

## INTRODUCTION

This is **Talkin' to America**. I am your host Aaron Zelman. Our guest today is Len Savage. Len has been with us before on several occasions. Len is going to be telling us about an experience he had in Milwaukee in a Federal Court room dealing with an unusual case, **US versus Olofson**. The outcome of it if it is left unchallenged could destroy the ownership of semi-automatic firearms in America. Am I right about that?

**Len Savage:** Oh, you're correct and not just semi-automatic firearms but side-by-side shotguns are now suspect.

**Aaron Zelman:** Would you like to elaborate?

**Len Savage:** It might be better if we go back to the beginning and kind of explain how this came to be. It is my understanding that Mr. Olofson is an avid shooter. He is a member of the National Guard and he is a drill sergeant, a drill instructor. He teaches people how to shoot firearms, and a gentleman about 19 or 20 years old came up to him and says, hey, you know, I understand you like to shoot, you know how to shoot, can you teach me how to shoot? Mr. Olofson takes the man to the range and starts to teach him how to shoot an AR-15 properly, holding it properly, sight acquisition, the whole nine yards, and the kid from time to time would ask to borrow the AR and go to the public range and practice his shooting skills and Mr. Olofson was nice enough to accommodate him and say, sure, don't do anything stupid with this. If you're just going to the range and back, you know, obey all the range rules, you know, on and on and the third time that this kid borrowed the rifle - I keep calling him a kid but remember, he is over 18. It was lawful for him to possess the firearm, and he is at the range and he fires about 120 rounds. He said the barrel was kind of hot and he went to put another magazine in and shoot again and the gun shot three times and then jammed. That is what he said. I was there. I heard him, and at the range were a couple of police officers and immediately, you know, where'd you get this gun. This gun is a machine gun and the kid said it ain't mine, I got it from Mr. Olofson and that is where this starts cause Mr. Olofson being a responsible person, heard what had happened, went down to the police station that had the firearm and says look guys, I can explain all of this cause that's not a machine gun. If anything, it may have broke or maybe it was too hot, he goes but I can assure you that gun is not a machine gun. I mean, I am in the National Guard. I know what a machine gun looks like and that's not it. And it didn't matter. Three days later, the ATF busted down the doors in his house and held his family at gunpoint. He is indicted. Not for possession of a machine gun because Mr. Olofson never possessed it. He was indicted for illegal transfer of a machine gun because he let the kid borrow his rifle and go to the range and the gun malfunctioned. So that's where this begins but it gets worse. ATF local office gets the gun, sends it to Tech Branch and says look, we suspect this as being a machine gun. Tech Branch examines it, notes the year, make and model, noted that it had some M-16 components such as trigger and disconnect and hammer but noted when they test fired it, it fired as a semi-automatic, so it was a firearm under the 18th Chapter of the United States Code but basically lawful to possess and the ATF local agent says look, we have verifiable witnesses. We have two cops who saw this thing fire in the automatic mode. Could you retest this gun again, this time using soft-primered commercially available ammunition and a month later, FTB since they do not have any written testing standards, sure and they put soft-primered ammunition and they were able to get the gun to malfunction, not all the time. Even they admit, not all the time. But because they were able to get it to malfunction, it was a gun which shoots more than once per function of the trigger, he is guilty, indict him. So it begins and Mr. Olofson when he attempted to go to trial, I think they had a pretrial conference last Thursday, and the ATF through the government said that they didn't want me testifying there and that I was there just to provide wholesale attack against the ATF and not give anything of substance to the court or to the jury or to Mr. Olofson's defense. That really doesn't surprise me but that's what happened, and this Monday, the trial began.

**Aaron Zelman:** Why don't you describe what went on in that court room because I think people would be fascinated, especially people who believe that they want their day in court and that there is justice left in the justice system.

