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In the
Supreme Court of the United States

WILLIAM C. HUDDLESTON,

Petitioner,

vs

UNITED STATES,

Respondent.

No. 72-1076

Washington, D.C.

November 7, 1973

Pages 1 thru 42

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Washington, D. C.
Wednesday, November 7, 1973

The above-entitled matter came on for argument at
10:19 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

HARVEY I. SAFERSTEIN, ESQ., 606 South Hill Street,
Eleventh Floor, Los Angeles, California; for the
Petitioner

DANNY JULIAN BOGGS, ESQ., Office of the Solicitor
General, Department of Justice, Washington, D. C.;
for the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 72-1076, Huddleston v. The United States.

Mr. Saferstein, you may proceed whenever you are ready.

ORAL ARGUMENT OF HARVEY I. SAFERSTEIN, ESQ.,

ON BEHALF OF WILLIAM G. HUDDLESTON

MR. SAFERSTEIN: Mr. Chief Justice, and may it please the Court:

This case is here on a writ of certiorari to review the decision of the Ninth Circuit Court of Appeals affirming the conviction of William Carroll Huddleston for violating 18 U.S.C. §922(a)(6), which prohibits the making of a false statement in connection with the acquisition of a firearm from a licensed firearms dealer.

The basic problem in this case arises from the simple fact that §922(a)(6) prohibits false statements only if they are made in connection with the acquisition of a firearm. However, Mr. Huddleston's statements were made in connection with the redemption from pawn of three rifles which he, himself, had previously pawned at a pawn shop some three or four months earlier. That is, the statements were not made in connection with the purchase or sale of firearms by Mr. Huddleston, but rather in connection with redeeming property which he, himself, had brought to the pawn shop.

Q You are attaching a significance, I take it, then, to use by Congress of the broad term "acquisition" instead of "purchase or sale"?

MR. SAFERSTEIN: Your Honor, we believe that the term "acquisition" was a term used by Congress to catch, basically, sales.

Q In its ordinary meaning, what does the word "acquire" convey?

MR. SAFERSTEIN: Well, we believe that, first of all, the use in other sections of the laws of broader terminology, such as "deliver," would indicate that the term "acquisition" has a narrower meaning than simply physical transfer. Furthermore, we believe that Congress may well have been concerned with trades or barters which were not technically sales; and that the term "acquisition" must have had a narrower meaning than simply physical transfer, or they would have used the broader terminology that is used in other sections, such as, simply, "transfer" or "deliver."

Q What about the clause that actually requires the pawnbroker to keep records of all "dispositions"?

MR. SAFERSTEIN: That is section 9 -- the -- Well, the pawnbroker is required to keep records as promulgated by the Department of the Treasury, and the --

Q That record includes -- it's not restricted to sales, is it?

MR. SAFERSTEIN: Well, there is not -- the Government contends that it is not restricted to sales -- that it includes dispositions of firearms. We do not concede that it does include dispositions of firearms by the pawn redemption method. The Government seems to be contending --

Q Well, they could have said "sales" --

MR. SAFERSTEIN: That's true. They could have said "sales" in --

Q So they meant more than just "sales" --

MR. SAFERSTEIN: They may well have meant more than "sales" -- such as a swap, or a trade, a barter --

Q You mean pawn shops swap and trade?

MR. SAFERSTEIN: Yes, there was some testimony in one of the hearings before the -- one of the Senate Committees which indicated --

Q That was James Bennett --

MR. SAFERSTEIN: Yes, Mr. Bennett --

Q James Bennett testified before one of the Committees that one of the problems was people going in and trading a watch for a gun --

MR. SAFERSTEIN: Yes --

Q -- at a pawnshop. I think I remember that in --

MR. SAFERSTEIN: Right.

Q -- briefs, don't I?

MR. SAFERSTEIN: Yes. Mr. Bennett testified that

people go in and they trade items, such as a watch, for a gun --

Q Or you could have said "swap" --

MR. SAFERSTEIN: Well, it is our contention that they could have said -- it's true that they could have said a lot of things that the Government contends --

Q But this is --

MR. SAFERSTEIN: -- is contained in various other sections.

Q But that's actually the broadest word they could find, didn't they?

Q Well, they could have said "transfer" --

MR. SAFERSTEIN: They could have said "transfer", which is used; they could have said "deliver", which is used in other sections; they could have said "ship", which is used in other sections.

Q But they persisted --

MR. SAFERSTEIN: But, for some reason, they chose "acquisition."

Q And your point is, whatever else "acquisition" may or may not mean, it doesn't mean a man getting his own property back.

MR. SAFERSTEIN: Right. I think our main point is that the term "acquisition" is not all-inclusive. Now, that is, it has some line to be drawn. We would draw it narrowly at sales. The Government, I would imagine, would draw --

Q Well, it could be gifts, couldn't it?

MR. SAFERSTEIN: I take it that it could be gifts by a licensed dealer.

Q A gift by a pawnbroker?

Q Or anybody.

Q But, I mean, pawnbrokers. Are they noted for giving?

MR. SAFERSTEIN: I don't think they're noted for giving, but the law covers all gun dealers, and I suppose that a gun dealer who gave away guns, for example, in a promotional effort -- "Free guns today." -- would be required, for all the people who came in to get the free guns, to fill out Form 4473; and that would be included in the law.

