

**To:** Cunningham, Patrick (USAAZ)[Patrick.Cunningham@usdoj.gov]  
**Cc:** Burke, Dennis (USAAZ)[Dennis.Burke@usdoj.gov]; Scheel, Ann (USAAZ)[Ann.Scheel@usdoj.gov]; Hernandez, Rachel (USAAZ)[Rachel.Hernandez@usdoj.gov]; Morrissey, Mike (USAAZ)[Mike.Morrissey@usdoj.gov]  
**From:** Axelrod, Matthew (ODAG)  
**Sent:** Thur 3/24/2011 7:44:31 PM  
**Subject:** RE: Final email for Matt ROIs and First Transfers

Thanks, Pat. I really appreciate all the help in sorting this out.

On the legal analysis, I guess I do have a slightly different take. Maybe we can talk this through sometime later today?

**From:** Cunningham, Patrick (USAAZ)  
**Sent:** Thursday, March 24, 2011 3:32 PM  
**To:** Axelrod, Matthew (ODAG)  
**Cc:** Burke, Dennis (USAAZ); Scheel, Ann (USAAZ); Hernandez, Rachel (USAAZ); Morrissey, Mike (USAAZ)  
**Subject:** FW: Final email for Matt ROIs and First Transfers

Matt:

I wanted to get you a quick response regarding the first transfers from a lawful purchaser to a second person and why prosecution and seizure of those weapons are so difficult. This email is not for any letter but for your review of the ROIs and if your view of the governing statutes is different, by all means give me a call to discuss. We are preparing answers to the six questions for you and reviewing each ROI you sent us. We will call you to arrange some meeting times to discuss the ROIs on your schedule.

The problem with prosecuting 924 a1A based on the fact that the DF later sold or transferred the guns at a gun show, or in a parking lot, is that we must prove beyond a reasonable doubt that when the df bought the guns, the df was not buying the guns for himself. The form asks if you are the actual purchaser at the moment of purchase. The form does not ask whether or not you might soon sell the gun. Even if df bought 200 guns to sell later that afternoon at the gun show (which we have virtually every other weekend somewhere in Arizona) or to a third party, we must prove that at the moment the Df bought the guns he was really buying them for a third party. Proving the inner workings of a potential defendant's mind at the time of purchase, without a confession by a defendant, is incredibly difficult.

When a purchaser buys a gun and then a few minutes later we see him hand it to another guy, if we arrest them at the point of transfer or soon thereafter we can only prove the case if the defendant make admissions. If neither makes a statement, we cannot prove a case that the buyer lied simply because a transfer of the guns occurred. They will make up any story as to why they transferred the gun, for example, he was selling them for me, or they were payment of a debt or

for work on my car. Worse, we will have to give the guns back because we cannot make the burden of proof in 924 d of clear and convincing evidence that the firearms are intended to be used in a crime of violence, because we do not have proof linking the guns to a listed crime of violence yet. All these defendants have to do is shut up and they win.

As the paragraph in our latest response letter we make clear these transfers are lawful until we develop more evidence:

“One of the principal challenges in this, like many gun trafficking investigations, has been developing sufficient evidence that particular gun purchases are unlawful straw purchases, which is an essential prerequisite to interdicting the guns. As you know, it is perfectly legal for a law-abiding citizen to purchase an unlimited number of firearms from a licensed gun dealer at any time, legal to transfer them to another person, and legal to even sell or barter them to another person. Even if ATF suspects in advance a straw purchase, ATF must conduct additional investigative work, such as surveilling the purchaser, to develop enough evidence to establish that the guns were purchased for unlawful resale or transfer to individuals who are not eligible to purchase them, or to establish by clear and convincing evidence that the firearm is intended to be used to commit a crime under 18 U.S.C. § 924(d). Absent such evidence, ATF agents have no legal authority to interfere with the transportation of guns. “

Finally, to prove unlicensed dealing under 922a1A we have to show a pattern of buying and selling for the purposes of livelihood and profit. A person is allowed to buy and sell to enhance their collection. A person could buy 50 guns on Saturday, decide that he wasn't happy with them or couldn't afford them, and sell them Sunday.

Thanks. PJC

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**From:** Axelrod, Matthew (ODAG) (SMO)  
**Sent:** Wednesday, March 23, 2011 4:36 PM  
**To:** Cunningham, Patrick (USAAZ)  
**Subject:** ROIs

Pat,

Great speaking to you earlier. Here's the list of ROIs falling into the two categories I described, with the caveat that I've only read through ROI 399 so there may be additional ones falling into these categories that I simply haven't read yet.

**ATF**

Thanks.

Matt

Matthew S. Axelrod

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