment on the MAAS bolt action rifle is virtually identical to the muzzle attachment on the Zastava SKS Carbine 59/66 rifle. Because the muzzle attachment on the Zastava SKS Carbine 59/66 rifle is a launching device for a grenade, it meets the definition of a “grenade launcher” in Penal Code section 12276.1(a)(1)(D), and is also a “destructive device” pursuant to the definition of that term set forth in Penal Code section 12301(a)(2). Therefore, the muzzle attachment on the MAAS bolt action rifle must be removed from the rifle or modified for the rifle to comply with California law. DOJ has reviewed two types of modified muzzle attachments on Zastava SKS Carbine 59/66-type rifles – manufactured by Century Arms and Ohio Gun Works - and determined that those alterations comply with California law.

You also asked in your email dated October 25, 2006 whether “DOJ [has] published an Information Bulletin to either FFLs or LEOs advising them of this?” DOJ has not issued an information bulletin regarding the muzzle attachment on the MAAS bolt action rifle. However, we have issued an Information Bulletin about the grenade launcher on the Zastava SKS Carbine 59/66 rifle. It can be found at the Firearms Division website at <http://ag.ca.gov/firearms/zastava.php>.

Mr. Michel
December 6, 2006
Page 2

I have attached to this letter all public documents in the possession of that Firearms Division of DOJ that address the legality of the Zastava SKS Carbine 59/66 rifle's muzzle attachment, and the legality of any modifications to such attachments.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Y. Merrilees". The signature is fluid and cursive, with a large loop at the end.

ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

Attachments

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

January 4, 2007

Mr. C.D. Michel
Attorney at Law
180 East Ocean Blvd, Suite 200
Long Beach, CA 90802

© COPY

Re: Sales of Uncertified Handguns to Law Enforcement

Dear Mr. Michel:

I am writing in response to your letter dated September 2, 2006. I apologize for not responding sooner.

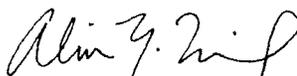
In your letter, you asked how persons who import handguns to California for the purpose of selling those handguns to law enforcement agencies (and the sworn members of those agencies) are able to comply with the requirement in Penal Code section 12129 that "every person who imports into the state for sale . . . [to] certify under penalty of perjury and any other remedy provided by law that every model, kind, class, style, or type of pistol, revolver, or other firearm capable of being concealed upon the person that he or she . . . imports . . . is not an unsafe handgun as prohibited by this chapter."

It is generally a crime in California to import into the state for sale any handgun that is unsafe. (Penal Code § 12125(a).) A handgun is unsafe if it fails to meet the criteria set forth in Penal Code section 12126. A handgun that is imported for the purpose of sale to a law enforcement agency listed in Penal Code section 12125(b)(4) (or a sworn member thereof), however, can be lawfully imported because it is exempt from the prohibition against the importation of unsafe handguns for sale. (California Penal Code section 12125(b)(4).) Because a handgun that is imported into the state for the purpose of sale to a law enforcement agency listed in Penal Code section 12125(b)(4) is "not an unsafe handgun *as prohibited by this chapter*," a person who imported such a handgun can truthfully certify that the handgun is "not an unsafe handgun as prohibited by this chapter" in compliance with Penal Code section 12129.

Mr. Garcia
January 4, 2007
Page 2

I hope this information is helpful. Please feel free to contact me again if you have any questions.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For BILL LOCKYER
Attorney General

EXHIBIT R

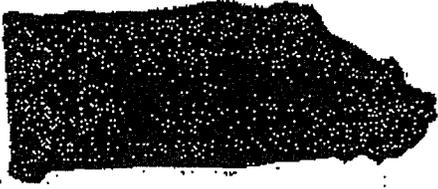
DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



BUREAU OF CRIMINAL INFORMATION
AND ANALYSIS
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-0537

November 1, 1998



RE: Out-of-State Machine Gun Sales Policy

Dear Mr. 

Thank-you for your letter of October 24, 1998 concerning the applicability of our machine gun license and permit condition, to wit:

The sale of machine gun(s) to any out-of-state person, federal firearms licensee, or other entity other than a law enforcement or government agency listed under Penal Code section 12201 is prohibited.

This condition reflects longstanding departmental policy that machine gun sales to out-of-state entities other than those listed in Penal Code section 12201 are prohibited. This policy has been re-affirmed as recently as December, 1997 at the highest policy-making level of the department. The condition has been added to machine gun licenses and permits as a courtesy to help keep licensees and permittees aware of their pre-existing limitations and responsibilities.

Sincerely,

DANIEL E. LUNGREN
Attorney General

A handwritten signature in black ink, appearing to read "Mike Small".

MIKE SMALL, Supervisor
Firearms Licensing and Permits Unit

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-3694
Facsimile: (916) 227-3700

Date, 2002

NAME
ADDRESS
CITY, STATE, ZIP

RE: Peace Officer Assault Weapon Sales

Dear Assault Weapons Dealer:

This letter provides information regarding revisions to Penal Code (PC) Section 12280, that may be of interest to you as a licensed California firearms dealer. A copy of the pertinent code subsections (12280 (f)(g)) is enclosed for your reference. Effective January 1, 2002, PC Section 12280 (g) enables specified law enforcement officers, with authorization from the head of their employing agencies, to acquire and register assault weapons. Within California, authorized peace officers may purchase assault weapons from DOJ permitted assault weapon dealers only. Furthermore, to engage in these assault weapon sales to individual officers, assault weapon permittees must have the following condition specified on their weapon permit:

Issued for the purpose of sales pursuant to Penal Code section 12280 (g)(2) to authorized peace officer members of agencies specified in Penal Code section 12280 (f). Purchasers must be provided a DOJ Assault Weapon Registration Application card (FD 023) and a DOJ Peace Officer Assault Weapon Registration Requirements Notice with the delivery of assault weapon(s). An acknowledgment signed by the purchasing officer confirming receipt of a DOJ Peace Officer Assault Weapon Registration Requirements Notice must be attached to a copy of the peace officer's agency authorization letter. These documents must be maintained and made available on demand by DOJ or any duly authorized local, state, or federal official.

If you would like to have this authorization added to your current assault weapon permit, please sign, date, and mail the enclosed request form to: *Department of Justice, FLPD - Dangerous Weapons Permits, P.O. box 820200, Sacramento, CA 94203-0200.*

Please be advised that assault weapon sales to peace officers are subject to all applicable federal laws and regulations. Enclosed for your convenience are pertinent excerpts from the Bureau of Alcohol, Tobacco, and Firearms (ATF) publication, Federal Firearms Regulations Reference Guide 2000. Please contact your local office of Bureau of Alcohol, Tobacco, and Firearms for information regarding federal law. All other questions regarding this issue may be directed to Firearms Licensing and Permits Section Dangerous Weapons Analyst Sean Nystrom at (916) 227-3696.

Sincerely,

MIKE SMALL, Manager
Firearms Licensing and Permits Section

For BILL LOCKYER
Attorney General

Enclosures

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-6337
Facsimile: (916) 227-3700

December 2, 2003

Luis M. Engersbach
P.O. Box 411603
Los Angeles, CA 90041-8603

RE: Advanced Technology Top-Fold Shotgun Gunstock and Dragunov Stocks

Dear Mr. Engersbach:

Thank you for your letter, dated November 20, 2003, inquiring whether the Advanced Technology top-fold shotgun gunstock and Dragunov stocks are legal in California.

As you know, a top-fold shotgun stock can be attached to a shotgun of various configurations. Penal Code section 12020 would make illegal any shotgun of an overall length of less than 26 inches or a barrel of less than 18 inches. Penal Code section 12276.1 would make any of the following an assault weapon illegal to possess per 12280 PC: 1) a semiautomatic shotgun that has both of the following: a) a folding or telescoping stock, and b) a pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip; 2) a semiautomatic shotgun that has the ability to accept a detachable magazine; or 3) any shotgun with a revolving cylinder. With the exception of these aforementioned shotgun configurations, the top-fold shotgun stock is legal in California.

The Dragunov stock's grip is considered a "pistol grip that protrudes conspicuously beneath the action of the weapon" pursuant to Section 978.20 (d) of Article 1 of Chapter 12.8 of Title 11 of the California Code of Regulations. As you know, a Dragunov stock can be attached to a rifle of various configurations. Penal Code section 12076.1 would make an assault weapon illegal to possess per 12280 PC any semiautomatic, centerfire rifle that has a capacity to accept a detachable magazine and any one of the following: a) a pistol grip that protrudes conspicuously beneath the action of the weapon; b) a thumbhole stock; c) a folding or telescoping stock; d) a grenade launcher or flare launcher; e) a flash suppressor; or f) a forward pistol grip. Penal Code section 12076.1 would also make an assault weapon illegal to possess per 12280 PC any semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds, and any semiautomatic, centerfire rifle that has an overall length of less than 30 inches. Penal Code section 12020 would make illegal any rifle of an overall length of less than 26 inches or a barrel less than 16 inches.

HUNT 03987

Luis M. Engersbach
December 2, 2003
Page 2

If you have any additional questions regarding this matter, please do not hesitate to contact me at (916) 227-0537.

Sincerely,

MIKE SMALL, Manager
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-0537
Facsimile: (916) 227-3700

FILE COPY

January 8, 2003

[REDACTED]

RE: Dangerous Weapons Permits

[REDACTED]

This responds to your undated correspondence, postmarked December 3, 2002, seeking information how to obtain California dangerous weapons permits and how to acquire "conversion kits" to convert rifles to automatic weapons.

Pursuant to Regulations of the Department of Justice Pertaining to Dangerous Weapons, commencing with Section 970 (a) (4) of Title 11 of the California Code of Regulations (11 CCR 970), no permit or license will be issued to any applicant who fails to establish good cause for such permit. An applicant must provide DOJ with clear and convincing evidence that there is a bonafide market or public necessity for the issuance of a permit or license and that the applicant can satisfy that need without endangering the public safety. In accordance with 11 CCR 972 (c), the Department recognizes good cause to establish bonafide necessity as follows:

- Sales to law enforcement or government agencies
- Use as props in commercial motion picture or television productions
- Possession for the purpose of maintaining a collection of destructive devices as defined in Penal Code section 12301 but such possession shall not be allowed for short-barreled shotguns/short-barreled rifles, machine guns or assault weapons
- Repair and maintenance of dangerous weapons lawfully possessed by others
- Training, research and development pursuant to a government contract
- Use of assault weapons in activities sanctioned by law enforcement agencies or government military agencies by members of those agencies

At this time, the Department neither recognizes nor contemplates the use of dangerous weapons by trial counsel as good cause for the issuance of dangerous weapons permits. We suggest you employ conventional discovery mechanisms available to you for accessing the weapons in question for examination purposes.