Now, on the other side, I would like to point out what happens to this term if it is given the broadest possible meaning, which I take it the Government is contending for. In other words, the question of where the line should be drawn on the term "acquisition." Under the Government's definition of "acquisition" -- which is virtually any transfer -- I take it that two things would be included. Number one: if a small loan company gave a loan on a nonpossessory lien on a rifle, it's very possible when that customer, who never gave up possession of the gun, repaid the loan, that the Government might consider that an acquisition, and require the debtor, when he paid off his loan, to fill out a Form 4473, which is the

Treasury form that was used in this case in which the false statement was made.

Q In other words, you feel it goes beyond mere possession -- physical possession?

MR. SAFERSTEIN: Well, I -- No, I feel that the Government's position, that it applies to any transfer --

Q Yes --

MR. SAFERSTEIN: -- would lead the Court to that position.

Q Well --

MR. SAFERSTEIN: It is my contention that is to be narrowly construed.

Q I doubt if they go that far. Let me ask you something: Is it agreed that this gun, or guns, were not the property of Mr. Huddleston, but of his wife?

MR. SAFERSTEIN: No, that is not -- I don't think that is agreed, Your Honor. It is agreed that his wife purchased the guns, and the Court below, in the District Courts, seemed to find that, as a result of this being a community property state, these were, prima facie, his guns as well as her guns.

Q You don't know why, as a practical matter, she didn't redeem them?

MR. SAFERSTEIN: As a practical matter why she didn't -- Do I personally know, by the fact that he is my client, or --?

On the basis of the record, he redeemed them. As a practical matter, I think, under California State Law, she had no right to redeem them. California State Law, as I read it, allows only the pawnor to redeem the guns, and says nothing about anybody else.

Q Even though, if she were the owner, and he had taken them into the pawnshop, only he could redeem them, under --

MR. SAFERSTEIN: That is the way I read the law, unless she brought an action against the pawnshop on the basis that the person who had pawned the gun had stolen it, or had made an unauthorized pawn of that gun.

Q Well, at some point he can foreclose, can he not, under California Law?

MR. SAFERSTEIN: Yes. Under California Law, after six months the pawnbroker can foreclose and sell the gun.

Q I suppose you would agree that if the pawnbroker had foreclosed, and the day after the foreclosure was complete, this gentleman came in and said he wanted to get that particular gun, because it had pearl handles, or something, or some characteristic; and he was then informed that it had been foreclosed the day before, but he purchased it, you wouldn't be here, would you? If he made an outright purchase after foreclosure?

MR. SAFERSTEIN: I think that would probably be true.

I don't want to avoid your question, but, under the specific question you ask, which, as the California Law -- there is a ten-day grace period, under which, when you get a notice, you can come in and lay claim to the gun. He can also bid --

Q Alter my hypothetical -- this is after the ten days.

MR. SAFERSTEIN: Right. I agree with you, I --

Q Then you wouldn't be here?

MR. SAFERSTEIN: I think that is true. That would be a -- that would be a purchase. The gun would have been foreclose, the title would have passed to the pawnbroker, even though, under California Law, he is -- the pawnor is still entitled the surplus of the funds after the sale.

I would also like to point out another position which I think that the broad definition of "acquisition" which the Government is arguing for would take this Court, and that is the bailment, such as person who had a hunting rifle, and had been hunting, and the hunting season was over, and took it into a retail gun store, and placed it there and said, "Would you please keep this for the nonhunting season; I don't like it around the house."

And I take it that under the Government's interpretation of the word "acquisition," when he came back to pick up that rifle after it had been stored, that that would also be an acquisition, and a Form 4473 would be required, and the

person who was picking up the gun would be liable for any false statements on the Form 4473.

And, as Your Honors are aware, the question which is at issue here, that is, the scope of the term "acquisition," has caused a split in the Circuits on this question. The Ninth and Tenth Circuits have agreed with the Government's position that a pawn redemption is included; the Fifth Circuit has adopted the petitioner's contention that a pawn redemption is not included in the term "acquisition." And I would briefly like to give the two primary reasons we believe that the term should exclude pawn redemptions.

First of all, the legislative history shows that the term "acquisition" in §922(a)(6) was not intended to apply to repossessions, such as a pawn redemption, but was limited to sales, or other such transfers, which resulted in a putting a new gun into new hands; that is, a net increase in the private ownership of guns. There were already sufficient laws on the books, by virtue of illegal possession laws, which gave Congress control over illegal possessions.

Q. Don't you think Congress has a special interest, independent of the total number of guns extant, in preventing guns coming into the possession of convicted felons?

MR. SAFERSTEIN: I think that the Government -- I think that the law did indicate that they wanted to make sure that felons did not acquire new guns -- that felons did not

acquire guns they didn't previously have. That was --

Q The primary purpose of the statute?

MR. SAFERSTEIN: I think that the thrust of the various regulatory measures that were put into the 1968 law were toward that end. The illegal possession statute, which was already on the books, and the receipt statutes, were merely beefed up a little. Those were before this Court, *United States v. Bass*. The -- and it was for that reason that the Congress did not require registration of firearms, nor did it require certain classes of persons to register their ownership of firearms, and for that reason Congress did not require certain classes of persons to register their guns. Rather, they simply put a lid on new sales by virtue of these various regulatory measures of licensing Federal Firearms dealers, and requiring new acquisitions to be recorded.

Q Mr. Saferstein, going back to my question --

MR. SAFERSTEIN: Yes --

Q Your -- the Government's brief states that the evidence at trial showed that petitioner, your client, pawned his wife's Winchester; and then later pawned, at the same store, two other rifles belonging to his wife. And your brief says that he pawned three of his family's rifles.

