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1 (The following was had on September 17, 2008:)

2 THE COURT: Good morning. I think we're finally ready
3 to start, and on behalf of the parties and the Court I
4 apologize for any inconvenience, and I know we got ahold of
5 some of you yesterday before you came here, but I do apologize
6 for any inconvenience. We've had -- as I mentioned, on
7 occasion there are certain emergency matters that come up that
8 we have to deal with, and a late developing emergency matter
9 which we were all unaware of Monday developed in this case on
10 some evidentiary issues which took a little while to resolve.
11 So with that, again, I apologize for any inconvenience, and we
12 will begin the trial at this time.

13 First of all I'm going to ask you now to stand and be
14 sworn by the clerk.

15 (The jurors were sworn by the clerk)

16 THE COURT: Now that you've been sworn as the jury to
17 try this case, I would like to give you some preliminary
18 instructions at this time.

19 By your verdict you'll decide the disputed issues of fact.
20 I will decide all the questions of law that arise during the
21 trial and before you retire to deliberate together I'll give
22 you instructions on the rules of law that you're to follow and
23 apply to the facts as you determine them to be when you reach
24 your decision. Because you've been called upon to decide the
25 facts of the case you should give careful attention to the

1 testimony and evidence presented for your consideration during
2 the trial, but keep an open mind and should not form any or
3 state any opinion about the case one way or the other until
4 you've heard all of the evidence and I've instructed you on the
5 law as well as having the benefit of the closing arguments of
6 the attorneys.

7 During the trial, as I mentioned Monday, you're not to
8 discuss the case among yourselves or with any other persons,
9 and not permit, you must not permit anyone else to attempt to
10 discuss the case with you. I've counseled with the attorneys
11 to make sure that they tell all of their witnesses to have no
12 contact with you either informally, innocently, or whatever,
13 and, likewise, anybody you come to recognize as being part of
14 this case, you should not engage in any conversations or
15 anything else, just to avoid even the appearance of
16 impropriety.

17 You must also, as I mentioned, avoid reading any
18 newspapers or listening to television or radio coverage or
19 avoid doing any research anything on the internet not only this
20 case but the subject matter of this case, because you've sworn
21 to me and your fellow jurors and these parties that you would
22 ways base your decision solely on the evidence that's
23 introduced in this courtroom and the law as instruct you and no
24 other outside factors.

25 I may be called upon during this trial to make certain

1 rulings on the law. Normally those are what evidence can be
2 introduced, not introduced, things like that. You should not
3 infer from, or conclude from any decision that I make which way
4 you should decide the case or whether -- you shouldn't form any
5 opinion on the merits of the case based upon some ruling I've
6 made. If I sustain an objection to a question that's asked of
7 a witness and it goes unanswered you should not speculate on
8 what that answer might be and should not draw any inferences
9 from the question itself. Many times I think jurors feel,
10 well, the judge is trying to keep us from hearing evidence that
11 we ought to hear, but basically the evidence that I exclude is
12 normally evidence -- for two reasons I exclude evidence. One
13 is it's not relevant to this case, or secondly, it's not
14 reliable evidence. Now, you've heard of hearsay evidence.
15 Well, there's several reasons the Court generally excludes
16 hearsay evidence. One is it's kind of like, you know, if you
17 tell somebody something and they tell somebody else something,
18 by the time it gets back it may not be in the same, may not be
19 quite the same as it was when it was first told. And that's
20 hearsay when somebody else testifies as to what they heard from
21 somebody else, so it's not quite as reliable. And secondly,
22 even though somebody gave an answer, you know, if you don't
23 have the expression of the way they've given it or something or
24 maybe they meant it one way and said it another way based upon
25 the whole context of the conversation or something like that.

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1 So there's numerous reasons why we exclude hearsay evidence.
2 The other reason, of course, is the parties don't have a chance
3 to confront the witness who may have made the statement and
4 cross-examine that witness to see, you know, what they meant by
5 it or something. So there's numerous reasons. Now, there are
6 exceptions and some hearsay evidence we do admit under certain
7 circumstances so, there are exemptions to that rule. So it's
8 not that in any evidentiary ruling I make I'm trying to keep
9 evidence out that you should hear or should know about in
10 making your decision.

11 I would like to give you just a few preliminary
12 instructions on the law that you're to follow at this time to
13 help you better understand these proceedings as we go through
14 them, and I'll give you a much more lengthy and detailed
15 description of the law you're to follow, but some general
16 preliminary instructions at this time will maybe help you
17 understand the basic rules in a case like this that you're to
18 follow.

19 First of all, as I told you during the process of your
20 selection, an indictment in a criminal case is merely the paper
21 which states the charge or charges that are to be determined at
22 the trial. It is not evidence against the defendant or anyone
23 else. The defendant in this case, Mr. Friesen, has entered a
24 plea of not guilty, and is presumed by the law to be innocent.
25 The government has the burden of proving him guilty beyond a

1 reasonable doubt, and if it fails to do so you must acquit him.
2 Proof beyond a reasonable doubt is proof of such a convincing
3 character that you would be willing to rely and act upon it
4 without hesitation in the most important of your affairs.

5 Because the government has the burden of proof it will go
6 forward and present its testimony and evidence first. After
7 the government finishes or rests what we call its case in
8 chief, the defendant may call witnesses and present evidence on
9 his behalf. However, you remember that the law does not
10 require defendant to prove his innocence or produce any evidence,
11 and no inference whatever can be drawn from the election of a
12 defendant not to testify in the event that he should so elect.

13 As you listen to the testimony of the witnesses, you
14 should remember that you'll be the sole judges of the
15 credibility or believability of those witnesses and the
16 weight to be given his or her testimony. In deciding whether
17 you believe or disbelieve any witness you should consider their
18 relationship to the government or to the defendant, their
19 interest if anything in the outcome of the case, the manner of
20 testifying, their opportunity to observe or acquire knowledge
21 concerning the facts about which they've testified, their
22 candor, fairness, and intelligence and the extent to which
23 they've been supported or contradicted by other credible
24 evidence. You may, in short, accept or reject the testimony of
25 any witness in whole or in part.

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1 As we begin the trial at this time by affording the
2 attorneys on each side to make what are called opening
3 statements which they will explain the issues in this case and
4 a brief overview of the evidence that they expect to be
5 introduced. This is not argument and they are not to argue the
6 positions, but simply to give you kind of a preview of the
7 case.

8 After the testimony and the evidence has all been
9 presented, the attorneys will then be given another opportunity
10 to make their arguments or summations of the evidence that has
11 been presented, and any conclusions that they feel like you
12 should infer or conclude from the evidence. But it's your
13 conclusions and your inferences that you want to draw, of
14 course, that control.

15 The statements that the attorneys make now as well as the
16 arguments at the end of the case are not to be considered by
17 you either as evidence, which comes only from the witness stand
18 and the exhibits that are introduced, or as your instruction on
19 the law, which will come only from me. Nevertheless, these
20 statements and arguments by counsel are very important and
21 intended to help you understand the evidence as it comes in,
22 the issues and disputes you'll be called upon to decide, as
23 well as the positions taken by both sides. So I will ask that
24 you give the attorneys your close attention as I recognize them
25 in turn for making their opening statement.

1 Mr. Martin, is the defendant ready proceed with trial?

2 MR. MARTIN: Mr. Friesen is ready, your Honor.

3 THE COURT: Mr. Kumi ega, is the government ready to
4 proceed with trial?

5 MR. KUMI EGA: The United States of America is ready,
6 your Honor.

7 THE COURT: Mr. Kumi ega, you -- one other thing I
8 should mention is -- Ms. Youngberg, you've given them all
9 notebooks, haven't you?

10 THE CLERK: Yes.

11 THE COURT: I do allow note-taking during these
12 proceedings, and since this is going to be a trial that is
13 going to last about six or seven days, that's something that
14 helps considerably. But there's a few cautionary comments I
15 want to make. You can and are permitted to take notes, you'll
16 be permit to use those notes in your jury deliberations. On
17 the other hand, you're not required to take notes, and some of
18 you may take notes and some may not during different things,
19 but the one thing I would encourage you not to do is try to
20 write down and to make a transcript of this proceeding because
21 unless you have, unless you're very qualified in shorthand or
22 have a little machine like Ms. Ring has, you're going to miss a
23 whole lot. And plus, when you try to take down too much, you
24 may miss the demeanor of the witnesses, you may miss certain
25 new testimony while you're taking other testimony down. So I

1 would just say that take notes maybe on a few highlight things
2 that you feel that might be -- you might want to recall about a
3 witness or you might want to make a certain note of certain
4 statements, but don't try to transcribe the whole trial.

5 And also sometimes there will be disputes among
6 yourselves, maybe your notes will even be conflicting as to
7 what one witness said. Sometimes somebody may have taken a
8 note about some testimony and somebody else may have remembered
9 it differently. It's your independent recollections, whether
10 you take notes or don't take notes, that matter. So don't just
11 ordinarily, or customarily automatically give in to someone who
12 has taken a note of something if you remembered it differently.
13 It's your independent recollection that's important. In other
14 words, somebody's notes are no more -- given no more weight
15 than your own independent recollection of what occurred. But
16 collectively, perhaps, that's what a jury is for and that's why
17 we have 12 of you to collectively remember.

18 Also I would just warn you that a transcript of these
19 proceedings will not be available to you in your jury
20 deliberations because a transcript is not normally prepared
21 until months later after a trial, and so you need to pay close
22 attention to all of the evidence in the trial and, as I say,
23 make whatever notes you think are important.

24 Mr. Kumiaga, does -- Mr. Martin, does either side wish the
25 rule to be invoked?

1 MR. MARTIN: Yes, your Honor, subject to the -- what
2 we discussed in chambers.

3 THE COURT: Exclusion of experts?

4 MR. MARTIN: Yes, sir.

5 THE COURT: The rule of sequestration will be invoked,
6 and that means that all persons who know themselves to be
7 witnesses in this matter will be excluded from the courtroom
8 except during their testimony. It also means that persons who
9 are witnesses should not discuss their testimony with other
10 persons who may be witnesses in this matter, and I will
11 instruct the attorneys to make sure that they instruct all
12 witnesses not to discuss their testimony with other potential
13 witnesses in this matter.

14 The Court will make an exception for the designated
15 experts of both the government and the expert witnesses of both
16 the government and the defendant in this matter.

17 MR. KUMIEGA: Your Honor, may the case agent also take
18 at counsel table.

19 THE COURT: Yes. The Court will make an exception of
20 the rule for Mr. Knopp, the case agent in this matter.

21 Mr. Kumi ega, you may make your opening statement at this
22 time.

23 MR. KUMIEGA: Thank you, your Honor. If I may have a
24 moment to get some charts out.

25 THE COURT: Sure.

1 I would also comment that the podium there's a little box
2 there that has certain little lights on it that come on, and
3 the purpose of that is we place a time limit on the attorneys'
4 opening statements and arguments. And that's only a --
5 provides a warning light as to them about when their time is
6 about up, and also a red light when their time is up.

7 You may proceed.

8 MR. KUMI EGA: If it please place the Court, Ladies and
9 gentlemen of the jury: Again, my name is Edward Kumi ega, I'm
10 the Assistant U.S. Attorney that's prosecuting this case. Mr.
11 Knopp is the case agent, and I want to introduce a new person
12 that is at counsel table that you didn't see on Monday when we
13 were picking a jury, that's Bonnie Webb, and she's our IT
14 specialist and she's be, I guess, managing photographs as we
15 present them to you, photographs that are going to be exhibits
16 if the Court allows them for admission.

17 As the Court said, this part of the trial is the opening
18 statement, and that is exactly what it is. It's a statement,
19 it's not evidence, it's not the government's -- it's an outline
20 of the government's case, it's like a road map. It's basically
21 a concept of how the government intends to during the course of
22 these days bring witnesses and exhibits for your consideration
23 during the course of these proceedings. And the evidence
24 you're going to hear is going to come from that witness stand
25 over there in the corner, and then as people look at these

1 exhibits and the Court permits them, we'll flash them for your
2 consideration so you can see the, see the case unfold.

3 What I have here is a time line chart of the government's
4 theory of the case. And this is just a demonstrative exhibit,
5 it's an aid for you to understand how this case is going to
6 unfold. The theme of this case, what the government is going
7 to attempt to prove today, and like I said, what I say is not
8 evidence, it's just what the government is going to attempt to
9 prove, is that Mr. Friesen the defendant, at one time was a
10 licensed gun dealer. And this chart here I think, this line is
11 during this period of time he was a licensed gun dealer, he's
12 allowed to sell guns. And the evidence shows if you're selling
13 guns, the evidence will show that you have to account to the
14 government of your gun sales, your gun possessions, you have to
15 have some type of responsibility when you sell these firearms.
16 And Mr. Friesen took that responsibility from May 1993 to
17 November of 2003.

18 During a period of time within that he also took the
19 responsibility, the government will allege, of also having the
20 ability to sell machine guns, silencers, and other type of I
21 guess exotic type weaponry. But he had only had that for a
22 three-year period of time or less. This becomes important
23 because the only reason inspectors from the Alcohol, Tobacco &
24 Firearms could go to visit with him is because he had that
25 license to sell guns. He has a license to sell guns.

1 And the government's theme of the case is even though Mr.
2 Friesen had a license to sell guns, he deceived the inspectors
3 by exhibiting a gun that he was not supposed to have, a machine
4 gun, and that's why we're here today. And during the course of
5 his conversations with these inspectors he lied about it. And
6 these are the five counts of the indictment.

7 Now, the Court gave you a summary, but in specific mode,
8 in Count 1, the government alleges on February 19th, 2003, and
9 that's here, Mr. Friesen said that a gun that he had, a Sten
10 machine gun was a gun that was actually registered to him, and
11 he showed a part number on that gun, a D number, D95843, was
12 the serial number, when in truth and fact it was not.

13 Count No. 2 talks about him, when the inspectors asked him
14 where he kept his guns, because the inspectors want to have an
15 accountability of where you keep your guns for sale or to
16 possess, he said that all my guns in my business, in my law
17 practice were on the second floor. Well, in truth and fact,
18 there was a gun vault hidden behind a library bookshelf that
19 had guns.

20 Count No. 3 talks about Mr. Friesen trying to sell the gun
21 and telling the people in Washington, D.C., the people who sell
22 -- who approve transfers, that the gun that he's trying to sell
23 was not really registered to him.

24 And Counts 4 and 5 talk about Mr. Friesen saying that the
25 girls, the inspectors, missed the serial number because they

1 were in a hurry. And the last count is the possession of an
2 unregistered machine gun. That's the counts of the indictment.

3 Now, the law -- Mr. Friesen back in February 26th, 1996,
4 legally possessed a machine gun. It's a Sten II -- Mark II
5 machine gun with serial number E683. And this is a type of
6 gun, a Sten II machine gun also. There will be testimony about
7 that. However, when the inspectors went out there on February
8 19, 2003, after hours of talking to Mr. Friesen, the inspectors
9 were shown this type of machine gun that was registered to him,
10 that he said was registered to him. And this is a Mark III
11 Sten machine gun, and the only number that the inspectors saw
12 that day was the D59843 part number. As the chart shows Mr.
13 Friesen had E683 registered to him, but on November 19th, 2003,
14 there was no serial number, there was only a parts number.