**Len Savage:** Well, the first thing that happened Monday morning, this was prior to them selecting a jury, was a hold-over from that last Thursday's pretrial conference and, one of the things that was brought up at this pretrial conference was that we know that the government has evidence of Mr. Olofson's innocence and through discovery they are required to provide the defense with this, what they term exculpatory information, because the government knows that Mr. Olofson is innocent and there are a couple of reasons that the government knows that Mr. Olofson is innocent because at the same time they were prosecuting Mr. Olofson for illegal transfer of a machine gun, they said it was because it contained the M-16 trigger parts but what they refused to show the judge was that SGW Olympic Arms prior to 1986 made all AR-15 semi-automatic rifles with M-16 trigger parts and that the government in 1986 recognized that there was a possibility of a malfunctioning occurring with certain ammunition, depending on the wear of the gun, fouling and that the guns could go full auto without the user knowing it and they posed a safety hazard and that the ATF mandated Olympic Arms to recall all of these guns and modify the trigger component so that this malfunction couldn't happen. We asked the government to produce this evidence so that the judge and the jury could see it. Mr. Olofson's attorneys asked for it and the ATF chief counsels' office responded to the US attorneys' office and said that it contained tax information, therefore, it would be against the law for the judge to even view the document and that His Honor would have to take the ATF chief counsels' office at their word that it contained on exculpatory information. So there was nothing fair about it. On top of that, during the same time, they removed an AR-15 with M-16 components from the NFRTR or the NFA registry. The government's bound book of machine guns and they contacted its owner and put in writing that an AR-15 with M-16 components is not a machine gun; therefore, it should have never been registered. We are removing it from the registry. The sear is the machine gun. I am not trying to confuse anybody here but think about this for a minute. At the very same moment in time one man is getting indicted for possessing an AR-15 with M-16 components that malfunctioned, another man's \$20,000 property is being devalued and saying well, no, that's not a machine gun, so it is no longer on the registry. We don't recognize it. Sorry, you're just out, and FTB and the personnel involved in this case were involved in both situations. I know because the person who owned that gun asked me who to talk to and I directed him to the personnel involved in this case. I wasn't involved in the case at the time.

**Aaron Zelman:** Okay, Len before we forget. Can we go back just a second and talk about the tax issue here. It seems that there was some misinformation given to the court dealing with the evidence?

**Len Savage:** I am told that the defense counsel is looking at that. The specific term that the US attorney used is that it was privileged under Section 6103. I am not a lawyer and I don't know what that means but all's we can do is hope that Mr. Olofson's attorneys take a look and find out. Because 6103 when I read it had to do with tax returns. This wasn't a tax return. This was a safety recall notice and a mandatory recall at that.

**Aaron Zelman:** So it is possible that the ATF misled the court.

**Len Savage:** Oh, it's very possible. In the owner of the NFA weapon, the ATF claims they don't have to tell the judge because an NFA weapon has an excise tax attached to it; therefore, tax privilege prevents the judge from knowing that at the same time we're indicting this guy, we are telling this guy it is not a machine gun, and the judge was prevented from seeing that. I don't blame the judge at all but he had no way of knowing this information unless the government produced it, and they just said well, we don't see where this is exculpatory and we claim it is privileged tax information. As a matter of fact, the entire discovery they claimed was privileged tax information under 6103 and these were documents that were known to exist. We asked for an open letter to the industry. They claimed that that was tax privileged. It just disgusted me. They were able to prevent the judge from knowing the other side of the coin right out of the box.

**Aaron Zelman:** This is **Talkin' to America**. Our special guest today is Len Savage. We are talking about the **US versus Olofson** case which will affect everybody who owns a semi-automatic firearm or even some other types of guns and so Len, I think, if you'd carry on please, I would appreciate it.

**Len Savage:** Sure. So we've got a situation where the ATF has got a 50% error rate on their classification of this man's evidence. It goes to court. He appeals to the court and says the ATF has documents that prove that I'm innocent, Your Honor, and they won't give them, could you please compel the government to turn over the documents to prove my innocence

and the ATF claims to the court that it's privileged tax information and the judge is prohibited by law from viewing it, you'll just have to take our word and, no, we aren't going to show it to anybody. This is just Monday morning. This is before the trial even started.

**Aaron Zelman:** Okay, well going from there, you said that during the court room time, if I can put it that way, that the ATF actually displayed a video that they made of the test firing of this firearm.

**Len Savage:** Yes they did. Isn't it amazing given the Fairness in Firearms' Testing Act and their refusal to adopt it that when it's in the government's best interest, the ATF knows how to operate a video camera and obviously must have one. Because they gave a very edited 15-second video of the gun malfunctioning. An M-16 has a fire rate of approximately 800 rounds a minute. This gun was firing at a far faster rate and that is indicative of a malfunction alone. It was untimed fire because the firearm in question didn't contain an auto sear, didn't have the provision for an auto sear. I was finally allowed to examine it. Now, imagine having an expert who's told your expert can't touch the weapon and we are not going to let him look at it and we're not going to allow him to shoot it, and even though we made a video, we are not even going to give your attorney a copy of the video prior to your trial because we're afraid of what will happen to the video, and if I'm going to quote right, they were afraid that the video would end up in a documentary was what I was told.

**Aaron Zelman:** Before we come back to this video where you showed how their tester was firing the gun for fear of his life, what did they have to say about **The Gang**, I think that's the alleged documentary to quote them, and JPFO in general.

