

Talkin' to America

Interview with Len Savage May 11th 2009

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INTRODUCTION

Aaron Zelman: This is **Talkin' to America**. Our special guest today is **Len Savage** reporting to us on the Olofson case and the appeal, and how it was handled by the courts. We will be giving you some information that might shock you, but also you'd better pay attention to it because it could dramatically affect the way you continue to be a gun owner and other aspects of your life. Len, welcome to **Talkin' to America**.

Len Savage: Well thank you very much, it's a pleasure to be here.

Aaron Zelman: Now why don't we start by giving just a very brief overview of what the Olofson case is.

Len Savage: The Olofson case concerns an AR-15 type rifle, and David Olofson owned an AR-15 type rifle that was built by SGW, Olympic Arms, probably built in the mid to early 80's - then it was 20 plus years old. And he loaned the rifle to an individual who went to a shooting range and shot approximately 800 rounds of ammunition that day, and the individual he loaned it to switched the safety selector to an unmarked position and the gun fired a couple of rounds and then jammed. The police were called, the firearm was seized and the end result was that Mr Olofson was charged with illegal transfer of a machine gun. And he went to court and was convicted by a jury - although he really never got to tell his complete side of the story. That's it, in a real short "Reader's Digest" version. The firearm malfunctioned and he was charged and convicted for illegal transfer of a machine gun because the firearm malfunctioned.

Aaron Zelman: OK, so he goes to court, he loses, goes to prison, and then he makes an appeal - his attorneys appeal the decision by a Judge Cleaver in Milwaukee, and - what happens with the appeal?

Len Savage: On May 1st they released their decision and they upheld his conviction. It's disturbing for several reasons, and not the least of which is if the government withheld information that proved Mr Olofson's innocence, and when you think of that in light of a recent decision I think with Senator Stevens, they threw out his conviction because the government withheld information. It's a tough pill to swallow, I guess maybe David Olofson should have been a senator, maybe he'd have been afforded a different set of rights in court.

Aaron Zelman: Justice comes to those who can afford justice I suppose. Let's talk about a couple of things that happened which involved you. That was to remove experts from helping defense implications outside the gun case.

Len Savage: Yes, the appeals court upheld Judge Cleaver's decision to remove me from the court room, and what happened when he did that is that Olofson's attorney who was a public defender, who had never tried a gun case, was left to try to understand the technical testimony of the ATF without the aid of an expert. It was really strange because it was agreed upon that both experts could

stay in the court room and, at the last minute, to quote the judge - the government reneged on the deal, just before their expert was going to come in and testify they changed their mind. What ended up happening was his attorney who would not understand how a firearm works, let alone the technical testimony being offered up by the ATF, it hamstrung the attorney.

The attorney was left to try to understand this and to try to cross examine on something he didn't understand. Let me just play 'what if' here - what if the Olofson case was about say, DNA sequencing and not about guns, and the attorney was left to try to understand DNA sequencing in scientific testimony. I mean, the ACLU and every other so called civil rights organization would be screaming up and down talking about how unfair it is. Their silence is deafening when it comes to firearms and Mr Olofson's case. We haven't heard a peep out of any of them. And it's very scary quite frankly because if this is allowed to stand and it is in the 7th circuit so far, if you're going to be denied the ability to understand what you're being accused of - I mean, why don't they just go ahead and do the next step and say, well, your attorney has got to step out of the court room, you're on your own Bub!

I mean, because in practice that's what they did. Olofson was left without the council of an expert to try to explain this stuff to his attorney, and try to help craft questions to bring out the truth from the government - and he was just denied that right. I'm surprised they just didn't go the next step like I say and just remove his attorneys from the courtroom. I mean this was really, really unjust if you will, no sense of fairness or fair play. And, it should be a wake up call, not just for gun owners but for anybody else up there, I mean, who's going to do this next? The EPA? The FBI? The list is endless here. I mean, can you imagine trying to save the onslaught of the federal machine who's there to mow you down, and put you in prison and you're being denied in essence your right to council. Not your right to attorney mind but your right to council.

Aaron Zelman: Well OK, so how does this square with Department of Justice policies?