15 Later on, 16 months later, on June of 2004, a search
16 warrant is conducted. The Court authorizes the government for
17 a search warrant and the United States goes out there and
18 seizes a firearm that looks just like this, and now has a part
19 number. When the inspectors went out -- I mean the serial
20 number. When the inspectors went out there in February of
21 2003, they never saw a serial number, they just saw a part
22 number. When the investigators went in June of 2004, they
23 seize the machine gun that had that same part number back in
24 2003, and now they saw a serial number that they believe was
25 added on there to show or to try to cover up the fact that this

1 machine gun is missing.

2 So the purpose of this trial will be the government is
3 going to show that Mr. Friesen did have a registered machine
4 gun, the gun that's over here, but the gun that he showed the
5 inspectors, that was not the gun that was registered to him.
6 So as the trial unfolds just think about the two machine guns,
7 the one that is lawfully registered to him and has never been
8 found from the government's position, and the gun that was
9 seized in June of 2004 that was found with a bogus serial
10 number to match that one here. That's basically the
11 government's case.

12 Now, government will bring witnesses, the two inspectors
13 who did the inventory on September -- excuse me, on February
14 19th, 2003. And during their look at the machine gun, they
15 went upstairs to Mr. Friesen's room, the room is well lit, and
16 Mr. Friesen presents them, presents the girls this firearm.
17 Each of the inspectors looked at the gun collectively and
18 separately, and Mr. Friesen looked at it. And the testimony we
19 believe from the inspectors is that they asked Mr. Friesen
20 where is the serial number on the gun, and he doesn't give them
21 the E683 number, he says it's the part number, the D95483. The
22 testimony will be, and we believe that these inspectors have
23 been doing this for many, many years, they work together as a
24 team, they work sometimes separately, and they were very
25 conscientious, and when they looked at the gun 16 months later

1 it was not in the same condition, the same condition that when
2 they observed it in February.

3 Now, we're going to call some forensic people who will say
4 that the serial number, the E683 that's on this gun is a
5 strange serial number, there is something wrong with it. And
6 we're going to call the manufacturer of the firearm who will
7 say that the E683 on this gun, the Mark III is not my serial
8 number; I never made this gun. And that's going to be part of
9 the government's testimony.

10 Also, during the course of the inspection, the inspectors
11 on -- this happened, they went out there approximately six
12 times, twice on the 19th and the inspection ended in March 4th
13 of 2003 -- one of the inspectors asked Mr. Friesen, well, you
14 know, you're a licensed gun dealer, you have to account for
15 your firearms, there is some type of responsibility, where do
16 you keep your guns for sale? And he said, everything is on the
17 second floor. Well, in truth and fact when they did the search
18 warrant on that day, as I said before, behind the library
19 shelves there was a gun safe, and in that gun safe was 12
20 firearms. And the United States is going to call several
21 former employees of Mr. Friesen who will say that that gun safe
22 was always full of guns. He kept that gun safe for the purpose
23 of his collection, or to sell his firearms.

24 So basically there are going to be four broad categories
25 of witnesses. They are going to be the inspectors who are

1 going to testify about the inspection, they are going to be the
2 forensic people who are going to testify that there is only one
3 coating on the firearm, one coat of paint on the firearm.
4 We're also going to call the employees. And there are going to
5 be other people who will testify about Mr. Friesen's
6 relationship with that Sten machine gun.

7 Now, as I said, one of the key dates is June 2004. Agent
8 Knopp, the investigator of the case, went out there to serve
9 Mr. Friesen the search warrant. Mr. Friesen is not under
10 arrest, they are having a conversation. Mr. Friesen freely
11 acknowledges that there was a gun vault behind the hidden
12 bookcase, he said there was many guns in there, and in fact,
13 the evidence will show there were 12 guns in there. And Mr.
14 Friesen looks at the search warrant, goes to the house, the
15 residence, and the machine gun is in his residence, and he says
16 to the, to Investigator Knopp, the ATF agent at that time, and
17 said, well, what really happened here, the evidence will show,
18 that the girls were in a hurry and they missed the serial
19 number.

20 That is basically the nuts and bolts of the government's
21 case. So the time line starts here where Mr. Friesen lawfully
22 has a machine gun, that's never -- the government's position
23 it's never been found during the course of the investigation, a
24 Mark III Sten machine gun was in fact seized and it's not like
25 the machine gun that he's supposed to have, and that's what we

1 believe the testimony of the manufacturer will come in. And
2 there are other firearms that were always in his gun safe
3 behind the hidden bookshelf that were never disclosed during
4 the course of the inspection.

5 Now, the manufacturer of this gun, a guy named Charles
6 Erb, it's not like Smith and Wesson, he's a boutique
7 manufacturer of machine guns. He's been doing it for many,
8 many years. He manufactured the gun in Pittsburg,
9 Pennsylvania, or around there. And he's going to come here and
10 look at this gun and say this is not my serial number that I
11 affixed, and this is not the type of gun that it was designed
12 to be.

13 Now, Mr. Erb did not make a Sten II machine gun. He makes
14 a tube, and then as it goes through the chain of these
15 wholesales they put attachments on it. But the tube, the tube
16 is an indication of what type of gun it is. The government --
17 the evidence will show that the serial number of the firearm is
18 like the DNA of a gun. The serial number is like the DNA of
19 the gun. This is the chromosomes. It's the only way you can
20 tell if a gun is registered to somebody or not. And there will
21 be much testimony about how the ATF registers these firearms
22 through the analysis of the serial number. And we'll have
23 several witnesses who will testify to the documents regarding
24 how these guns are registered.

25 So, for instance, the evidence will show that Mr. Friesen

1 got this gun, as I said, in 1996, in February, but it was
2 manufactured initially in Pittsburg, Pennsylvania, or
3 thereabouts. It went to a wholesaler in Chicago, went to
4 somebody in Florida, to somebody in Alabama, and evidence will
5 show that Mr. Friesen bought that firearm from a gun dealer, a
6 wholesaler in Alabama.

7 During the course of the search -- the United States will
8 also talk about or introduce evidence that in Mr. Friesen's
9 possession there was evidence, like a videotape and some
10 documents to show that he was, the government is going to show,
11 or attempt to show that Mr. Friesen had these documents to show
12 how to build a machine gun, how to repair it, how to build a
13 machine gun. That was one of the documents that was seized
14 during the course of the search.

15 Also, it's another interesting item, when the inspectors
16 went out there and they were armed with all his machine guns
17 and silencers that he lawfully possessed, they were asking, the
18 inspectors were asking Mr. Friesen, where is one of your
19 silencers? And Mr. Friesen said, oh, I loaned that silencer
20 out. So four hours later that silencer showed up during the
21 course of the inspection. And the testimony we believe will
22 show that was -- that was not proper for Mr. Friesen to loan a
23 silencer even to a police officer without the proper
24 documentation from ATF.

25 The United States will also bring in for your attention

1 what we call bookend guns. The serial number in question is
2 683, that is marked here. We're going to bring into the Court
3 No. 682 and No. 685. And the United States believes that
4 Charles Erb, the manufacturer, will say these are what my
5 serial numbers look like, the 682 and the 685, and we'll show
6 them as evidence for your consideration to see what a real
7 serial number looks like. And that's part of the totality of
8 the government's case.

9 We'll have the forensic people say this certainly is a
10 machine gun. We'll have a chemist to say there's only one
11 layer of coat on there, of paint. And then we'll have the tool
12 and die examiner that says the stamp, the 683 that was seized
13 by the ATF in June 10th, 2004, was stamped multiple times.
14 It's not a nice serial number but there are multiple stamps
15 like someone was in a hurry to put a stamp on that firearm.

16 Now, there will be other evidence as we go along in the
17 case, but this is basically the crux of the case: That on
18 2/19/03 there was an inspection, they found a gun that didn't
19 have a serial number. Later on they get a search warrant, they
20 find the firearm that now has a serial number. And then we
21 have the statements that are associated with Mr. Friesen
22 explaining to the inspectors about how the serial number
23 appeared on the firearm.

24 After you listen to all this testimony the government
25 believes you'll have enough evidence to find Mr. Friesen guilty

1 of the five counts of the offenses charged. Thank you.

2 THE COURT: Thank you, Mr. Kumiaga. Mr. Martin, do
3 you wish to make your opening statement at this time?

4 MR. MARTIN: If I might, your Honor.

5 THE COURT: You may proceed.

6 MR. MARTIN: Ladies and gentlemen of the jury: As I
7 told you the other day, I'm Mack Martin. I think I announced
8 that my associate Kendall Sykes, she wasn't here, but this is
9 Kendall Sykes, and this is Doug Friesen.

10 Our plea is not guilty to all five counts, and we're going
11 to ask you at the return of all the evidence, at the end of all
12 the evidence to return a verdict of not guilty.

13 The facts in this case are going to be extremely
14 contested, I will advise you. I will tell you that I
15 anticipate the evidence will show that Doug Friesen is a
16 licensed attorney in the State of Oklahoma, that he's been very
17 active in the Bar Association, law-related activities, that he
18 practices divorce, personal injury, criminal law, civil law,
19 administrative law, regulatory law, and he's a very busy man,
20 successful lawyer. That not only does he do that but he's what
21 you would call a firearm enthusiast. So much so that in layman
22 terms, during a period of time, as Mr. Kumiaga said, he was
23 licensed to buy and sell firearms. He was also licensed or had
24 permission to own certain types of firearms if he had the
25 appropriate tax stamps for them, for machine guns or silencer

1 or things like that, unique weapons.

2 Evidence and testimony will also be that because of his
3 specialized knowledge of firearms that he teaches law
4 enforcement officers, that he's been to all kinds of training
5 classes, that he teaches what they call at continuing legal law
6 enforcement education training classes. Many of the people he
7 runs with are police officers, that he teaches classes on
8 concealed carry, when you have the -- obtain a permit to carry
9 a concealed weapon, he teaches those classes, that he's very
10 versed in this area of the law.

11 That is about Doug's background. That's who he is. Most
12 of his friends, most of the people that we will have called are
13 either people that work in his law firm or have a law
14 enforcement background.

15 The case that we have here, the case that the government
16 has, we anticipate the evidence will be that in 1996, Doug got
17 a special license to purchase a Sten machine gun. He's not the
18 first person that owned this gun, he's the fifth person to own
19 this gun. The evidence will be that nobody saw this gun,
20 nobody will remember this gun when it was first bought, nor
21 will the second owner remember it, nor will the third owner
22 remember it, nor will the fourth owner remember it. The first
23 time attention has ever been drawn to this gun is in this
24 courtroom today, ladies and gentlemen.

25 This gun is a firearm that is a machine gun, it's called a

1 Sten. A Sten actually was something that was used back during
2 World War II. They were dropped behind the lines so that
3 people could use these guns to protect themselves during World
4 War II from the Germans during the war. But this gun, this
5 part that we're talking about, the serial number on the gun,
6 which is -- I can't tell by the picture, but it's somewhere in
7 this area, is not, the illegal part that the government is
8 alleging is not that, it's not the trigger, it's not the
9 mechanism, it's a metal tube somewhere around that long
10 (indicating). My wife is mad at me because I stole a roll of
11 paper towels today, and I had to take -- you may have seen me,
12 I took off the last few paper towels, because this is an
13 example, and we anticipate the evidence will be that a little
14 tube is what a Sten machine gun starts as. And that you take a
15 special piece of machinery and there are holes that are
16 actually cut in certain areas of this tube, which ultimately
17 make up this weapon here. But this is the piece we're talking
18 about.

19 The evidence will be that in 1996, a law was passed that
20 said no longer can civilians manufacture machine guns except
21 for sale to the United States. You can't sell them to
22 individuals after 1986. If they are manufactured by then you
23 can sell them today, but they have to be manufactured prior to
24 1996. The evidence will be that Mr. Erb, the government's
25 star witness, was one of these types of manufacturers, that he

1 made these tubes. And you're supposed to cut the holes out in
2 the tube, and once the tubes are completely cut out and in
3 appropriate form, you take a hammer and a die and you beat a
4 serial number into it and you cut out the holes, and then you
5 can register that tube with the ATF.

6 The evidence will be that in 1986, from probably March
7 through May 19, because that's the cutoff day, May 19th you
8 could no longer do this. You could do it as many as you wanted
9 until May 18. Mr. Erb in Fredericktown, Pennsylvania, is
10 cutting these as quick as he can and stamping them and
11 registering them. And evidence will be that some of them he
12 puts the wrong serial numbers on, some of them have the same
13 serial numbers, some of them aren't even cut right. But he's
14 whipping them out as quick as he can so he can get them done so
15 he can have them registered with the ATF to sell, because after
16 May 19th, he can't make anymore. He can't cut anymore of these
17 metal tubes.

18 This gun that the government says is unregistered is one
19 of those tubes. Evidence will be that there's at least two
20 registrations for this gun. There may be more. We anticipate
21 that you will see that Mr. Erb will testify that, oh, when I
22 made these tubes I put the serial number in a special location,
23 I put my manufacturer's stamp in a special location, and so you
24 can tell it's my gun because I put my stamp in a particular
25 location on this tube. We will present to you photographs that

1 were taken by the ATF of approximately ten to 15 guns, and I
2 think you'll draw the conclusion that the serial numbers are
3 stamped in all different places on these tubes. Part of them
4 have manufacturer's stamps, part of them don't. Some of them
5 are even duplicated, the records will reflect.

6 This gun -- because of Doug's particular licensing, he's
7 subject to inspection by the ATF, which is a compliance
8 inspection that occurred in February of 2003. I believe it was
9 February 19th. Two ATF inspectors showed up unannounced and
10 said we want to inspect your firearms. Well, as you might
11 imagine, they show up at his law office, he's practicing law,
12 and he goes through the course of trying to show them every
13 firearm that he can. And towards the end of the day, they come
14 across a Sten firearm. And the agents will tell you this is
15 the only Sten firearm we saw, we didn't see any other Sten
16 firearms. This is the only one. And Doug had one Sten firearm
17 registered to him. They will tell you they didn't find a
18 serial number, so they wrote down a part number, and I believe
19 the part number that they wrote down is somewhere in this area,
20 somewhere in this very area (indicating). It's a part number
21 for the magazine. And they wrote that down as the serial
22 number. Doug may have told them it was the serial number. He
23 didn't know. And because of that, unknown to Doug, in their
24 report they put down that this is a, quote, this firearm, the
25 only one he's ever owned, it's an unregistered machine gun.

1 The one that he bought after five people had -- he's the fifth
2 owner of that firearm. And because they were so concerned that
3 he had an unregistered firearm on February 19th, 2003, they
4 didn't seize it, they left it in his possession. They left it
5 in his possession for February, for March, for April, for May,
6 they left it in his possession for 20-something months until
7 June 10th, 2004 -- maybe it was only 18 months -- over a year
8 later, a year and four months later, Mr. Knopp and ten or so
9 ATF agents again show up at Mr. Friesen's, execute a search
10 warrant and seize that firearm. They now see that there is a
11 serial number on the firearm, E683. Not very legible, but
12 there's one on there. Hard to see in bad light. And that is
13 the basis of why we are here. Mr. Friesen -- Agent Knopp will
14 testify that's the only Sten Mr. Friesen had, the only gun, he
15 only had one registered to him. And they now say and we're
16 here today because they say we've never seen it before but we
17 now know that's an unregistered firearm because of the
18 testimony of Mr. Erb, who will tell you that I was knocking
19 these out as quick as I could. I was knocking these tubes out
20 as quick as I could. And yeah, I duplicated some of the serial
21 numbers on them, and yeah, I registered some of them twice, and
22 yeah, I didn't cut all the holes I was supposed to send out so
23 I don't know if the configuration of it looks like this gun or
24 if the configuration of it would look like that other weapon
25 Mr. Kumiaga showed you. I don't know what the configuration of

1 the firearm is because I never did that configuration. I just
2 made this tube.