MR. SAFERSTEIN: That is correct.

Q Now, which is correct?

MR. SAFERSTEIN: I believe that our interpretation

is correct.

Q And does the family own it?

MR. SAFERSTEIN: It was -- it was purchased by the wife with what we conce- -- what we contend is prima facie community property money in California; and, therefore, the family meaning he and his wife, not their son, as well.

Q It belongs to both of them.

MR. SAFERSTEIN: That would be our contention.

Q Then I ask again, as a practical matter, why didn't she redeem them? Then you wouldn't be here to have a case, would you?

MR. SAFERSTEIN: As a practical matter, why didn't she redeem them? Again, I hate to go off the record --

Q According to testimony at the trial, and reading it on page 28, she'd suffered severe heart attacks, and she's still not very healthy, and that was the reason she had nothing to do with these transactions.

MR. SAFERSTEIN: Well, as I was going to say, I didn't --

Q Well, is that right?

MR. SAFERSTEIN: That is correct. I mean --

Q That's what the testimony was.

MR. SAFERSTEIN: As a ma- -- as a point of fact, I'm not sure whether he testified to it at trial, but she was -- a severe heart attack, and could hardly get out of the car.

And that was the reason he pawned them in the first place.

Q Well, I -- perhaps that's right. I guess it's your representation to the trial Judge that that was the situation --

MR. SAFERSTEIN: Right. I do think that as a matter of the natural testimony at trial that it was testified to that she was still under treatment, and couldn't redeem the guns, even though -- and, as I say, I don't know, under California Law, her right of redemption, since she was not the pawnor. She might have had the gun through a procedure by which --

Q He was the one who went to the pawnshop to borrow the money.

MR. SAFERSTEIN: Right. He was the pawnor.

Q By posicating the guns into the --

MR. SAFERSTEIN: And under California Law --

Q They didn't ask about where he got the -- whose property the guns were. He brought 'em there.

MR. SAFERSTEIN: That is correct, Your Honor.

Q And he was going to borrow the money.

Q On the other hand, on page 27, this purports to be your statement to the Court: "Mrs. Huddleston owned three rifles which she brought -- bought -- in her name." Now this is not correct, then, I take it?

MR. SAFERSTEIN: Which she bought in her name?

Q "Mrs. Huddleston ---"

MR. SAFERSTEIN: I think it is correct that she bought -- again, this is a -- this is an opening statement which I gave, and --

Q Well, you say, "Mrs. Huddleston owned three rifles..." -- page 27. I just wanted --

MR. SAFERSTEIN: Correct.

Q -- to know if that is incorrect.

MR. SAFERSTEIN: That is -- as I say, I'm not exactly sure of the -- of the exact import of that. That was an opening statement. She had -- it was clearly brought out in the testimony that she bought the guns. The record was left at that, with the Court's indication that on the basis of the fact that he had pawned the guns, and that they were married, under California Law they were both co-owners of the guns.

Q Well, you made the -- the very next page, right after that statement that Mr. Justice Black has referred you to, you made the argument to the Trial Judge, "We have a community property state, your Honor." And the Trial Judge said, "That ain't gonna' help you."

MR. SAFERSTEIN: Well, he -- but he -- well, I -- it's a long hi- -- well, it's a short story, basically, we were faced with the situation, and this is how this whole --

Q Who was the Trial Judge?

MR. SAFERSTEIN: Judge Real. Basically what happened -- I was the trial attorney -- basically what happened was the Justice Department was trying to create a lack of conflict in the Circuits by contending that this case was different than the Laisure case. The Trial Judge indicated that -- very early in the game, in the trial, that we were probably going to lose, and that the best thing we ought to do is to make sure we had an appeal to issue. And, therefore, as he states on page 29 of the Appendix, Mr. Saferstein "you are in good shape right now because the pawn ticket is in Mr. Huddleston's name. [and] That puts you right smack dab in Laisure."

What he meant by that was that the Government was trying to distinguish Laisure by saying that in Laisure it was the owner who had pawned the gun, whereas in our case it was an agent of the owner. And he basically said, Mr. Saferstein, I don't want to try your case for you, but you're in as good a shape as you are right now, and I wouldn't proceed any further with trying to show whose guns they were. So, the testimony that did come out was simply that Mr. Huddleston pawned the guns, and the Government only brought out the simple question that Mr. Huddleston had bought the guns. And under California Law, in a community property state, the presumption would still be that they were co-owned. So -- and in the Ninth Circuit, the same arguments about the distinction between who owned the gun, and whether this was under Laisure or not under the Laisure

case, were discussed. And the Ninth Circuit accepted the position that they were the co-owners of the guns.

Q Mr. Saferstein, assuming that he had sold the gun to a second-hand dealer, and then re-purchased it, you'd have no question that he was under the Act?

MR. SAFERSTEIN: Well, let me say this, your Honor --

Q Well, he sold it. He transferred title to --

MR. SAFERSTEIN: I agree fully with that statement.

Q Well, my point --

MR. SAFERSTEIN: Except for one thing. There are certain states where pawnshops are defined as both people who lend money and people who buy guns and agree to resell them at a stipulated price. They try to avoid the pawn laws and the usury interest rates by going to a buy-sell.

Q Well, I've been talking where this was a legitimate sale --

MR. SAFERSTEIN: If this was a legitimate sale --

Q And then the only difference, it seems to me, in your argument, is that this was not a sale at any time --

MR. SAFERSTEIN: Correct.