Len Savage: Well - it doesn't! So many things don't square with the Department of Justice policy with respect to Mr Olofson's case. For one thing, the testing agency, the ATF has firearms technology branch, and they're the folks that do the technical evaluation, do the testimony in court - but uh, they're not certified by any qualifying agency, their testing methods are not validated by anyone. Quite frankly the Department of Justice since 1997 has very clearly stated that uh, written technical procedures must be available for annalists to review and should include, to quote - 'descriptions of sample preparation under controlled standards and calibration procedures as well as a description of precautions and, most importantly, possible sources of error'. In Olofson's case, the ATF who is now part of the Department of Justice, absolutely violated policy and nobody's even blinking.

Aaron Zelman: They ought to demand by the Department of Justice in 1997

Len Savage: What they have

Aaron Zelman:to testing - and it's been ignored all these years.

Len Savage: The office of inspector general of the Department of Justice wrote a 500 plus page document on FBI testing and some funny business that went on in several court cases, and very clearly in their findings they talked about the need for written procedures and standards and what they must contain, and that they must be validated, by some agency. They actually very specifically talk about an F(?) class lab, and that's a certifying agency that the uh, procedures are scientific in nature and that gathered data is recorded and examined in a scientific manner. And, I can tell you from experience, that doesn't happen, and Firearms Technology Branch at the Bureau of Alcohol Tobacco Firearms and Explosives, or BATFE if you will. The funny things is, that the ATF does have

a laboratory and also has a head of all the laboratories, but for some reason the Firearms Technology Branch does not report to it. Now I say some reason, if you're very specific as to why, because if they had written standards they wouldn't be able to do this flim-flam that they did in Olofson's case in court.

Aaron Zelman: I guess if someone would like to see an example of this gross incompetence they could watch the actual test that was performed by an ATF agent in "The Gang" - the movie that we made, a documentary film, where he went out to test the gun but he omitted at the final end he didn't even bother to disassemble it to see what was going on internally. There's a question here you raised about dealing with the Olofson case about danger of court's definition about 'automatically', why it is self acting or self regulating - dangerous, as a definition. Not sure I fully understand that - perhaps you can elaborate on it.

Len Savage: Well, in the court of appeal's decision, they cited an Oxford dictionary 1934 definition that says 'automatically' refers to any self acting or self regulating mechanism. This is their new definition of a machine gun that they're putting forward. The real danger here is, that also describes a semi automatic firearm. When you squeeze the trigger on a semi automatic firearm it's self acting and self regulating - it ejects the spent cartridge, grabs a new cartridge and is ready to fire again. Under that definition every semi automatic could be considered a self regulating or self acting mechanism, and under that definition that they are giving for a machine gun, would also encompass every single semi automatic out there.

Aaron Zelman: Well -this leads us to another question then - you think that there's an effort by the government with the help of the courts, to criminalize firearms ownership?

Len Savage: Oh yes - way beyond Olofson. I've been involved in court cases coast to coast, either just as a technical advisor and being able to basically look over the shoulders and look at the case files and sometimes actively testifying in them. And, there is a definite agenda afoot if you will, to criminalize firearm's ownership, through the courts and, you know, the evidence doesn't hold up with any level of common sense and it's turning our justice system into a legal system, and surely you can understand the dangers of that.

Aaron Zelman: Yeah and it would become a nation of men and not a nation of laws.

Len Savage: That's just it, the rule of law is out the window. Never forget, that everything Hitler did in Germany prior to World War 2 was all nice and legal. Everyone - you know, it was immoral, it was evil, but by golly it was legal.

Aaron Zelman: If you had to speculate, based on this movement by the government to criminalize all gun owners, what do you think their next move will be in the next year or two?

Len Savage: Well, there's a couple of things. I see them certainly going down this path of anything goes with testing. The ATF position is if the ATF can turn it into a machine gun then it's a machine gun. We saw that in *Us v Kwan* out in Seattle - the government, you know, performed machining operations on Mr Kwan's firearm, replaced several parts and then turned around and told the court straight faced - "well hey, I was able to make a machine gun out of it, so therefore it's a machine gun". It's a recurring theme I'm seeing, literally, from one end of this country to the other.

Aaron Zelman: In fact we have an example of that within our documentary "The Gang", showing them actually manufacturing, taking scraps of metal and creating a gun and welding it and, all of a sudden, it's a machine gun. They're very good at doing this. While we're on this subject, it doesn't do much good at this point to lobby congress apparently because no one there is interested, whether

they be 'Republicrats' or Democans they really don't care any more about the second amendment from my perspective. So what should we gun owners be doing to sound the alarm?

