

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: HAROLD E. STAPLES, III, Petitioner v. UNITED STATES

CASE NO: No. 92-1441

PLACE: Washington, D.C.

DATE: Tuesday, November 30, 1993

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -X
3 HAROLD E. STAPLES, III, :
4 Petitioner :
5 v. : No. 92-1441
6 UNITED STATES :

7 - - - - -X
8 Washington, D.C.

9 Tuesday, November 30, 1993

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 11:03 a.m.

13 APPEARANCES:

14 JENNIFER L. De ANGELIS, ESQ., Tulsa, Oklahoma; on behalf
15 of the Petitioner.

16 JAMES A. FELDMAN, ESQ., Assistant to the Solicitor
17 General, Department of Justice, Washington, D.C.; on
18 behalf of the Respondent.

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1 P R O C E E D I N G S

2 (11:03 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in No. 92-1441, Harold E. Staples v. the United
5 States.

6 Ms. De Angelis.

7 ORAL ARGUMENT OF JENNIFER De ANGELIS

8 ON BEHALF OF THE PETITIONER

9 MS. De ANGELIS: Mr. Chief Justice, and may it
10 please the Court:

11 My client, Harold E. Staples, was convicted of
12 knowing possession of a machinegun not registered to him,
13 in violation of 26 U.S.C. section 5861(d). My client is
14 asking this Court to reverse this conviction and remand
15 this case for a new trial, a fair trial.

16 The defendant respectfully contends that the
17 first trial was not fair. It was not fair because the
18 jury was prohibited by the jury instructions presented to
19 consider whether or not Mr. Staples knew the sport rifle
20 he possessed was, in fact, a machinegun.

21 As stated by Justice Ebel in his concurring
22 opinion, printed at page 24A of the Petition for Cert in
23 this case, whether the appellant in this case is an
24 innocent victim is an open question because the jury was
25 precluded from considering his knowledge of the gun's

1 capabilities. Principles of justice and fair play suggest
2 that we let the jury decide whether the defendant
3 possessed an automatic weapon.

4 Prior to this criminal prosecution, the citizen
5 before this Court had no prior criminal record, was
6 engaged in no unlawful activity, certainly engaged in no
7 unlawful activity in connection with this gun. And by all
8 accounts --

9 QUESTION: You say certainly he did not?

10 MS. De ANGELIS: Certainly, he did not.

11 QUESTION: Well, the jury thought otherwise.

12 MS. De ANGELIS: Prior to this criminal
13 prosecution.

14 QUESTION: Oh, I'm sorry. I misunder -- I
15 misunderstood you.

16 MS. De ANGELIS: Mr. Staples believed what he
17 possessed -- possessed what he believed to be -- and the
18 undisputed evidence, testimony of three other witnesses at
19 trial, was that this legal semiautomatic weapon, operated
20 only in semiautomatic mode prior to government seizure and
21 test fire in January of 1990 --

22 QUESTION: Well, now, counsel, I am somewhat
23 concerned about --

24 MS. De ANGELIS: Excuse me.

25 QUESTION: -- the argument in your brief, and

1 apparently one you're going to make here, that we have
2 before us this issue of whether the defendant actually
3 knew it was automatic. I thought the jury found that it
4 was a machinegun, and the court of appeals did not
5 overturn that finding.

6 MS. De ANGELIS: Justice O'Connor, I would
7 disagree to the extent that the jury was precluded from
8 considering whether or not the weapon was a machinegun.
9 Because of the nature of the instruction, all the jury had
10 to find was that the defendant possessed a device that was
11 dangerous, and that dangerous device was likely to be
12 subject to regulation. That's not the same as --

13 QUESTION: Well, I thought the jury had to find
14 that it was a machinegun. They didn't have to find that
15 your client knew of its capability.

16 MS. De ANGELIS: They had to find it was a
17 firearm, and technically --

18 QUESTION: And the firearm was defined in this
19 instance, under this statute, as something that fires
20 automatically with a single pull of the trigger.

21 MS. De ANGELIS: That's correct, Justice
22 O'Connor. There are --

23 QUESTION: And that was the finding and the
24 court of appeals did not upset that. So we -- we take
25 that as a given, don't we?

1 MS. De ANGELIS: When the trigger was pulled on
2 this gun, the weapon fired multiple shots with a single
3 trigger pull. If what you're saying, Justice O'Connor, is
4 that constitutes a machinegun, then I would have to agree
5 with your analysis of the Tenth Circuit opinion.

6 However, how --

7 QUESTION: And if it were shown that this
8 defendant knew of -- of that capability, of that
9 operational feature, then there wouldn't be really a case
10 here.

11 MS. De ANGELIS: That's correct.

12 QUESTION: All right.

13 MS. De ANGELIS: There are approximately 70
14 million law abiding gun owners in this country who
15 Congress has consistently sought to protect. The
16 protection of hunters and sportsmen is codified in section
17 101 of the Gun Control Act, cited in our brief at page 39.
18 Of the 70 million law abiding gun owners, a large
19 percentage of them own semiautomatic guns purchased
20 lawfully, just like Mr. Staples, at a public gun show
21 authorized by 18 U.S.C. 923, subsection (j).

22 In the record, and throughout the case law,
23 there are cited numerous instances where truly innocent
24 possessors of semiautomatic rifles may be convicted of
25 knowing possession of a machinegun. For example, at trial

1 of this case, Judge Cook expressly, repeatedly showed
2 concern about people who may be out duck hunting and their
3 sport rifle may double by accident, without any prior
4 indication that it had such capability, and that doubling
5 would result in conviction under the strict liability
6 interpretation of 26 U.S.C. section 5861(d). Under these
7 circumstances, Judge Cook said, it violates our system of
8 fair play, but he assumed that people wouldn't be
9 prosecuted.

10 Perhaps the best example is cited by Judge Ebel
11 in the concurring opinion printed at page 24A -- excuse
12 me, 23A of the Petition for Cert. Consider, for example,
13 a situation in which a person who knows nothing about guns
14 inherits a rifle from a relative. Unbeknownst to the
15 recipient, the gun is defective, occasionally discharges
16 two rounds of ammunition, and after a single pull of the
17 trigger, or perhaps it's been converted by a prior owner
18 to an automatic weapon. Because he has no use for the
19 rifle, the recipient stores it with other unnecessary
20 possessions in the basement or attic, without ever having
21 used it or examined it. Under the strict liability
22 theory, he would be prosecuted and sentenced.

23 The penalties which accompany conviction for
24 violation of 6 U.S.C. 2561(d) are harsh: 10 years
25 imprisonment, \$10,000 fine, or both. For --

1 QUESTION: When you talk about fair play,
2 counsel, you're not suggesting that if this statute, in
3 fact, said all you have to know is that you have a gun and
4 the gun, in fact, has to be of a certain type -- that
5 that's what this statute said, that's fair play?