Q That's your position, isn't it?

MR. SAFERSTEIN: That is our position. That this is simply --

Q There never was a sale --

MR. SAFERSTEIN: There never was a sale. There ne-

-- well, and even furthermore, there never was an "acquisition." It is our contention that the period during which the gun is under in pawn, when there is a redemption, is merely an interruption in the continued possession of ownership by the pawnor. And that the ultimate effect of all this is simply a return to the status quo at the end of the pawn period, when he takes back the gun into his possession.

Q Doesn't California Property Law recognize the proposition that the husband has the absolute right to alienate community property, so far as a third party, like a pawnbroker, is concerned? He might be responsible to the wife in a separate action, but so far as the third party is concerned he may deal with the husband as the owner of community property, may he not?

MR. SAFERSTEIN: I would think so, your Honor.

Q Mr. Safenstein, I think you said that your interpretation of the legislative history leads you to think that Congress was concerned either only or primarily with the introduction of new guns into commerce.

MR. SAFERSTEIN: Yes, sir.

Q Why do you think, in light of that, that Congress requires pawnbrokers to register as dealers?

MR. SAFERSTEIN: Well, first of all -- I don't mean exactly new guns; I mean it could be used guns, but putting guns into commerce. And I think that Congress --

Q This would put guns into the hands of new people --

MR. SAFERSTEIN: Guns into the hands of new people -- I'm misphrasing myself --

Q By transfer --

MR. SAFERSTEIN: Transfer of --

Q -- one owner to the other.

MR. SAFERSTEIN: Right. And it seems to me that pawnbrokers were included in the law for a number of reasons. The testimony of Mr. Bennett before the House showed that there were a number of purchases by people from pawnbrokers, especially the kind of purchase that Mr. Justice Stewart talked about; that is, the swap. And they are also concerned, I believe, that pawnbrokers were often in parts of the community that had high crime rates. And so I think they were concerned with making sure that, 1) they were licensed -- they wanted them to be licensed; and 2) that their sales of guns -- every one of the Congressmen and every one of the Senators who talk about pawnbrokers talks about their sales. They talk about windows and displays of guns in their windows.

Well, a pawnbroker does not display in his windows the guns that he is keeping in the safekeeping for the pawnor. So I think they included them to include their sales, and they were fearful, in light of the testimony of Mr. Cohn, and the unique nature of the pawnbroker's business, that they would

not be included within the definition of a retail seller of guns at retail or wholesale. And so I think that is an explanation. Furthermore, they may have been simply concerned with making sure that they were regulated in the entirety.

Q Your thought being that had pawnshops not been included as a separate item, a pawnbroker would have been free to come in and say, "Look, I'm not within the definition of a dealer, even though I may make occasional sales."

MR. SAFERSTEIN: Right. And Mr. Cohn, the president of the Pawnbrokers Association of New York, when testifying on this legislature, made it quite clear that that's what he -- that's what he thought: that they weren't dealers, and that they didn't consider themselves dealers under the law. And I think, for that reason, Congress went out of its way to include pawnbrokers as a separate category.

Now, I think the primary legislative history, apart from the debates, which supports our position is the Code Section cited on page 13 of our brief: §922(a)(2). This is the cornerstone of the '68 law, §922(a)(2), is this section which prohibits any interstate shipment by firearms dealer to anyone. It simply outlaws it. And this was -- the whole purpose of this was to bring the whole gun transactions into licensed dealers, and to transactions between licensed dealers.

Yet, despite the importance of this basic prohibition in the gun control law, Congress exempted from that, in their

subparagraph (A), they state: "this paragraph and subsection (b)(3) shall not be held to preclude a ... licensed dealer ... from returning a firearm ... to a person from whom it was received..." In other words, despite the crucial importance of this section, Congress exempted the type of repossession that we have in this case; that is, the return of a gun to the person who deposited it with that licensed firearm dealer.

Our second basic argument, in the alternative, is that the statutory language is so ambiguous that -- and raises such serious constitutional questions, that the statute should be narrowly construed in light of the statutory construction rules cited by this Court in the *United States v. Bass*, when dealing with a -- another title of this same 1968 gun law.

Q Tell me, how do you relate resting the finding of ambiguity on the word "acquisition" or on the words "other disposition"?

MR. SAFERSTEIN: I read *Laisure* as saying there is an ambiguity, because "acquisition," to the Court in *Laisure*, seemed to be a narrow term, which they did not think --

Q Well, I know, but where was the ambiguity?

MR. SAFERSTEIN: The ambiguity, I take it, in *Laisure* was by the fact that in the first part of §922(a)(6) they talked about "acquisition," and in the second part they talked about "sale or other disposition." And they thought that it was ambiguous that "or other disposition" might be broader

than "acquisition" -- and there they found the ambiguity.

I must say I find the ambiguo- --

Q And that is the argument that you adopt?

MR. SAFERSTEIN: I think that the argument that I would adopt is that the the term "acquisition" by itself is ambiguous -- it's not defined. In fact, there are something like, I think, 12 to 15 terms used in this law to define the transfer of firearm. And not one of these is defined anywhere in the lengthy list of definitions. And so I --

Q Well, Mr. Webster, in his SEVENTH EDITION, which is not necessarily the final word, says that "acquire" means to come into possession of; and that "acquisition" is the act of acquiring. Is that very ambiguous, in your mind?