Len Savage: Well that's a good question. With congress, with respect to firearms and the second amendment, the lights are on but nobody's home. I can tell you that I have personally spoke with members of congress and tried to push forward the Fairness of Firearms Testing Act, which has been reintroduced to this session of congress. I don't think it's got a snowball's chance of even getting out of committee, that's a good question. We need to educate the jurors, we need to turn on the lights, and bang the pots and pans if you will, because one thing for certain is if you shine the light on these folks and their methods they really don't like it.

Aaron Zelman: I've learned from that, yes

Len Savage: And it's a matter of folks taking their citizenship not for granted, and starting to act and get off their posteriors. And if it's just a situation of being a good citizen and getting on the jury and when you hear these ridiculous things doing what's right, if it's a matter of not only lobbying congress, I think that it is important that we do let congress know what's going on no matter what, even if they've got a deaf ear we've got to exhaust it every opportunity we have, to try to change this, because as soon as they get a real good toe hold and this starts working for them - and it has been working for them by the way for decades - the more they're going to do it.

Aaron Zelman: You know, we've been hearing about people who are upset with government spending and taxes, having their tea bag parties, I think it's time for gun owners to have some cartridge parties. Put some fired cartridges on a string or a chain and start rattling them around public buildings and make sure we gun owners are heard. There's something you alluded to but I think we have to pick up on it a little more, and that is that JPFO for many years has been saying that registration leads to confiscation, and what specific signs are you seeing about the government moving towards that area, of registering guns?

Len Savage: Well, without being taste specific I can tell you that I have first hand knowledge that the government has been using this nation's one nationwide registration scheme - that would be the NFA and GCA - the National Firearms Act and the Gun Control Act of 1968, which says that machine guns, short barreled rifles and short barreled shotguns and the like must be registered. They're all but issued a title like a car, and any time they transfer you have to go through a great deal of paperwork, you have to pay for a \$200 tax stamp, and your chief law enforcement officer has to sign off on your application. In a recent court case I saw where they used this registry to collect up all the guns that had serial numbers prior to the firearm in question, and all of the guns with serial numbers after the gun in question - approximately twenty of them and they just seized them. They knocked on the door, they scared the living daylight out of the folks who owned them and they said "give them up or", you know, "we are either going to seek a warrant or we're going to subpoena you to federal district court if you don't give them up" - and they took 'em. And they used these lawfully possessed firearms as evidence against another firearms owner.

The most chilling thing to me was a remark made by an ATF agent, when I was examining the evidence in this case - "boy, is there going to be some upset firearms owners when this is over with, 'cause I don't think we are giving these back". I can tell you that there's another case in another part of the country where they were using the registry to just go down like a hit list and started demanding firearms - started seizing them. Now, you need to understand that NFA owners if you will, to coin a term, are THE most responsible firearms owners in this country and that in 1934 none of them had ever been used to commit a crime, except twice, and coincidentally both of those instances were committed by a law enforcement officer and not a private citizen. So, you've got a 99.9999999% good

citizen rate if you will, because these folks haven't done anything wrong and aren't involved in crime. The firearms are typically extremely expensive which means doctors, lawyers, dentists, and professionals - the people with disposable income as the purchasers and owners of these, and they've never committed crimes with them yet the government is using this registration to seize firearms - and - it's proof positive to me that registration definitely leads to confiscation. Oh they'll - they'll make it sound legal and it may even be legal, but it doesn't make it right and it doesn't make it just. It certainly does not make it constitutional.

Aaron Zelman: How does this tie in with the 'tracer forward' initiative the ATF boys have been involved in?