3 And during the course of the inspection with the ATF
4 inspectors in February of 2003, Doug Friesen talked to them and
5 he said, number one, that's my Sten. That's my registered
6 firearm. That's the only one I've ever had. And because of
7 that he's been charged with making a false statement to the ATF
8 because they say that's an unregistered firearm. That D
9 number, that part number is not the registered number.

10 The evidence will be that the serial number has always
11 been on there, but they were unable to find it. As a matter of
12 fact, Mr. Erb, there will be serial numbers on his where -- on
13 one of the firearms, this is an example, they actually had to
14 remove the sight on the firearm, the exhibits will show you, to
15 find the serial number. It was put under the sight. The
16 agents never found -- the number, the evidence will be, was
17 always on there.

18 Another false statement they asked, that they've accused
19 him of are, where are your firearms stored? He told them where
20 every firearm they were looking for was stored. Yes, he had a
21 safe in his basement, and yes, it was a gun safe. But at the
22 time of the inspection, the evidence will be, there were no
23 firearms in that safe. Everything he told them was true.
24 Agent Knopp will testify that Doug told him that the girls were
25 in such a hurry they didn't find the serial number. They are

1 saying that's a false statement. I don't know why they didn't
2 find the serial number, but that's what we believe, that the
3 girls were in a hurry, it was the last gun they saw of the day,
4 it was the only Sten that was registered to him, it was the
5 only one he possessed. And so they said that's a false
6 statement.

7 I submit to you, ladies and gentlemen, that after you've
8 heard all the evidence and seen all the inconsistencies and
9 heard Mr. Erb get up here and testify that I was whacking these
10 out thousands and thousands as quick as I could to make that
11 May 18th deadline, because midnight on May 18th I couldn't make
12 anymore of these and sell them, and this gun falls right within
13 that category, you'll find that the government's case does not
14 have any merit, that they can't prove beyond a reasonable doubt
15 that that's not the registered firearm that Doug got as the
16 fifth owner of it, and that any of the statements he made to
17 the agents in this case to include Agent Knopp were false in
18 any way, shape, or form. And we will ask you at the conclusion
19 of all of evidence to return a verdict of not guilty as to all
20 counts as to Doug. Thank you.

21 THE COURT: Thank you, Mr. Martin, you may call your
22 first witness.

23 MR. KUMIEGA: Yes, your Honor. The United States
24 would like to call Denise Brown.

25

1

DENISE BROWN,

2

called as a witness, having been duly sworn, testifies as

3

follows:

4

DIRECT EXAMINATION

5

BY MR. KUMIEGA:

6

Q. Ma'am, can you introduce yourself to the jury, please?

7

A. My name is Denise Brown.

8

Q. And Ms. Brown, how are you employed, please?

9

A. I'm employed by the Bureau of Alcohol, Tobacco & Firearms

10

in the National Firearms Act branch in Martinsburg, West

11

Virginia.

12

Q. And how long have you been employed with ATF?

13

A. Over 25 years.

14

Q. And can you tell the jury some of your duties with ATF,

15

please?

16

A. Yes. During the course normal of my business I search

17

the National Firearms Registration and Transfer Record, which

18

is a central registry of certain types of firearms that are

19

required to be registered for the federal government.

20

Q. All right. And you said there were certain type of

21

firearms. Can you tell the jury what type of firearms the

22

registry particularly pertains to, please?

23

A. Those firearms are machine guns, silencers,

24

short-barreled rifles, short-barreled shotguns, destructive

25

devices, and certain other weapons like a pen gun.

B. JEANNE RING, RDR
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1 Q. You said short-barreled shotguns; is that correct?

2 A. Yes, sir.

3 Q. That's a sawed-off shotgun; is that correct?

4 A. Yes, it would be.

5 Q. And you said explosive devices also?

6 A. Destructive devices, like a grenade.

7 Q. Destructive. Okay. And you said you've been doing this

8 20 some-odd years; is that correct?

9 A. That is correct.

10 Q. And can you tell the jury how this registry is formed?

11 Like how do you get the numbers to put in the registry, please?

12 A. We receive certain applications, an ATF Form 2, which
13 would be a notice of firearms manufacture or imported, or
14 making form, an ATF Form 1. Those two type of forms initiate
15 the registrations from a manufacturer or maker that lists
16 serial number, different types of firearm with a serial number.

17 Q. Now, you talk about the serial number. What's the
18 importance of a serial number, please?

19 A. That serial number will uniquely identify each firearm
20 that is made and that's assigned to that particular firearm.

21 Q. So each serial number can't be duplicated with another
22 serial number in the registry; is that correct?

23 A. It cannot be duplicated by the individual manufacturer.
24 Another manufacturer could use the number.

25 Q. Could you tell the jury what type of training you've had

1 to compile these records?

2 A. Over the years it has been on-the-job training within the
3 office from superior employees.

4 Q. And have you trained other individuals?

5 A. Yes, I have.

6 Q. And approximately how many and how long ago?

7 A. Two or three employees over the last five years.

8 Q. Now, you've brought certain exhibits for us today; is
9 that correct?

10 A. Yes, it is.

11 Q. And let me ask you this, a couple of foundational
12 questions: These documents were created in the ordinary course
13 of business; is that correct?

14 A. That is correct.

15 Q. Meaning that the government requires you to compile this
16 registry; is that right?

17 A. That is correct.

18 Q. And again, what's the name of that registry, please?

19 A. The National Firearms Registration and Transfer Record.

20 Q. And is there an abbreviation for it?

21 A. The NFRTF.

22 Q. Okay. And they apply, like you said, just to certain
23 type of exotic guns, the machine guns, silencers, et cetera?

24 A. That's correct.

25 Q. Other firearms, just a pistol, handgun, rifles, are not

1 included in the registry; is that right?

2 A. No, they are not.

3 Q. Okay. You, since you've been doing this for 20 years or
4 more, you have knowledge in the way the records are kept; is
5 that correct?

6 A. That is correct.

7 Q. Can you give the jury an example, for instance, if I
8 wanted to register a machine gun what process I go through and
9 what process you go to actually put it in the NFTR.

10 A. We would receive an ATF Form 4, which is an application
11 to transfer and register a firearm from another individual that
12 wants to sell this to the new owner. The application comes in
13 and we check it for accuracy, such as to make sure the state
14 would allow that type of firearm, to make sure the person
15 receiving the firearm is not in anyway prohibited. We also do
16 a fingerprint check and a criminal history background check.
17 If all of those things are in place and in order we will
18 approve the application, affix a blue stamp to it, it's a \$200
19 transfer tax stamp, and we send that back to the seller, and at
20 that time they can give that firearm to the new owner.

21 Q. You said that you need to pay a \$200 tax stamp; is that
22 correct?

23 A. That is a \$200, yes, for the short-barreled shotgun and
24 machine guns.

25 Q. So if a person who is not prohibited, meaning they don't

1 have a criminal history, wants to get a machine gun, they can
2 buy one you but they would have to pay a tax to the United
3 States?

4 A. That is correct.

5 Q. And that is registered then within the registry; is that
6 correct?

7 A. Yes. The name and the firearm will now be in the
8 registry.

9 Q. Let me ask you this: The documents that you get, are
10 they near in time when the event occurred, either when the
11 firearm was manufactured, the machine gun, or when it was
12 transferred?

13 A. Sometimes they are, sometimes they come directly from the
14 manufacturer, sometimes they come through other sellers, such
15 as a dealer.

16 Q. And let me ask you this: Does your agency, the
17 government typically or exclusively rely on these documents?

18 A. Yes, we do.

19 Q. Now, it's my understanding you brought several of these
20 documents today for court purposes; is that correct?

21 A. Yes, I have.

22 Q. Can you look at first Government's Exhibit 1.1. I
23 believe that's the Special Occupational Tax Record. Do you see
24 that?

25 A. Yes, I do.

1 Q. What is the title of that?

2 A. Certificate of -- that's the cover sheet there.

3 Q. Okay. And what does that document contain?

4 A. This document would contain information on the Special
5 Occupational Tax.

6 Q. For what individual, please?

7 A. May I take it out of the sleeve?

8 Q. Please.

9 A. For Mr. Charles N. Erb.

10 Q. All right. And what is the Special Occupational Tax
11 Record? What does that purport to be, please?

12 A. This is also kept by the office I work in, the National
13 Firearms Act branch. This is the Special Occupational Tax,
14 this is payment of the tax along with the federal firearms
15 license of someone who wants to engage in business as a
16 manufacturer, a dealer or importer of the firearms that I
17 mentioned earlier.

18 Q. So that's a tax to show you have the -- you have the
19 ability to, with the government's I guess blessing to
20 manufacture a firearm; is that correct?

21 A. Yes. It shows that Mr. Erb paid the Special Occupational
22 Tax as a manufacturer.

23 Q. All right. And did he have, did he have the ability to
24 manufacture firearms back in 1986 from that record?

25 A. Yes, he did.

1 Q. Can you tell the jury the time parameters, what that
2 Exhibit 1.1 shows regarding Mr. Erb's ability to manufacture
3 these type of machine guns, please?

4 A. Since 1988, ATF, that's Alcohol, Tobacco & Firearms, we
5 collected the tax and maintained the registry on that. Prior
6 to that IRS was collecting the tax, and each individual that so
7 paid the tax would submit to us a self-certification that they
8 did pay the tax, and we did have such a certification from Mr.
9 Erb.

10 Q. All right. And what was the years that he had the
11 ability to manufacture those firearms, please.

12 A. From 1980 to the present.

13 Q. Okay. Government's Exhibit 1.2. Is that again a Special
14 Occupational Tax record?

15 A. Yes, it is.

16 Q. And whose name appears on that certified copy on that
17 Special Occupational Tax record, please?

18 A. Larry Douglas Friesen.

19 Q. And what dates were Mr. Friesen permitted by the United
20 States to either sell or transfer machine guns, silencers, the
21 weapons that you enumerated before, please?

22 A. Between July 1st, 1994, through June 30th, 1997 he was
23 qualified as a dealer in NFA firearms.

24 Q. Mr. Brown, Can you see that from here? Is that possible
25 you can see that?

1 A. Yes.

2 Q. That line? And you said July 1st, 1994 to June 30th,
3 1997?

4 A. Yes, sir.

5 Q. All right. And Mr. Friesen paid the tax during that
6 period of time; is that correct?

7 A. Yes, he did.

8 Q. Okay. Now, Government's Exhibit 1.3. What is that
9 purported to be, please.

10 A. This is a list of firearms that remain registered.

11 MR. MARTIN: Your Honor, may I approach on this
12 exhibit?

13 THE COURT: Yes.

14 Ladies and gentlemen of jury, I don't recall mentioning,
15 but hopefully bench conferences will be few and far between,
16 but when we do have a bench conference to discuss an
17 evidentiary issue, if you want to you may stand, get a drink of
18 water, visit quietly among yourselves. Do not leave the jury
19 box or the immediate vicinity of your seat, but use that as
20 what I would call just a little a mini break to stand and
21 stretch.

22 (The following was had at the bench, out of the hearing of
23 the jury:)

24 THE COURT: Yes.

25 MR. MARTIN: Judge, Exhibit 1.3, which is a list of

1 guns that apparently -- the inspectors say are missing from
2 Doug's inventory when they did their inventory, and this is
3 what that record says. The only one that is of any relevance
4 to this case whatsoever is the -- I'm trying -- is the
5 submachine gun, No. 10. The rest have no relevance at all to
6 this case, and I object to the introduction of a document that
7 was created by the government relating to -- by the ATF, as far
8 as I know it was prepared for purposes of prosecution, and they
9 don't have any relevance except for this machine gun that
10 somebody said is missing. I just don't think for the purpose
11 of this case I don't think it's relevant.

12 MR. KUMIEGA: Your Honor, these are the guns --
13 Valerie Rowden will testify she had a copy of this type of
14 document when she went out to do the inspection. She had to
15 inventory everything in his inventory and his records because
16 he had a firearms license to sell firearms and that she was
17 armed with these documents.

18 THE COURT: Armed with this document?

19 MR. KUMIEGA: A copy of this, not this exact document,
20 a copy of this document to show --

21 THE COURT: Was the document is created September 5,
22 2008?

23 MR. KUMIEGA: But she had all these -- when she went
24 out there they gave her a copy of all --

25 THE COURT: So she can testify to all that?

1 MR. KUMI EGA: It's the same thing, Judge. Yes. This
2 was prepared for reasons of court, but she had a certified copy
3 of all of these firearms when she went out there to inventory.
4 They are relevant to show his records were in disarray, and we
5 couldn't find that number.

6 THE COURT: She can testify to that, but this looks
7 like it was created for the trial.

8 MR. KUMI EGA: It was, but the information is the same
9 she got -- it's a record. It's a business record. Of course
10 it was created for the trial.

11 THE COURT: This isn't kept in the ordinary course of
12 business?

13 MR. KUMI EGA: Yes, it is. Every firearm that he has
14 --

15 THE COURT: These documents may be, but this document
16 is not. That's not kept in the ordinary course of business.

17 MR. KUMI EGA: Your Honor, the number --

18 THE COURT: It's a summary.

19 MR. KUMI EGA: Of everything that he has, because
20 exotic --

21 THE COURT: This is not a business record, Mr.
22 Kumi ega.

23 MR. KUMI EGA: It's a certified copy of the document,
24 your Honor.

25 THE COURT: It's not a business record. It's just a

1 summary that was created for the trial.

2 MR. KUMI EGA: But it mirrors the business record.

3 THE COURT: It's not a business record.

4 MR. KUMI EGA: I think it is, your Honor.

5 THE COURT: Well, it's not created in the ordinary
6 course of business.

7 MR. KUMI EGA: The information is created in the
8 ordinary course of business. They have to have on his registry
9 what he has in his inventory.

10 THE COURT: I don't disagree with any of that. This
11 document is not created in the ordinary course of business.
12 It's not a business record. It's something that was created
13 from other documents as a summary for the purpose of the trial.
14 It's not a business record. It's not something that they
15 normally keep some running tally on the individual documents.

16 MR. KUMI EGA: Well, they do, but yes.

17 THE COURT: The summary?

18 MR. KUMI EGA: It's a summary, but it's the same
19 information that Ms. Rowden had when she went out.

20 THE COURT: She can testify to that information.

21 MR. KUMI EGA: Can she testify to this document or
22 another document?

23 THE COURT: The Court isn't going to admit this, this
24 is not a business record. I'll sustain the objection to that
25 document.

1 (The following was had in open court, within the hearing
2 of the jury:)

3 MR. KUMIEGA: Your Honor, before I go any further the
4 United States would move for admission of Government's Exhibit
5 1.1 and 1.2 into evidence.

6 MR. MARTIN: No objection.

7 THE COURT: Will be admitted.

8 Q. (By Mr. Kumi ega) Ma'am, this is a blowup, Ms. Brown, of
9 what you identified as Government's 1.1, the sales records or
10 the manufacturer records of Mr. Erb; is that correct?