**Len Savage:** Well yeah, we're jumping ahead a little bit but the ATF and the government decided to challenge my expertise in firearms. They claimed among other things - let's see. They claimed to the court that I intentionally tried to mislead the court by falsifying my resume to the court. They said that I really wasn't qualified as an expert on machine guns and they said that I shouldn't be allowed to testify about this particular firearm because I never fired it and they also told the court that I had a personal vendetta against the ATF. It's amazing because they didn't want me there because I was found to provide wholesale attack against the ATF, yet I didn't say a disparaging word against the organization other than the fact that they don't have any written testing standards and that I disagreed with some of the management practices but it was them who attacked me. They went on to bring up your organization Aaron and told the court that I was associated with you. Now remember, this is a Daubert hearing. This is supposed to have to do with my expertise in firearms but the ATF chose to bring up to the court that I shouldn't be an expert because I associate with you and JPFO, a Jewish civil rights' organization. The judge did see through this and ended up asking the US attorney just what in the heck did that have to do with expertise in firearms and he roughly shot him down on this but I am more than a little upset. Would they have a problem if I was associated with the NAACP I don't know what they were getting at but I didn't like it.

**Aaron Zelman:** Okay, well going back to this testing then as far as the edited video, can you elaborate on that?

**Len Savage:** Yeah, well not only was the gun obviously malfunctioning but the person from ATF who was chosen to shoot this particular firearm was so afraid of catastrophic failure, he was holding the firearm as far out in front of his body as possible and wasn't shouldering the weapon like one would normally shoulder a rifle. I think he feared that he was going to be wearing a bolt carrier for an eye patch if the test went wrong but I guess if the test went wrong, we won't have seen the video. Now, it was very telling that even they realized that this rifle was of just as much risk to the shooter as it was if it was pointed at somebody and that obviously it wasn't a machine gun, it was a gun that, you know, could fly apart at any second. What it means is that if the ATF can manipulate the court system and can prevent evidence that proves your innocence from being brought forth at your trial, I would say that's pretty significant wouldn't you? I specifically asked this US attorney trying to clarify what he was saying, I asked him are you saying if I take my granddaddy's double-barrel out hunting and I pull one trigger and both go off because it fired more than once per function of the trigger, that's a machine gun, and he acknowledged it. People better wake up. This isn't just about semi-automatic firearms anymore. You duck hunters who look down on the guys who own the black rifles, you're clearly marked as next. A double-barrel shot gun malfunction is now a machine gun. The ATF through the US attorney made the argument and nullified my testimony that showed that it was a malfunction that it doesn't matter, even if Mr. Savage is correct, it doesn't matter because the law states any weapon which shoots and since it

doesn't specifically exempt a malfunction, you must be guilty. If they meant to exempt malfunction they'd have put it in the law and the jury is given this kind of skewed, neutered view of the definition of this particular firearm within the law which would be Chapter 26 United States Code Section 5845 Paragraph B, this is the definition of a machine gun and because in that definition of a machine gun, a malfunction is not exempted, they don't enumerate it. It was taken for granted, but the ATF has seized upon the situation that since it was not specifically exempted then it is illegal. Now, you say where is this going? I would say that this is agenda driven and the whole idea is if you know that you sell somebody as a dealer a firearm and someday it breaks and malfunctions in front of a couple police officers, you too could be facing federal prison time. So maybe you better not keep anything that does that so that you can stay out of trouble. You know, without passing a law, without going through Congress, they are exerting pressure on people who are now in fear of their livelihood, who may now after hearing of this decision, well maybe I better not own one of those. Talk about a way of wielding power and just cutting the corners on our Constitution to do it.

**Aaron Zelman:** If I could just share with you. I spoke to a dealer who has been audited several times by ATF and he mentioned to me that when they come in and audit the books they go by all of the bolt action rifles, the lever action guns, pump guns, they don't pay any attention to those, they want to make a list of the customers who bought a semi-automatic weapon. So I think it is agenda drive.

**Len Savage:** And they have done it. They have succeeded. Unless Mr. Olofson can somehow successfully appeal this, this is how, you know, it worked. They're going to do it again, and they have openly stated that now they consider double barrels that malfunction fair game as well. People had better wake up. We get to thank Congress for this. Quite frankly, the House and the Senate by their silence have done nothing but emboldened the ATF under Mike Sullivan's leadership who's got such a horrible track record of being abusive in court and seems to have no problem taking those same tactics to the ATF because I experienced this and it's enough to make anybody retch because the judge is in a catch-22. He can't order that they give it over unless he sees what it is and they say you can't see what it is because Your Honor, it is a felony for you to look at it, and a cute little way to make sure that nobody sees the evidence that proves their innocence, and I say that they know this is because Olympic Arms had a tragic fire in 2002 and all these records were lost and they know that Olympic does not have copies of this and they know that they are the sole holders of the copies of the recall letters and did not want that to get out. So, yes, they absolutely misled the judge who was as fair and impartial as any judge can be and I quite frankly had a lot of respect for him and the court.