6 MS. De ANGELIS: Justice Ginsburg, I'm not sure
7 I'm understanding your question.

8 QUESTION: I was thinking what you said --
9 you're interpreting a statute and you say -- said that the
10 statute requires that the defendant know he possessed a
11 machinegun. Suppose -- so -- and you're -- as you read
12 the statute, that's what it says.

13 MS. De ANGELIS: That's correct.

14 QUESTION: If the statute, in fact, said
15 defendant must know he has a gun, the gun must be a
16 machinegun, period, that that would be fair play, that you
17 wouldn't -- you're not raising a constitutional point.

18 MS. De ANGELIS: No. And also I would direct --
19 Justice Ginsburg, as you well know, in the U.S. v. Harris
20 decision decided by the D.C. Circuit which you authored,
21 there is no constitutional requirement --

22 QUESTION: I don't believe I authored that
23 decision.

24 MS. De ANGELIS: Oh, I'm sorry.

25 QUESTION: I think it was Judge Silberman, was

1 it not?

2 MS. De ANGELIS: Right, you're correct. I stand
3 corrected.

4 QUESTION: And I believe that Justice Thomas
5 concurred in that.

6 MS. De ANGELIS: That's correct. As well, that
7 there is no constitutional requirement to apply a scienter
8 element into the criminal offenses. However, what the
9 courts have done in recent history is they have used tools
10 of statutory construction, and the rule of lenity, to find
11 that --

12 QUESTION: If there's an ambiguity.

13 MS. De ANGELIS: If there -- that's correct. If
14 there is an ambiguous statute, then principles of
15 fundamental criminal law mandate that the Government prove
16 mens rea. Support for the application of rule of lenity
17 stated that -- in this case particularly, and the Harris
18 decision, that if Congress, against the background of
19 widespread lawful gun ownership, wished to criminalize the
20 mere possession of an unregistered possess -- machine --
21 excuse me, firearm, often indistinguishable from other
22 nonprohibitive types, it would have clearly stated to that
23 effect.

24 QUESTION: Well, do they say that in our drug
25 laws? I mean, you know, possession of heroin and so

1 forth? Do they say knowing that it -- knowing that it is
2 heroin? Do those statutes say that?

3 MS. De ANGELIS: No. Those are, for the most
4 part -- and I must tell you I'm not familiar with every
5 single one of the controlled substances statutes, but they
6 would -- most of them do require strict liability.

7 However, the difference between a controlled narcotic or
8 sulfuric acid or other substances of that nature, is it
9 doesn't have the support of the Constitution. There is a
10 Second -- Second Amendment right to bear arms, and for
11 that reason Congress has chosen time and time again to
12 protect that right and distinguish what firearms need to
13 be registered intact and what firearms may be legally
14 owned and possessed.

15 QUESTION: But doesn't Congress say what drugs
16 are unlawful?

17 MS. De ANGELIS: Yes, certainly they do.
18 They -- they're regulated.

19 QUESTION: So why isn't this case more like the
20 drug case, particularly the Balint case, than it is like
21 the Food Stamps case. Because a gun is a dangerous
22 instrument. Nothing dangerous about a Food Stamp.

23 MS. De ANGELIS: I would agree with you, Justice
24 Ginsburg. There's nothing dangerous, necessarily about a
25 gin -- about a Food Stamp. However, what you have before

1 you is a -- is a weapon that is legal, that has legal uses
2 and legal possession. Food Stamps also have legal uses
3 and legal possession, and you stand the risk of
4 criminalizing innocent behavior, innocent possessors, by
5 not implying knowledge requirements --

6 QUESTION: And don't -- don't some drugs have
7 lawful uses too?

8 MS. De ANGELIS: Certainly, prescription drugs,
9 or -- if that's what the Justice is referring to.
10 However --

11 QUESTION: Well, one could even lawfully possess
12 marijuana in connection with treatment of certain forms of
13 cancer, is that not so?

14 MS. De ANGELIS: That is -- that is correct.
15 However, the distinction here -- again, those exceptions
16 have been noted. For example, we know that this Court's
17 rendered decisions -- I haven't reviewed them recently --
18 dealing with spiritual uses for marijuana, or other
19 narcotics, to allow that freedom to exist, just as there
20 is a freedom here to bear arms, and a right to bear arms,
21 and legal uses for a sport rifle.

22 QUESTION: I don't quite understand what the
23 Second Amendment has to do with the case. Would you
24 explain that again?

25 MS. De ANGELIS: Only in that it allowed

1 Congress -- it supports a constitutional basis to allow
2 Congress -- which Congress has relied on, let me rephrase
3 that. It provides a constitutional basis which Congress
4 has relied on to protect legitimate, law abiding uses for
5 sport rifles and target practice, or hunting or duck
6 hunting, or whatever the use may be. There is a right to
7 bear arms. It's not something that's --

8 QUESTION: The militia is.

9 MS. De ANGELIS: Exactly, that's correct.

10 QUESTION: It is. But is this part of
11 somebody's militia, this machinegun?

12 MS. De ANGELIS: No. What we have before this
13 Court is just a citizen.

14 QUESTION: Well, we mentioned earlier about the
15 lawful uses of articles of this kind. What is the primary
16 lawful use of a machinegun?

17 MS. De ANGELIS: There are approximately, my
18 understanding would be, about 140,000 registered
19 machineguns. I understand they are used in
20 competitions --

21 QUESTION: I know. But I'm just asking you. I
22 just don't happen to know. What is the primary lawful
23 use? Why would one not think, getting a machinegun, that
24 there might be a reason to check as to whether there's any
25 reason to have it registered and so forth? Why is it --

1 is it so commonly used, like an automobile or something
2 like that? Isn't that the kind of article that would put
3 you on notice that if you want to use it in -- that you
4 ought to check and be sure the use is lawful?

5 MS. De ANGELIS: Well, Your Honor, I don't stand
6 before this Court to be a firearms expert, but I do
7 believe that there are competitions involving machineguns,
8 and there are other -- are other uses for them. Those of
9 which were lawfully registered prior to the ban of 1986, I
10 don't know what --

11 QUESTION: Is your point machineguns or is your
12 point semiautomatic rifles?

13 MS. De ANGELIS: This case --

14 QUESTION: Which, due to some defect, may turn
15 into machineguns, which is what you -- what you say is the
16 situation here.

17 MS. De ANGELIS: That's correct, Justice Scalia.

18 QUESTION: And there are many more than 140,000
19 semiautomatic rifles.

20 MS. De ANGELIS: That's right, there --

21 QUESTION: Many hunters use semiautomatics all
22 the time. It just means you don't have to reload each
23 time you fire one round.