11 A. That is the payment of the Special Occupational Tax
12 payment, yes.

13 Q. And what is that, please?

14 A. That was the second one with Mr. Friesen's name on it.

15 Q. Okay. Let's look at Government's Exhibit 1.4, please.
16 What is Government's Exhibit 1.4, please?

17 A. This is a history of a particular firearm manufactured by
18 Charles Erb, serial number E683.

19 Q. Let me ask you this: Was that document made in the
20 ordinary course of business?

21 A. Yes, it was.

22 Q. Can you tell the Court why, please?

23 A. This one was asked by the agent for me to make, to
24 prepare the information and put it under seal.

25 Q. All right. And the information that you had, that is in

1 ordinary course of business; is that correct?

2 A. Yes, it is.

3 Q. And is that a compilation of all the documents contained
4 in that certificate?

5 A. Yes, for everything from E682 showing from the
6 manufacturer to the current owner.

7 Q. All right. Can you look at that document and tell the
8 jury, if you can give the jury the pedigree of 682, please,
9 that birthing document, please?

10 A. The Form 2 I received from Charles Erb --

11 MR. MARTIN: Your Honor, I don't think she be allowed
12 to do that unless the document is admitted into evidence.

13 THE COURT: Will be sustained.

14 Q. (By Mr. Kumi ega) You said this document is prepared in
15 the ordinary course of business; is that correct?

16 A. Yes, it is.

17 Q. Are each document that you have within the registry and
18 then they are pulled together to be submitted by you in that
19 sealed certificate; is that correct?

20 A. That is correct.

21 Q. And what is the certificate, what does it symbolize or
22 suggest, please, when you put a sealed certificate on it?

23 A. That we were able to search everything relative to that
24 serial number and put it in order from the manufacturer all
25 through the subsequent transferors and then seal it.

1 Q. Do you do that routinely for cases that you present for
2 the purposes of courtroom testimony?

3 A. I have.

4 MR. KUMIEGA: Your Honor, at this time the United
5 States would move for introduction of 1.4 into evidence.

6 MR. MARTIN: May I voir dire, your Honor?

7 THE COURT: Uh-huh.

8 VOIR DIRE EXAMINATION

9 BY MR. MARTIN:

10 Q. Ms. Brown, looking at what's been marked for
11 identification purposes as Exhibit 1.4, I believe you testified
12 that's a complete history of the weapon?

13 A. The weapon ownership.

14 Q. Okay. Is the first transfer in there?

15 A. I do have one, yes. I do have one.

16 Q. From?

17 A. Mr. Erb to J.R. Perry.

18 MR. MARTIN: May I approach, your Honor. My copy
19 doesn't appear to have one.

20 THE COURT: Yes.

21 MR. MARTIN: I apologize, your Honor. I don't have
22 that page, your Honor. I apologize. I don't have any further
23 questions.

24 THE COURT: Excuse me?

25 MR. MARTIN: I didn't have that page in my records,

1 your Honor.

2 THE COURT: Okay. Continue.

3 MR. KUMIEGA: With that, your Honor, we ask that
4 document 1.4 be admitted into evidence.

5 MR. MARTIN: Other than relevance, your Honor, I don't
6 have any objection.

7 THE COURT: 1.4 will be admitted.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. KUMIEGA:

10 Q. Ma'am, can you explain the transfer and who it went to and
11 how it wound up with the last individual, please?

12 A. We would receive applications after the transfer to Mr.
13 Perry, he submitted an ATF Form 3, which is the transfer
14 between Special Occupational Taxpayers, those engaged in
15 business to transfer it on to another dealer.

16 Q. And then from there -- if you can give the Court and jury
17 how the gun wound up with the last owner, please?

18 A. The names?

19 Q. Yes.

20 A. After Mr. Perry it went to Grant Kemmerer.

21 Q. Where is he from, please?

22 A. He's from Miami, Florida.

23 Q. And from there where did it go next?

24 A. Went to another Special Occupational Taxpayer Mr. John
25 Guy Walker and Trussville, Alabama.

1 Q. And then after Alabama where did it go next?

2 A. Onto an individual, Mr. Dukes in Lewisburg, Kentucky.
3 Then from Mr. Dukes, it went to dealer, Elite Firearms, in
4 Paducah, Kentucky. Then from Elite Firearms it went to a
5 dealer, Vanguard Firearms in Pound, Wisconsin. From there it
6 went to another dealer, Mr. Todd in Springfield, Pennsylvania.
7 From there it went to another dealer, CJK Firearms,
8 Incorporated, in Mt. Olive, North Carolina. From there it
9 went to another dealer, Ronald Keith Common, Dennison, Ohio.
10 From there it went to an individual, Mr. Thomas Winter,
11 Stonecreek, Ohio. And that is the last and current owner.

12 Q. Ms Brown, the last transaction that winds up with Winter,
13 who did he get that from?

14 A. Mr. Ronald Common in Dennison, Ohio.

15 Q. What's the dates of that transfer, please?

16 A. November 29th, 2006.

17 Q. So again, that certificate basically certifies what you
18 said is from your records; is that correct?

19 A. That is correct.

20 Q. Would you look at Government's Exhibit 1.5, please. And
21 what does that document purport to be, please?

22 A. This particular certification certifies that E683 made by
23 Charles Erb is currently registered to Larry Douglas Friesen.

24 Q. All right. And again, this was prepared in the normal
25 course of business; is that correct?

1 A. Yes, it was.

2 Q. And how many transfers in that document go from the
3 manufacturer to Mr. Friesen, please?

4 A. Four.

5 MR. KUMIEGA: Your Honor, at this time the United
6 States would move for introduction of Government's Exhibit 1.5
7 into evidence.

8 MR. MARTIN: Your Honor, could you reserve ruling?
9 I'll let her testify about it until cross-examination. It
10 might speed things up, but I don't object to them going into
11 it.

12 THE COURT: Okay. I'll reserve ruling.

13 Q. (By Mr. Kumi ega) Ma'am, the first person that, the
14 person that manufactured the gun, E683, is who, please?

15 A. Charles Erb.

16 Q. And the date of the manufacture, please?

17 A. May 14th, 1986.

18 Q. And what's the model that was made, please?

19 A. Sten Mark II.

20 Q. All right. Mr. Erb then sold that firearm or it was
21 transferred to another individual; is that correct?

22 A. That is correct.

23 Q. And who did he transfer it to, please?

24 A. R.J. Perry & Associated, Incorporated.

25 Q. And the date, please?

1 A. April 15th, 1987.

2 Q. Okay. So it starts with Erb then goes to Perry; is that
3 correct?

4 A. That is correct.

5 Q. And again, it's the same E683 number?

6 A. Yes, it is.

7 Q. And it's a Sten Mark II?

8 A. Yes, it is.

9 Q. Then it goes to someone in Florida; is that correct?

10 A. That is correct.

11 Q. Who does it go to into Florida, please?

12 A. Grants L. Kemmerer.

13 Q. And the date for the jury, please?

14 A. October 8, 1992.

15 Q. And does Mr. Kemmerer transfer that firearm to somebody
16 in Trussville, Alabama?

17 A. Yes, he did.

18 Q. Who, the dates, and again, the serial number and the
19 model, please.

20 A. John Guy Walker, approved 11/25/1992.

21 Q. And the serial number and the model, please?

22 A. The serial number E683, model Sten Mark II.

23 Q. All right. And who does the people from Alabama sell
24 their gun to, please?

25 A. Larry Douglas Friesen, E683, Sten Mark II.

1 Q. And the date, please?

2 A. Approved February 22nd, 1996.

3 Q. This is basically the birthing document, or excuse me,
4 this is the transfer document of how Mr. Friesen got the
5 firearm; is that correct?

6 A. That's the transfer history, yes.

7 Q. What is Government's Exhibit 12.6, please?

8 A. This is the transfer history of E685 manufactured by
9 Charles Erb.

10 Q. Basically, you did the same with the other document you
11 just testified to; is that correct?

12 A. Yes, I did.

13 MR. KUMIEGA: Your Honor, the United States would move
14 for introduction of Government's Exhibit 1.5 into evidence.

15 THE COURT: I think Mr. Martin wants to cross-examine
16 before. I'm going to reserve ruling on it.

17 MR. MARTIN: Same with 1.6, Ed?

18 MR. KUMIEGA: Same with 1.6.

19 THE COURT: Any objection to 1.6?

20 MR. MARTIN: Other than relevance, your Honor.

21 THE COURT: Okay. Objection will be overruled. It
22 will be admitted.

23 Q. (By Mr. Kumi ega) Now, can you, again, tell the jury the
24 pedigree of that gun, who made it, and who did it wind up with,
25 please?

1 A. We have an ATF Form 2 dated 5/14/86 from Charles Erb.

2 Q. And the date that gun was manufactured, please?

3 A. 5/14/86.

4 Q. And the serial number, please?

5 A. E685.

6 Q. Okay. And who does Mr. Erb sell that gun to?

7 A. That firearm was sold to R.J. Perry & Associates, E685,
8 April 15th, 1987.

9 Q. Okay. And then who does Mr. Perry sell the gun to,
10 please?

11 A. To Grant L. Kemmerer, Miami, Florida, October 8th, 1992.

12 Q. And again, is that -- the serial number and the type of
13 gun?

14 A. E685, Sten Mark II.

15 Q. And does Mr. Kemmerer sell the gun subsequently to
16 someone else?

17 A. To John Guy Walker, Trussville, Alabama, for E685 Sten
18 Mark II, approved November 25th, 1992.

19 Q. Okay. And then after that can you tell the jury the
20 history of the gun after it leaves Trussville, Alabama, please?

21 A. We have a transfer to Mr. Murray Beckford, Cascade,
22 Wisconsin for E685 Sten Mark II, approved December 21st, 1992.

23 Q. All right. Is that the last person who has that firearm?

24 A. That is the current owner.

25 Q. What's Government's Exhibit 1.7, please?

1 A. This is a certification that a particular firearm is not
2 registered to Larry Douglas Friesen.

3 Q. Excuse me. I didn't hear that.

4 A. This is a negative certification reflecting that --

5 MR. MARTIN: Your Honor, as to exhibit -- your Honor,
6 I object 1.7, your Honor. It's the same as that earlier
7 objection I made at the bench relating to the business record.

8 THE COURT: Okay. Objection will be sustained. She
9 can testify as to what she found from her search of the
10 records, but this exhibit is not a -- the Court is going to
11 sustain the objection.

12 MR. KUMIEGA: Your Honor, may I approach, your Honor?

13 THE COURT: No. It's not a record made in the
14 ordinary course of business, Mr. Kumi ega, but she can testify
15 as to what she found from her search of the records.

16 MR. KUMIEGA: All right.

17 Q. (By Mr. Kumi ega) Ma'am, you've looked at that document;
18 is that correct?

19 A. That is correct.

20 Q. And you did a search on a specific number; is that
21 correct?

22 A. That is correct.

23 Q. What number did you search, please?

24 A. D as in David 95843.

25 Q. And you searched it under what categories, if you tell

1 the jury, please?

2 A. I searched that serial number with and without the
3 prefix, and I researched it for the type of machine gun, for
4 any type of firearm that would fall under the ones that require
5 registration to see if it was in the registry.

6 Q. All right. When you said you searched it for, you said
7 different prefixes; is that correct?

8 A. I would search it without the prefix with a percent sign
9 in place of that.

10 Q. What does that mean, please?

11 A. Just to determine if any number like that would be
12 registered for that type of firearm, for the type of firearm
13 that we're looking at.

14 Q. Okay. So you ran it under the D95843; is that correct?

15 A. Yes.

16 Q. And you ran it under 95843; is that correct?

17 A. That is correct.

18 Q. Did you run any other combination of numbers?

19 A. With the percent sign just in the front, replace the D to
20 see if any other combinations would come up.

21 Q. All right. You also examined Mr. Friesen's records; is
22 that correct?

23 A. Yes, I did.

24 Q. Did you see any firearm registered under that number in
25 Mr. Friesen's name?

1 A. No, I did not.

2 Q. All right. Can you tell me what Government's Exhibit 1.8
3 is, please?

4 A. This is certification certifying that E705 manufactured
5 by Charles Erb is still registered to Charles Erb.

6 Q. And the date of that manufacture, please?

7 A. 5/14/1986.

8 MR. KUMIEGA: Your Honor, United States would move for
9 introduction of Government's Exhibit 1.8 into evidence.

10 MR. MARTIN: Your Honor, it's not a business record
11 like the others, it's just another certification. I object.

12 MR. KUMIEGA: It -- it is a business record, your
13 Honor.

14 THE COURT: Doesn't fall under business records, but
15 she can testify as to what it says.

16 MR. KUMIEGA: Okay.

17 Q. (By Mr. Kumi ega) How did you prepare that number,
18 please?

19 A. I was asked to search this particular serial number and I
20 looked in the database to see if the firearm was registered to
21 any person, and it is registered to Charles Erb.

22 Q. What type of firearm is it, please?

23 A. It's a machine gun.

24 Q. And does it have a model on it?

25 A. Sten Mark II.

1 Q. You said date it was born is May of 1986?

2 A. Yes.

3 Q. What specific date, if you remember, please?

4 A. May 14th.

5 Q. Okay. What is Government's Exhibit 1.9, please?

6 MR. MARTIN: Your Honor, I'm going to have the same
7 objection as to that one.

8 THE COURT: You can go ahead and identify it.

9 MR. KUMIEGA: Yes, your Honor.

10 Q. (By Mr. Kumi ega) What is Government's Exhibit E --
11 excuse me. What are you looking at, ma'am?

12 A. This is another certification on E683 stating that the
13 machine gun manufactured by Charles N. Erb that is currently
14 registered to Larry Douglas Friesen, we had a pending
15 application to transfer that firearm, but the application was
16 not approved.

17 Q. What date did that application go to your office, please,
18 or your agency?

19 A. I believe it was 2004.

20 Q. And what date was it denied by your agency, please?

21 A. I believe in 2006. I'm not sure of the date.

22 Q. Okay. And you said -- and who was trying to transfer the
23 firearm, the Sten machine gun? Who was trying to do that?

24 MR. MARTIN: Your Honor, I object. Now we're getting
25 way outside the scope of what this trial is about.

1 THE COURT: Objection will be overruled.

2 Q. (By Mr. Kumi ega) Who was he trying to transfer the gun
3 to, please?

4 A. Mr. James Howard Bugg.

5 Q. All right. So my understanding of the records is Mr.
6 Friesen filed an application to sell the gun?

7 A. That is correct.

8 Q. And it was denied; is that correct?

9 A. That is correct.

10 Q. Now, to buy the gun, can you tell the jury how that
11 works, please? If I wanted to buy a machine gun, who makes the
12 payments, who does the applications, please?

13 A. The current owner of the firearm would submit an
14 application to transfer it on to a new owner, they would submit
15 the form along with the \$200 transfer tax.

16 Q. The current owner pays the transfer tax?

17 A. That is correct.

18 Q. Okay. In your government's exhibit, ma'am --

19 MR. KUMI EGA: Your Honor, may I have a moment with my
20 paralegal?

21 THE COURT: Yes.

22 (Brief pause)

23 Q. (By Mr. Kumi ega) Ma'am, if you can look at Government's
24 Exhibit 1.5; you testified to that before. What is that,
25 again, please?

1 A. This is certification for E683 manufactured by Charles
2 Erb.

3 Q. And can you look at page 3 of that document, please?
4 What is that?

5 A. That is the first transfer from Charles Erb to R. J. Perry
6 & Associates.

7 Q. Is there a Form 2 in that document?

8 A. Yes, there is.

9 Q. What is Form 2, please?

10 A. Form 2 would be the application that we received a show
11 the initial registration and manufacture of the firearm.

