

Drill instructor convicted after rifle jams

Guardsman guilty of illegally transferring 'machine gun' after firearm malfunctions

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A drill instructor in the National Guard has been convicted in a Wisconsin federal court of illegally transferring a machine gun after a rifle he loaned to a student malfunctioned, setting off three shots before jamming. The verdict of guilty on one count in the case against David Olofson was confirmed yesterday by the [clerk's office in the U.S. District Court for the Eastern District of Wisconsin](#). **That means now that anyone whose weapon malfunctions is subject to charges of having or handling a banned gun,** according to an expert witness who reports that the particular problem is a well-known malfunction and was even the subject of a recall from the manufacturer. **"If your semiautomatic rifle breaks or malfunctions you are now subject to prosecution.** That is now a sad FACT. I guess we know now what Sen. Kennedy meant when he said he looked forward to working with [Acting Bureau of Alcohol, Tobacco, Firearms and Explosives Director] Mike Sullivan on Gun control issues, after his committee approved him for full Senate vote," Len Savage, a weaponry expert who runs Historic Arms LLC, said in a blog. **"To those in the sporting culture who have derided 'black guns' and so-called 'assault weapons'; Your double barreled shotgun is now next up to be seized and you could possibly be prosecuted if the ATF can get it to 'fire more than once,'"** he wrote in [a blog run by Red's Trading Post](#). **"Hey, but don't worry," Savage said. "The people testing it have no procedures in writing and the testing will be in secret. Also if you know of information that proves YOUR innocence, maybe the ATF won't claim that it's tax information at your trial and prevent YOUR judge from viewing it."**

He told an [interview with Jews for the Preservation of Firearms Ownership](#) that Olofson had been instructing a man in the use of guns, and the student asked to borrow a rifle for some shooting practice. "Mr. Olofson was nice enough to accommodate him," Savage said. So the student, Robert Kiernicki, went to a range and fired about 120 rounds. "He went to put in another magazine and the rifle shot three times, then jammed," Savage said. A couple of police officers who also were at the range immediately approached him and started asking questions about the "automatic" fire, and he told them it was a borrowed weapon. "Mr. Olofson, being a responsible person, went down to the police station and said, 'I'm in the National Guard. I know what a machine gun looks like. That's not it,'" Savage said. But instead of having the issues resolve, Savage said, it got worse. He reported that **because of the malfunction, the rifle was seized and sent to the Firearm Technology Branch, the testing arm of the federal agency.** **"The examined and test fired the rifle; then declared it to be 'just a rifle,'" Savage said. "You would think it would all be resolved at this point, this was merely the beginning."** He said the Special Agent in Charge, Jody Keeku, asked for a re-test and specified that the tests use "soft primed commercial ammunition." **"FTB has no standardized testing procedures, in fact it has no written procedures at all for testing firearms," Savage said. "They had no standard to stick to, and gleefully tried again. The results this time...a machinegun."** ATF with a self-admitted 50 percent error rate pursued an indictment and Mr. Olofson was charged with 'Unlawful transfer of a machinegun.'. Not possession, not even Robert Kiernicki was charged with possession (who actually possessed the rifle), though **the ATF paid Mr. Kiernicki 'an undisclosed amount of money' to testify against Mr. Olofson at trial,"** Savage said. **And then during the trial, the prosecution told the judge it would not provide some information defense lawyers felt would clear their client,** Savage continued. **That included the fact that the rifle's manufacturer, Olympic Arms, had been issued a recall notice for that very model in 1986 over an issue of guns inadvertently slipping into full automatic mode, if certain parts were worn or if certain ammunition was used.** Ryan Horsley, who posts the [Red's Trading Post](#) blog, said the results were "very concerning." "Basically if your Ruger 10/22, Browning Citori Over and Under or Remington 11-87 malfunction and fire more than one round at a time; the ATF will now consider it a machine gun," he wrote. He told WND he's had personal experience with guns that malfunction and fire more than one bullet. Even double-barreled shotguns, if both shells would be released at once, now could be considered machine guns and illegal, he said. **"This precedent is very dangerous,"** he said.

Defense attorneys in the Olofson case couldn't be reached immediately to determine whether an appeal would be pursued, but Savage noted the arguments by assistant **U.S. Attorney Greg Hannstad, who handled the prosecution.** **"Hannstad claimed the law does not exempt a malfunction.** He claims that it states 'any weapon that shoots more than once without manual reloading, per function of the trigger is a machinegun.' To clarify when I was on the stand, I asked him, 'Are you saying if I take my Great Granddaddy's double barrel out and I pull one trigger and both barrels go off, it's a machinegun?' He went back to ... 'any weapon that shoots...'" Savage said. On the Red's blog, commenters were incensed. "'Innocent until proven guilty' has been transformed by **the ATF into 'guilty until framed,'**" said LibertyPlease. Horsley also told WND the 2008 edition of Firearms Law Deskbook quotes from a 1999 case in which the court concluded the law on automatic weapons "is not intended to trap the unwary innocent, and well intentioned citizen who possess an otherwise semi-automatic weapon that, by repeated use of the weapon, by the inevitable wear and tear of sporting activities, or by means of mere inattention, happenstance, or ill-fortune, fires more than semi-automatically."