24 MS. De ANGELIS: That's right. And that is
25 exactly what this case is about. The semiautomatic weapon

1 in this case is a sport rifle. There are --

2 QUESTION: I suppose that a pistol -- would a
3 pistol that had that defect become -- would an automatic
4 pistol that had that defect become a machinegun?

5 MS. De ANGELIS: You mean a semiautomatic
6 pistol?

7 QUESTION: A semiautomatic pistol?

8 MS. De ANGELIS: It's my understanding that any
9 semiautomatic pistol, sport rifle, shotgun, has the
10 capability --

11 QUESTION: If it fires more than one round with
12 a pull, it doesn't matter how long the barrel is, it
13 becomes a machinegun.

14 MS. De ANGELIS: If it fires more than one shot
15 with a single pull of the trigger, it becomes a machinegun
16 under the strict liability theory. That was the -- that's
17 the concern in most of the courts that have implied a
18 knowledge requirement in the 26 5861(d). And this case is
19 -- involves a semiautomatic sport rifle, as any
20 semiautomatic gun can be converted into an automatic or
21 can, by malfunction, as did this gun, perform with --
22 produce multiple shots with a single pull.

23 QUESTION: Well, that's not quite accurate.
24 This didn't -- this wasn't really a semiautomatic weapon.
25 It was an automatic weapon that had been rendered

1 semiautomatic, and that because of a defect became And
2 automatic again. you turn the lever, that in and of itself,

3 in this gun MS. De ANGELIS: I -- gun to produce multiple
4 shots. You QUESTION: Wasn't this weapon an automatic

5 weapon as originally designed, and it had been modified to
6 prevent the automatic feature of it from operating?

7 third position MS. De ANGELIS: If you're referring to the stop
8 on the switch -- its position, you wouldn't be making the

9 same argument QUESTION: Exactly. ing here.

10 MS. De ANGELIS: The -- when this -- the ly
11 testimony at trial has been consistently, from the seller
12 all the way through, of this AR-15 sport rifle, as of when
13 my client purchased it at the gun show, it was he form
14 manufactured with M-16 internal parts. The selector
15 switch on the outside had a three-position lever that could
16 allows it to go from safe to semi to auto, and there was a
17 stop on that to prevent it from semi to auto.

18 The Court should know -- and it is printed in
19 the transcript and in the briefs -- that there are AR-15
20 sport rifles out there, and other semiautomatic guns out
21 there, that have no stop at all, nothing to prevent the
22 user from turning the lever from the semi to the auto.
23 However, the turning of that lever --

24 QUESTION: In which case you wouldn't be making
25 this argument, if your client had bought one of those. the

1 MS. De ANGELIS: Well, with one exception. And
2 that is even if you turn the lever, that in and of itself,
3 in this gun, will not allow the gun to produce multiple
4 shots. You have to have the malfunction --

5 QUESTION: No I realize that. But if your
6 client had bought one of the guns in which there was a
7 third position and all the client had to do was to put the
8 device in the third position, you wouldn't be making the
9 same argument that you're making here.

10 MS. De ANGELIS: You are correct, primarily
11 because at trial --

12 QUESTION: Well, I suppose I didn't understand
13 your answer to Justice Scalia's question. In the form
14 that this came from the manufacturer, and if it was
15 operating properly, without any defect, would -- it would
16 be semiautomatic only, is that correct?

17 MS. De ANGELIS: That's correct.

18 QUESTION: So it was not manufactured as a
19 machinegun within the meaning of the act.

20 MS. De ANGELIS: That's correct. It was not
21 designed --

22 QUESTION: Only if there's a defect does it
23 become -- does it acquire that characteristic.

24 MS. De ANGELIS: That's correct. It's not
25 designed to shoot multiple shots with a single pull of the

1 trigger. And interestingly enough, the testimony at trial
2 from the expert, Mr. Fagg, in this case, was that this is
3 not a weapon, for example, that you would want to sell to
4 the military and represent was an M-16. It's not a
5 weapon, by the Government's expert's own concession, that
6 would reliably fire multiple shots with a single pull of
7 the trigger.

8 Interestingly enough, on page 16 of the
9 Government's brief they make the following statement: "In
10 cases in which the offense involves regulation of an item
11 that would not ordinarily be considered a hazard to the
12 community, a rigorously knowledge element may be implied."
13 The rationale that all parties agree for the implication
14 of a knowledge requirement is that any other result would
15 risk criminalizing a broad range of innocent conduct, just
16 as we were discussing earlier in the Liparota decision.

17 Certainly, I would not represent to this Court
18 that guns are always safe. But Congress has repeatedly
19 and deliberately chosen only to register and tax those
20 guns which are considered to be highly dangerous and
21 offensive firearms.

22 The Government says that Congress wants to
23 prevent the conversion of semiautomatic weapons to
24 automatic weapons. The petitioner does not disagree
25 necessarily with that statement. However, that assumes

1 some knowledge or purposeful act on the part of a person,
2 just as in the Mittleider decision rendered by the Tenth
3 Circuit. Defendant Mittleider sold his semiautomatic with
4 a conversion kit to a undercover officer.

5 The conversion kit for this AR-15 is called an
6 auto-sear. It's a very small part whose only function is
7 to allow the gun to fire automatically more than one shot
8 with a single pull of the trigger. Conversion of the gun
9 cannot be accomplished reliably or purposefully without
10 the auto-sear.

11 Because the criminal offenses requiring no mens
12 rea have a generally disfavored status, petitioner
13 respectfully requests this Court to apply the rule of
14 lenity in this case. Throughout their brief, the
15 Government alludes to gangsters and criminals in
16 connection with gun possession.

17 The petitioner is not a criminal, other than
18 this conviction, and has no prior criminal record, nor
19 does he advocate widespread use of machineguns.
20 Petitioner does advocate fairness, however, in
21 prosecution, and strongly believes that this honorable
22 Court and the Congress and the Constitution promote
23 justice and fair play by providing citizens with notice of
24 what conduct is unlawful and to prove that the defendant
25 had knowledge of his unlawful conduct.

1 To allow 26 section 5861(d) to be a strict
2 liability crime invites random prosecution. The only
3 support for this prosecution is an ambiguous statute that
4 omits a critical element of fundamental and criminal
5 jurisprudence, and that is the defendant's mens rea.

6 I would like to reserve the rest of my time for
7 rebuttal. Thank you very much.

8 QUESTION: You may proceed, Mr. Feldman.

9 ORAL ARGUMENT OF JAMES A. FELDMAN

10 ON BEHALF OF THE RESPONDENT

11 MR. FELDMAN: Mr. Chief Justice and may it
12 please the Court:

13 It's our position that the jury was properly
14 instructed in this case, and that petitioner's conviction,
15 accordingly, should be affirmed. The jury was instructed
16 that in order to convict petitioner, it had to find that
17 he possessed a machinegun and that he knew he possessed a
18 dangerous device of a type as would alert one to the
19 likelihood of regulation.