12 Q. Okay. Is there other guns contained in that series?

13 A. Yes, there are.

14 MR. KUMIEGA: Your Honor, the United States would move
15 for introduction of 1.5; specifically I would like to display
16 form No. 2 of that document.

17 Q. (By Mr. Kumi ega) Was that made in the active course of
18 business?

19 A. Yes, it was.

20 Q. Who submits that document to you, please?

21 A. The manufacturer, in this case Mr. Charles Erb.

22 MR. MARTIN: Your Honor, I don't object to the
23 displaying of the form, but I still have my standing objection
24 that I would like you to rule on after cross. But I don't
25 object to displaying the Form 2. Let me make sure I'm

1 understanding. What page are you talking about?

2 THE COURT: 1926? Is that the page, Mr. Kumi ega?

3 MR. MARTIN: 1926 or 25?

4 MR. KUMI EGA: 25.

5 MR. MARTIN: 25. I don't have a problem with that.

6 THE COURT: Without objection, you can display it even
7 though it's not admitted yet, Mr. Kumi ega.

8 MR. KUMI EGA: Thank you, your Honor. If you can
9 display that.

10 Q. (By Mr. Kumi ega) Ms. Brown, what is this?

11 A. This is the ATF Form 2 that was submitted by Mr. Erb. It
12 has numerous firearms on it, a total of 25 with consecutive
13 serial numbers starting with E as in echo, 676 through and E as
14 in echo 700.

15 Q. And what does Form 2 purport to be, please?

16 A. It is a notice of firearms manufactured. Each
17 manufacturer that so makes NFA firearms will notify us that
18 they've made these firearms in the course of their business.

19 MR. KUMI EGA: May I approach the witness with a laser
20 pointer so she can point it out?

21 THE COURT: Yes.

22 Q. (By Mr. Kumi ega) Now, you testified that Mr. Erb, I
23 guess, makes these firearms; is that correct?

24 A. That is correct.

25 Q. And this is the E series goes 676 sequentially to 690; is

1 that correct? Or to 700; is that correct?

2 A. Yes.

3 Q. And this shows the date these guns were born or made; is
4 that right?

5 A. That's right. Within 24 hours after manufacture, the
6 manufacturer will submit the Form 2 to us.

7 Q. And once you get that form, what do you do with it,
8 please?

9 A. We look at the information and have someone enter it into
10 the database.

11 Q. And 683 is here; is that correct?

12 A. That is correct.

13 Q. And you testified about 682; is that right?

14 A. Yes, I did.

15 Q. You also testified about E685; is that correct?

16 A. Yes, I did.

17 Q. Once you get that you put that in the document; is that
18 correct?

19 A. Into a database, yes, we do.

20 Q. Does anybody who buys any of these guns, does that stay
21 with their certificates?

22 A. The Form 2 will always be there as the originating
23 document, then each subsequent transfer form is also entered,
24 input into the database after we approve it.

25 Q. And can you tell the jury what these are, please, across

1 the top?

2 A. The first one is the date of manufacture, that's
3 information given by the manufacturer, the type of firearm, the
4 caliber, the model, the barrel length, the overall length, and
5 then the serial number.

6 Q. All right. So everything is labeled as a machine gun; is
7 that correct?

8 A. Yes, they are.

9 Q. And you have the caliber?

10 A. Yes.

11 Q. And what model is being made that day?

12 A. Sten Mark II.

13 Q. What are these two here? What do they purport to be,
14 please?

15 A. The barrel length of the firearm and the overall length.

16 Q. What is the barrel length, please?

17 A. Eight inches for the barrel length, and 31 for the
18 overall.

19 Q. Okay. Who signs this document, and tell us about these
20 signatures here and what they purport to be?

21 A. There's a signature from Mr. Charles Erb, the
22 manufacturer, and the date.

23 Q. And that's the date right there (indicating)?

24 A. Yes, it is.

25 Q. What does Class 2 mean, please?

1 A. Class 2 indicates that he's a manufacturer of firearms.

2 Q. Okay. And are there other, above that in that category,
3 there are other specific numbers associated with Mr. Erb; is
4 that right?

5 A. Yes.

6 Q. How does that help your agency, please?

7 A. This also, his federal firearms license, we make sure
8 that he's also licensed as well as paid the Special
9 Occupational Tax, and the type of business.

10 Q. Okay. You said that each of these documents that you
11 talked about contain that item; is that correct?

12 A. Yes, they do.

13 Q. So 682 has the same thing, and 685?

14 A. Yes, they do.

15 Q. Okay. So that's basically the origin document, like a
16 baptismal certificate I would imagine; is that correct?

17 A. That is the origin of the --

18 MR. KUMIEGA: Your Honor, if I may have a moment with
19 my case agent.

20 THE COURT: Yes.

21 (Brief pause)

22 Q. (By Mr. Kumi ega) You talked about a firearm not being
23 transferred from Mr. Friesen to Dr. Bugg, is that correct or
24 Mr. Bugg?

25 A. That's correct.

1 Q. Can you tell the Court or the jury what reasons ATF would
2 deny applications, please?

3 MR. MARTIN: Your Honor, to which we'll object.

4 THE COURT: If she has knowledge of that.

5 MR. MARTIN: I think it was a general question, what
6 reasons they might deny it.

7 MR. KUMIEGA: Well, if she has the authority, your
8 Honor, as custodian of records she can tell the jury why
9 certain applications will be denied, what reasons would be for
10 deniability.

11 THE COURT: The objection will be overruled.

12 THE WITNESS: We will deny an application if the
13 recipient were not qualified to receive it, they were
14 prohibited, if the state law did not allow it, if we didn't
15 have all pertinent documentation such as the money, the check,
16 the fingerprint cards, those types of reasons.

17 Q. (By Mr. Kumi ega) And would the inaccuracy of the serial
18 number be another reason for deny it?

19 A. Yes, we check that first to make sure that the current
20 registrant has the firearm properly registered, and then we
21 move forward on the transfer.

22 Q. Okay. Now, from your working area, you only can register
23 a gun that has a proper serial number; is that correct?

24 A. That is correct.

25 MR. KUMIEGA: Your Honor, I have nothing further from

1 thi s wi tness.

2 THE COURT: You may cross-exami ne.

3 CROSS-EXAMI NATION

4 BY MR. MARTIN:

5 Q. Ms. Brown, I believe you testi fied you've been with the
6 ATF approxi mately 20 years in thi s posi ti on?

7 A. Yes, si r.

8 Q. And it's -- is thi s your pri mary duty, going to court
9 certi fyi ng records?

10 A. It's my pri mary duty to search the database, yes, si r.

11 Q. Okay. Then occasi onally you wi ll come to court and
12 testi fy as you have today?

13 A. Yes, si r.

14 Q. Okay. And I believe you testi fied that you've searched
15 the database and you've -- and that every manufacturer, for
16 example, has to have a uni que seri al number on every fi rearm
17 that they register; is that correct?

18 A. Yes, si r.

19 Q. So I'll just say, for example, Smi th and Wesson, they
20 could have a number similar to a, that could be the same as
21 another manufacturer, but for that parti cular manufacturer,
22 they can only have certain numbers, they have to have distinct
23 numbers as to every fi rearm; is that right?

24 A. Yes, si r.

25 Q. For example, in thi s case, the number in thi s case is

1 E683. Smith and Wesson might have an E683 but it's a Smith and
2 Wesson; is that right?

3 A. That is correct.

4 Q. And a Colt might an E683, but it would be Colt, and
5 that's okay, right?

6 A. Yes, they could.

7 Q. But for example, Mr. Erb could not have two or three or
8 four E683s or E685s or any number, that would be wrong,
9 wouldn't it?

10 A. That would be wrong. Yes, sir.

11 Q. Okay. Now, what you rely on, as I understand, are the
12 documents that have been provided to you from transferring
13 firearms; is that correct?

14 A. Yes. And from the original manufacturer, yes, sir.

15 Q. I couldn't hear you. I'm sorry.

16 A. From the original manufacturer first and then from the
17 subsequent transfers.

18 Q. Okay. And I believe you testified that within, I think
19 it was within 24 hours that, of manufacture, the manufacturer
20 has to file the Form 2; is that right?

21 A. Yes, they should. Yes.

22 Q. So if I make 25 Sten tubes -- you know what a tube is?

23 A. Not technically. No.

24 Q. I'm sorry. You do or don't?

25 A. I'm not sure of the question.

1 Q. Okay. Do you know what is Sten machine gun is?

2 A. A completed machine gun, yes.

3 Q. Do you know what a tube is?

4 A. Not technically. No.

5 Q. Okay. Okay. The registrations that you have here, are
6 those completed machine guns, are those completed tubes, or do
7 you know the distinction I'm trying to make?

8 A. The manufacturer should submit the ATF Form 2 for
9 completed machine guns.

10 Q. Okay. And so in front of you are Exhibits 1.4, 1.5, and
11 1.6. Those are your forms that you've reviewed here that were
12 supposedly created by, manufactured by Mr. Erb; is that right?

13 A. That's correct.

14 Q. And if you need to look at the records go ahead, but
15 correct me if I'm wrong, isn't it true that as to each of those
16 serial numbers, E682, E683, and E685, Mr. Erb transferred those
17 to Mr. Perry, Mr. Perry transferred those to Mr. Kemmerer, and
18 then Mr. Kemmerer transferred those to John Guy Walker in each
19 of those three firearms. They were bulk transfers, basically.

20 A. They did do that, yes. They continued those transfers,
21 yes.

22 Q. As to each of those firearms?

23 A. Yes, sir.

24 Q. And according to the records --

25 MR. MARTIN: Would you put up -- I believe it's the

1 one Ed just had. 1925, I believe.

2 Q. (By Mr. Martin) And that on May 14th, and I'm assuming
3 that date is down here (indicating), right?

4 A. Yes, sir.

5 Q. On May 14th, that machine gun, your testimony is was
6 supposed to be 31 inches long?

7 A. Barrel length, yes.

8 Q. Okay.

9 A. Overall length. I'm sorry.

10 Q. Overall length of the weapon, and I'm assuming, I may be
11 wrong, but the overall length of the weapon should have been 31
12 inches; is that right?

13 A. Yes.

14 Q. That's what your records reflect?

15 A. Yes.

16 Q. Okay. And the -- and that would apply as in this case as
17 to 682, 683, and 685 that we've heard your testimony about,
18 right?

19 A. That is correct.

20 Q. Okay. Now, we see Mr. Erb's signature at the bottom. Do
21 you see that?

22 A. Yes.

23 Q. And this document, this 1925 we've referred to it, is in
24 each of the three exhibits, 1.4, 1.5 and 1.6; is that right?

25 A. Yes, it is.

1 Q. Mr. Kumi ega referred it to it as I guess the birth
2 certi fi cate, right?

3 A. That's correct.

4 Q. So that document would be in every one of your files from
5 E676 to E700, correct?

6 A. There would be a Form 2 there. Yes, sir.

7 Q. And over here next to the date there's some type of an
8 ini ti al. Do you see that?

9 A. I do.

10 Q. Do you know what that is or who that is or why it's
11 ini ti aled there?

12 A. I do not recognize that ini ti al.

13 Q. Okay. And I'm assumi ng you got -- I'm assumi ng you got
14 that document off of a mi crofi che?

15 A. That's correct. Mi crofi lm, yes, sir.

16 Q. And do the mi crofi che put a number or a, some uni que mark
17 on the document that would indi cate that it's been mi crofi ched
18 li ke at the top or bottom or anything?

19 A. We used to have the numbers. I don't believe that it
20 currently makes the numbers. We used to have the numbers.

21 Q. Okay. I'm going to hand you what I've marked for
22 i denti fi ca ti on purpo ses as De fend ant's Ex hi bi t No. 100, and ask
23 you, ma'am, if you recognize that document.

24 A. This is an ATF Form 2.

25 Q. And is it a form that is normally kept in the normal

1 course of business with the ATF?

2 A. Yes, it is.

3 MR. MARTIN: Your Honor, I would move for introduction
4 of Defendant's Exhibit No. 100.

5 THE COURT: Do you have a copy of it, Mr. Kumiaga?

6 MR. KUMIAGA: I do, your Honor.

7 THE COURT: Any objection?

8 MR. KUMIAGA: No, your Honor.

9 THE COURT: Will be admitted.

10 Q. (By Mr. Martin) I'm going to put on the monitor for you
11 to see here Defendant's Exhibit No. 100. Do you see that?

12 A. Yes, sir.

13 Q. And this you've referred to as a Form 2. We call it a
14 Form 2 mainly because right here at the bottom it says ATF Form
15 2, right?

16 A. Yes, sir.

17 Q. And if we zoom out, we see this is one of those birth
18 certificates Mr. Kumiaga talked about, right?

19 A. Correct.

20 Q. And it appears that it's got some microfiche marks where
21 it was microfiched in; is that correct?

22 A. Yes.

23 Q. And it's dated here at the bottom. Do you see that?

24 A. Yes, sir.

25 Q. And it's got the same initial on it that we didn't

1 understand earlier, doesn't it?

2 A. That's correct.

3 Q. And it's signed by Charles Erb and it says that I
4 manufactured some guns on April 20th, 1986. Do you see that?

5 A. Yes, I do.

6 Q. And we see on there E682, don't we?

7 A. Yes.

8 Q. And we see on there E686, don't we?

9 A. Yes.

10 Q. And we see on there E685, don't we?

11 A. Yes.

12 Q. And we see that those guns were registered with the ATF
13 on April 20th, almost a month before May 14th, 1986, don't we?

14 A. Yes, sir.

15 Q. And those are the same serial numbers that you told us
16 that we can't have duplications of because it would cause
17 problems with the ATF's records; is that correct?

18 A. Yes, sir. Yes.

19 MR. MARTIN: May I have a moment, your Honor?

20 THE COURT: Yes.

21 (Brief pause)

22 Q. (By Mr. Martin) And have you brought, I think they've
23 been referred to as the blue ribbon certificates for supporting
24 Defendant's Exhibit No. 100, ma'am?

25 A. For this particular one?

1 Q. Yes, ma'am.

2 A. I have not.

3 MR. MARTIN: No further questions, your Honor.

4 THE COURT: Mr. Kumi ega.

5 REDI RECT EXAMI NATION

6 BY MR. KUMI EGA:

7 Q. Ma'am, let me ask you this: You have Defense Exhi bi t 100
8 that Mr. Martin just had you testi fy about; is that correct?

9 A. Yes, si r.

10 Q. And then you have the other exhi bi t that's part of the
11 certi fi ed record; is that correct?

12 A. Yes, si r.

13 Q. That you testi fi ed about. Which one is part of the
14 offi ci al record, please?

15 A. We have the May 14th one in the database.

16 Q. Okay. Why is that record, this one here that you
17 testi fi ed about when I was asking questions in the database,
18 and this one not in the database?

19 A. I don't recall exactly. In 1986, we could have received
20 a duplicated Form 2, or an amended Form 2.

21 Q. All right.

22 MR. MARTIN: Your Honor, I object to specul ation. If
23 she doesn't know, she doesn't know.

24 THE COURT: Will be overruled.

25 Q. (By Mr. Kumi ega) One is an offi ci al document and the

1 other one is an unoffi cial document; is that correct?

2 A. Yes.

3 Q. If one is offi cial and one is unoffi cial is it because
4 something was rejected, or can you explain to the jury what
5 happens when this is not part, Defendant's Exhi bi t 100 is not
6 part of your certifi ed records?