[REDACTED]
January 8, 2003

Page 2

Regarding conversion kits, Penal Code section 12200 states the term machinegun includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. Thus, Penal Code section 12220 prohibits the sale, manufacture, and/or possession of conversion kits in this state.

I trust this answers your inquiries fully. Please do not hesitate to contact me with any questions at (916) 227-0537.

Sincerely,



MIKE SMALL, Manager
Firearms Licensing and Permits Section

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

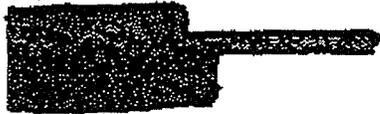
State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-0537
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FILE COPY

January 8, 2003



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Sincerely,



MIKE SMALL, Manager
Firearms Licensing and Permits Section

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 227-0537
Facsimile: (916) 227-3700

December 2, 2003

Luis M. Engersbach
P.O. Box 411603
Los Angeles, CA 90041-8603

RE: Advanced Technology Top-Fold Shotgun Gunstock and Dragunov Stocks

Dear Mr. Engersbach:

Thank you for your letter, dated November 20, 2003, inquiring whether the Advanced Technology top-fold shotgun gunstock and Dragunov stocks are legal in California.

As you know, a top-fold shotgun stock can be attached to a shotgun of various configurations. Penal Code section 12020 would make illegal any shotgun of an overall length of less than 26 inches or a barrel of less than 18 inches. Penal Code section 12276.1 would make any of the following an assault weapon illegal to possess per 12280 PC: 1) a semiautomatic shotgun that has both of the following: a) a folding or telescoping stock, and b) a pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip; 2) a semiautomatic shotgun that has the ability to accept a detachable magazine; or 3) any shotgun with a revolving cylinder. With the exception of these aforementioned shotgun configurations, the top-fold shotgun stock is legal in California.

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HUNT 03987

Luis M. Engersbach
December 2, 2003
Page 2

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Sincerely,

MIKE SMALL, Manager
Firearms Division

For BILL LOCKYER
Attorney General

BILL LOCKYER
Attorney General

FILE COPY

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 820200
SACRAMENTO, CA 94203-0200
(916) 263-0699
Facsimile: (916) 263-0676

September 17, 2004

[REDACTED]

RE: Machine Gun Replica

[REDACTED]

This letter is in response to your recent correspondence regarding the legality of a machine gun replica that would be permanently modified to fire only blank ammunition. Although a definitive determination would require submission of an exemplar for inspection, based on the information provided in your letter, under current California law, the blanks-only replica would be regulated as a machine gun pursuant to California Penal Code (PC) sections 12200 - 12234. Specifically, section 12200 PC states in part, "The term 'machine gun' as used in this chapter means any weapon which shoots, is designed (*emphasis added*) to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." California law makes no exception for firearms originally designed as machine guns that are subsequently modified to no longer fire real ammunition. Pursuant to section 12230 PC, the Department of Justice issues permits for the possession of machine guns, upon a satisfactory showing that good cause exists for issuance. A Machine Gun Permit application package is enclosed for your reference and use.

If you would like to make arrangements for the Department of Justice to receive and inspect an exemplar of your proposed machine gun replica, please feel free to contact Special Agent Supervisor Ignatius Chinn at (916) 263-0956.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Small".

MIKE SMALL, Manager
Firearms Licensing and Permits Section

For BILL LOCKYER
Attorney General

From: Mike Small
To: Bonnie Wells; Dana McKinnon; Denise Tucker; Justin Phillips; Karen Milami; Kathy Quinn; Leslie McGovern; Lisa Strange; Renee Lewis; Robert Berthold; Sally Carney
Date: Tue, May 2, 2006 3:43 PM
Subject: Assault Weapon Determination Questions

FISS Staffers:

In order to ensure consistency and accuracy in the matter of Assault Weapon designations, effective immediately, all requests (public, law enforcement, prosecutorial, judicial, political) for Assault Weapon status of any make/model or configuration will be processed as follows:

1. The FISS staffer receiving the request will forward the request in writing (e-mail or memorandum) through the immediate supervisory chain starting with DOJA I Karen Milami and, in her absence, me, then DOJA III Steve Buford. Include as specific a request as possible including make/model information, photos (especially of markings, as well as full weapon configuration).
2. The supervisor will route same request to FD firearms expert SAS Ignatius Chinn or his designee, and cc: the request to Steve Buford, DAG Alison Merrilees, Assistant Director Dale Ferranto, and Director Randy Rossi.
3. SAS Chinn or his designee will render an opinion on the weapon. Barring disagreement from any of the parties enumerated in step #2, the supervisor will return the determination to the requesting FISS staffer, as well as cc'ing all FISS staff for informational purposes.

These steps are essential to ensure FD management can ensure quality control as well as sustain familiarity with assault weapon designation issues. FISS staff is expected to observe this protocol.

Please do not hesitate to contact me with any questions regarding this important protocol.

Thanks,

Mike Small

CC: Alison Merrilees; Dale Ferranto; Steve Buford

From: Mike Small
To: Leslie McGovern
Date: Thu, May 4, 2006 11:44 AM
Subject: Re: AR receiver question

We would likely give notice that regulations will be effective on such and such a date (probably a week or so out) and they will be illegal the day they are listed in regulation.

Mike

>>> Leslie McGovern 05/04/06 10:47 AM >>>

And I'm anticipating this question from him, and I think it was mentioned at one time before, that even if they were added to the list say tomorrow there would be a date by which they would then be "illegal", not the day that it is decided, right?

>>> Mike Small 05/04/06 10:42 AM >>>

Yes, please advise the gentleman that receivers on neither the 12276 PC list or the regulatory series list can be trafficked up until when and if they are ever listed.

Thanks,
Mike

>>> Leslie McGovern 05/04/06 10:40 AM >>>

I received a call today from a dealer in San Diego who has a shipment of AR receivers in route and says he heard that we were soon going to be adding these receivers to the list and wanted to know if he could still receive them.... the answer I would want to give would be yes, as there is no listing yet, however, I wanted to verify that with you. Thanks!

From: Mike Small
To: [REDACTED]
Date: 5/9/2006 7:55:15 AM
Subject: AR-15 Series Receivers

Mr. Wayne,

Thank you for your inquiry to the Department, dated May 3, 2006, regarding AR-15 series receivers which are not listed by Penal Code section 12276 or Section 979.11 of Chapter 12.9 of Division 1 of Title 11 of the California Code of Regulations (*11 CCR 979.11*).

Such a receiver cannot now be built up in a manner in violation of Penal Code section 12276.1, which states, in pertinent part:

- 12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:
- (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:
 - (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - (B) A thumbhole stock.
 - (C) A folding or telescoping stock.
 - (D) A grenade launcher or flare launcher.
 - (E) A flash suppressor.
 - (F) A forward pistol grip.
 - (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.
 - (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

If the weapon were ever to become listed by *11 CCR 979.11* as an "AR Series" assault weapon it would have to be registered at that time. It would have to be registered despite any personal modification to its "capacity to accept a detachable magazine" because "AR Series" assault weapons are defined by their make and model without regard to their capacity to accept a detachable magazine.

As long as the weapon is not listed by *11 CCR 979.11* as an AR Series assault weapon, any modification to the magazine well to remove the weapon's capacity to accept a detachable magazine and avoid the 12276.1 PC assault weapon designation must be permanent. A permanent modification would cause destruction to the weapon if restoration of the firearm to accept a detachable magazine were attempted.

I trust these answers are fully responsive to you. Please do not hesitate to contact me if you have any additional questions regarding this matter.

Mike Small
Firearms Division
California Department of Justice
(916) 227-3694

CC: Alison Merrilees; Jeff Amador; Karen Milami; Leslie McGovern; Sally Carney

From: Mike Small
To: Clinton Wayne
Date: 5/15/2006 2:28:00 PM
Subject: Re: AR-15 Series Receivers

Mr. Wayne:

Penal Code section 12276.1 states, in pertinent part:

12276.1. (a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

It is DOJ's opinion that under current law, a semiautomatic centerfire rifle that is modified to be temporarily incapable of accepting a detachable magazine, but can be restored to accommodate a detachable magazines, is an assault weapons if it has any of the features listed in §12276.1(a)(1).

Individuals who alter a firearm designed and intended to accept a detachable magazine in an attempt to make it incapable of accepting a detachable magazine do so at their legal peril.

Whether or not such a firearm remains capable of accepting a detachable magazine is a question for law enforcement agencies, district attorneys, and ultimately juries of twelve persons, not the California Department of Justice.

We cannot anticipate how any or all of the above entities will view the conversion of a firearm.

DOJ has approved several models of commercially manufactured firearms that we believe have been altered to be permanently incapable of accepting detachable magazines. However, we have warned those manufacturers that other law enforcement entities could view the legality of those firearms differently. Local law enforcement agencies and district attorneys could consider the firearms to be capable of accepting detachable magazines, and therefore assault weapons under California law.

Mike Small
Firearms Division
California Department of Justice

>>> Clinton Wayne <[REDACTED]> 05/09/06 4:06 PM >>>
Thank you for your reply.

I have a few more questions. As I understand the definition of "detachable magazine" is "any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool."

In that case do you have to permanently attach the mag to the off-list lower to be legal? Or can you bolt it in so you cannot readily remove it without a tool?

Once you permanently or tool attach your magazine to the lower does that take it out of the mandatory registration category since you altered it to no longer being able to readily accept a magazine?

I also have a Vulcan California lower that they said I do not have to register. Although it is also a "AR" type lower that just has a fixed mag. The DOJ told me I don't have to register it, due to the fact that it has a letter of approval from your department. What is the difference if I alter the off-list lower or Vulcan does it with theirs? They are the same thing in the end.

The reason I ask about the tool attaching is if you ever have to get the magazine out to replace it due to malfunction or damage, I would not be able to get a new receiver if it was damaged in fixing the magazine because I couldn't get it out without destroying it. And once they are listed I would not be able to order a new replacement lower.

Just trying to get as much info as I can. I want to stay very legal and there are many people with other info going around that didn't sound like what your email had said.

Thank you again very much for your time.