Len Savage: Ah, the 'forward trace initiative' - I think we spoke about that the last time you had me on. Well, this is really interesting. Certain firearms, firearms that are politically sensitive, misnamed by the media as "assault" weapons, although they're not assault weapons. Assault weapons would be full auto and not only that, "assault" is a behavior, not a device but none the less, um, the so called "black guns", the AR-15's the FAL's, firearms that the media doesn't like - the government I guess, like the thought police - "well look, these guns *might* be used in a crime, so what we're going to do is just go ahead and trace them now and find out who's hands they are in and who's purchasing them". And they've been doing this, secretly if you will, for years according to the manufacturers I've been speaking with in the industry. And that is that during these mandatory compliance inspections to verify that a federal firearms licensee holder is doing the paperwork right and keeping track of everything. They're just writing down serial numbers and where they went and then they'll go to the next one and go to the dealer, and then go to the next dealer, and then find out who's the last private citizen was who filled an over the counter 4473 - the paperwork you have to fill out if you purchase a firearm through a federal firearms licensee. And gathering this information is certainly a violation of our right to privacy and it's wrong - but they're developing, if you will, an 'ad hoc' registry which is somewhat already in place anyway.

The national registry is not supposed to be lawful, but uh, and it's not in possession of the ATF, it's in the hands of the licensees, but most folks out there probably don't know is, if a licensee, that is a licensed firearms manufacturer goes out of business he is required to turn in all of his business records to the government. And, they have that information - every 4473, your acquisition and disposition books, that show, you know, where you got a firearm and who you sold it to - you go out of business the government has that. And uh, if you're in business and you get a call from the ATF - the National Tracing Center - um, you're mandated by law to give them the information if they say "hey" you know, "I need to do a trace of firearm xyz - so-and-so's book says that they received firearm serial number xyz from you, who did you sell it to and when?". And if they're a dealer please give us their licence number.

Although the ATF doesn't have a registry the law mandates we keep it for them. That's only supposed to happen in the event of a crime, a firearm either recovered from a criminal or a firearm that was used in the commission of a crime - they're supposed to trace it backwards all the way to the manufacturer, so they can figure out how in the world it got into the hands of a criminal. This 'forward trace initiative' is backwards, they start at the manufacturer and say "oh I see you sold 30 AR-15's to Joe's Gun Shop", and then they go to Joe's Gun Shop and say "well, who did you sell these to?", and they either pull the 4473's or they find out what dealer he sold them to. And, I guess in 'anticipation' of a crime even though one's not been committed.

Aaron Zelman: It appears then that ATF does indeed have a registry system, at least of certain guns. You know, the 'black guns' and they want to know who owns them and this has been going on for quite some time now.

Len Savage: To a certain degree they do - it's not all inclusive. According to our new Attorney General, I mean, he certainly wants to push this forward.

Aaron Zelman: Why don't we just remind people how serious the decision in the Olofson appeal is and what people should try to do aside from wasting their time talking to their congress critters.

Len Savage: I don't know that that's wasting time. We have got to just bang the possum pans as loud as we can. You need to be active, vocal. There's been a little bit of media attention on Olofson and we certainly thank CNN and Lou Dobbs for covering this. It's just a matter of getting vocal on the internet, whatever you can do to support it, if it's a matter of helping out JPFO financially. If it's a what, certainly there's something that every person can do. Even if it's a matter of demanding a meeting with your representative. It's one thing to pester them, it's another to just say "Dear Senator, I want 15 minutes of your time". I can tell you, that it's going to be a lot of work and they're going to try to toss you off to an aid, but if you continue to demand to speak with them, and you're willing to go through all that trouble to sit down with them and express your displeasure on them. They're going to take that far more seriously than any fax, letter or email. It's just one of those things. I wish I had some answers, you know, and if you can be a good citizen and be on a jury, be very aware of how evidence is being manipulated.

Aaron Zelman: OK, well Len I appreciate you spending time with us today.

Len Savage: Can I say one thing?

Aaron Zelman: No (laughs). Go ahead.

Len Savage: Well, it's come to my attention that the boys at BATFE are certainly listeners to your program and I would just like to say 'hello' to them and to all the folks at ATF Chief Council.

Aaron Zelman: OK well, we'll make sure they hear your fondest regards.

Len Savage: Thank you.

Aaron Zelman: Len, thank you very much for being with us today.

Len Savage: You're welcome.

Aaron Zelman: We've had the pleasure of talking with **Len Savage**, talking about what a disaster the Olofson appeal has become, for all of us, not just gun owners. This has been **Talkin' to America**, I have been your host **Aaron Zelman** and thank you again to our special guest **Len Savage**. And remember, if you won't defend your rights, don't complain when you lose them.

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