7 A. We could have a question about the form and asked the
8 manufacturer for further information.

9 Q. All right. So if one is an offi cial record and one is
10 not, are there mul ti ple serial numbers that the government
11 prohi bi ted, ATF prohi bi ted, I mean permi tted Mr. Erb to have?

12 A. Could you repeat that question?

13 Q. If there is just one offi cial serial number, one offi cial
14 birthing document, and you deny Defendant's Exhi bi t 100, are
15 there mul ti ple guns under Erb the same serial number?

16 A. There are not.

17 Q. Okay. And why is that, please?

18 A. Because the first one was not put into the system because
19 of questions.

20 Q. Okay. So there is only one form that -- this is the
21 correct form; is that correct?

22 A. Yes, it is.

23 Q. Let me ask you this: On the form, there are Xs after the
24 numbers. What does that signi fy, please?

25 A. I do not remember. I do not know.

1 Q. But they are not in this form; is that correct?

2 A. That is correct.

3 Q. From your experience, does that -- is it significant?

4 A. It could be.

5 Q. Okay. So you're just telling us there is only one
6 official E series; is that right?

7 A. That is correct.

8 MR. KUMIEGA: Your Honor, if I may have a moment.

9 THE COURT: Yes.

10 (Brief pause)

11 MR. KUMIEGA: No further questions, your Honor.

12 THE COURT: Mr. Martin.

13 RECCROSS-EXAMINATION

14 BY MR. MARTIN:

15 Q. Ms. Brown, this is Defendant's Exhibit No. 100, so there
16 is no mistake. I've highlighted it at the top. That's an ATF
17 marking, is it not, that this document has been microfilmed,
18 microfilmed?

19 A. That is correct.

20 Q. And there is nothing on the face of this document to say,
21 to indicate that it is a valid or invalid Form 2 on the face of
22 the document, is there, ma'am?

23 A. No there is not.

24 Q. And on April 20th, 1986, this was submitted and you don't
25 know, you weren't involved in this process back then, were you,

1 ma' am?

2 A. I was employed at the time in the office in the NFA
3 branch.

4 Q. Were you involved in these particular weapons being
5 registered on April 20th, 1986?

6 A. I was not.

7 Q. Okay. And the NFA branch is -- NFA stands for National
8 -- tell me what it is; I'll mess it up.

9 A. It's the National Firearms Act branch.

10 Q. Okay. And if someone asks the NFA to obtain a document
11 for them that would indicate these serial numbers and this
12 document was produced, it would have been kept in your normal
13 course of business there then; is that right?

14 A. Yes.

15 Q. Okay. And you don't know if there are two E676s and two
16 E677s all the way down to two E700s, do you, ma' am?

17 A. I did search the database.

18 Q. You don't know if there are firearms with those duplicate
19 numbers, do you, ma' am?

20 A. Without the firearm, that is correct, I do not recall.

21 Q. Under Mr. Erb?

22 A. I only found one under Mr. Erb.

23 Q. But there is no denying we have two forms with duplicate
24 numbers on them almost a month apart, the one you brought today
25 and the one that we've introduced, Defendant's Exhibit 100; is

1 that correct?

2 A. Yes, it is.

3 MR. MARTIN: Nothing further.

4 THE COURT: Mr. Kumi ega and Mr. Martin, the Court made
5 a ruling on Government's 1.3, and at the time that the
6 objection was made and the argument was made, the Court only
7 was discussing initially the document prepared September 5th,
8 2008, with no discussion regarding all the supporting
9 documents. And I didn't realize there was anything other than
10 that certification without the supporting documents. Based
11 upon the Court's review of the supporting documents, the Court
12 is going to change its ruling and admit Government's Exhibit
13 1.3, realizing that the first two pages are only the
14 certification of what are the supporting documents behind it
15 similar to the other exhibits.

16 So there was no discussion of those supporting documents,
17 I understand you have an objection to the relevance of all of
18 them except one; is that right, Mr. Martin?

19 MR. MARTIN: Your Honor, maybe I misunderstand. I
20 don't think there are any supporting documents behind them.

21 THE COURT: Well, my --

22 MR. MARTIN: Maybe I have a different exhibit book
23 than you do.

24 THE COURT: I have 20-something pages of supporting
25 documents.

1 MR. MARTIN: May we -- may we approach on that
2 correct, your Honor, because I don' t.

3 THE COURT: Let' s give it to Mr. Kumi ega and see. Are
4 these supporting documents we behind it, Mr. Kumi ega? They are
5 in the Court' s exhi bi t book.

6 MR. KUMI EGA: 1.3, your Honor. Is that what you're
7 tal ki ng about?

8 THE COURT: 1.3.

9 MR. KUMI EGA: Yes, si r.

10 MR. MARTIN: Wait a mi nute, your Honor. I apol ogi ze.
11 I do have the documents that you're referring to.

12 THE COURT: So based upon the Court' s discovering that
13 the supporting documents were behind it, which weren' t
14 di scussed during the bench conference, the Court is going to
15 admi t Exhi bi t 1.3.

16 And based upon that admi ssi on, Mr. Kumi ega, you can reopen
17 your di rect i f you have other questions regarding thi s wi tness
18 related to that.

19 MR. KUMI EGA: Thank you, your Honor.

20 REDI RECT EXAMI NATION

21 BY MR. KUMI EA:

22 Q. Ms. Brown, i f you could look at Government' s Exhi bi t 1.3,
23 pl ease. What does that purport to be, pl ease?

24 A. Thi s is a certi fi cation li sting all the fi rearms that are
25 regi stered to Larry Dougl as Fri esen and Lobo Arms.

1 Q. And those are the types of fi rearms that you expl ained to
2 the jury before, the machi ne guns, silencers, sawed off
3 shotguns; is that correct?

4 A. Yes, they are.

5 Q. And how many, ma'am, are regi stered to Mr. Fri esen's
6 i nventory as of January 21st, 2003, please?

7 A. Seventeen.

8 Q. All right. And in that regi stration, is there a notati on
9 or a number for a Sten Mark II machi ne gun wi th seri al number
10 E683?

11 A. Yes, there is.

12 Q. And as the Court referred to the supporting documents,
13 what are the supporting documents for your offi ce, your agency
14 to make that conclusi on, please?

15 A. I was able to pull the copies of the regi stration
16 documents for each fi rearm.

17 Q. Excuse me?

18 A. I was able to pull the copies of the regi stration
19 document for each fi rearm.

20 Q. Would that include the Form 2s for each one, or just the
21 last time he received the fi rearms?

22 A. Thi s parti cular instance I pulled the current
23 regi strations for Mr. Fri esen.

24 Q. Okay. If you wanted to, you could have done a, I guess a
25 birthing document for everything; is that correct?

1 A. I could have pulled the ATF Form 2 and each subsequent
2 transfer document.

3 Q. Let me ask you this: The Form 2 that would be -- you
4 would use the Form 2 to build your supporting documents; is
5 that correct?

6 A. Yes, sir.

7 Q. There is only one Form 2 approved by ATF; is that
8 correct?

9 A. That is correct.

10 Q. Okay.

11 MR. KUMIEGA: Nothing further, your Honor.

12 THE COURT: Mr. Martin, you may cross-examine relating
13 to that exhibit.

14 RECCROSS-EXAMINATION

15 BY MR. MARTIN:

16 Q. Ms. Brown, how accurate are the NFRTR records?

17 A. I don't have a number.

18 Q. There are inaccuracies in them, wouldn't you agree,
19 ma'am?

20 MR. KUMIEGA: Objection, your Honor. That's not part
21 of the direct examination. We're here to discuss certain
22 specific serial numbers.

23 THE COURT: Be overruled.

24 Q. (By Mr. Martin) There are inaccuracies in them, are
25 there not, ma'am?

1 A. Yes, there are.

2 Q. The Form 2, the birthing documents, who approves those?

3 A. They are a notice of manufacture. We accept them from
4 the manufacturer or importer.

5 Q. So nobody approves them, I just send one in if I'm
6 licensed to do that?

7 A. That is correct.

8 Q. So if I sent one in on May 14th, you accepted it, if I
9 sent one in on April 20th, you accepted it; is that right?

10 A. We could contact you and ask you, you know, the concern
11 if they were the same numbers.

12 Q. Okay. You don't know what happened in this instance?

13 A. No, I do not.

14 MR. MARTIN: Nothing further.

15 THE COURT: Anything further.

16 MR. KUMI EGA: Yes. May I voi r dire about the numbers,
17 your Honor?

18 THE COURT: Voi r dire about the numbers?

19 MR. KUMI EGA: Ask her questions about the numbers,
20 your Honor, that Mr. Marti n just brought up.

21 THE COURT: All right.

22 REDI RECT EXAMI NATION

23 BY MR. KUMI EGA:

24 Q. Ma'am, you testi fied about E682; is that correct?

25 A. Yes.

1 Q. E683, E685, and you also had information on the part
2 number, D95843; is that correct?

3 A. Yes, I did.

4 Q. Have you found any inaccuracies as you put together your
5 presentation today for those numbers?

6 A. No, I did not.

7 MR. KUMI EGA: Nothing further, your Honor.

8 THE COURT: Ms. Brown, you may be excused, and I would
9 advise you that you're not to discuss the testimony you've
10 given here today with other persons who may be a witness in
11 this matter. You may be excused.

12 Who is your next witness?

13 MR. KUMI EGA: Eric Booker from the ATF. He might be a
14 lengthy witness, your Honor.

15 THE COURT: Okay. We're going to take our lunch break
16 at this time and reconvene at 12:45. I'm Assuming all of you
17 know about or discovered that there are numerous downtown
18 places to eat, both in the tunnel and above ground and close
19 by. So again, I would remind you to not discuss the case among
20 yourselves or with others or reach any conclusions until
21 you've heard all the evidence and I've instructed you on the
22 law. We'll reconvene at 12:45.

23 All rise while the jury exits.

24 (The jury exits the courtroom, after which the following
25 was had in open court:)

1 THE COURT: Mr. Kumi ega, Mr. Martin, without tabs I
2 thought the only thing we were objecting to was this
3 certi fication. The Court did not look beyond because there are
4 no particu lar tabs on all these various exhi bits, so I didn't
5 realize that there were all the supporting documents which are
6 business records exceptions. And so the ruling of the Court
7 will be in all those exhi bits where there are the supporting
8 documentations, why, the certi fication will be included in part
9 of that exhi bit. But the -- and, of course, other issues of
10 relevance and other matters can always be objected to, but as I
11 say, when I made my ini tial ruling I didn't look beyond that
12 ini tial page which is not a business record, but -- Mr. Martin.

13 MR. MARTIN: Your Honor, I had asked you to reserve
14 ruling on 1.5, which was E686. My objection will be the
15 accuracy of the record based upon Defendant's Exhi bit 100, but
16 I didn't want the record to go silent in that area.

17 THE COURT: The Court will admit Exhi bit 1.5 and .H1 ~
18 Booker - Di rect
19 overrule the objection based upon that objection.

20 We'll be in recess until 12:45.

21 (A recess was had, after which the following was had in
22 open court:)

23 THE COURT: Government may call its next witness.

24 MR. KUMI EGA: Yes, your Honor. The United States
25 would like to call Eric Booker.

1 (Wi tness sworn)

2 THE COURT: Have a seat, si r.

3 You may proceed, Mr. Kumi ega.

4 MR. KUMI EGA: Thank you, your Honor.

5 ERIC BOOKER,

6 called as a wi tness, having been duly sworn, testi fies as

7 fol lows:

8 DIRECT EXAMI NATION

9 BY MR. KUMI EGA:

10 Q. Si r, for the record, can you introduce yoursel f to the
11 jury, please?

12 A. My name is Eric Booker.

13 Q. Mr. Booker, how are you empl oyed?

14 A. I'm a speci al agent with the Bureau of Al cohol , Tobacco,
15 Fi rearms and Expl osi ves.

16 Q. And how long have you been worki ng wi th ATF?

17 A. For seven years now.

18 Q. Do you offi ce out of Okl ahoma Ci ty?

19 A. Yes, I do.

20 Q. And prior to worki ng wi th ATF, what did you do, please?

21 A. I was a state probati on and parole offi cer for
22 approxi mately two years in Tul sa.

23 Q. Now, on or about I think June 10th, 2004, you were part
24 of a search warrant team; is that correct?

25 A. That's correct.

1 Q. And what were your tasks? What were your duties that
2 day, please?

3 A. I was there when we made entry into the law office. I
4 took video of the law office and I took photographs of
5 evidence.

6 Q. All right. And how long did that take you to do, please?

7 A. The whole time we were there?

8 Q. Yes, sir.

9 A. I would guess two or three hours.

10 Q. And what time did you knock on the door, please?

11 A. 7:45, 8 a.m.

12 Q. You also took video of another location; is that correct?

13 A. At the home residence.

14 Q. All right. And what did you do first, please?

15 A. The office itself.

16 Q. And you said took about two hours, you said?

17 A. I'm thinking.

18 Q. And when did you go to the residence?

19 A. I was trying to remember that; it was years ago. I
20 honestly can't remember if I left the office and went to the
21 residence and shot video and then went back to the office, or
22 if we completed the office and then I went to the residence.

23 Q. When you were making entry into the office, was there
24 another team doing something else?

25 A. Yeah. There were other additional agents at the

1 residence.

2 Q. All right. So simultaneous entry?

3 A. Yes.

4 Q. All right. So you said you had a specific task that day;
5 is that correct?

6 A. I shot the video and took the photographs.

7 Q. Why did you take a video camera to both the residence and
8 the law office on June 10th, 2004?

9 A. It's actually ATF policy that we shoot video. Once we
10 secure a residence or location we shoot a video of the location
11 as it is then and then we shoot a video of the location as it
12 is when we depart it.

13 Q. And you did that; is that correct?

14 A. Yes.

15 Q. And for the presentation today, you looked at the
16 original tapes of your handiwork, taking the pictures; is that
17 correct?

18 A. Yes.

19 Q. And what kind of camera did you use?

20 A. It was either a Sony PC5 or PC9. It's just a small
21 hand-held camcorder.

22 Q. And did you have the opportunity then to change that
23 format to a different format?

24 A. I myself didn't, but it has been transferred to a DVD.

25 Q. And did you ensure the accuracy of the first tape was

1 correct with the DVD?

2 A. I've looked at it on computer, yes.

3 Q. And they are accurate; is that correct?

4 A. Yes.

5 Q. Now, did you also have the ability -- did you take any
6 notes during your search?

7 A. I did not.

8 Q. All right. Did you also, you said you seized evidence;
9 is that correct?

10 A. Some evidence was seized from the residence, yes, and,
11 I'm sorry, the office.

12 Q. Okay. And do you know what happened to that evidence?

13 A. It was taken into the ATF evidence vault.

14 Q. And tell us about custody about control of that, please.

15 A. Following the search, the items that were taken would
16 have been logged in, would have been put in a vehicle and
17 driven to the ATF office where they would have remained in a
18 secure, what's called the outer vault. One the case agent puts
19 them into our data base system they are assigned, like, a PIN
20 number or an item number. At that point they are placed into a
21 secured evidence vault.

22 Q. Agent, the video that you shot basically has two segments
23 for each structure, for the law office and for the residence;
24 is that correct?

25 A. That's correct.

1 Q. Can you tell the jury about that, please?

2 A. Again, there would be an entry portion where we first
3 secured the residence or the office. That would be a video
4 shot within the first few minutes basically of securing the
5 location. It shows the residence as it was while we searched
6 it or prior to searching it. The second version will be
7 basically the same thing, and it's showing the office and the
8 residence as we left it.