Clinton Wayne

----- Original Message -----

From: "Mike Small" <Mike.Small@doj.ca.gov>

To: <[REDACTED]>

Cc: "Alison Merrilees" <Alison.Merrilees@doj.ca.gov>; "Jeff Amador" <Jeff.Amador@doj.ca.gov>; "Karen Milami" <Karen.Milami@doj.ca.gov>; "Leslie McGovern" <Leslie.McGovern@doj.ca.gov>; "Sally Carney" <Sally.Carney@doj.ca.gov>

Sent: Tuesday, May 09, 2006 7:55 AM

Subject: AR-15 Series Receivers

- > Mr. Wayne,
- >
- > Thank you for your inquiry to the Department, dated May 3, 2006,
- > regarding AR-15 series receivers which are not listed by Penal Code
- > section 12276 or Section 979.11 of Chapter 12.9 of Division 1 of Title
- > 11 of the California Code of Regulations (11 CCR 979.11).
- >
- > Such a receiver cannot now be built up in a manner in violation of
- > Penal Code section 12276.1, which states, in pertinent part:
- > 12276.1. (a) Notwithstanding Section 12276, "assault weapon"
- > shall also mean any of the following:
- > (1) A semiautomatic, centerfire rifle that has the capacity to
- > accept a detachable magazine and any one
- > of the following:

- > (A) A pistol grip that protrudes conspicuously beneath the
- > action of the weapon.
- > (B) A thumbhole stock.
- > (C) A folding or telescoping stock.
- > (D) A grenade launcher or flare launcher.
- > (E) A flash suppressor.
- > (F) A forward pistol grip.
- > (2) A semiautomatic, centerfire rifle that has a fixed magazine
- > with the capacity to accept more than
- > 10 rounds.
- > (3) A semiautomatic, centerfire rifle that has an overall length
- > of less than 30 inches.
- >
- > If the weapon were ever to become listed by 11 CCR 979.11 as an "AR
- > Series" assault weapon it would have to be registered at that time.
- > It would have to be registered despite any personal modification to its
- > "capacity to accept a detachable magazine" because "AR Series"
- > assault weapons are defined by their make and model without regard to
- > their capacity to accept a detachable magazine.
- >
- > As long as the weapon is not listed by 11 CCR 979.11 as an AR Series
- > assault weapon, any modification to the magazine well to remove the
- > weapon's capacity to accept a detachable magazine and avoid the 12276.1
- > PC assault weapon designation must be permanent. A permanent
- > modification would cause destruction to the weapon if restoration of the
- > firearm to accept a detachable magazine were attempted.
- >
- > I trust these answers are fully responsive to you. Please do not
- > hesitate to contact me if you have any additional questions regarding
- > this matter.
- >
- > Mike Small
- > Firearms Division
- > California Department of Justice
- > [REDACTED]
- >
- >
- >
- >

CC: Jeff Amador

From: Sally Carney
To: Sally Carney
Date: 5/31/2006 2:03:18 PM
Subject: Mike's response to [REDACTED]

>>> Mike Small 05/09/06 7:55 AM >>>
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(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

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If the weapon were ever to become listed by 11 CCR 979.11 as an "AR Series" assault weapon it would have to be registered at that time. It would have to be registered despite any personal modification to its "capacity to accept a detachable magazine" because "AR Series" assault weapons are defined by their make and model without regard to their capacity to accept a detachable magazine.

As long as the weapon is not listed by 11 CCR 979.11 as an AR Series assault weapon, any modification to the magazine well to remove the weapon's capacity to accept a detachable magazine and avoid the 12276.1 PC assault weapon designation must be permanent. A permanent modification would cause destruction to the weapon if restoration of the firearm to accept a detachable magazine were attempted.

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Mike Small
Firearms Division
California Department of Justice
(916) 227-3694

[REDACTED]
>>> < [REDACTED] 05/03/06 11:36 AM >>>

Below is the result of your feedback form. It was submitted by
[REDACTED] on Wednesday, May 03, 2006 at 18:36:15

Name: Clinton Wayne

Telephone:

feedback: Hello, I was looking into the off-list AR-15 lowers. If I were to purchase one and permanently attach a 10 round magazine to it, would that be legal and not considered a assault weapon? So when they get added to the list I will not have to register it as such? Thank you for your time.

Clinton Wayne

CC: Denise Tucker

From: Mike Small
To: Clinton Wayne
Date: 5/15/2006 2:28:00 PM
Subject: Re: AR-15 Series Receivers

Mr. Wayne:

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Firearms Division
California Department of Justice

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Thank you again very much for your time.

Clinton Wayne

----- Original Message -----

From: "Mike Small" <Mike.Small@doj.ca.gov>

To: <[REDACTED]>

Cc: "Alison Merrilees" <Alison.Merrilees@doj.ca.gov>; "Jeff Amador" <Jeff.Amador@doj.ca.gov>; "Karen Milami" <Karen.Milami@doj.ca.gov>; "Leslie McGovern" <Leslie.McGovern@doj.ca.gov>; "Sally Carney" <Sally.Carney@doj.ca.gov>

Sent: Tuesday, May 09, 2006 7:55 AM

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- > (2) A semiautomatic, centerfire rifle that has a fixed magazine
- > with the capacity to accept more than
- > 10 rounds.
- > (3) A semiautomatic, centerfire rifle that has an overall length
- > of less than 30 inches.
- >
- > If the weapon were ever to become listed by 11 CCR 979.11 as an "AR
- > Series" assault weapon it would have to be registered at that time.
- > It would have to be registered despite any personal modification to its
- > "capacity to accept a detachable magazine" because "AR Series"
- > assault weapons are defined by their make and model without regard to
- > their capacity to accept a detachable magazine.
- >
- > As long as the weapon is not listed by 11 CCR 979.11 as an AR Series
- > assault weapon, any modification to the magazine well to remove the
- > weapon's capacity to accept a detachable magazine and avoid the 12276.1
- > PC assault weapon designation must be permanent. A permanent
- > modification would cause destruction to the weapon if restoration of the
- > firearm to accept a detachable magazine were attempted.
- >
- > I trust these answers are fully responsive to you. Please do not
- > hesitate to contact me if you have any additional questions regarding
- > this matter.
- >
- > Mike Small
- > Firearms Division
- > California Department of Justice
- > [REDACTED]
- >
- >
- >
- >

CC: Jeff Amador

EXHIBIT S

From: Randy Rossi
To: Buford, Steve; Rieger, Tim
Date: Wed, Mar 3, 2004 8:30 AM
Subject: Re: Fwd: bulletin regarding Walther P22

This matter will be very dynamic over the next two months. Questions concerning how to make the models compatible with existing law, who can make the changes, costs, who pays, etc have yet to be addressed. I would prefer a web site postings which can be changed easily rather than making numerous bulletins that will be outdated and likely misleading in short order.

>>> Steve Buford 3/3/2004 8:20:19 AM >>>
Randy, Tim,

Lesa may require some feedback from you to assist her in responding to some of Jeff's questions needed to complete the Information Bulletin.

Thanks!

>>> Jeff Amador 3/2/2004 4:25:50 PM >>>
Lesa:

I've been assigned the task of writing a bulletin to dealers regarding the Walther P22. There is some question about what should be included in the bulletin but I am told you can give me the details regarding the S&W fix that is in the works. Here are some of the questions I am hoping you can answer:

When will the "fix" be available?
Is it available to dealers and private citizens who bought P22s?
Is there a particular person at S&W for them to contact?

My other questions (not related directly to your contact with S&W) are:

Will private citizen purchasers be notified by us or are dealers expected to notify the persons who bought P22s of the problem and fix?

Is there a "grace period" (formal or informal) for dealers and purchasers to have this fix performed or dispose of their P22s?

Do all P22s have the threaded barrel? I found one website that states, "Walther also had a limited run of these pistols that came with threaded barrels." It says the vast majority have a "bushing arrangement that is easily adapted for threading on a silencer." Are these legal?

CC: Saville, Lesa

From: Lesa Saville
To: Buford, Steve; Orsi, Donnette
Date: 04/08/2004 7:47:04 AM
Subject: Re: Fwd: Service Request for CFIS Table Addition

I spoke with Iggy and he said the Walther P22 doesn't go by any other names. Based on a run of all .22 Walthers in the database, variations of the Walther P22 that have been entered by dealers are:

.22
P22
P 22
P-22

We may also want to block:

P222
P 222
P-222

>>> Donnette Orsi 4/7/2004 3:51:41 PM >>>
Steve -

Yes, we will need any variation on the model name. For example, in the current table that defines assault weapons, the gun make of ADV is listed three times with a model name of M11, M-11 and M 11. It is not necessary to distinguish between upper/lower case since the front end converts all data to upper case. The Walter could be listed at least three times as gun make of WAL, gun model P22, P-22 and P 22. If there are any other variations on the gun model name as you described, such as P22 HITMAN SPECIAL - that would have three additional entries in the table.

Please let me know if you have any more questions.

Donnette

>>> Steve Buford 4/7/2004 1:59:45 PM >>>
Lesa

Recognizing that for private party sales purposes, these guns won't be listed the same as they are on the SB 15 list, we need to know their model designation that a dealer would free input into the DES model field (e.g, P22 hitman special, P22 spider killer, etc.,). Also Koefyn, Donnette please correct if wrong, we need to include all foreseeable variations including upper and/or lower case variations including word transpositions and/or truncations.

Thanks!

>>> Lesa Saville 4/7/2004 1:47:32 PM >>>
The Walther P22 models are as follows:

Walther P22, 5" barrel, Material(s) Steel, Polymer, Caliber .22 LR
(CFIS Seq. No. 818)

Walther P22, 3.4" barrel, Material(s) Steel, Polymer, Caliber .22 LR
(CFIS Seq. No. 825)

Please let me know if you need additional information.

>>> Steve Buford 4/7/2004 12:49:52 PM >>>

NRA-
SEC

Department of Justice
4949 Broadway
Sacramento, CA 95820

January 25, 2006

NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the Department of Justice is providing notice of changes made to proposed regulation section 968.44 which was the subject of a regulatory hearing on May 24, 2005, and was subsequently modified and noticed to the public on October 28, 2005 and also on December 20, 2005. These changes are in response to comments received regarding the modified regulations.

The Department will accept written comments regarding the proposed changes between January 25, 2006 and February 10, 2006. All written comments must be received by the Department no later than 5:00 p.m. on February 10, 2006, and addressed to:

Mail: Jeff Amador, Field Representative
Department of Justice
Firearms Division
PO Box 820200
Sacramento, CA 94203-0200
or
Email: jeff.amador@doj.ca.gov

All written comments received by February 10, 2006, which pertain to the indicated changes will be reviewed and responded to by the Department's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

A logo consisting of a square containing the letter 'c' followed by the word 'COPY' in a bold, sans-serif font.