MR. SAFERSTEIN: Well, I think in light of the le- -- I think in light of the context of the statute, and the fact that it talks about "sale" -- which is certainly not simply coming into possession, in light of the statutory purpose, in the light of §922(a)(2)(A) -- that that -- that is an ambiguous term. It has a whole spectrum of meanings. The Government argues for a very broad one; we think that it is a very narrow one, and that it does not apply simply to any "coming into possession." I don't think it applies to, for instance, the simple person who comes and brings his gun in for a day and says, "Please keep it," and when he goes out has to fill out a Form 4473, and is liable for any false statements, and subject

to imprisonment for a maximum of five years. And I would like to save any remaining time for rebuttal.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Saferstein. Mr. Boggs?

ORAL ARGUMENT OF DANNY JULIAN BOGGS, ESQ.,

ON BEHALF OF THE UNITED STATES

MR. BOGGS: Mr. Chief Justice, and may it please the Court:

This case essentially turns on the construction of a single, relatively simple, English word: "acquisition" and its root, "acquire." As has already been indicated, the essential dictionary definition of this word would be "to come into possession of," when which we perceive no basic ambiguity. We would also note that this word is used in correlation with the words "sale or other disposition." When the man goes into the pawn shop, or into any transaction, he "acquires;" the man on the other side of the counter "sells" or "disposes."

Now, the word "dispose" in "disposition" itself appears throughout the statute as part of the basic scheme of control over the use of firearms, which is, in fact, the basic statutory purpose. This Court --

Q But in this case he didn't "possess," he "repossessed" --

MR. BOGGS: Well, your Honor, that's -- in the Court

below, the dissenter stated he didn't "acquire," he "reacquired." I find that to be a distinction without a difference. If a statute forbids "sale," I hardly think that I would get out of it by saying that I did not "sell," I "resold." One could think of a series of verbs of that sort, and I --

Q How about "possess"?

MR. BOGGS: If I am forbidden to "possess" something, and I come in and say, "Well, your Honor, I didn't really possess it, I just repossessed it." If I'm forbidden to possess heroin, for example, and I'm up on charges before -- and say, "I didn't possess it; I had it before, and I now repossess it." Even if we assumed an intervening statute, or something of that sort, I cannot see that that argument would progress very far.

Q What about if he just left it there for safe-keeping?

MR. BOGGS: Well, your Honor, the question of safe-keeping is, of course, not this question; but I think that in terms of what the word means, which is "to come into control of" -- I think that we would probably have to include that. I think that it doesn't have to be decided here, but I would point out, as this Court, speaking through Mr. Justice Marshall, said in the Bass case, that the purpose of the statute was to "control the firearms-related activities of felons and other dangerous persons."

And I trust it will not be belaboring the obvious to

indicate that this statute was passed -- the debate was begun shortly after the assassination of Dr. King -- it was, in fact, passed very shortly after the assassination of Senator Kennedy. And if one considers the question of a person who has pawned a gun, or has even put it into storage (but that, of course, is not the question), who then comes under one of these four prohibitions, who is convicted of a crime, and becomes a fugitive from justice, becomes a drug addict --

Q Then you don't agree that the purpose of the Act was to stop people from getting guns that didn't have them before? That wasn't the purpose?

MR. BOGGS: I find it very hard, your Honor, to take that position. Let's look at the -- let's look at the restriction from the point of view of the dealer, which is contained in §22(d), which states that "it shall be unlawful for a licensed dealer to sell or otherwise dispose of any firearm, knowing that the person is a felon or a fugitive from justice, or a drug addict." And I -- as I would repeat, that in light of the -- what appears to me to be the plain statutory language and the purpose -- that if we contemplate the situation in which the man comes to the dealer and says, "Well, you know, you've got my firearm before -- but it really doesn't matter that I am now a felon, or a drug addict -- I want my gun back."

Q That's the matter in this case. Is that in this

case?

MR. BOGGS: In this case you have a person who is a felon -- is a previously convicted felon -- who comes to the pawnbroker --

Q Who had it -- who had three guns --

MR. BOGGS: He previously had them. He now does not have possession --

Q To use the word of the statute, he "possessed" three guns.

MR. BOGGS: He possessed three guns.

Q And he surrendered the possession for a period of time.

MR. BOGGS: Right. And he now wishes to --

Q Resume his present -- his former status --

MR. BOGGS: He wishes to come into possession -- which is the dictionary definition of "acquire." To -- and I find it difficult to see that that does not fall directly within those words. There may be some --

Q I think it falls in the phrase of "repossess" -- I'll go with you that far.

MR. BOGGS: Well -- Yes, sir --

Q Mr. Boggs, what title interest passes to the pawnbroker under California Law, if any?

MR. BOGGS: Well, your Honor, to begin with, I think that the -- the uniform commercial code states that the rights

of the various parties that may be involved are not dependent upon any indication of where the title to the weapon in fact lies. It's clear that the pawnbroker, until the loan is repaid, has the right to possession, and at the point at which he redeems the gun, or repays the loan, he then acquires that right to possession.

Q Well, at least, as I understand it, in some states --

MR. BOGGS: For example, if we take the -- I'm sorry --

Q In some states the pawnbroker gets the title.

MR. BOGGS: That -- that may be, your Honor. I -- I do not feel that the -- that certainly in passing this law as a national law that Congress meant for the import of this important section in this term "acquisition" to depend upon the question of title. If they had felt that title or consideration were an important aspect, they could have used words such as "limited to sale or rental." For example, in the case of a rental, all the man gains that he did not have before is "possession;" he gains no title to it. And this is what Mr. Huddleston gains here. He previously did not have the right to possession, and he then gains the right to possession.