**Aaron Zelman:** Well, if we were to look for a solution to this problem, what would you suggest?

**Len Savage:** First and foremost, we need to get malfunctions exempted within the statute immediately. I don't really hold a lot of faith in Congress.

**Aaron Zelman:** And Congress would even understand the issue.

**Len Savage:** I don't know. It is too early and the transcripts aren't out. When those are out, maybe when they can read with their own eyes that a US prosecutor is stating that a malfunctioning shotgun that fires both barrels by accident is by definition a machine gun and then, maybe then, when it starts affecting them in that way, they'll feel the heat, maybe see the light.

**Aaron Zelman:** They're only going to feel the heat if they hear from people.

**Len Savage:** I agree. That's the only thing we can do is just get the word out.

**Aaron Zelman:** I understand there was also something interesting said by the government prosecutor about the fellow who possessed the machine gun but was never charged.

**Len Savage:** The gentleman who was caught at the range with Mr. Olofson's rifle. This gets real interesting. First of all, they certainly stated on the record that this gentleman was being paid to come and testify against Mr. Olofson. Not only was he not

charged with a crime because obviously he possessed it and if magically a gun that malfunctions is now a machine gun, why didn't the guy who was actually caught with it get charged with anything and why did they have to pay for his testimony. Quite frankly, I listened to his testimony and he gave four separate answers and most of which were I don't recall, I can't remember and yeah, maybe I said that, and you know, I don't know. It's interesting how somebody can be charged with an illegal transfer of a machine gun when nobody was charged with the illegal possession of the same machine gun. The kid's testimony was crucial here because under **US versus Staples**, a Supreme Court decision, it states that you have to know that that's a machine gun. You have to know that that contains the features and characteristics that make it a machine gun and they're saying when the kid had babbled his four answers, one of them was that yes, Mr. Olofson told him that the gun had malfunctioned from time to time, and they say, well, he knew. He knew it was a machine gun because he knew the gun malfunctioned. Now, that's the worst thing that they could say. They tried to, you know, twist words and stretch things and paint Mr. Olofson in a terrible light. I don't know Mr. Olofson personally. I got to meet him during this trial and he seems like a gentleman but I can tell you they personally attacked me.

**Aaron Zelman:** Was the jury listening to all of this at the time they were attacking you.

**Len Savage:** No, during a Daubert hearing, the jury is excused from the room and basically they get to challenge your expertise.

**Aaron Zelman:** Did a jury hear the testimony of this fellow who changed his story four times?

**Len Savage:** Oh yes. They actually requested it be read back to them. The jury couldn't even keep up with what he said. They had during deliberations actually had to ask for his testimony to read back because even they couldn't remember what in the heck he said.

**Aaron Zelman:** And I guess we ought to deal with what the jury's verdict was.

**Len Savage:** Mr. Olofson was found guilty of illegal transfer of a machine gun. He is facing 10 years in jail and a \$250,000 fine for being a nice guy and teaching a young man how to shoot rifles.

**Aaron Zelman:** This is an example where the jury is not examining the facts of the case as well as the law itself.

**Len Savage:** They were given a neutered version of the law, an amended version, and the US attorney is openly lying to them in his closing arguments saying that they must not take any of my testimony seriously because I haven't taken formal training on firearms' classifications which you can only get if you're an ATF agent, so only the ATF agent is actually an expert, not Mr. Savage. Mind you, nobody over at Firearms' Technology Branch and any of their experts I don't think that they have designed five or six different firearm systems in the last three or four years and actually managed to bring them to production but they're experts and I'm not. I actually work in my industry.

**Aaron Zelman:** Tell me what you think has to be done to correct this injustice.

**Len Savage:** Overwhelmingly, we need to send a message to Congress. Cut off the funding. It's time to go after the money. They obviously have too much money if they're worried about these silly breakdowns and chasing people down and spending God knows only, who knows how much they spent on **US versus Olofson**. It would be interesting if anybody ever audited to find out much money the government actually did waste to chase down a broken gun that nobody possessed. Go after the money, cut it off at the knees. Starve it out.

**Aaron Zelman:** Well, sounds good to me. Anything else you would like to add Len?

**Len Savage:** I am very disappointed. I am very disappointed in what I saw, and we had better wake up because they've got a new tactic and it worked.

**Aaron Zelman:** Okay, well this has been **Talkin' to America**. Our guest today has been Len Savage talking about the case **US versus Olofson** and how the ATF has concocted a new scheme to destroy gun ownership in America, and I want all of you to remember if you won't defend your rights, don't complain when you lose them.

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