From: Jesse Nunez <[REDACTED]>
To: Ignatius Chinn <Ignatius.Chinn@doj.ca.gov>
Date: 8/16/2006 3:11:51 PM
Subject: RE: JESSE NUNEZ

I'm sorry.... couldn't understand your response..... So at this time Stag & Double Star will NOT be added to the list....? Or they are going too....?

-----Original Message-----

From: Ignatius Chinn [mailto:Ignatius.Chinn@doj.ca.gov]
Sent: Wednesday, August 16, 2006 3:04 PM
To: Jesse Nunez
Subject: Re: JESSE NUNEZ

at this time no we are adding it , we are prohibiting the adding of the chacteristics under 12276.1 PC IG

>>> Jesse Nunez <[REDACTED]> 8/16/2006 11:15 AM >>>

Good Morning....

Mr. Chinn.

Are they going to add Double Star and Stag to the assault weapons list....? I'm very new to all this...sorry for all the dumb questions :O)

As I stated yesterday... my receiver has a 10 round magazine that's pinned...and locked in.... so that is okay correct...?

Thanks...

Jesse Nunez

-----Original Message-----

From: Ignatius Chinn [mailto:Ignatius.Chinn@doj.ca.gov]
Sent: Tuesday, August 15, 2006 9:52 AM
To: Jesse Nunez

Subject: Re:

Mr Nunez this item you have is an off list lower and is controlled in this state by California Penal Code section 12276.1 thus you may not attach any of the offending characteristics if the detachable magaizne is still acceptable in this firearm- the magazine must be permanently fixed and not returnable to the detachable magagzine manner in anyway IG

>>> Jesse Nunez [redacted] 8/14/2006 2:44 PM >>>

Here you go buddy.....

Jesse!

-----Original Message-----

From: Jeff Amador [mailto:Jeff.Amador@doj.ca.gov]

Sent: Monday, August 14, 2006 2:38 PM

To: Jesse Nunez

Subject: Re:

Dear Mr. Nunez:

The picture referenced in your e-mail was not included. Please send the picture and I will forward the picture and your e-mail to the appropriate staff for response.

Jeff Amador, Field Representative

Firearms Division

>>> Jesse Nunez [redacted] 8/14/2006 12:07:27 PM >>>

Hello Jeff.... I was told to e-mail you this....See below:

July 13, 2006

Jesse Nuñez

[REDACTED]

[REDACTED]

Attorney General's Office

California Department of Justice

Attn: Public Inquiry Unit

P.O. Box 944255

Sacramento, CA 94244-2550

REF: Double Star Lower

To whom it may concern:

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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EXHIBIT T

E425 Firearms Factory Tours

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| [Health](#) | [All](#)

Location:	CCI and Various
Brief Description:	This approximately twelve day long journey provides tours of a series of firearms related manufactories in California, Nevada, and Arizona. Students observe current manufacturing processes. Emphasis is placed on processes that create forensically significant tool surfaces. A maximum of twelve students can be accommodated. THIS CLASS IS AVAILABLE FOR BFS FIREARMS ACADEMY STUDENTS ONLY. Not POST Certified at this time.
Instructor:	Mike Giusto & John Rush, CCI
Teaching Methods:	Tours, documentation with notes and photography, discussion, and preparation of a presentation of findings.
Student Objectives:	Students will learn some currently used manufacturing methods of forensically significant tool surfaces. Students will be able to determine the uniqueness of various manufactured surfaces.
Prerequisites:	Enrolled in E600 BFS Fireams Academy
Preparation:	Prereading or research projects may be assigned
Materials Fee:	\$300.00 for non CAL DOJ students.
Tuition:	\$1440.00 for non CAL DOJ/BFS agencies. Note: Student lodging and per diem are not included.
Program Manager:	John Rush FAX: (916) 454-5433

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E101 Firearms Safety

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Location:

Varied Locations in California

Brief Description:

This three-day (24 hour) course will provide students with knowledge of basic firearm terminology, construction, and operation as well as first-hand experience in safely loading, test-firing, and unloading a variety of weapons. The weapons included are the ones commonly found in criminal cases: revolvers, pistols, rifles, shotguns, and automatic weapons. The primary focus is the safe operation and handling of weapons, ammunition, and the related tools and equipment used during laboratory examinations. This course is intended for laboratory technicians, latent print examiners, criminalists, or crime scene specialists from law enforcement agencies who must handle evidence firearms in the course of their duties. Each class is limited to 20 students. This course is POST reimbursable, Plan IV.

Instructor:

Dave Barber, John Hamman, Mike Giusto, James Hamiel, Mike Appel, and John Rush

Teaching Methods:

Classroom lecture, handling and range firing of more than 25 different firearms.

Student Objectives:

Students will be able to collect firearms evidence safely. Students will be able to safely load and

unload a wide variety of firearms action types.

Prerequisites:

None.

Preparation:

Pre-course reading material may be required

Materials Fee:

A \$75.00 materials fee will be charged to all non-BFS students. This charge will be due at the beginning of the class. Make checks payable to the California Department of Justice.

Tuition:

No cost to POST supported or State of California based LawEnforcement agencies. A \$360.00 tuition fee is required for all other public agencies, private sector, or out-of-state applicants.

Program Manager:

John Rush FAX (916) 454-5433

E102 Firearms and Toolmarks Introduction I

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Location:	California Criminalistics Institute / Sacramento
Brief Description:	This one-week (38 hour) course is designed for the new firearms examiner. The course will take the criminalist through a typical firearms case up to the point that actual striated comparisons would start. Special emphasis will be placed on examination of recovered firearm components for information to assist the investigating officer such as development of a list of possible firearms, determination of brand of ammunition used, and intercomparison to other "open" shooting cases. Topics covered in this course include the history, manufacture and nomenclature of firearms, introduction to ballistics, origin of markings on projectiles and casings, concepts of uniqueness, test-firing practices, crime scene considerations and introduction to the comparison of striated and impressed marks. Each class is limited to 12 students. This course is POST reimbursable, Plan IV.
Instructor:	Mike Giusto and John Rush, CCI
Teaching Methods:	Classroom lectures, 35mm slides, video recordings and practical workshops and laboratory exercises.
Student Objectives:	Students will be required to examine firearms and ammunition components, measure class

characteristics, prepare lists of "possible weapons", determine cartridge designation and weapon chambering, select appropriate test-firing ammunition, and write reports of examination.

Prerequisites: Firearm Safety E101 is recommended.

Preparation: Pre-course reading material may be assigned.

Materials Fee: A \$35.00 materials fee will be charged to all non-BFS students. This charge will be due at the beginning of class. Make check(s) payable to California Department of Justice.

Tuition: No cost to POST supported or State of California based Law Enforcement agencies. A \$600.00 tuition fee is required for all other public agencies, private sector, or out of state applicants.

Program Manager: John Rush FAX (916) 454-5433

E111 Serial Number Restoration

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Location:	California Criminalistics Institute / Sacramento
Brief Description:	This three-day (24-hour) class will provide students with knowledge of the principles of firearm serial number identification, the metallurgical aspect of impressions and the methods that are available for the restoration of obliterated samples. Students will become acquainted with diverse restoration methods and will practice with various diverse samples, artificial and actual number segments from firearms. The course will also emphasize proper documentation methods for serial number cases and the completion of the National Tracing Center form. Safety and health aspects will also be discussed. This course is intended for examiners, criminalists, or crime scene specialists from law enforcement agencies who will be restoring serial numbers in the course of their duties. Each class is limited to 12 students.
Instructor:	Michael F. Giusto, California Criminalistics Institute`
Teaching Methods:	Classroom lectures, restoration exercises on actual samples
Student Objectives:	Students should be able to restore firearm serial numbers in a safe and proficient manner.
Prerequisites:	None
Preparation:	Pre-course reading material may be assigned.
Materials Fee:	A \$45.00 materials fee will be charged to all non-BFS students. This charge will be due at the beginning of class. Make check(s) payable to the California State Department of Justice
Tuition:	No cost to POST supported or State of California based law enforcement agencies. A \$360 tuition fee will be required for all other public agency, private sector and out-of-state applicants.
Program Manager:	John Rush FAX (916) 454-5433

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E420 Special Topics-Firearms Function and Design

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Location: CCI

[CCI News](#)

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Brief Description: This two day (16 hour) class familiarizes students with design elements and functioning of common semiautomatic pistols, selective fire rifles, and pump shotguns. Disassembly, component identifaciton, and proper reassembly are emphasized.

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Instructor: Mike Giusto, CCI, and others

[Health & Safety](#)

Teaching Methods: Lecture, discussion, and practical exercises

[Bloodborne Pathogens CD](#)

Student Objectives: Student will be able to name gun components and describe the component's function within the gun's cycle of fire.

Prerequisites: E101 Firearms Safety is desirable.

Preparation: none

Materials Fee: \$35.00 for non-CAL DOJ/BFS personnel.

Tuition: \$240 for non CAL DOJ/BFS personnel.

Program Manager: John Rush FAX: (916) 454-5433

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EXHIBIT U

1 All parties hereby respectfully submit this request for clarification of the governing
2 standard on plaintiffs' constitutional facial vagueness claims in this action, in connection with the
3 Court's ruling on the parties' cross-motions for summary judgment.

4 INTRODUCTION

5 This matter is an action in which plaintiffs seek declaratory and injunctive relief in regard
6 to certain provisions related to the regulation of "assault weapons" and "large -capacity"
7 ammunition feeding devices. In sum, for the reasons set forth below, defendants have contended
8 that plaintiffs' burden on their claims that these provisions are unconstitutionally vague on their
9 face is to show that they are "impermissibly vague in all of their applications." For the reasons set
10 forth below, plaintiffs have contended that "vague in all applications" is not the governing
11 standard, and instead that the provisions at issue are subject to facial attack if they prove
12 "vagueness permeates the text" of the provisions.

13 In the ruling on the parties' cross-motions for summary judgment, the Court references
14 both sides' contentions (Ruling, p.3), but defendants maintain that it is unclear which side's
15 position was adopted, and what the Court considers the governing standard to be.

16 The parties' respective arguments as to the governing standard were laid out in the cross
17 motions for summary judgment and are set forth below. For the benefit of informing the parties'
18 preparation for trial, including guidance as to possible remaining discovery inquiries and
19 disagreements, the parties respectfully request clarification of the Court's view as to the governing
20 standard on plaintiffs' constitutional facial vagueness claims in this action.

21 PLAINTIFFS' POSITION

22 This clarification is defendants' idea and is largely unnecessary from plaintiffs'
23 perspective. If the Court had adopted the defendants' position during the litigation of the summary
24 judgment issues, summary judgment would likely have been granted in their favor. It wasn't. But
25 defendants insist that this issue must be resolved in order for discovery or settlement discussions
26 to move forward. Accordingly, in an effort to break the log jam that is stalling discovery and
27 settlement talks, plaintiffs have agreed to join in this request.