20 It's our position that that is sufficient for a
21 conviction under section 5861(d) and that the court
22 properly rejected petitioner's proposed instruction that
23 would have required the jury to find that he knew that the
24 weapon he possessed had all of the characteristics,
25 including the ability to fire automatically, that subject

1 it to regulation under the National Firearms Act.

2 QUESTION: Mr. Feldman, now, just to clarify for
3 us, you agree that this weapon was manufactured as a
4 semiautomatic?

5 MR. FELDMAN: Yes. There's a military --

6 QUESTION: And as manufactured, it would not
7 fall within the definition of a machinegun?

8 MR. FELDMAN: At least -- yes, yes. There's a
9 military weapon which is an M-16. It's a selective fire
10 weapon that has a switch that you can turn to automatic,
11 semiautomatic, or, I think, safety. This --

12 QUESTION: Now, if -- if the modifications of a
13 weapon were -- were strictly internal so there was nothing
14 on the exterior that would alert a possessor about the
15 change, and if you had a defendant who simply didn't know
16 that the weapon had been modified internally when it was
17 purchased, that person would be liable under your theory,
18 I guess.

19 MR. FELDMAN: That's correct. That's correct.
20 Of course, that -- that -- there have been courts which
21 have distinguished between cases where the modification
22 was entirely external -- was entirely internal, and where
23 there was some external modification.

24 QUESTION: Yes, I just want to --

25 MR. FELDMAN: But in our view --

1 QUESTION: I want to understand how far your
2 theory goes, and it would go so far as to hold someone who
3 was absolutely unaware of the modification liable.

4 MR. FELDMAN: Yes, that's correct. Just as --
5 that's correct. The Congress' intent when it enacted the
6 National Firearms Act -- well, when Congress enacted the
7 National Firearms Act in 1934, it made it a crime to
8 possess a machinegun that's not registered in the national
9 registration records. It modeled the statute -- it
10 specifically stated that it modeled the statute on the
11 Harrison Narcotics Act of 1914.

12 This Court had -- which imposed a similar
13 registration/recordkeeping requirement on opiates and
14 cocaine. In the United States against Bailant in 1922,
15 this Court held that that statute does not require the
16 Government to prove that the defendant has the kind of
17 knowledge that petitioner argues must be proven in this
18 case. That in -- that under -- under Bailant, under the
19 national -- under the Harrison Narcotics Act, it's not
20 necessary to show that the defendant knows that the drugs
21 he possessed had the characteristics of opium or opiates
22 or cocaine.

23 QUESTION: Mr. Feldman, I don't understand your
24 argument. This statute says that it's to be interpreted
25 like the Narcotic Act?

1 MR. FELDMAN: No, it doesn't say that. If you
2 look at the provision -- if you set it -- if you set the
3 original 1934 statute alongside the Narcotics Act, the
4 similarities are striking. The penalty provision is
5 identical. A lot of the language is the same. But I
6 think equally important, the Attorney General Cummings who
7 drafted -- who had a role in drafting the statute, stated
8 that he modeled it on the Harrison Narcotics Act, and the
9 committee reports stated we have modeled this on the
10 Harrison Narcotics Act.

11 QUESTION: But narcotics are different from --
12 from a semiautomatic rifle, which are very common.

13 MR. FELDMAN: That's true. Narcotics are
14 different, but --

15 QUESTION: Narcotics may not be different from a
16 machinegun that looks like a machinegun.

17 MR. FELDMAN: Well --

18 QUESTION: It's something when, you know, you're
19 presented with it, you say, gee, this is a machinegun,
20 what's this doing around here. Or if you're presented
21 with narcotics, the same thing, you ought to notice right
22 away. But when you -- when you're -- when you say a
23 semiautomatic rifle, hunters use them throughout the
24 country. It's no big deal.

25 MR. FELDMAN: That's true, and -- but I think

1 the same thing would have been true of drugs at the time
2 they enacted the Harrison Narcotics Act. In other words,
3 the Court didn't say that what -- the burden of the
4 Court's decision in Bailant was that if you possess drugs
5 and you didn't know that those drugs were opium or --
6 opiates or cocaine, you could still be prosecuted under
7 the act.

8 And the reason that the Court reached that
9 conclusion, and the reason that Congress intended that,
10 and the reason that they didn't put a mens rea provision
11 in the statute here, is that those -- that drugs, as a
12 general category of items, like firearms, can pose a very
13 severe threat to the community. That was the premise on
14 which the Firearms Act and the Narcotics Act were enacted

15 And if you are in possession of those -- that
16 sort of item that can pose such a threat to the community,
17 it's up -- Congress wanted it to be up to you to
18 investigate what the nature of the item is that you had,
19 and what the legal requirements that you had to comply
20 with in order to possess it. That conclusion is
21 particularly apt because this was a registration and
22 recordkeeping provision.

23 QUESTION: Well, it was, except that in the
24 narcotics example, I suppose it's true to say that
25 Congress did not draw a line between -- sort of down the

1 middle in the class of dangerous narcotics and say, well,
2 we'll -- we'll prohibit or regulate some and leave others
3 free. But that, in effect, is what has happened in the
4 gun situation. I mean, after all, the Brady bill didn't
5 pass until last week.

6 I mean, there's just been a long history of
7 refusal to regulate the major class of guns in this
8 country, so that when you are faced with something that,
9 so far as externals are concerned, looks perfectly well
10 like a gun which is unregulated and which has been the
11 subject of repeated decisions not to regulate, you're not
12 in the same situation that you're in with the narcotics.

13 MR. FELDMAN: I guess I'd respectfully disagree
14 with that. In 1934 when Congress -- what Congress did
15 want to regulate was machineguns. It wanted to know how
16 many machineguns there were, who had them, who had control
17 of them, where they were located, in order to enforce
18 that. Just as with the Narcotics Act where there were
19 many other drugs that were not regulated aside from
20 opiates and cocaine, by the act, in both cases I think the
21 situation was exactly parallel.

22 There were many things which Congress didn't
23 want to directly regulate, but these are items that are
24 dangerous, that pose -- can pose threats, serious threats
25 to the general welfare, and they didn't want, in the case

1 of machineguns, machineguns to be kicking around in
2 somebody's attic where they can surface at some later date
3 and wreak havoc on the community.

4 QUESTION: Well, I'm still -- I guess maybe I'm
5 going to move aside a little bit from the -- from
6 attacking the historical analogy, and just go to the
7 merits of applying the interpretive rule here. Given the
8 fact that the -- that the overwhelming number of guns in
9 this country, all of which are dangerous to some degree,
10 are not regulated, I have difficulty in seeing the ease of
11 applying this rule that one simply is on notice that there
12 may be regulation by virtue of the fact that one has a
13 weapon which, by definition, is dangerous.