Q But the fact is, that he always had ownership of the guns, under California Law, and that he borrowed some

money and hypothecated the guns, and the -- but he always had ownership of them, as I understand it, under California Law; and when he repaid the money he just simply got his guns back.

MR. BOGGS: Well --

Q Isn't that it?

MR. BOGGS: Sir, to begin with, not to restart the quibble over the wife at great length --

Q Now, he's the one who pawned the guns.

MR. BOGGS: OK.

Q And, from the point of view of the pawnbroker, it was -- they were his guns. I don't see what --

MR. BOGGS: Right. All right, he -- as you stated, he simply did these things. The question is whether that transaction falls within the terms of --

Q Well, am I wrong that he always had ownership of the guns?

MR. BOGGS: That would be our impression, yes.

Q What? That I'm wrong?

MR. BOGGS: No, that he always had the ownership of the gun, although, as I indicated, the relative rights don't depend on where title lay during that period. We don't believe that title, as such --

Q But --

MR. BOGGS: -- is dependent in this case.

Q -- whatever you may believe, the fact is, he

always had title to the guns.

Q Mr. Boggs, what if you were to rent from Hertz an Oldsmobile for the weekend. Would you -- a '74 Oldsmobile -- would you refer to that as saying you have "acquired" an Oldsmobile?

MR. BOGGS: I certainly have acquired the possession of it, and, in terms of the intention of the statute, and the words of the statute, I would think so. The word is "to come into possession of." For example, if we take the situation of a rental of a firearm, I find it difficult to believe that the word "acquisition" would not encompass a rental. Otherwise, I, as a previously convicted felon, could go down to my pawnbroker or other store and say, "Now, look, I want to hold up a place tonight. Loan me a gun." And I wouldn't have to fill a 4473; I presumably would not be barred by the "otherwise disposition" language from getting the gun, and I could be on my merry way. And, it seems extremely difficult, in light of the statutory language, to say that an acquisition would not contemplate a rental. But, of course, if we do take title as the criterion, then, Mr. Justice Rehnquist's question would be very apt, and presumably rental would not apply.

Q I had thought my brother Rehnquist's question -- maybe I misunderstood it -- was directed to the situation -- this situation. I have a gun. I rent it to you for a week. At the end of the week you return it to me. Now, is that an

"acquisition" by me?

MR. BOGGS: I -- if I previously did not have possession of it, I would think that would be covered, but -- no, that's not a question that we --

Q No, I said: It's my gun: I've rented it to you for a week -- for five dollars. You return it to me at the end of the week. Is that then an "acquisition" by me, of my gun, that I've rented to you for a week, under the meaning of the statute? That's the question I had understood Justice Rehnquist to ask.

MR. BOGGS: I would --

Q Perhaps if he didn't ask it, I'm asking it.

MR. BOGGS: OK, your Honor. It would be my interpretation that the words "come into possession" would cover that. I believe that --

Q Well, "acquisition" this morning --

MR. BOGGS: Well, the definition of "acquisition" being "to come into possession" --

Q But the statutory word is "acquisition" --

MR. BOGGS: -- is "acquisition," yes.

Q And you think, therefore --

MR. BOGGS: I did not previously have the gun; I thereupon "acquired" it.

Q Well, I did previously have it. I parted with it for a week.

MR. BOGGS: I didn't previously have it.

Q You lost possession of it when you lent it out, and then you regained possession of it when you got it back?

MR. BOGGS: You "reacquired" it, if you wish to put it that way. I certainly think that --

Q That was the --

MR. BOGGS: -- "acquisition" encompasses "reacquisition;" the reverse may not be true.

Q That would apply to renting it for a day? You have to say so.

MR. BOGGS: Yes, I'll go that far if you feel that it's necessary to decide this case, because, your Honor, as -- if we want to get into the legislative history, Senator Tydings, one of the persons supporting speaking for the Bill, stated its purpose to be "to keep dangerous weapons out of the hands of dangerous people." And the Congress, in setting up the regulations, and the statute -- excuse me, the wording of the statute forbade the "disposition" in §922(d)(1). Now, in each of these cases where we're talking about "acquisition" from one side, I believe that we're talking about "disposition" from the other side. And it seems perfectly clear from the language, that Congress did not wish licensed dealers to be able to dispose of guns to persons in these prohibited categories.

Q When he pawned it, did he keep a record of that?

MR. BOGGS: Without the 4473 or with the 4473? When

he came in to pawn it, the dealer is required -- was required to keep a record of it, presumably as a receipt. I would point out that the statute in g923(g) --

Q That's what I'm talking about.

MR. BOGGS: -- sets up the record-keeping requirements. Now, I believe --

Q So, we've already got a record of the fact that this man, --

MR. BOGGS: -- brought it in --

Q -- Huddleston, owned three weapons. And the Government also knows that he's a felon. Right?

MR. BOGGS: All right. And where does --

Q So what more does the Government get by requiring him to again sign up when he takes his own guns back?

MR. BOGGS: The Government doesn't want -- and Congress didn't want -- that gun to get back into his hands. And, in addition, I would make this further point about g923(g). I believe the counsel opposite stated that while this requirement was just a Treasury -- the Treasury could make those regulations, the statute, g923(g), says that they may make regulations with regard to records of sales or other dispositions. So that if we determine that this is not a disposition, they may be entitled to make no records at all when the gun goes out.