28 With respect to the issues needing clarification, as this Court stated:

1 [T]he Supreme Court has indicated that a law may be void for vagueness
2 where it reaches a substantial amount of constitutionally protected conduct.
3 (*Kolender v. Lawson* (1983) 461 U.S. 352, 358, fn. 8.) Also, where a statute
4 imposes criminal penalties, the standard of certainty is higher. (*Ibid.*) “When
5 vagueness permeates the text of such a law, it is subject to facial attack.” (*City of*
6 *Chicago v. Morales* (1999) 527 U.S. 41, 55.)

(Ruling, p. 3.)

7 Defendants focus on the first sentence above and ignore the latter two in arguing that a
8 vagueness claim lacks merit if the questionable provision is not impermissibly vague in *all*
9 applications. Thus, defendants argue that plaintiffs must show there is *no set of circumstances*
10 where the statute might be applied in a constitutional manner. Alternatively, under this “no set of
11 circumstances” test, defendants need only produce an example in which the statute could be
12 applied constitutionally to defeat the facial challenge. In either event, however, the standard of
13 certainty is at the low end of the scale. That is inappropriate where, as here, criminal penalties and
14 property seizures are at issue. *See Kolender v. Lawson* (1983) 461 U.S. 352, 358, fn. 8 (“where a
15 statute imposes criminal penalties, the standard of certainty is higher”) discussed below.

16 **Defendant’s Reliance on *Hoffman Estates* Is Misplaced; *Hoffman Estates* Concerns**
17 **Economic Regulations and Civil Penalties**

18 Defendants cite *Village of Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S.
19 489, 494-95, in support of their argument. But *Hoffman Estates*, at best, sets out the test for
20 economic regulations with civil penalties, only. The limited applicability of *Hoffman Estates* is
21 evident in Justice White’s concurring opinion, where he states: “I agree with the majority that a
22 facial vagueness challenge to an *economic regulation* must demonstrate that ‘the enactment is
23 impermissibly vague in all of its applications.’” *Id.* at 507 (emphasis added). It is also evident in
24 the text of the main opinion, wherein the Court directly addresses the varying standards applicable
25 to a vagueness test depending on the nature of the provisions at issue.

26 In *Hoffman Estates*, the ordinance at issue required a business to obtain a license to sell
27 drug paraphernalia, violation of which was punishable by fine only. An official advised
28 businesses about which products were covered by the ordinance. Instead of obtaining a license or
filing an administrative proceeding, the business filed suit. *Id.* at 493. In considering the

1 vagueness challenge, the Court focused on several factors, including: (1) the type of regulation –
2 economic; (2) the type of penalty – civil versus criminal; and (3) the level of scienter. The Court
3 held that: “The degree of vagueness that the Constitution tolerates – as well as the relative
4 importance of fair notice and fair enforcement – depends in part on the nature of the enactment.”

5 *Id.* at 498. It continued:

6 Thus, economic regulation is subject to a less strict vagueness test The Court
7 has also expressed greater tolerance of enactments with civil rather than criminal
8 penalties because the consequences of imprecision are qualitatively less severe.
9 And the Court has recognized that a scienter requirement may mitigate a law’s
vagueness, especially with respect to the adequacy of notice to the complainant that
his conduct is proscribed.

10 *Id.* at 498-99.

11 *Hoffman Estates* added: “perhaps the most important factor affecting the clarity that the
12 Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally
13 protected rights.” *Id.* at 499. This does not deny that the other factors listed above are still
14 important, though “perhaps” not “the most” important. The Court in *Hoffman Estates* considered
15 all factors and found that the ordinance simply regulated business, required scienter, and imposed
16 only civil penalties. *Id.* at 499. On that basis, it found the regulations were not unconstitutionally
17 vague. *Id.* at 500.

18 The regulations here, however, are not mere economic regulations with civil penalties and
19 an actual knowledge element. Instead, they concern a felony crime and require only civil
20 negligence – the “should have known” mental state, not actual knowledge. Thus, the facts here
21 are readily distinguishable from the facts in *Hoffman Estates*. Moreover, the “vague in all its
22 applications” language in *Hoffman Estates* relied upon by Defendants has been criticized by later
23 Supreme Court decisions, as well as by legal scholars.¹

24 In short, defendants’ reliance upon *Hoffman Estates* is misplaced. The holding in that case
25 actually supports a *less* tolerant view of the vague regulations at issue here because: (1) the Court

26
27 ¹ See generally, *Chicago v. Morales* (1999) 527 U.S. 41, 55 n.22 and M. Dorf,
28 Facial Challenges to State and Federal Statutes, 46 Stan. L.Rev. 235, 284 (1994) (cited by
the *Morales* Court in footnote 22).

1 implemented *mens rea* test is weak, here, with no actual knowledge required; and (2) the criminal
2 penalty is extremely high.² Pen. Code § 12280. Property (the firearm) is seized as well. All these
3 factors require greater scrutiny.

4
5 **In *Morales*, the Supreme Court Distinguished the Test in *Hoffman Estates*
and Held that It Does *Not* Apply Where Criminal Penalties Are at Issue**

6 In *Chicago v. Morales* (1999) 527 U.S. 41, the United States Supreme Court declared as
7 facially vague a prohibition on loitering with “no apparent purpose” after police have ordered
8 dispersal and one of the persons is a “criminal street gang member.” The following holding is
9 dispositive here: “[E]ven if an enactment does not reach a substantial amount of constitutionally
10 protected conduct, it may be impermissibly vague because it fails to establish standards for the
11 police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.”
12 *Id.* at 52.

13 *Morales* is a plurality opinion joined in by three Justices, but six Justices concurred with
14 Part V of the opinion.³ Part V does not suggest that any constitutionally protected interest was
15 implicated, and instead holds that the law violated “the requirement that a legislature establish
16 minimal guidelines to govern law enforcement.” *Id.* at 60. “Recognizing that the ordinance does
17 reach a substantial amount of innocent conduct, we turn, then, to its language to determine if it
18 ‘necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his
19 beat.’” *Id.* Although the Justices who dissented differed with the majority on the answer to that
20 question, they did not dispute the principle. As in *Morales*, the Act here reaches otherwise
21 innocent conduct – mere possession of a device on a firearm. Further, it lacks sufficient standards
22

23 ² Hypothetically, if a firearms collector is charged with three counts of possession
24 for his inadvertent possession of three firearms deemed “assault weapons” that he
25 lawfully purchased prior to the registration period, but failed to register due to the
26 vagueness of the law, he faces three years in prison. If he is charged with transferring
these same firearms, he faces 24 years in prison. (Penal Code section 12280(a) and (b),
respectively.)

27 ³ Souter and Ginsburg, JJ., joined in the plurality opinion by Stevens, J. *See id.* at
28 66-67 (O’Connor, J., concurring, joined by Breyer, J.) (“I agree with Part V of the Court’s
opinion”); *id.* at 69 (Kennedy, J., concurring) (“I join Parts I, II, and V”).

1 to put the public on notice of what conduct it prohibits, or to protect the public from arbitrary or
2 discriminatory enforcement.

3 The regulatory definition here (and/or lack thereof) is parallel with the vague terminology
4 in *Morales*: “The ‘no apparent purpose’ standard for making that decision [to order dispersal] is
5 inherently subjective because its application depends on whether some purpose is ‘apparent’ to the
6 officer on the scene.” *Id.* at 61-62. Since “we must assume that the ordinance means what it
7 says,” the Court “refused to accept the general order issued by the police department as a
8 sufficient limitation on the ‘vast amount of discretion’ granted to the police in its enforcement.”
9 *Id.* at 63. Loitering is “innocent and harmless,” *id.* at 64, but that does not imply that it is
10 constitutionally protected. Thus, six Justices agreed with the rule in Part V that a criminal law
11 lacking sufficient standards is facially vague, regardless of whether it implicates a constitutional
12 right.

13 The plurality opinion states that the law “does not have a sufficiently substantial impact on
14 conduct protected by the First Amendment to render it unconstitutional,” but suggests that “the
15 freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the Due Process Clause
16 of the Fourteenth Amendment.” *Id.* at 52-53. But that need not be resolved:

17 There is no need, however, to decide whether the impact of the Chicago ordinance
18 on constitutionally protected liberty alone would suffice to support a facial
19 challenge under the overbreadth doctrine. . . . For it is clear that the vagueness of
20 this enactment makes a facial challenge appropriate. This is not an ordinance that
21 “simply regulates business behavior and contains a scienter requirement.”

22 *Id.* at 55.

23 Similarly, in this case it is not necessary to resolve the question whether possession of a
24 firearm implicates a liberty interest, either in terms of property rights or the right to protect one’s
25 own life and property. It is enough that the statute imposes criminal penalties – including prison
26 time. As discussed in more detail, below, the right *not* to be imprisoned based on arbitrary or
27 discriminatory enforcement of a vague statute implicates liberty interests, in and of itself.

28 Moreover, *Morales* expressly rejected the view that “to mount a successful facial
challenge, a plaintiff must ‘establish that no set of circumstances exists under which the Act
would be valid.’” *Id.* at 55 n.22, citing *United States v. Salerno* (1987) 481 U.S. 739, 745. “To

1 the extent we have consistently articulated a clear standard for facial challenges, it is not the
2 *Salerno* formulation, which has never been the decisive factor in any decision of this Court,
3 including *Salerno* itself”⁴ *Id.* at 55 n.22. “Since we . . . conclude that vagueness permeates
4 the ordinance, a facial challenge is appropriate.” *Id.*

5 Justice O’Connor concurred that the “ordinance is unconstitutionally vague because it
6 lacks sufficient minimal standards to guide law enforcement officers.” *Id.* at 65-66 (O’Connor, J.,
7 concurring). Similarly, Justice Breyer denied that the ruling violated the “rules governing facial
8 challenges,” concluding that “the ordinance violates the Constitution because it delegates too
9 much discretion to a police officer to decide whom to order to move on, and in what
10 circumstances.” *Id.* at 71 (Breyer, J., concurring). “[I]f every application of the ordinance
11 represents an exercise of unlimited discretion, then the ordinance is invalid in all its applications.”
12 *Id.* Finding examples where a vague law might apply will not save the law:

13
14 But the city of Chicago may no more apply *this* law to the defendants, no matter
15 how they behaved, than could it apply an (imaginary) statute that said, “It is a crime
16 to do wrong,” even to the worst of murderers. See *Lanzetta v. New Jersey*, 306
U.S. 451, 453 (1939) (“If on its face the challenged provision is repugnant to the
due process clause, specification of details of the offense intended to be charged
would not serve to validate it”).