14 MR. FELDMAN: Well --

15 QUESTION: So just on the analytical point, I
16 think you've got a hurdle to jump here.

17 MR. FELDMAN: I think -- well, I guess I do
18 think the historical point is important. But I think,
19 analytically, the vast majority of those guns that are
20 unregulated are not machineguns, couldn't fire
21 automatically, and wouldn't be supposed to be machineguns
22 by anybody. It's not a serious burden that's put on
23 people.

24 But I think that if you do -- the Court's
25 decisions in Bailant, in Dotterweich, in the more recent

1 Freed, and in International Minerals, I think that they do
2 set a line that when you're dealing -- although -- that
3 when you're dealing with extraordinarily hazardous items
4 and especially where there's a registration/recordkeeping
5 scheme where Congress wanted to know the locations of
6 those items and who had them, that the people who have
7 those extraordinarily dangerous items, it's up to them to
8 find out what it is precisely that they own. It's --

9 QUESTION: Well, does the -- does the argument,
10 then, in this case, come down to the fact that if you're
11 dealing with a machinegun, that's fair to say, something
12 which is manufactured as a machinegun, sold as a
13 machinegun, anyone sort of buying it could reasonably be
14 assumed -- or possessing it, could reasonably be assumed
15 to know that it was a machinegun, but that the argument
16 doesn't wash in the case of a gun which, at least to
17 external appearances, is not a machinegun.

18 MR. FELDMAN: Well, there have -- as I said,
19 there have been courts that have taken that view. And
20 that view, I suppose, would be an intermediate view, where
21 there had no external indicia that could alert one to the
22 fact that it was a machinegun. But frankly I don't --

23 QUESTION: To this act, that it falls within
24 this very dangerous category of regulated weapons.

25 MR. FELDMAN: I --

1 QUESTION: In other words, we've got a category
2 of dangerous weapons which are not regulated. Presumably,
3 there's nothing about the possession of a singleshot 22
4 that ought to put the owner on -- to an obligation of
5 calling the Government to see whether they regulate
6 singleshot 22's.

7 When the person possesses or buys a machinegun
8 pure and simple, yes, you get a pretty strong argument
9 that it's fair to put that obligation on him. Then we
10 have the middle category of guns which maybe can be
11 converted, and which in most cases are not. And is it --
12 is it appropriate to put the obligation on the possessor
13 or the buyer of those weapons to see whether something, in
14 fact, has -- has been modified about them that puts them
15 into the especially dangerous regulable category? And
16 that's the issue we've got.

17 MR. FELDMAN: Right. And I think it is
18 appropriate. I think it's appropriate both because
19 Congress -- I think, primarily, for the reasons I've
20 already said, but because when Congress enacted the
21 statute, they didn't include a mens rea component here.
22 They did model it on the Harrison Narcotics Act. And in
23 other areas where you're dealing with --

24 QUESTION: Well, they may have -- they may have
25 done that on the assumption that we were going to apply

1 this rule, which we're having difficulty applying, or at
2 least I'm having difficulty applying. Congress many have
3 said, well -- you know, in fact Congress frequently does
4 this -- you know, the courts will work it out, they'll
5 figure out what to do here. So I'm not sure that you can
6 infer much from Congress' failure to act positively here.

7 MR. FELDMAN: I guess, well -- I think,
8 actually, the way I would put it would be that the burden
9 is on -- would -- the burden would be on petitioners to
10 show that even though Congress didn't include -- it's not
11 their failure to act positively. They did act positively.
12 They enacted a criminal statute that provides that it is
13 unlawful to possess a machinegun that's not registered in
14 the national firearms registration records.

15 QUESTION: Well, while keeping -- while keeping
16 their silence on mens rea.

17 MR. FELDMAN: Right. Well -- well, without --
18 without indicating a mens rea. And in doing that -- as I
19 said, it followed exactly the Harrison Narcotics Act. And
20 in the line -- it's -- the decisions that have applied the
21 principle that we're talking about aren't limited to the
22 Bailant case. In the Dotterweich case you were talking
23 about misbranded or adulterated drugs. Now, there's a
24 wide variety of unmisbranded or nonadulterated drugs that
25 are around.

1 QUESTION: But I -- I think -- I guess what's --
2 I guess what's bothering me is that I don't see in the
3 drug situation an analogy to this fact about the gun
4 situation: In the gun situation, there has been a
5 continuing political contest for further back than I can
6 tell, about the appropriateness of regulating guns. And
7 Congress, by and large, has taken a very narrow view of
8 what should be regulated. And it seems to me that that is
9 a fact which makes it difficult to apply, sort of, your
10 tough version of the rule. And I don't see any analogy
11 there in the drug situation.

12 MR. FELDMAN: Well, I mean, I guess I'd make two
13 points in response to that. First, Congress has, though,
14 decided it wanted to regulate machineguns. And I'm not
15 suggesting that Congress wanted to regulate other types of
16 guns. All it wanted was to know that if you had a
17 machinegun and if you knew -- that if people who had
18 machineguns had to have them registered and it wanted to
19 know where they were, that doesn't suggest that it's
20 trying to regulate other types of guns, it's just
21 suggesting that they wanted to make the regulation of
22 machineguns an effective regulation that would ensure that
23 they got registered.

24 The second point I'd make is that throughout the
25 years since the Gun Control Act of 1968, when Congress has

1 extensively -- in 1968 they recodified the National
2 Firearms Act. In 1986 they amended it, as well as the Gun
3 Control Act, which are the title 18 provisions.
4 Throughout those years, and up until very recently, the
5 courts were unanimous or almost unanimous that our
6 position in this case was right, and that all you had to
7 know was to know that it was a weapon in the general
8 sense, in the general sense. There was no need for
9 Congress for act --

10 QUESTION: Is there any circuit other than --
11 any circuit other than the D.C. Circuit that has gone for
12 the defendant in?

13 MR. FELDMAN: The D. -- as we read the cases,
14 the only -- the D.C. Circuit is the only -- is the one
15 that created the conflict in the circuits on the issue in
16 this case. There are three circuits, the Ninth Circuit,
17 the Sixth Circuit, and the Fifth -- I think the Fifth
18 Circuit, that have held -- have appeared to us, at least,
19 to distinguish between guns that -- where the modification
20 is entirely internal and entire -- and guns where there's
21 some external modification, as there was in this case.

22 QUESTION: Couldn't one rank this gun, based on
23 the defendant's expert testimony, that this was a defect,
24 and so bracket the defective gun with the internal
25 modification, rather than the external modification?

1 a machine MR. FELDMAN: Well, I suppose -- one could
2 accept that. I think the jury squarely rejected
3 petitioner's evidence that the gun was defective. There
4 was nothing defective about the gun. Perhaps if it had an
5 additional part, it could have operated more reliably.
6 But there was extensive evidence that the gun had been
7 taken out -- evidence -- ammunition of various -- several
8 different types had been put in the gun, and it had fired
9 automatically with a single pull of the trigger.