Now, let me raise a point with regard to the gun

going out. The counsel opposite spoke at several points about while under California Law only the owner -- only the pawnor could redeem the gun -- and he took that from California Financial Code §21201, which simply says that the borrower may redeem. Now, the general law of pawn, taking either, for example, the articles in C.J.S., or the specific laws in many states, is that anyone, with the pawn ticket, may get an item. The Uniform Commercial Code specifically says that such an interest is assignable, and as a matter of practice, in California, pawnbrokers habitually return to the pawn ticket holder, regardless of ownership. So that if we cannot control the disposition of the gun -- if we cannot control the gun as it goes out of the shop, we have the situation in which a felon -- a new felon, a different felon, or a felon from case where it was pawned by a nonfelon -- may then come in and get the gun without filling out any form at all. Which, again, knocks a large hole in the purpose of the statute, being to control the disposition of firearms into the hands of people in these prohibitive categories.

I believe we have indicated the statutory context these words are used. I would like to make an additional point with regard to the definition of "pawnbrokers." Under the old National Firearms Act, the wording was exactly as it is in the present one, that dealers are persons engaged in the business of selling firearms at wholesale or retail. Under that Act, pawnbrokers were licensed in the same way as any other person

who was selling at wholesale or retail. Now, we had some discussion with regard to the question of the Bulova watch swap, but it would certainly appear to me that in any indication of what was a sale, if one tried to escape by saying, "I sold the gun, not for money but for a Bulova watch," he would certainly not be able to get out from under that. So that the Congressional action in adding the wording that pawnbrokers, defined as people who merely take pledges of guns, are under the Act; and in the report accompany it specifically stating that pawnbrokers who deal in firearms, rather than those who sell them, are under the Act, would certainly be a strong indication that something in addition to mere sales would have been included.

I believe we've discussed the §922(d), the question of "other disposition." Now, this is, I believe, a rather important policy implication that's concerned here, and this gets us to the question that I believe Mr. Justice Brennan raised with regard to the Laisure case. That in Laisure the Court specifically said, well, we believe that "other disposition" is broader than "acquisition," and that this was where they found the ambiguity.

Now, on the face of it, we believe that the use of these words in §922(a)(6) implies that they are correlative. But, given the use of "disposition" at many other points throughout the statute, I think it's important that we care-

fully consider which of these two, let us say, conflicting interpretations we might adopt.

If we followed the lead of the Laisure Court and said that this is not an "acquisition," but it is, indeed, a "disposition," then it would appear that the arguments and the evils that counsel opposite was attacking, would be futile, because, although he, perhaps, would be able to wiggle out under §922(a)(6), he couldn't get the gun back under §922(d)(1), because the dealer couldn't dispose of it to him. He might still have to fill out the form, because we can keep records of dispositions. So that the logic of the Laisure Court on that aspect seems highly tenuous.

Q But he wouldn't be criminally liable for having falsified the form?

MR. BOGGS: He would not be criminally liable under §922(a)(6); he would, however, under §924(a), because he would have made a false statement with respect to the information required to be kept, so long as we hold that it is a disposition. So that to undertake this type of what we would consider tortuous construction of the word "acquisition," simply to knock out this one portion of the statute, while leaving intact all of the reasons essentially that we knocked it out, would seem to be a futile exercise.

If the ambiguity were related to some action which did not give Mr. Huddleston fair warning -- if it involved a

classic and grammatical conundrum, as I think the Bass case did, we might be on sounder ground in invoking the rule of lenity through ambiguity. But here we had a perfectly clearly expressed intention for record-keeping; we had a perfectly clearly expressed statement, which Mr. Huddleston saw on the form, that he should not lie on the form --

Q I still have a problem on this. Assuming that the man refused to give him the guns, and he had to resort to court action. Even under the new model and form of pleading, would he file an action to "possess" or to "repossess"?

MR. BOGGS: Well, I think that any form of words, as it's stated, would be appropriate. I think he --

Q Would be to "repossess," or he wouldn't have a cause of action, would he?

MR. BOGGS: He has a right to possess it or to repossess it. If he were not the original pawnor, but were the holder of the pawn ticket, he would be entitled to possess it.

Q Now, this is the original pawnor --

MR. BOGGS: All right.

Q And the man says that, "I just don't like you, and I won't let you have it." And he says, "Well, I want it." And he said, "No." And he goes to court.

MR. BOGGS: All right.

Q His action is -- am I correct? -- to "repossess."

MR. BOGGS: Could well be. Could well be. I don't

see that that affects the statute. We're willing to concede, I believe, if you want to use that term, that he didn't -- that he "reacquired" the gun. We'd certainly say that "reacquire" falls within the meaning of "acquire," just as "resale," or "rent" --

Q But don't you have to go that far, to uphold the statutes?

MR. BOGGS: To uphold this --

Q I'm not saying that I agree or not

MR. BOGGS: To uphold this conviction --

Q Yes.

MR. BOGGS: -- we're willing to say that he "repossessed" rather than "possessed." But there certainly should --

Q Would this be true in the same sense as it would be for the possession of a narcotic?