9 Q. In front of you if you can look at Government's Exhibit,
10 proffered Exhibit 2.0. Can you look at that, please? Is there
11 a notation for 2.0?

12 A. It says "physical evidence".

13 MR. KUMIEGA: Your Honor, may I approach the witness,
14 your Honor?

15 THE COURT: Yes.

16 Q. (By Mr. Kumi ega) What I have here, sir, is Government's
17 Exhibit 2.0 and 2.01 for identification purposes. Can you look
18 at that, please? Are you familiar with those exhibits?

19 A. Yes.

20 Q. What are they, please?

21 A. Exhibit 2.0 is the actual digital videotape made by the
22 camcorder at the office, and 2.01 is the DVD that was made of
23 that.

24 Q. Can you now flip to Government's Exhibit 3.0 and 3.01,
25 please? Is there a notation on that, please?

1 A. Yes. It says "physical evidence".

2 MR. KUMIEGA: Your Honor, may I approach the witness
3 again?

4 THE COURT: Yes.

5 Q. (By Mr. Kumi ega) Sir, what I've handed you are marked
6 3.0 and 3.01. Are you familiar with those proffered exhibits?

7 A. What was that again?

8 Q. Are you familiar with those proffered exhibits I've just
9 handed you?

10 A. Yes.

11 Q. What are they, please?

12 A. 3.0 would be the digital videotape shot at Doug Friesen's
13 residence. 3.01 should be the DVD conversion of this tape.

14 Q. Also, did you also take or someone in your office take
15 companion still photographs of both searches of the residence
16 and of the office?

17 A. I took photographs at the office, another agent took
18 photographs at the residence.

19 Q. All right. Now, did I ask you this, but out of an
20 abundance of caution, you said that you've looked at 2.0 and
21 2.01 and they are accurate; is that correct?

22 A. Yes.

23 Q. And same with 3.0 and 3.01; is that correct?

24 A. Yes.

25 MR. KUMIEGA: Your Honor, the United States at this

1 time would move for the admission of Government's Exhibit 2.0
2 and 2.01 and Government's Exhibit 3.0 and 3.01, your Honor.

3 MR. MARTIN: I have an objection if I could approach
4 very briefly.

5 THE COURT: What's the objection?

6 MR. MARTIN: The objection, number one, your Honor, is
7 we have -- there's preserving the record on a motion that was
8 previous by filed to suppress, and also there is audio on these
9 videos, your Honor, that I don't think is an appropriate
10 narration, and some of them are staged.

11 THE COURT: What's the audio of?

12 MR. KUMIEGA: Judge, my understanding of the audio,
13 and we can delete it, or mute it, my understanding it's just a
14 running commentary of what he sees.

15 THE COURT: Why don't we mute the audio.

16 MR. KUMIEGA: Yes, sir. May the agent testify to the
17 jury what he's seeing as he goes through the tape?

18 THE COURT: Well, we can mute the audio and the agent
19 can testify regarding the pictures.

20 MR. KUMIEGA: All right.

21 THE COURT: The objection will be overruled.

22 MR. MARTIN: There is one staged photo that I would
23 like specifically to be heard on, your Honor.

24 THE COURT: Which --

25 MR. MARTIN: It's on the video of the office.

1 THE COURT: That's the 3?
2 MR. MARTIN: That's No. 2, actually.
3 THE COURT: Oh, the office is No. 2?
4 MR. KUMI EGA: Yes, sir.
5 THE COURT: Which part of the --
6 MR. MARTIN: It's part of the video, your Honor, when
7 they get upstairs.
8 THE COURT: Counsel approach.
9 (The following was had at the bench, out of the hearing of
10 the jury:)
11 MR. MARTIN: Your Honor, under my client's desk there
12 is a gun that's mounted on a swivel, and in the video it's
13 shown, and there will be some exhibits like that that are
14 shown. I think the evidence will be that that gun, number one,
15 is not pointed like that, it's pointed like that (indicating),
16 to -- away from the front of the desk, and number two, I think
17 it's such a prejudicial nature that it so outweighs any
18 probative value. They are going to get evidence in about it,
19 but these photographs are highly prejudicial.
20 THE COURT: What's the relevance?
21 MR. KUMI EGA: First of all. These are not staged,
22 this is the way the agent found them, and he's going to testify
23 to that. But second, this goes to Count No. 2 of the
24 government's indictment, I think it was Count No. 2 when the
25 inspector says do you have any other guns stored in your office

1 and he says this one and a gun in the closet and another in the
2 display case, and he neglects to talk about the guns found in
3 the vault on the day of the inspection that we found the secret
4 room that goes back to February 19, 2003. So all this is
5 relevant. It shows he has the guns he admits, but does not
6 admit to the guns being in the vault during the search warrant.
7 These are relevant.

8 MR. MARTIN: He admitted this one. This is not a
9 substantive crime. He said there is a gun stored in my desk.

10 MR. KUMIEGA: Then the jury is entitled to see how the
11 gun is being stored.

12 THE COURT: Is that one -- did he show the inspector
13 this gun when they first came in?

14 MR. KUMIEGA: Yes, he did.

15 THE COURT: How is that part of Count No. 2?

16 MR. KUMIEGA: This shows that he had the gun stored on
17 the second floor but did not tell the inspectors.

18 THE COURT: So he never -- he did not tell the
19 inspectors about this gun?

20 MR. KUMIEGA: No. He did.

21 MR. MARTIN: He did.

22 MR. KUMIEGA: He tells the inspectors about this gun
23 and the gun in the closet and another gun in the display case
24 on the second floor, and these are guns we're going to
25 introduce. But he didn't talk about the guns in the safe.

1 THE COURT: So Count No. 2 is the guns in the safe.

2 MR. KUMI EGA: But this shows he's truthful about this
3 but is being deceitful on something else. That's the relevancy
4 of this.

5 THE COURT: I don't see how that's relevant if that's
6 not part of Count No. 2.

7 MR. KUMI EGA: He has this registered, it's the way he
8 displays it. But the point is he only discloses that and
9 doesn't disclose the machine gun which we believe is in the
10 vault on the day of the search on the, on the day of the
11 inspection. That's the whole purpose of this.

12 THE COURT: But this isn't part of the Count No. 2,
13 the charge --

14 MR. KUMI EGA: It's part of the relevance of that
15 count, your Honor.

16 THE COURT: If he told them about it and showed it how
17 is it --

18 MR. KUMI EGA: The jury is entitled to see where he's
19 storing his guns and why he neglected to talk about the safe on
20 the first floor behind the library on the bookshelf.

21 MR. MARTIN: While we're up here I've also got, and we
22 might just address it now, they've got a photograph of every
23 gun he owns they plan to introduce. They are all legal, there
24 is no issue about it. They have no relevance to the case. I
25 mean, unless -- I guess what I'm saying is there's, like, I

1 don't know how many there are. There's 30 or 40 pictures of
2 firearms that are totally legal that he can lawfully have but
3 it appears they just want to show pictures of firearms, and I'm
4 going to, I need to object to them. They are Exhibits 2.2
5 through 2.21. So it would be 2.2, 2.3, 2.4. All those
6 exhibits I can tell you from what I can tell they all appear
7 legal, and same thing will happen in the house.

8 THE COURT: What's the relevance of all this?

9 MR. KUMIEGA: The guns that he has in the safe, your
10 Honor, on the 19th of February, 2003, he never discloses those
11 guns in the safe. When we do the search warrant and the
12 testimony from the employees is that gun room was always chock
13 full of firearms. So by circumstantial evidence, Mr. Friesen
14 is lying to the inspectors on the day of the compliance
15 inspection where he's keeping his guns. That's why we'll never
16 find the registered --

17 THE COURT: My question is, what's the relevancy of
18 showing all these guns that are legal?

19 MR. KUMIEGA: Because he is lying about them. That's
20 the point. He had them stored and that's why they were missing
21 guns and he never explained it.

22 THE COURT: So these guns were all missing during the
23 compliance inspection?

24 MR. KUMIEGA: They are not missing, they are being
25 stored and never divulged.

1 THE COURT: So these guns, all of these exhibits were
2 never divulged during the compliance inspection?

3 MR. KUMIEGA: He was using those guns -- yes, there is
4 one gun missing. That Johnson gun, that's part of my --

5 THE COURT: So one out of all these pictures of guns,
6 all the others were hidden and concealed?

7 MR. KUMIEGA: He didn't have a license anymore at the
8 time of the search. But the evidence will show that at the
9 time of the compliance he was storing these guns, storing guns
10 of like nature in there, and that's why it's relevant to show
11 he was lying to the inspectors. It's a gun vault --

12 THE COURT: We're not communicating, Mr. Kumiega. The
13 pictures of all these guns that he's objecting to were all
14 hidden in a gun vault and not shown to the inspectors?

15 MR. KUMIEGA: No. I'm saying at least one of the guns
16 were.

17 THE COURT: So what about all the others?

18 MR. KUMIEGA: It shows the relevance that he was
19 actually using the vault to store firearms during the
20 inspection and never divulged them.

21 THE COURT: What about 30 pictures of guns that were
22 disclosed that were suspected that he did own properly, why
23 have all of those pictures?

24 MR. KUMIEGA: Because it shows he's lying to the
25 inspectors on the day of the compliance. This was an actual

1 storage room that --

2 THE COURT: We're not communicating. Are you saying
3 that in this storage room all of these guns were hidden and
4 were not shown to compliance inspectors?

5 MR. KUMIEGA: I can't say that. I can't say if these
6 guns were on his books on this day. I can find out. But it's
7 not the relevance, just showing he was using a storage
8 compartment and one of the guns that he should have declared,
9 because he got it in December of 2002 and the inspection
10 occurred on February of 2003, when we did the search warrant it
11 was in that hidden room, he never divulged that gun.

12 THE COURT: So we're talking about one gun?

13 MR. KUMIEGA: But these show he was using a storage
14 room to have guns. Remember when we do the search warrant he
15 gave up his firearms license prior to that. He's got a duty to
16 disclose it at that time, but shows he had a gun vault to store
17 firearms. That's why it goes to the lie to the inspectors.

18 MR. MARTIN: One gun I understand; the rest I don't.
19 And that's the problem with the video. There's guns, they've
20 got guns laying out all over the house that they are showing,
21 they are all legal and there is no, I don't know, there's no
22 issue as to whether or not the officers did something improper
23 or anything during the search. The video goes to show a bunch
24 of guns in a bunch of rooms. And that's my concern. If he's
25 got a particular gun that he says was in the safe, you know,

1 until I can refute it, which I'll tell you I'll be able to, but
2 I think he can get that photograph in, of that one particular
3 gun.

4 MR. KUMI EGA: These guns bolster the gun that was
5 hidden on that day. That's the whole point, he was using it.

6 MR. MARTIN: The inventory was February 2003. The
7 search was 16, 18 months later.

8 MR. KUMI EGA: Right.

9 MR. MARTIN: You're making a leap that from February
10 to 18 months later that gun was still in there or was put in
11 there.

12 MR. KUMI EGA: The employees are all going to testify
13 that he kept guns in the gun vault at the time of the
14 compliance inspection. They cannot say exactly what date, but
15 everybody in the office knew that's where he kept a boatload of
16 his firearms, and this proves it.

17 THE COURT: So all of these guns were not there during
18 the compliance inspection but were there during the search
19 warrant?

20 MR. MARTIN: That's our position.

21 THE COURT: Is what you're saying?

22 MR. KUMI EGA: We don't know what was there during the
23 compliance inspection because he never showed that vault.
24 That's the whole point, it was hidden and that's the point,
25 because the inspectors have a right to look through the Lobo

1 Arms -- remember, your Honor, he's supposed to be selling the
2 guns. That's the ground zero, and he's supposed to tell the
3 inspectors everywhere he keeps guns, in a gun vault --

4 THE COURT: Which one gun was --

5 MR. KUMIEGA: Excuse me?

6 THE COURT: -- at least. So you don't know. So these
7 guns don't comply with the guns that were done during the
8 inspection. Is that what you're saying?

9 MR. KUMIEGA: I don't know. I honestly --

10 THE COURT: Some do, some don't.

11 MR. KUMIEGA: I honestly don't know, your Honor. If I
12 can have a minute break I can ask Valerie Rowden, because she's
13 the one that did the deal. But it tends to show that he was
14 storing guns during the compliance inspection because that gun
15 vault was installed way before February of 2003. And the
16 employees are going to say he always kept guns in the gun vault
17 and never divulged it in February of '03. That's the whole
18 relevance. It tends to support that's what he was doing and
19 that's where the lie comes from. And remember, he's a FFL on
20 the day, he's got to tell them where the guns are stored. It's
21 material to the case.

22 THE COURT: Mr. Martin.

23 MR. MARTIN: Your Honor, our position is that there
24 were no guns in the safe on that day. We'll have evidence to
25 support that, even though Mr. Kumiega is going to say we don't.

1 One gun he can possibly put in that safe, a gun by the name of
2 Annette Johnson, I believe. And you know, I don't have a
3 problem with that, because I think he'll lay the foundation to
4 get that in. They can refute it, but that's the problem I
5 have. He's going to have -- and I don't have them here, but
6 there's picture after picture after picture of handguns,
7 hunting guns, all kind of firearms that have no relevance other
8 than to prejudice this jury. Kind of like that picture.

9 MR. KUMIEGA: That's what -- it's not staged. That's
10 the way they found it. That's the way he stores his guns.
11 That tends to show a machine gun was missing when you look at
12 the totality of the evidence. Incrementally it still shows
13 that he kept a storage place and never divulged it in February
14 of '03.

15 MR. MARTIN: Those the whole crux of this. And these
16 are, remember he drops his license before that. The Court can
17 give a limiting instruction that shows what it's limited to do,
18 and there's not anything prejudicial about it.

19 THE COURT: I'm still not understanding what it's
20 intended to do.

21 MR. KUMIEGA: Your Honor, just showing he's lying.
22 I'm telling you.

23 THE COURT: How does it show he lied if he's got a
24 bunch of legal guns laying around?

25 MR. KUMIEGA: Because he's got to divulge it.

1 THE COURT: So he didn't divulge any of these guns?

2 MR. KUMIEGA: He did not divulge that there was a gun
3 safe in there.

4 THE COURT: Did he divulge -- I don't see how that
5 connects with what was divulged or not. So we know one out of
6 all these.

7 MR. KUMIEGA: But it tends to show that's where he was
8 keeping the gun and tends to show that one gun is a lie and
9 that's enough to make it material as to count No. 2. They
10 bolster each other that he used it and never divulged it. The
11 machine gun, the registered Sten, it could have been in there
12 but it's material to that count.

13 MR. MARTIN: He showed the machine gun to the
14 inspectors. They saw the Sten, the only one he had in his
15 office.

16 MR. KUMIEGA: Without the serial number on it.

17 THE COURT: Okay.

18 MR. KUMIEGA: If I can get a five-minute break I can
19 go over these numbers, but I'm telling you I believe this is
20 highly relevant to the case.

21 THE COURT: I'm not sure how, but I'm going to
22 overrule the objection, Mr. Martin. I haven't seen the video,
23 I haven't seen all the pictures.