10 QUESTION: Well, of course --

11 QUESTION: Mr. Feldman -- which shoots, is

12 designed QUESTION: or -- Under your position, even if it's
13 defective, there's liability? Not without manual reloading,

14 I think MR. FELDMAN: I don't -- no, I don't think so.
15 I think if the gun, in fact -- if the gun was -- I suppose
16 it might -- might matter what you mean by defective. If
17 the gun occasion -- once or twice fired multiple rounds
18 and -- but was -- I think a jury reasonably could find and
19 a defendant reasonably could argue to a jury that this
20 just wasn't a machinegun, it was an occasional defect.

21 capability QUESTION: Well, isn't it a question of law as
22 to what is a machinegun and what isn't? A position is that

23 there's a MR. FELDMAN: Right. And it's -- most of the

24 time or a QUESTION: Well, is it your position that a
25 defective firearm that fires multiple rounds is or is not

1 a machinegun?

2 MR. FELDMAN: If it -- if it fire -- if it fires
3 multiple rounds. I mean, I -- let me refer to the
4 language of the definition. A machinegun is defined as
5 any weapon --

6 QUESTION: Can you tell me where you're reading
7 from, please?

8 MR. FELDMAN: Actually, it's excerpted on page 4
9 of our brief.

10 QUESTION: Thank you.

11 MR. FELDMAN: Any weapon which shoots, is
12 designed to shoot, or can be readily restored to shoot
13 automatically more than one shot without manual reloading.
14 I think when it says would shoot -- which shoots, or is
15 designed to shoot, or can be readily restored to shoot, I
16 think you could take the term "shoot" there not to mean
17 that it did it once by virtue of some defect --

18 QUESTION: So the Government's position is that
19 unless --

20 MR. FELDMAN: -- That type of -- this is a
21 capability that this weapon has.

22 QUESTION: So the Government's position is that
23 there's a machinegun involved if it shoots most of the
24 time or some of the time as fully automatic?

25 MR. FELDMAN: I hesitate to depart too far,

1 because I think it has to have the general capability of
2 shooting more than once with a single pull of the trigger.
3 I suppose that --

4 QUESTION: If the statute is ambiguous, isn't
5 that an argument for requiring specific knowledge of its
6 characteristics, as opposed to strict liability?

7 MR. FELDMAN: I don't -- in the -- in the -- I
8 guess I don't see the ambiguity. I mean, I think there
9 are going to be -- there are going to be close cases --

10 QUESTION: Well, it seems to me we've just
11 stumbled onto one.

12 MR. FELDMAN: I don't -- actually, I don't think
13 it's an ambiguity. I think it's a question of the
14 application of a lot of fact. The question is does this
15 gun have the capability of shooting automatically. That
16 question could arise even if you took petitioner's view of
17 the case. Under any view of the case, you could have a
18 question of whether the gun itself was or was not an
19 automatic weapon. The question is whether it has the
20 general capability of shooting automatically. That's a
21 question that can be argued to the jury, but that's a
22 question --

23 QUESTION: And the Government has the burden of
24 proof on that, I take it.

25 MR. FELDMAN: That's right.

1 QUESTION: And the jury must be instructed as to
2 that.

3 MR. FELDMAN: That's right. And that's a
4 question on which there was conflicting evidence in this
5 case, but there was extensive evidence that this gun would
6 fire, as a matter of course, if you put in -- if you held
7 the trigger down and put in ordinarily commercially
8 available ammunition, it would fire automatically. And
9 the jury credited that evidence and it didn't credit the
10 defendant's evidence.

11 QUESTION: Well, was the jury instructed on
12 the -- on a defensive defect here? I didn't think it was.

13 MR. FELDMAN: I don't recall -- I actually don't
14 recall the specific --

15 QUESTION: Well, you said a moment ago that the
16 jury rejected the theory that, in fact, this was a merely
17 defective gun, and I didn't -- I didn't understand that
18 that issue was put to the jury.

19 MR. FELDMAN: The --

20 QUESTION: In fact, I don't -- as I understood
21 the instructions, the jury wouldn't have had any occasion
22 even to take that issue up.

23 MR. FELDMAN: The jury was instructed that --
24 was instructed, I think, in terms of the definition of
25 machinegun that I read to you, as I recall.

1 QUESTION: Yes.

2 MR. FELDMAN: So it was instructed on what a
3 machinegun is.

4 QUESTION: And under that definition, as I
5 understand the instructions, if the jury found that on one
6 occasion one pull of the trigger shot more than one round,
7 that that -- that would qualify as a machinegun.

8 MR. FELDMAN: Well, I don't think --

9 QUESTION: And the jury was not instructed, as I
10 understand it, that in -- in the generality of cases this
11 particular gun had to function in that way. And as I
12 understand it, it was not instructed that if it did so as
13 a result of a defect, that it was not a machinegun. Am I
14 wrong about the instructions?

15 MR. FELDMAN: Again, I don't recall. I don't --
16 it wasn't -- the latter instruction I don't think was
17 given. I don't recall specifically.

18 QUESTION: Well, then we can't -- we can't say
19 that the jury rejected the theory of defect in this case.

20 MR. FELDMAN: I think what you can say is that
21 the jury concluded that the gun was an automatic gun, as
22 defined by -- an automatic gun as defined by the statute.
23 And also I really have to say --

24 QUESTION: Well, I agree with you, but that's
25 not -- that's not the point. The point is did it reject a

1 theory of defective weapon such that if it had found it
2 was merely defective, that would have been defensive. And
3 the jury didn't reject that theory.

4 MR. FELDMAN: Well, I have to say the court of
5 appeals didn't rule, as I recall, on any theory -- on the
6 theory of defective weapon. And the Petition for Cert
7 doesn't --

8 QUESTION: No, I'm not addressing the court of
9 appeals, I'm just addressing your argument, and you were
10 making the argument a moment ago that the jury had
11 rejected the theory of defect, and I don't see how it
12 did -- you can make that argument based on the
13 instructions.

14 MR. FELDMAN: Well, let me go -- as far as the
15 theory of defect goes, I don't understand exactly what the
16 theory of defect is. If the theory of defect is that it
17 was able -- it shot once, because something was wrong with
18 it, multiple times with a pull of the trigger, but
19 couldn't -- that couldn't be repeated.

20 QUESTION: Well, regardless --

21 MR. FELDMAN: And that -- that --

22 QUESTION: Regardless of what the theory of
23 defect is, the jury did not reject a theory of defect.
24 Isn't that fair to say, under the jury instructions as
25 given?

1 MR. FELDMAN: I guess -- I don't mean to fight
2 the premises here, but I think --

3 QUESTION: You're doing -- you're doing a good
4 job.

5 (Laughter.)