17 *Id.*

18 The Court in *Morales* stated the general rule on vagueness in the context of criminal
19 statutes, as follows: “Vagueness may invalidate a criminal law for either of two independent
20 reasons. First, it may fail to provide the kind of notice that will enable ordinary people to
21 understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and
22 discriminatory enforcement.” *Id.* at 56. Besides not providing notice, the ordinance violated “the
23 requirement that a legislature establish minimal guidelines to govern law enforcement.” *Id.* at 60.
24 Like here, the law “necessarily entrusts lawmaking to the moment-to-moment judgment of the
25 policeman on his beat.” *Id.* Further, the “Constitution does not permit a legislature to ‘set a net
26 large enough to catch all possible offenders, and leave it to the courts to step inside and say who

27
28 ⁴ *Salerno* concerned the constitutionality of the Bail Reform Act and presented no
issue of vagueness.

1 could be rightfully detained, and who should be set at large.” *Id.* at 60, quoting *United States v.*
2 *Reese* (1876), 92 U.S. 214, 221. The net cast by the DOJ’s regulations on “flash suppressors” and
3 the lack of a definition for “permanently alter” violates this legal maxim on its face.

4
5 **The Right Not to Be Imprisoned Based on Arbitrary or Discriminatory**
Enforcement of a Vague Statute Implicates Liberty Interests, in and of Itself

6 *Lanzetta v. New Jersey* (1939) 306 U.S. 451, which the Supreme Court has cited as
7 authority in virtually every vagueness decision, invalidated a law as facially vague without any
8 constitutional right at stake other than the Due Process right not to be subject to criminal penalties
9 for conduct which is not clearly proscribed. It invalidated a prohibition on “gang” membership as
10 vague under the principle: “No one may be required at peril of life, liberty or property to speculate
11 as to the meaning of penal statutes.” *Lanzetta*, 306 U.S. at 452-53.

12 The rule advocated by the defendant here is at odds with the Supreme Court’s
13 jurisprudence from *Lanzetta* through *Morales*. “The standards of certainty in statutes punishing
14 for offenses is higher than in those depending primarily upon civil sanction for enforcement.”
15 *Winters v. New York*, 333 U.S. 507, 515 (1948). Economic regulations which establish crimes
16 have been declared facially vague.⁵ *Papachristou v. Jacksonville* (1972) 405 U.S. 156, 164, held a
17 vagrancy prohibition facially vague even though the activities at issue “are not mentioned in the
18 Constitution or in the Bill of Rights.”

19 *Colautti v. Franklin* (1979) 439 U.S. 379, invalidated a law requiring a physician
20 performing an abortion to utilize certain techniques when there is “sufficient reason to believe that
21 the fetus may be viable.” *Colautti* explained:

22 This Court has long recognized that the constitutionality of a vague statutory
23 standard is closely related to whether that standard incorporates a requirement of
24 mens rea. . . . Because of the absence of a scienter requirement in the provision

25 ⁵ *United States v. Cardiff*, 344 U.S. 174, 174-75 (1952) (refusal of factory owner
26 to permit entry “at reasonable times” held vague); *United States v. L. Cohen Grocery Co.*,
27 255 U.S. 81, 89 (1921) (“wilfully” charging “any unjust or unreasonable rate” for
28 “necessaries” held vague); *International Harvester Co. v. Kentucky*, 234 U.S. 216, 223-
24 (1914) (Holmes, J.) (compelling persons “to guess on peril of indictment” uncertain
facts “is to exact gifts that mankind does not possess”).

1 directing the physician to determine whether the fetus is or may be viable, the
2 statute is little more than “a trap for those who act in good faith.” *United States v.*
Ragen (1942) 314 U.S. 513, 524.⁶

3 *Id.* at 395.

4 *Ragen* was a tax-evasion case not involving constitutionally-protected conduct, and thus
5 the above states the rule for all criminal statutes.⁷

6 *Kolender v. Lawson*, (1983) 461 U.S. 352, 353-54, held as vague on its face a requirement
7 that persons who loiter provide a “credible and reliable” identification. Since the police
8 determined what was “credible and reliable,” the provision lacked any standard and was vague.
9 “[T]his is not a case where further precision in the statutory language is either impossible or
10 impractical.” *Id.* at 361.

11 *Kolender* rejected the argument that a statute “should not be held unconstitutionally vague
12 on its face unless it is vague in all of its possible applications.” *Id.* at 358 n.8. It explained:

13 The description of our holdings is inaccurate in several respects. First, it neglects
14 the fact that we permit a facial challenge if a law reaches “a substantial amount of
15 constitutionally protected conduct.” . . . Second, where a statute imposes criminal
16 penalties, the standard of certainty is higher. . . . This concern has, at times, led us
to invalidate a criminal statute on its face even when it could conceivably have had
some valid application. *See, e.g., . . . Lanzetta v. New Jersey* (1939) 306 U.S. 451.

17 *Kolender*, 461 U.S. at 358-59 n.8.

18 Again, *Lanzetta* did not involve constitutionally-protected conduct, yet it invalidated the
19 statute on its face even though it may have had some valid application.⁸ Thus, the above rule
20 applies to all criminal provisions.

21 *Kolender* also rejected the view that a facial challenge is restricted to First Amendment

22
23 ⁶ *Ragen, id.*, noted: “A mind intent upon willful evasion is inconsistent with
24 surprised innocence. . . . [T]he charge . . . amply instructed the jury that scienter is an
essential element of the offense.”

25 ⁷ *See Hill v. Colorado* (2000) 530 U.S. 703, 120 S. Ct. 2480, 2498 (vagueness
26 “ameliorated” by scienter requirement).

27 ⁸ For instance, in *Lanzetta* the defendant might have confessed to being a “gang”
28 member, just as in *Kolender* a person may have exhibited a passport and a driver’s license
as “credible and reliable” identification.

1 cases, also recognizing “facial challenges in the arbitrary enforcement context.” *Id.* Reliance on
2 *Hoffman Estates* was misplaced, given that “economic regulation is subject to a less strict
3 vagueness test”⁹ *Id.*

4 Similarly, the Ninth Circuit in *Forbes v. Napolitano* (9th Cir. 2000) 236 F.3d 1009,
5 invalidated on its face a prohibition on certain medical procedures due to the vagueness of the
6 terms “experimentation,” “investigation,” and “routine.” Based on the above precedents, *Forbes*
7 held that the strict test for vagueness applies *regardless of* whether constitutionally-protected
8 conduct is involved:

9 If a statute subjects transgressors to criminal penalties, as this one does, vagueness
10 review is even more exacting. . . . In addition to defining a core of proscribed
11 behavior to give people constructive notice of the law, a criminal statute must
12 provide standards to prevent arbitrary enforcement. . . . Without such standards, a
13 statute would be impermissibly vague even if it did not reach a substantial amount
14 of constitutionally protected conduct, because it would subject people to the risk of
15 arbitrary deprivation of their liberty. . . . Regardless of what type of conduct the
16 criminal statute targets, the arbitrary deprivation of liberty is itself offensive to the
17 Constitution’s due process guarantee. (*Id.* at 1011-12 (citations omitted).)

14 **The Lack of a Strict Mens Rea Requirement Also Militates in**
15 **Favor of a Higher Level of Scrutiny**

16 Defendants attempt to distinguish this case based upon the *mens rea*. Penal Code section
17 12280 does not expressly contain a *mens rea* requirement. Where substantial penalties are
18 imposed, California law normally establishes a presumption against criminal liability without at
19 least some *mens rea*. *In re Jorge M* (2000) 23 Cal.4th 866, 879. However, *In re Jorge M* held
20 that a negligence standard applies to Penal Code section 12280, contending that “An actual
21 knowledge element has significant potential to impair effective enforcement” (*id.* at 884) and
22 stating that:

23 A scienter requirement satisfied by proof that the defendant *should have known* the
24 characteristics of the weapon bringing it within the AWCA, however, would have
25 little or no potential to impede effective enforcement. . . .

26 ⁹ The dissent argued that the test should be whether the law has a “core” and is not
27 vague in all its applications, giving an example in which the ordinance would not be
28 vague. *Id.* at 370-73 (White, J., dissenting). “The majority attempts to underplay the
Id. at 372 n.*. If true, *Kolender* is the more recent, binding precedent.

1 *In re Jorge M* (2000) 23 Cal.4th 866, 885. (Emphasis added.)

2 Accordingly, the Court held: “we construe section 12280(b) as requiring knowledge of, *or*
3 *negligence in regard to*, the facts making possession criminal. In a prosecution under section
4 12280(b), that is to say, the People bear the burden of proving the defendant knew or *reasonably*
5 *should have known* the firearm possessed the characteristics bringing it within the AWCA.” *Id.* at
6 887 (emphasis added). Moreover, “Our ‘reasonably should have known’ formulation departs
7 somewhat from the usual description of criminal negligence.” *Id.* at 887 n.11. The Court rejected
8 the normal rule that “[T]o constitute a criminal act the defendant’s conduct must go beyond that
9 required for civil liability and must amount to a ‘gross’ or ‘culpable’ departure from the required
10 standard of care.” *Id.* It concluded that “the Legislature intended guilt to be established by proof of
11 a mental state slightly lower than ordinarily required for criminal liability.” *Id.*

12 *In re Jorge M* thus rejected the standard set forth in *Staples v. United States* (1994) 511 U.S.
13 600, that unlawful machinegun possession under federal law requires proof that the accused knew that
14 a firearm had the requisite characteristics of a machinegun. In dissent, Justice Kennard would have
15 followed the *Staples* rule and would have held that “unlawful possession of an assault weapon, which
16 carries a maximum three-year state prison sentence, requires knowledge by the defendant that the
17 firearm has the characteristics that make it an assault weapon.” 23 Cal.4th at 894 (Kennard, J.,
18 dissenting). Justice Kennard explained:

19 Disregarding this usual presumption, the majority injects into the offense of
20 possession of an unregistered assault weapon a mental state taken from the civil law
21 of torts: whether the accused “knew or reasonably should have known” the firearm
22 possessed the characteristics that made it an assault weapon. (Maj. opn., ante, 98
23 Cal.Rptr.2d at p. 482, 4 P.3d at p. 311, italics omitted.) That this is the test for civil
negligence is not disputed by the majority (maj. opn., ante, at p. 482, fn. 11, 4 P.3d at
p. 311, fn. 11), which cites no decision by this court adopting this civil law standard
as the requisite mental state in a criminal case.