MR. BOGGS: The same example that we gave just a moment ago. I believe we've also pointed out that the policy implications concerning the hole that this would knock in the statute if we take out the example -- the wording of "other disposition" -- is a rather serious one that, while this case would, of course, only involve turning Mr. Huddleston loose, I think that we would have invoked considerable confusion in the administration of the statute throughout the country, as pawnbrokers and others would say, "Well, now, are we -- what is the case with rental, what is the case with gift?" rather than

staying with a straightforward, dictionary definition of the word "acquisition," meaning to "come into possession," which is perfectly in line with the statutory purpose of keeping dangerous weapons out of the hands of dangerous people.

Q Mr. Boggs, if Congressional intent is as you say, it seems that it would have been so easy to use the word "transfer" rather than "acquisition," which would have clearly covered --

MR. BOGGS: Well, your Honor, I am -- off the top of my head, I would say I do not see that as a distinctly broader word, if we look at the word "disposition" -- in most dictionaries, "dispose of" is defined as to "transfer into somebody else's hand." The acquisi- -- if you think about it a little bit in terms of drafting language, I think that "acquisition" is a word peculiarly connoting "taking from this side," whereas "transfer" would not. As a draftsman, I think, perhaps, if you were saying "in connection with the transfer of," it would not have quite the same connotation of "taking" from the side of the new possessor, or the reposessor.

Q Now about "receipt of" then? To be -- have a cognate of "acquisition"?

MR. BOGGS: That would be another possibility. Again, in some of the dictionaries -- I looked up five or six of them -- indicate that to "acquire" is to "receive." And "receive" is also, in many places, defined as to "take into

possession," which is the same definition as "acquire." I don't believe that this type of inquiry as to what might have been a slightly more felicitous phrase, in the minds of a draftsman, can alter the basic and straightforward statement that to "acquire" is to "come into possession of," which is exactly what Mr. Huddleston did in this case.

If there are no further questions, I submit --

MR. CHIEF JUSTICE BURGER: Very well, Mr. Boggs.

Do you have anything further, Mr. Saferstein?

REBUTTAL ARGUMENT OF HARVEY I. SAFERSTEIN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SAFERSTEIN: Yes, your Honor. May it please the Court, and Mr. Chief Justice:

First of all, I would like to answer the argument of counsel that the pawnbrokers were included because of the worry of the swaps not being included. I don't think that was the problem. I think they were worried that their business, which is primarily lending, was not included; and that they were not in the business of selling guns at wholesale or retail, and particularly because of the unique nature of the foreclosure sales.

As to the question of there be -- of the record-keeping requirement for "other dispositions," and somehow knocking a hole in that. Again, the hole is not knocked insofar as there are any records. The only hole that would be

knocked is the question of whether Mr. Huddleston would be criminally liable for any statements made. And the Government has argued, and has proceeded against people under §924(a), for the same type of transaction that Mr. Huddleston engaged in, on the grounds that it was a false statement on a record required to be kept.

Finally, I think that the point of the gun control law was to focus on the disposition by dealers to regulate dealers, and insofar as people who were not supposed to have guns, they were relying on the illegal possession statute. And, in this case, because of the pawn records that are kept by virtue of State laws, by Federal laws, by the truth-in-lending laws - Mr. Huddleston's transaction was an open, public transaction. His possession was a matter of record. And if the agent who goes around to the pawnshops and checks the records would have checked his police reports, he could have simply brought an illegal possession case against Mr. Huddleston.

Q Wouldn't it be true if a convicted felon went to a gun store to purchase a gun that it would be an open, public record transaction?

MR. SAFERSTEIN: In that case, he would be required to fill out Form 4473. Yes.

Q Well, how does that help any, that this was -- that this redemption was open and public --

MR. SAFERSTEIN: No, I am saying that the pawn is an

open -- I mean, he openly recognizes, I own, I possess this gun; he puts it into the hands of a Federally licensed firearm dealer; the record is there for everyone to see; the police come through and check it; the Treasury Department officials come through and check it; they run it through Sacramento where -- or the F.B.I. -- and they say, "This fellow is a felon." In this case, the felon -- he was a -- six years previously he had pled "guilty" to writing checks without sufficient funds. The question is whether that is a felony -- technically it's a felony under California Law, even though he was sentenced to only 30 days in prison. But the -- during the period that that was in pawn he makes an open, public statement that, "Here I am." And the Government has all the records -- in fact, it would seem to me that under the Craven decision of the Sixth Circuit, that they probably could prosecute him for illegal possession simply on the basis of the fact that he pawned the guns, and he filled out his name, and wrote and said, "I accept the money for the gun that I am giving you, and the gun is spelled out in the records."

So it seems to me that there is no legitimate enforcement device of the Government that we are knocking out by asking for a -- an honest, narrow construction of what we feel is an ambiguous statute -- and the ambiguous statute that raises serious problems, both in terms of fairness to people, in terms of property rights; and if it is construed broadly --

and we therefore feel that the principles of Bass should be applied, and the term narrowly construed.

Q Is it conceded here that the original possession was illegal? I haven't checked that aspect of it.

MR. SAFERSTEIN: It has never been tested, nor has it ever been conceded. The question of the illegality of Mr. Huddleston's possession would require, first, proof that he was a convicted felon; and that would probably be proven by what was proven here. However, under the United States v. Bass decision of this Court in 1971, an interstate commerce nexus would have to be proven. And, honestly, I think that is what is trying to be avoided by this procedure that the Government uses here, because they are trying to avoid the interstate commerce nexus that has to be shown under this Court's decision in Bass.

I thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

[Whereupon, at 11:13 o'clock a.m., the case was submitted.]