6 MR. FELDMAN: Perhaps. The jury was instructed
7 that it had to find that this was a machinegun. The jury
8 in -- if petitioner's defense was, well, this only fired
9 automatically because it was a defect, and I didn't mean
10 it to fire automatically, no the jury wasn't asked to rule
11 on any question like that. The fact was that this gun was
12 fitted with automatic parts.

13 It had a piece -- a pin which ordinarily sits on
14 the receiver and would keep -- even if all the automatic
15 parts, all the semiautomatic parts had been replaced by
16 automatic parts, that pin would keep the lever from
17 shifting over to the automatic position. That pin had
18 been visibly ground down.

19 Now, if -- petitioner's view of defect, as far
20 as I understand it, was simply that the gun could have had
21 another part which would have made it fire -- which would
22 have made it fire automatically more reliably, and that
23 since it didn't have that part, it only fired
24 automatically as a result of a defect. In our view, I
25 don't think that was any real distinction, and there was

1 no reason to instruct the jury. But in any sense in which
2 it's relevant, I think the jury did reject the theory of
3 defect.

4 QUESTION: Mr. Feldman, can I ask what the
5 Government's theory of mens rea requirement is? You're
6 certainly not asserting that we should read every Federal
7 statute which does not explicitly have a knowledge
8 requirement as dispensing with it.

9 MR. FELDMAN: That's correct.

10 QUESTION: Ordinarily, we will read in a
11 requirement that you have to know you're violating the
12 law.

13 MR. FELDMAN: That's correct.

14 QUESTION: Now, what -- what makes this
15 different?

16 MR. FELDMAN: I would say there's about three
17 factors. There's -- one is the correlation between -- the
18 Congress' attempt to model this act on the Harrison
19 Narcotics Act. There's two, that this involves highly
20 dangerous items that are a serious threat to the
21 community. And three, that it's a registration and
22 recordkeeping requirement. It's a -- it's in -- the
23 criminal prohibition here is in aid of seeing to it that
24 these weapons get registered and that the Government know
25 where they are and who has them.

1 QUESTION: All registration and recordkeeping
2 requirements do not have a scienter.

3 MR. FELDMAN: I think where Congress -- we would
4 be comfortable with the rule that where Congress doesn't
5 specify otherwise, and where it's dealing with highly
6 hazardous threats to the community and imposes a
7 registration and recordkeeping requirement, that in those
8 circumstances a very weak scienter requirement of the sort
9 that was given to the jury here is appropriate.

10 QUESTION: Well, Mr. Feldman, does the
11 Government want to concede that you ordinarily read in a
12 requirement that you must know you're violating the law in
13 every criminal statute where Congress is silent? Isn't
14 the presumption ordinarily that ignorance of the law is no
15 defense?

16 MR. FELDMAN: Yes, that's correct.

17 QUESTION: Well, then --

18 MR. FELDMAN: And I didn't mean to concede that.

19 QUESTION: Well, but it's -- then, it seems to
20 me, you're giving a different answer to me than you gave
21 to Justice Scalia a moment ago.

22 MR. FELDMAN: I'm sorry. What I was really --
23 what I mean to say was where there's no specific --
24 there's no specification of a knowledge requirement, I
25 think it ordinarily is appropriate to require that the

1 defendant at least know the facts, or the primary facts,
2 or the crucial facts that make his conduct illegal. I do
3 think it's a question of reading each particular --

4 QUESTION: Well, but that's a different -- it's
5 one thing to say the defendant must know the facts that
6 make his conduct illegal. It's another thing to say that
7 he must know the law that makes them illegal.

8 MR. FELDMAN: Right. I don't think that there
9 is -- there's all -- there's virtually never a
10 requirement, unless it's otherwise specified, of knowledge
11 of the law.

12 QUESTION: I meant -- I meant the former. The
13 Chief Justice is quite correct to make that modification.
14 But in this case, that would lead to the normal
15 requirement that he had to know the fact that it was a
16 machinegun.

17 MR. FELDMAN: That's right. And if -- if we
18 were --

19 QUESTION: But you say that's not the case here
20 because --

21 MR. FELDMAN: Because --

22 QUESTION: Machineguns are dangerous and this
23 act looks like another act that we've held doesn't have a
24 recordkeeping requirement, and this is a -- doesn't have
25 such a requirement. And lastly, this -- this act is a

1 recordkeeping act.

2 MR. FELDMAN: I mean I guess -- I guess what I
3 would add to that is that the primary determinant should
4 be what Congress' intent was. And the point about this
5 looking like another act is -- I think that's a very
6 strong index of what Congress' intent was --

7 QUESTION: Do most recordkeeping acts have
8 prison sanctions for up to 10 years, which is what this
9 is?

10 MR. FELDMAN: That is a stiff sentence, I'll
11 agree. But this act, when it was enacted, for instance --
12 and there's no reason to think that the intent requirement
13 would be any different today -- had a prison requirement
14 of 5 years and \$2,000, which, word for word, was the same
15 as the penalty provision in the Harrison Narcotics Act
16 that the Court -- that the Court interpreted --

17 QUESTION: Well, it seems to me that implicit in
18 the argument that it's a registration, a regulatory act,
19 is also the assumption that the penalty is -- is not too
20 severe. This is a very severe penalty.

21 MR. FELDMAN: It's true that it is a severe
22 penalty. But as I said, that -- that penalty was not --
23 it's not that different from the penalty that was in
24 effect when the act was first passed. And there's
25 certainly no reason to think that over the years -- I

1 think Congress upped the penalty from 5 years to 10 years
2 in 1968, but that either then or in 1986 when additional
3 amendments, some amendments were made here and some to the
4 Gun Control Act -- that at any of those times Congress
5 wanted to change the Act.

6 In fact, to the contrary, at all relevant times
7 both the line of decisions that I've cited, Dotterweich
8 and Bailant, the decisions of this Court, it's recognized
9 in Morissette as well and International Minerals -- at all
10 relevant times those decisions uniformly supported our
11 position, as did the decisions of the lower courts.

12 QUESTION: Mr. Feldman, remind me of your answer
13 to Justice Souter's question about the difference between
14 drugs, where one would say drugs are dangerous, and guns
15 where, for the most part, Congress hasn't regulated, so
16 it's only a special category that's registered? You don't
17 have the same kind of congressional determination of
18 dangerousness.

19 MR. FELDMAN: I think there's -- there's really
20 distinctions on both sides of that. First, when in 19 --
21 when Congress enacted the Harrison Narcotics Act -- and
22 generally in the early part of the century drugs were much
23 less regulated than they are today. And the Harrison
24 Narcotics Act only purported to regulate cocaine and
25 opiates, not any other drugs.