24 *Id.* at 894.¹⁰

25 _____
26 ¹⁰Justice Kennard further opined:

27 The only prosecutions that are likely to be aided by the majority’s “should
28 have known” standard are those of novice firearm owners, such as a
widow who inherits her husband’s rifle that she has never fired or even

1 Accordingly, given the majority decision in *In re Jorge M.* that the normal mens rea
2 requirements of criminal law generally do not apply, the court must review the definitions at issue
3 strictly to determine whether they are “little more than ‘a trap for those who act in good faith.’”
4 *Colautti, supra*, 439 U.S. at 395.

5 As alleged in the Complaint, the definition of “flash suppressor” does nothing to clarify the
6 law for a person who actually does investigate. On the contrary, it worsens the application of the law.
7 Similarly, the lack of a definition for “permanently alter” creates similar confusion. With such a low
8 standard, the civil *mens rea* established in *In re Jorge M* does little to clarify the vagueness that
9 permeates the Act and is not the protection that would allow application of the “vague in all
10 applications standard” – as urged by the Defendants.

11 In sum, the DOJ “flash suppressor” regulation, and the lack of a regulation defining
12 “permanently alter” fail to provide adequate notice to the public or adequate guidance to law
13 enforcement regarding what conduct is prohibited by the Act. Consequently, the Act subjects the
14 public to arbitrary and discriminatory enforcement of regulations that could lead to a felony
15 conviction and prison time for otherwise innocent behavior. The lack of an “actual knowledge”
16 scienter requirement exacerbates the problem. Because the law challenged by plaintiffs involves
17 criminal penalties, property rights, and the liberty interests of those charged under the Act, it
18 should be subjected to greater scrutiny than that applied to the economic regulations in *Hoffman*
19 *Estates*. The proper vagueness test is the one employed when reviewing criminal laws, with
20 criminal penalties: “Vagueness may invalidate a criminal law for either of two independent
21 reasons. First, it may fail to provide the kind of notice that will enable ordinary people to
22 understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and

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24 handled. The majority's holding will facilitate her prosecution. It may not
25 have occurred to her to examine the rifle to determine its precise make and
26 model, the characteristics making it an assault weapon. Yet, under the
27 majority's holding, she could now face felony conviction and state
28 imprisonment because, in the majority's view, those characteristics are
29 something she “should have known.”

30 *Id.* at 895.

1 discriminatory enforcement.” *Morales* at 56.

2 This Court must examine each of these independent factors to determine the validity, *vel*
3 *non*, of the Regulations.

4 **DEFENDANTS’ POSITION**

5 As the Court states:

6 “A law failing to give a person of ordinary intelligence a reasonable opportunity to
7 know what is prohibited violates due process under both the federal and California
8 Constitutions.” (*Harrott v. County of Kings* (2001) 25 Cal. 4th 1138, 1151.) “A law
9 that does not reach constitutionally protected conduct and therefore satisfies the
10 overbreadth test may nonetheless be challenged on its face as unduly vague, in
11 violation of due process. To succeed, however, the complainant must demonstrate
12 that the law is impermissibly vague in all its applications.” (*Village of Hoffman*
13 *Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, 498.)

14 (Ruling, p.3.)

15 The law is thus clear that in order to challenge a law that does not implicate
16 constitutionally protected conduct as unconstitutionally vague on its face, a plaintiff must show
17 that such law is impermissibly vague in all applications. The decisions relied upon by plaintiff,
18 which involved challenges to laws that did in fact implicate constitutionally protected conduct, are
19 distinguishable and have no application in this action.

20 To begin with, unlike the loitering provisions at issue in *Kolender v. Lawson* (1983) 461
21 U.S. 352 and *City of Chicago v. Morales* (1999) 527 U. S. 41, it is undisputed that the provisions
22 challenged here do not “reach a substantial amount of constitutionally protected conduct.”

23 (Compare *Kolender*, 461 U.S. at 358 [“Our concern here is based upon the ‘potential for
24 arbitrarily suppressing First Amendment liberties’ In addition [the provision] implicates
25 consideration of the constitutional right to freedom of movement.”] *City of Chicago*, 527 U.S. at
26 53 [“freedom to loiter for innocent purposes is part of the ‘liberty’ by the Due Process Clause of
27 the Fourteenth Amendment”]). Recognizing this, plaintiffs attempt to argue that the challenged
28 provision need no “reach a substantial amount of constitutionally protected conduct” in order to
avoid the ordinary “vague in all applications” standard, notwithstanding protected conduct” in
order to avoid the ordinary “vague in all applications” standard, notwithstanding, that such
requirement is recognized not just in *Village of Hoffman Estates*, but also in the very decisions

1 cited by plaintiffs, as th Court has already recognized. (See Ruling, p. 3: *Kolender*, 461 U.S. at
2 358, fn. 8 [“we permit a facial challenge if a law reaches ‘a substantial amount of constitutionally
3 protected conduct’”]; *City of Chicago*, 527 U. S. At 52-53.)

4 In making this attempt, plaintiffs take the Supreme Court’s language from *City of Chicago*
5 out of context in arguing that it is “dispositive” here that the Supreme Court stated: “Even if an
6 enactment does not reach a substantial amount of constitutionally protected conduct, if may be
7 impermissibly vague because it fails to establish standards for the police and public that are
8 sufficient to guard against the arbitrary deprivation of liberty interests.” In context, the
9 “substantial amount of constitutionally protected conduct” in this statement simply referred to
10 First Amendment conduct, and the “deprivation of liberty interests” simply referred to First
11 Amendment conduct, and the “deprivation of liberty interests” simply referred to the freedom to
12 loiter for innocent purposes. (See *City of Chicago*, 527 U.S. at 52-53.) The Supreme Court was
13 simply confirming that the “constitutionally protected conduct” in question need not be, strictly
14 speaking, First Amendment conduct. But by no reach of the imagination was the Supreme Court
15 abrogating the ordinary rule that the challenge law must reach “a substantial amount of
16 constitutionally protected conduct” in order for a plaintiff to avoid the high burden on a facial
17 challenge identified in *Village of Hoffman Estates*. The decisions in *Kolender* and *City of*
18 *Chicago*, addressing challenged provisions implicating constitutionally protected conduct, simply
19 do not apply to the present matter.

20 Nor did the loitering provisions at issue in those cases include a *mens rea* requirement to
21 protect against prosecution of the innocent, unlike the provision at issue in *Village of Hoffman*
22 *Estates*, and unlike the provisions at issue here as the Court has confirmed at pages 3-4 of its
23 Ruling. (Compare *City of Chicago*, 527, U.S. at 55 [provision “contains no *mens rea*
24 requirement”], with *Village of Hoffman Estates*, 455 U.S. at 499 [provision “contains a scienter
25 requirement”].)

26 Moreover, the high standard of certainty applicable to criminal provisions does not create
27 any exception to the ordinary Village of Hoffman Estates facial challenge “vague in all
28 applications” evaluation. In *Village of Hoffman Estates*, the quasi-criminal provision at issue was

1 subject to the strict certainty test, but the Supreme Court nonetheless found: “Flipside’s facial
2 challenge fails because, under the test appropriate to either a quasi-criminal or a criminal law, the
3 ordinance is sufficiently clear as applied to Flipside.” (*Village of Hoffman Estates*, 455 U.S. at
4 499-500, emphasis added.) A high degree of certainty is indeed required of criminal provisions,
5 but a facial challenge to such a provision still requires proof that such certainty cannot be achieved
6 in any application.

7 Accordingly, the standard applied in *Village of Hoffman Estates* governs on this facial
8 challenge, and plaintiffs’ burden on this facial challenge is to demonstrate that the provisions
9 challenged are “impermissibly vague in all of their applications.”¹¹

10 Dated: October _____, 2007

Respectfully Submitted,

11 TRUTANICH - MICHEL, LLP

12
13
14 C. D. MICHEL
Attorneys for Plaintiffs

15 Dated: October _____, 2007

Respectfully Submitted,

16 EDMUND G. BROWN JR.
17 Attorney General of the State of California

18
19
20 DOUGLAS J. WOODS
Deputy Attorney General,
21 Attorneys for Defendants

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23
24 ¹¹ As an aside, defendants note that the Court’s determination on this issue may
25 be dispositive in this case. If the Court confirms that “vague in all applications” is the
26 governing standard, it is expected that, upon reflection, plaintiffs would acknowledge that
27 they cannot prevail in this action. On defendants’ part, if the Court were to determine
28 that “vagueness permeates the text” is the governing standard, and if the Court deems it
necessary that there be flash suppressor testing capability, established flash measurement
standards, and/or established baseline assumptions as to whether the firearm is held at the
shoulder or the hip, as to whether the firearm has iron sights or telescopic sights, and/or to
particular ammunition variables, *it is undisputed that plaintiffs would prevail.*

EXHIBIT V

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6 Sacram
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E-mail:

8 Attorneys
9 BILL LO
and CALL

Tentative Ruling became
Order of the Court -
no further order is
necessary

FILED BY FAX

Case No. 01CECG03182

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

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA, et al.,

20 Defendants.

[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION AND
GRANTING IN PART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT OR SUMMARY
ADJUDICATION

Date: March 22, 2007
Time: 3:30 p.m.
Dept: 72

Before the Honorable Alan Simpson

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25 The parties' cross-motions for summary judgment or, alternatively, summary adjudication
26 on plaintiffs' Amended Complaint came on regularly for hearing on March 22, 2007, in Department
27 72 of the above-entitled Court. Jason A. Davis and C. D. Michel of Trutanich • Michel, LLP and Don
28 B. Kates of Benenson & Kates appeared on behalf of plaintiffs. Douglas J. Woods of the Office of the

EXHIBIT W

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10 (360) 666-2688

11 Attorneys for Plaintiffs

12

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF FRESNO

15 EDWARD W. HUNT, in his official) CASE NO. 01CECG03182
capacity as District Attorney of Fresno)
16 County, and in his personal capacity as a)
citizen and taxpayer, et. al.,) **OBJECTION TO DEFENDANTS**
17 Plaintiffs,) **PROPOSED ORDER**
18 v.)
19 STATE OF CALIFORNIA; WILLIAM)
LOCKYER, Attorney General of the State of)
20 California, et. al.,)
21 Defendants.)

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1 On April 24, 2007 Defendants' Counsel, Douglas J. Woods submitted a Proposed Order
2 Denying Plaintiffs' Motion for Summary Judgment or Summary Adjudication and Granting in
3 Part Defendants' Motion for Summary Judgment or Summary Adjudication. Plaintiffs' object to
4 this proposed order on the grounds that it exceeds the scope of the Court's tentative and oral
5 ruling made at the time of oral argument.

