



U. S. Department of Justice  
Office of the Solicitor General

*The Solicitor General*

*Washington, D.C. 20530*

January 25, 1995

Michael Davidson, Esquire  
Senate Legal Counsel  
642 Hart Building  
Washington, D.C. 20510

Re: United States v. Raymond Rybar, Crim. No. 94-  
243 (W.D. Pa. Jan. 9, 1995)

Dear Mr. Davidson:

I am writing to notify you that we have determined not to appeal the decision of the district court in the above-referenced case. Although the applicability of 26 U.S.C. 288k(b) is unclear in this particular instance, I thought it best to make you aware of this matter.

The defendant in this case is a federally licensed firearms dealer who transferred two machinguns without filing an application for the transfer and registration and without paying the tax required by the National Firearms Act, 26 U.S.C. 5801-5872. He was charged with two counts of transferring machinguns, in violation of 18 U.S.C. 922(o), and with two counts of transferring unregistered machinguns, in violation of 26 U.S.C. 5861(e).

The district court dismissed the Title 26 counts, holding that 26 U.S.C. 5861(e) is unconstitutional insofar as it makes it a criminal offense to transfer an unregistered machinegun. The court reasoned that, in light of the enactment of 18 U.S.C. 922(o), it is not possible for the defendant to register machineguns. Thus, the court stated, he was charged with failing to perform an act -- registration -- that has been prohibited by law. That result, according to the court, violated the Due Process Clause of the Fifth Amendment.

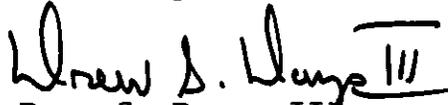
Following the dismissal of the Title 26 counts, the defendant entered a guilty plea to the charges under 18 U.S.C. 922(o), reserving the right to appeal the constitutionality of that provision. In light of the defendant's guilty plea and upon consideration of the possibility that this case, if appealed, might result in adverse appellate precedent, I determined not to authorize this an appeal in this case. If an appeal had been

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authorized, the notice of appeal would have been due by February 5, 1995.

Please do not hesitate to contact me if you have any questions. With best wishes.

Sincerely,

A handwritten signature in cursive script that reads "Drew S. Days, III". The signature is written in dark ink and is positioned above the printed name.

Drew S. Days, III  
Solicitor General

cc: Cheryl Lau, Esquire  
General Counsel to the Clerk  
219 Cannon House Office Building  
Washington, D.C. 20515