1 But secondly, from the other point of view, I
2 think guns are extensively regulated in our society. They
3 are items that are very dangerous and are known to be
4 dangerous by people, and Congress legislated under that
5 background assumption. And guns are sufficiently
6 highly -- are sufficiently regulated and sufficiently
7 dangerous that if you have one, it's up to you to
8 determine whether -- whether it fires automatically.

9 Another example, for instance, would be a
10 short-barreled rifle. The short-barreled rifles or
11 short -- or sawed-off shotguns are also firearms under the
12 National Firearms Act. It's -- I don't think someone
13 could reasonably -- could reasonably -- under petitioner's
14 view, the Government has to prove, I suppose, that
15 somebody took out a ruler and measured the length of a
16 barrel on one of those weapons and saw that it was less
17 than the specified 16 or 18 inches in the statute.

18 I don't think that that's what Congress
19 intended. Congress intended that if you own a shotgun or
20 a rifle, it's up to you to determine how long the barrel
21 is. And so long as you know you own the rifle or the
22 shotgun, if the barrel is shorter than the 16 or 18
23 inches, it's a firearm under the act.

24 QUESTION: Mr. --

25 QUESTION: What if -- what if you don't even

1 know that it's a shotgun, you don't even know you have a
2 shotgun? You buy a house, right, and sealed up in an
3 abandoned room in the basement there is a sawed-off
4 shotgun; would you be liable? You don't have to know
5 anything at all? You don't even have to know you possess
6 it?

7 MR. FELDMAN: No, that's not our position. Our
8 position is you have to know --

9 QUESTION: Oh.

10 MR. FELDMAN: -- is you do have to know it's a
11 gun. The possession -- the --

12 QUESTION: Why is that?

13 MR. FELDMAN: The position we have --

14 QUESTION: Why is that?

15 MR. FELDMAN: Because I think it draws the line
16 that the Court has drawn between items that are entirely
17 apparent -- that are entirely innocent, such as -- such as
18 Food Stamps or the type of conduct at issue in United
19 States Gypsum --

20 QUESTION: Is that the way the drug law is
21 interpreted too, that you appeal to? If I sell something
22 that I think is face powder and it turns out to heroin, is
23 that what they said in the Supreme Court?

24 MR. FELDMAN: In Bailant, that's not what they
25 said.

1 QUESTION: I didn't think it was.

2 MR. FELDMAN: In Bailant they didn't address
3 what you -- what the -- what the Court held in Bailant was
4 that you -- it rejected petitioner's position in this
5 case, which is you don't have to know that what you
6 possessed was opiates or cocaine.

7 QUESTION: Right.

8 MR. FELDMAN: They -- The Court didn't go into
9 what you do have to know.

10 QUESTION: No, but if --

11 MR. FELDMAN: And to some extent --

12 QUESTION: I think if you're going to appeal to
13 Bailant and the drug cases, you have to say it really
14 doesn't even matter whether he knows it's -- it's a -- he
15 owns a gun.

16 MR. FELDMAN: I think that it's reasonable
17 that -- I think the question of what you do have to know
18 is -- well, it's one that they didn't address in Bailant.
19 And generally -- I mean, generally, you could interpret
20 this to be a strict liability offense. However, in light
21 of the Court's distinctions in -- between, for instance,
22 cases such as Liparota and United States Gypsum, and cases
23 like Bailant or Dotterweich or Freed, I think it's
24 reasonable to draw the line and infer a very mild scienter
25 requirement.

1 QUESTION: Well, isn't it true that all the
2 courts of appeals have done that. At least -- at least
3 they have to know that he possessed the item.

4 MR. FELDMAN: Yes, as far as I'm aware.

5 QUESTION: Do you happen to know, as a matter of
6 history, what precipitated the enactment of the '34 act?

7 MR. FELDMAN: I -- it was --

8 QUESTION: You didn't live in --

9 MR. FELDMAN: There was testimony about
10 Dillinger I believe.

11 QUESTION: You didn't live in Chicago then, I
12 guess.

13 MR. FELDMAN: Yes.

14 (Laughter.)

15 MR. FELDMAN: Yes.

16 QUESTION: Is it fair to say -- we could argue
17 about the facts of application, but is it fair to say that
18 your interpret -- the Government's interpretative rule for
19 finding what Congress probably intended, or imputing an
20 intent to Congress, does require, for your position to
21 prevail, that we conclude that the -- that the -- that the
22 defendant understand that what he was possessing was --
23 was an object within a class of highly dangerous objects
24 which it is reasonable to suppose the Government would
25 regulate?

1 MR. FELDMAN: I --

2 QUESTION: Is that the general premise?

3 MR. FELDMAN: That would be one formulation,
4 yes.

5 QUESTION: Okay.

6 MR. FELDMAN: If there's no further questions,
7 I've completed.

8 QUESTION: Thank you, Mr. Feldman.

9 Ms. De Angelis, you have 10 minutes remaining.

10 REBUTTAL ARGUMENT OF JENNIFER L. De ANGELIS

11 ON BEHALF OF PETITIONER

12 MS. De ANGELIS: Thank you, Mr. Chief Justice.

13 It's important for this Court to remember that
14 not all guns are taxed and regulated. And as with regard
15 to the congressional intent, I'd like to leave the Court
16 with this thought from the Anderson decision in the Fifth
17 Circuit: "It is unthinkable to us that the Congress
18 intended to subject such law-abiding, well-intentioned
19 citizens to a possible 10-year term of imprisonment if,
20 unknown to them, without reasonable cause on their part to
21 think otherwise, what they genuinely and reasonably
22 believed was a conventional semiautomatic pistol turns out
23 to have been worn down or secretly modified to be fully
24 automatic."

25 QUESTION: That's a court that makes the

1 distinction between internal and external.

2 MS. De ANGELIS: That's right.

3 QUESTION: And which we don't have here. because
4 whatever you call it, it was external.

5 MS. De ANGELIS: In part, Justice Ginsburg. I
6 think that the Government has stated, even in pretrial
7 proceedings, that the modifications in this case were
8 twofold. One, it contained M-16 parts. The Government
9 says the parts were substituted. That was not the
10 evidence at trial. The evidence was it was purchased by
11 Mr. Staples with M-16 parts; it was manufactured in that
12 fashion. And one of those parts was the selector stop on
13 the lever -- and the switch, the stop being modified or
14 filed or worn down in some fashion by someone at some
15 time.

16 QUESTION: But you're not saying that this case
17 fits within the, "You can't see it; it's all on the
18 inside."

19 MS. De ANGELIS: That's correct. If there are
20 no further questions.

21 CHIEF JUSTICE REHNQUIST: Thank you, Ms. De
22 Angelis.

23 The case is submitted.

24 (Whereupon, at 11:54 a.m., the case in the
25 above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

HAROLD STAPLES III V. THE UNITED STATES

CASE 92-1441

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BY Ann Marie Federico

(REPORTER)

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