6 Specifically, as noted in the exhibit submitted by the Defendants, "the proposed order . . .
7 includes a new paragraph (pages 4-5) leading into the denial of plaintiffs' motion for summary
8 adjudication on their vagueness claims. The new paragraph expressly confirms the "vague in all
9 applications" standard from the Supreme Court's decisions in *Village of Hoffman Estates*, and
10 adopts [Defendants'] argument from the hearing distinguishing the *Colender* and *City of Chicago*
11 cases cited by plaintiffs in reply."

12 This ruling, however, was not the stated opinion of this Court. In fact, *City of Chicago v.*
13 *Morales*, 527 U.S. 41 (1999), declared as facially vague a prohibition on loitering after police
14 have ordered dispersal and one of the persons is a "criminal street gang member." The following
15 holding is dispositive of the issue here: "Even if an enactment does not reach a substantial amount
16 of constitutionally protected conduct, it may be impermissibly vague because it fails to establish
17 standards for the police and public that are sufficient to guard against the arbitrary deprivation of
18 liberty interests." (*Id.* at 52.) Also, the law "does not have a sufficiently substantial impact on
19 conduct protected by the First Amendment to render it unconstitutional." (*Id.* at 52-53.)
20 Nonetheless, the vagueness of this enactment makes a facial challenge appropriate." (*Id.* at 55.) A
21 plaintiff need not "establish that no set of circumstances exists under which the Act could be
22 valid," which "has never been the decisive factor in any decision of this court . . ." (*Id.* at 55
23 n.22.) "Since we . . . conclude that vagueness permeates the ordinance, a facial challenge is
24 appropriate." (*Id.*)

25 And, though defendants attempt to distinguish this case on the basis of the *mens rea*
26 requirement established for "assault weapon" violations, prosecuted persons are still deprived of
27 their property which may not be returned once deemed an illegal "assault weapon" – even if the
28 possessor of the firearm is not *criminally* prosecuted.

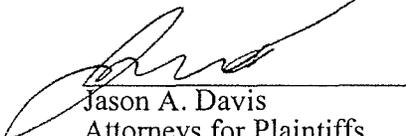
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Further at the hearing Plaintiffs' submitted on the tentative ruling, which did not include the language in Defendants' proposed order.

For the foregoing reasons Plaintiffs' object to Defendants' proposed order and request that the Court issue an order identical to its tentative ruling.

Dated: May 2, 2007

TRUTANICH - MICHEL, LLP



Jason A. Davis
Attorneys for Plaintiffs

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PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

On May 2, 2007, I served the foregoing document(s) described as

OBJECTION TO DEFENDANTS PROPOSED ORDER

on the interested parties in this action by placing
[] the original
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

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

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

Executed on May 2, 2007, at Long Beach, California.

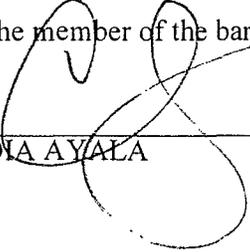
X (VIA FACSIMILE TRANSMISSION) As follows: The facsimile machine I used complies with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to Rules of Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, copies of which is attached to this declaration.

 (PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on May 2, 2007, at Long Beach, 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 court at whose direction the service was made.



CLAUDIA AYALA

EXHIBIT X

Ignatius Chinn

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

---o0o---

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

Plaintiffs,

vs.

No. 01CECG03182

STATE OF CALIFORNIA; WILLIAM
LOCKYER, Attorney General of
State of California; CALIFORNIA
DEPARTMENT OF JUSTICE; Does 1-100,
Defendants.

Deposition of

IGNATIUS CHINN

Tuesday, December 11, 2007

Reported by:

TRACY LEE MOORELAND

CBR No. 10397

Job No. 17598LR

1 A. No.

2 Q. Never?

3 A. Never.

4 Q. Is there a process for getting clarification
5 from the Department of Justice firearms bureau regarding
5 assault weapon issues?

7 A. It was an open door. You could call an
3 analyst, and if they couldn't answer it, then they would
9 give the call to me.

0 Q. Then would you respond back or would --

1 A. No, I would respond back. And then if they
2 wanted a written answer, then it would be referred to
3 legal.

4 Q. And that's been since when?

5 A. It's been quite a while now. Since Alison's
6 been here. Three years.

7 Q. Does the DOJ still respond to inquiries in
8 writing?

9 A. Not a whole lot of them lately.

0 Q. Why is that?

1 A. I don't know.

2 Q. Does the DOJ make determinations as to whether
3 or not a firearm is an assault weapon or not anymore?

4 A. Yes.

5 Q. In writing?

1 A. Not to my knowledge, no.

2 Q. If I were to submit a request clarifying
3 whether or not a firearm is an assault weapon, the DOJ
4 would not respond at this point?

5 MR. BECKINGTON: Objection. Calls for
6 speculation.

7 THE WITNESS: No, they would, but not through
8 my office.

9 Q. BY MR. DAVIS: They would respond -- how would
0 they respond?

1 MR. BECKINGTON: Objection. Calls for
2 speculation.

3 Q. BY MR. DAVIS: Do you know?

4 A. Through legal.

5 Q. Is it the policy of the Department of Justice
6 firearms bureau to not clarify whether or not firearms
7 are assault weapons anymore in writing?

8 MR. BECKINGTON: Objection. Lack of
9 foundation.

0 THE WITNESS: We do it verbally. An inquiry
1 notice is sufficient. That doesn't state that we have
2 to do it writing, so we do it verbally under the Staples
3 case and under 12288, assault weapons. That's their
4 ability to surrender illegal assault weapons prearranged
5 to law enforcement. Keeps them out of judicial

1 liability.

2 Q. BY MR. DAVIS: So you don't issue written
3 clarification letters anymore, the Department of
4 Justice --

5 A. They do, but it's through Alison.

6 Q. They do?

7 A. They do, through Alison.

8 Q. There's no policy prohibiting that anymore?

9 A. Prohibiting --

10 MR. BECKINGTON: Just want to make an
11 objection. Lack of foundation.

12 Q. BY MR. DAVIS: When was the last time you
13 visited the Department of Justice website, firearms
14 bureau? You don't recall?

15 A. Never had to.

16 Q. You never had to?

17 A. No, because the forms that are on there for
18 civilians I have at my hand in my car, so I never have
19 to access it because the "no longer in possession" forms
20 are there. People ask me for ownership records forms, I
21 have them in my vehicle.

22 Q. Does it have a public inquiry page?

23 A. I don't know.

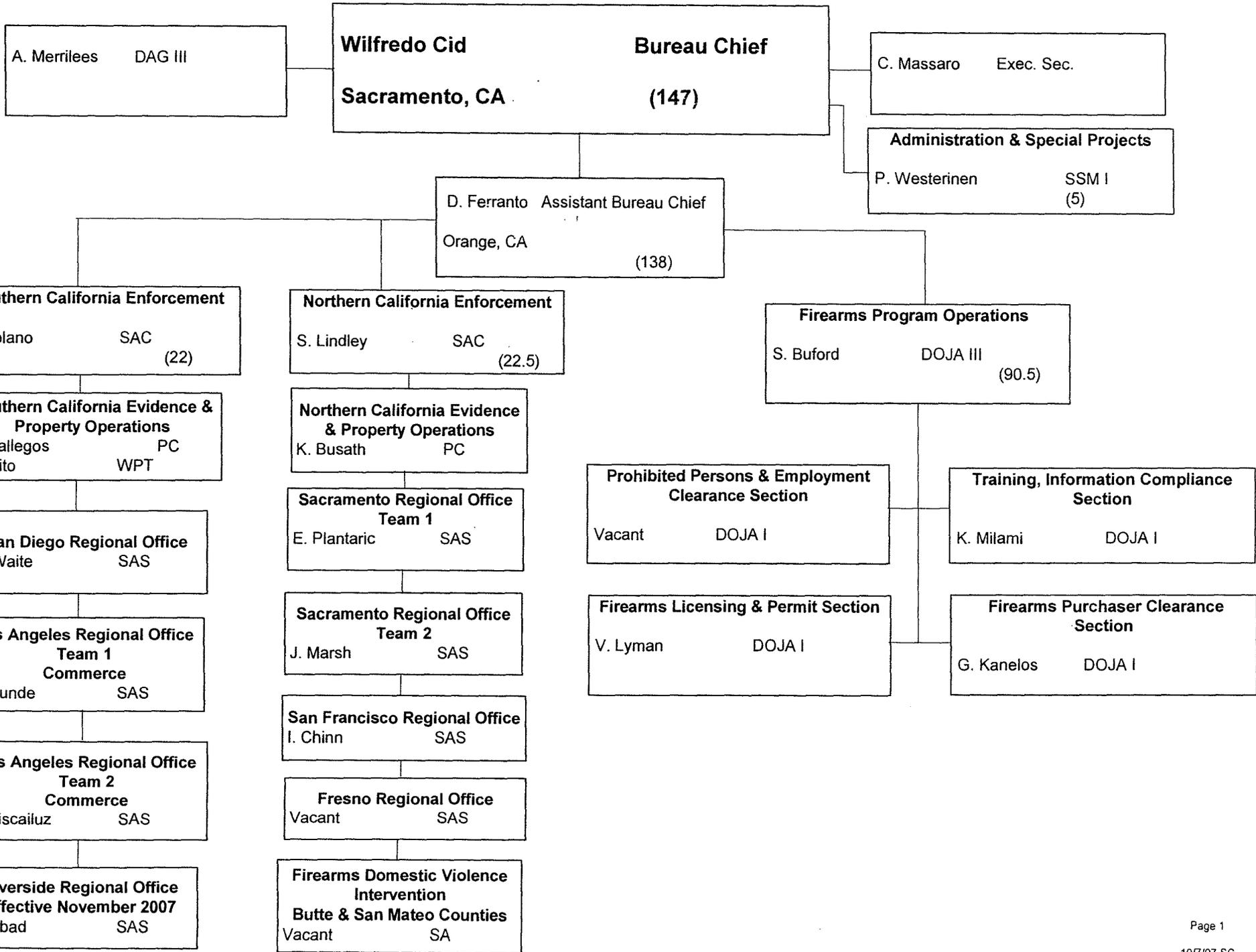
24 Q. Does the Department of Justice have a policy
25 regarding destruction of documents and document

EXHIBIT Y

Pink - Extended Leave
 Blue - Vacant
 Green - Hiring in Progress
 Red - CJIS Redirect

BUREAU OF FIREARMS

NOVEMBER 2007



DIVISION OF LAW ENFORCEMENT (DLE)