24 MR. MARTIN: This is the one that causes me the most
25 heartburn, at least this picture, 2.20, but --

1 THE COURT: And he divulged it?

2 MR. KUMI EGA: Yes.

3 THE COURT: So what's the purpose of that?

4 MR. KUMI EGA: Shows how he was storing his guns that
5 day.

6 THE COURT: If he divulged it it doesn't matter how he
7 stored them, does it?

8 MR. KUMI EGA: Just shows the haphazard nature of the
9 way they were stored.

10 THE COURT: Didn't look too haphazard to me. I'm
11 going to sustain the objection to that. I think it is more
12 prejudicial than probative.

13 MR. KUMI EGA: How do I redact it out of the tape, your
14 Honor? We can show -- we gave this to them a long time ago.

15 MR. MARTIN: I didn't think there was an issue until I
16 got our exhibit list, but I don't think there was any issue
17 about what happened in the search.

18 THE COURT: Do you know where it is so when you come
19 to it, we can skip that?

20 MR. KUMI EGA: It's going to be hard to redact it. I
21 would need a couple of minutes.

22 THE COURT: We'll stand at ease then.

23 MR. KUMI EGA: Judge, it's going to --

24 (The following was had in open court, within the hearing
25 of the jury:)

1 MR. KUMI EGA: May I approach?

2 THE COURT: Yes.

3 (The following was had at the bench, out of the hearing of
4 the jury:)

5 MR. KUMI EGA: Your Honor, to ensure accuracy and I
6 don't violate anything, I'm going to need a couple of minutes.
7 Can I go use a conference room?

8 THE COURT: You can't do it here.

9 MR. KUMI EGA: The jury might see it.

10 THE COURT: Not if you turn it towards you.

11 MR. KUMI EGA: They might hear something. Out of an
12 abundance of cautious, I don't want to prejudice anything.

13 THE COURT: You can turn the machine that way and
14 silently put it on mute.

15 MR. KUMI EGA: Okay.

16 (The following was had in open court, within the hearing
17 of the jury:)

18 THE COURT: Ladies and gentlemen, we're just taking a
19 few minutes here to correct one little thing in the video that
20 you're about to see. So it will just take a couple minutes for
21 them to get through that.

22 (Brief pause)

23 THE COURT: Did you get it done, Ms. Webb

24 MS. WEBB: Can I have just a second, your Honor?

25 MR. KUMI EGA: Your Honor, can we dim the lights when

1 we play the tape?

2 THE COURT: Oh, sure. This is different courtroom
3 than we've used in the past, but we'll figure it out.

4 Ms. Youngberg you may put us all in the dark, but can you
5 figure out where the lights are?

6 MR. KUMIEGA: Your Honor, with the correction that you
7 ordered the government, may the government play 2.01?

8 THE COURT: You may proceed.

9 (Government's Exhibit 2.01 played, with the following
10 commentary:)

11 Q. (By Mr. Kumi ega) Agent Booker, what is that?

12 A. That's the Doug Friesen Law Firm.

13 Q. What day is this search?

14 A. June 2004.

15 Q. And you're taking this video; is that correct?

16 A. Yes.

17 Q. All right. Is that like a panorama of the office?

18 A. Yeah. That's a 360 degree view.

19 Q. Anybody teach you how to work a video camera?

20 A. Not especially well.

21 Q. What is that? Can you describe that for the jury,
22 please?

23

24 A. As you walk in the front door of the law firm to the left
25 there's kind of a receptionist desk.

1 Q. What's that, Agent?

2 A. It's just a closet.

3 Q. On the first floor?

4 A. Yes.

5 Q. What is that, sir?

6 A. Looks like stairs going down to the basement.

7 Q. All right, Agent.

8 MR. KUMI EGA: Stop right there.

9 Q. (By Mr. Kumi ega) Explain this to the jury, please.

10 A. That area during the search we referred it as the
11 library. Obviously has the large book cases with the books in
12 it. Basically kind of had a quasi secret compartment. I'm not
13 sure how it was released, but somehow you that panel is
14 released and that bookcase swung in, and once it did there was
15 a small area back behind the bookcase.

16 Q. And did you attempt to photograph that, please?

17 A. Yes.

18 Q. Both by video and still?

19 A. There are some still pictures in there. Yes.

20 Q. Okay. Does that show how it swings open?

21 A. Yes.

22 Q. What happens next? What are you recording now?

23 MR. KUMI EGA: Stop right there, please. If you can
24 back up about five seconds. Right there. Okay.

25 Q. (By Mr. Kumi ega) What is that, please?

1 A. It's a gun safe.

2 Q. All right. How do you know that?

3 A. We looked inside of it.

4 Q. All right. Continue please. What area of the office is
5 that?

6 A. The kitchen area.

7 Q. Is this on the first or second floor?

8 A. On the first floor. The floor you enter on from the
9 front entrance.

10 Q. What's that, Agent?

11 A. That's crossing from the kitchen into I believe the
12 conference room.

13 Q. Now, during the course of the entry and exit video, did
14 you find some firearms upstairs?

15 A. There were some firearms upstairs. Yes.

16 Q. And were they NFA type weapons?

17 A. I believe one of them was.

18 Q. All right. And what is an NFA type weapon?

19 A. A firearm that has to be registered with ATF that
20 encompasses machine guns, silencers, destructive devices.
21 Those type things.

22 Q. Now, did you find some of these firearms in the desk
23 area?

24 A. Yes.

25 Q. Did you find some in the closet area?

- 1 A. Yes.
- 2 Q. This is in his office on the second floor?
- 3 A. In his office on the second floor.
- 4 Q. And did you find some in the display case?
- 5 A. Yes.
- 6 Q. All on the second floor?
- 7 A. Yes.
- 8 Q. Now, what is this, please?
- 9 A. This is coming up the stairs.
- 10 Q. Whose office is that?
- 11 A. The one we just walked into?
- 12 Q. The one we just saw.
- 13 A. The one that was dead ahead was Mr. Friesen's office;
- 14 it's not this office.
- 15 Q. Okay. Is this a side office?
- 16 A. Yes.
- 17 Q. Tell us when you get into Mr. Friesen's office, please.
- 18 Whose office is that, sir?
- 19 A. Right there, I don't know whose office that particular
- 20 one is.
- 21 MR. KUMI EGA: Stop at this point.
- 22 Q. (By Mr. Kumi ega) Whose office is this now, please?
- 23 A. This would be Doug Friesen's office.
- 24 Q. Did you find firearms in that office?
- 25 A. Yes.

1 MR. KUMI EGA: Stop right there.

2 Q. (By Mr. Kumi ega) Were there fi rearms in the di splay
3 case?

4 A. There was one fi rearm in a di splay case.

5 Q. Do you know where in the office it was l o c a t e d, s i r?

6 A. I ' m n o t f o r s u r e w h e r e .

7 Q. Where do you think i t w a s?

8 A. I t w o u l d h a v e b e e n l a y i n g o n a t a b l e, i t w a s i n a d i s p l a y
9 c a s e m a y b e 1 2 o r 1 4 i n c h, a g l a s s t o p w i t h a D e r r i n g e r a n d s o m e
10 a m m u n i t i o n i n i t .

11 MR. KUMI EGA: C o n t i n u e .

12 S t o p r i g h t t h e r e . B a c k u p a b o u t t h r e e s e c o n d s, f i v e
13 s e c o n d s .

14 Q. (By Mr. Kumi ega) A g e n t, d i d y o u f i n d f i r e a r m s a s s o c i a t e d
15 w i t h t h a t d e s k?

16 A. Y e s .

17 Q. W h a t t y p e o f f i r e a r m s d i d y o u f i n d?

18 A. T h e r e w a s a . 2 2 p i s t o l i n o n e o f t h e d r a w e r s, u n d e r n e a t h
19 t h e d e s k --

20 MR. MARTIN: Y o u r H o n o r, m a y w e -- I t h o u g h t w e
21 a d d r e s s e d t h i s i s s u e .

22 T H E C O U R T: W i l l b e s u s t a i n e d .

23 M R. K U M I E G A: I t h o u g h t i t w a s t h e p h o t o g r a p h, y o u r
24 H o n o r .

25 T H E C O U R T: S a m e p r i n c i p a l . H e f o u n d f i r e a r m s i n t h e

1 desk.

2 MR. KUMI EGA: All right.

3 Q. (By Mr. Kumi ega) How many fi rearms did you find in the
4 desk area?

5 A. In the desk area? I believe three.

6 Q. Okay.

7 MR. KUMI EGA: Continue, please.

8 Your Honor, I believe that concludes our presentation for
9 the jury as to the videotape.

10 THE COURT: All right.

11 (Video concluded)

12 Q. (By Mr. Kumi ega) Agent, you also testi fied that you
13 helped inventory a gun safe on the first floor; is that
14 correct?

15 A. Yes.

16 Q. All right. Government's Exhi bi t 2.02. What is that,
17 please?

18 A. That is a photograph of the Friesen Law Firm, actual
19 structure.

20 MR. KUMI EGA: Your Honor, may the United States admi t
21 Government's Exhi bi t 2.02?

22 MR. MARTIN: No objecti on.

23 THE COURT: Will be admi tted.

24 Q. (By Mr. Kumi ega) That's the picture of the office; is
25 that correct?

1 A. That's correct.

2 Q. Okay. Can you look at Government's Exhibit 2.1, please.

3 A. Okay.

4 Q. Have you seen that before?

5 A. That is the gun safe that was located in the, behind the
6 panel, bookcase in the library.

7 Q. Okay.

8 MR. KUMIEGA: Your Honor, the United States at this
9 time would move for admittance of 2.1 into evidence.

10 MR. MARTIN: Your Honor, as to these and the rest of
11 the exhibits, I'll raise the same objection I raised at the
12 bench a minute ago.

13 THE COURT: The objection will be overruled. Is there
14 a still picture of the one that the Court sustained an
15 objection?

16 MR. KUMIEGA: Yes. I'm not bringing that up, your
17 Honor.

18 THE COURT: Which one is that?

19 MR. KUMIEGA: I think it's going to be a series of
20 guns, depending upon how the Court rules, the gun in question
21 that the Court looked at is 2.20. Mr. Martin did not object to
22 2.19 or 2.21. That's up for the Court's consideration.

23 THE COURT: The Court is going to overrule the
24 objection to all of the exhibits except 2.20, and I'll sustain
25 the objection to that.

1 MR. KUMI EGA: Your Honor, the United States then would
2 move in toto for the introduction, to save the Court time, 2.1
3 up to 2.19, and 2.21, your Honor. We would move for the
4 introduction of those exhibits.

5 THE COURT: The Court will note the defendant's
6 objections and overrule those objections, and they'll be
7 admitted. Did you say 2.21?

8 MR. KUMI EGA: 2.1 to --

9 THE COURT: 2.19?

10 MR. KUMI EGA: Yes, sir. Then I'm skipping 2.20 and
11 going to 2.21, your Honor.

12 THE COURT: Okay. All but 2.20 will be admitted.

13 MR. KUMI EGA: Yes, sir.

14 Q. (By Mr. Kumi ega) All these photographs you've looked at
15 and they accurately depict the scene on June 10th, 2004; is
16 that correct?

17 A. Yes.

18 Q. What is that?

19 A. That is the gun safe that was located behind the bookcase
20 kind of in the hidden compartment location.

21 MR. KUMI EGA: Your Honor, maybe I think if we can just
22 take out these series of lights the jury can see a lot better.

23 THE COURT: Okay. Ms. Youngberg.

24 Q. (By Mr. Kumi ega) And for the record, what does that say,
25 please?

1 A. What does it say?

2 Q. Yeah. On the vault.

3 A. Armor Vault.

4 MR. KUMIEGA: 2.2, if we can show the jury that,
5 please.

6 Q. (By Mr. Kumi ega) Can you describe that for the jury,
7 please, and for the record?

8 A. That's the inside of the gun vault. A few things stacked
9 there on the left and long guns there on the right.

10 Q. 2.3, please. What is that, please?

11 A. Another picture of the inside of the gun vault. There's
12 two handguns hanging there on the right.

13 Q. And does that swing open, I imagine.

14 A. That's the front door to that vault swung open.

15 Q. All right. And, again, this is all behind the library
16 shelves; is that right?

17 A. Correct.

18 Q. 2.4, please. What does that appear to be, please?

19 A. That is the top of the gun vault. Two firearms were
20 found up on top of it.

21 Q. And that black thing, from your experience do you know
22 what that is?

23 A. It's a gun box.

24 Q. 2.5, please. What is that, please?

25 A. That is a pistol that was removed from the inside of the

1 gun safe.

2 Q. For the record, can you read that into the record and
3 serial number, please?

4 A. Yeah. That is a -- I'm going to have to look at the
5 report to get the serial numbers. That's a FIE .22 caliber
6 revolver model E15 and had a serial number of 35267.

7 Q. Government's Exhibit 2.6, please. What is that?

8 A. That is a semi-automatic pistol.

9 Q. What kind and serial number, please?

10 A. It's a Star .22 caliber semi-automatic pistol and it had
11 serial number 424947.

12 Q. Government's Exhibit 2.7. Can you describe that for the
13 jury, please?

14 A. Yeah. It is Taurus model 0830 ultralight titanium .38
15 caliber revolver, serial number SG506657, and it was found in
16 that gun box sitting on top of the gun safe.

17 Q. Government's Exhibit 2.8.

18 A. That is a Baretta model 92A nine millimeter
19 semi-automatic pistol, and it had serial number BER4532980Z, as
20 in zebra.

21 Q. Okay. Before I introduce physical evidence, can you
22 explain what 2.9.1 is, please?

23 A. That is a Baretta pistol box, and it has inside a, like a
24 plastic trash bag, it had a name attached to the trash bag, and
25 it was sitting on top of the gun safe as well. It wasn't

1 actually inside of it.

2 MR. KUMI EGA: Your Honor, may I approach regarding
3 Exhibit 2.9?

4 THE COURT: 2 point what?

5 MR. KUMI EGA: 2.9, your Honor.

6 THE COURT: Oh, sure. I thought you meant approach
7 the bench.

8 MR. KUMI EGA: Oh, no.

9 THE COURT: You may approach the witness. Yes.

10 Q. (By Mr. Kumi ega) Agent, what is this, and if you can
11 open the box and tell the jury what is contained inside the
12 box?

13 A. This is a gun box for a Baretta nine millimeter pistol.
14 And inside is a scrap of paper that was inside the box, as well
15 as the bag the box was found in, and two pistol magazines.

16 Q. Okay. And is there a notation or a name contained in
17 there, please?

18 A. This particular piece of paper says Annette Johnson, and
19 it's dated 12/19/02, and this tag on the plastic trash bag says
20 Annette Johnson.

21 Q. All right. You said the date was 2/19/02; is that
22 correct?

23 A. It looks like 12/19 of '02 to me.

24 Q. Okay. 12/19?

25 A. Uh-huh.

1 Q. Government's Exhibit 2.10, please.

2 A. That is Reuger 1022, it's a .22 caliber semi-automatic
3 rifle, and it had serial number 120-81461.

4 Q. Government's Exhibit 2.11, please.

5 A. Listed as High Standard Apache AP-212 .12 gauge
6 semi-automatic shotgun with no serial number.

7 Q. 2.12?

8 A. It's a Browning .12 gauge semi-automatic shotgun, and no
9 serial number was found on it either.

10 Q. Is that weapon camouflaged?

11 A. Yes. It had been painted camouflage.

12 Q. 2.13, please?

13 A. That's a Norinco SKS 7.62 caliber semi-automatic rifle,
14 and it is going to be serial number 11111911.

15 Q. Government's Exhibit 2.14, please.

16 A. It's a Remington 870 .12 gauge shotgun. It's serial
17 number C044893M, as in Mary.

18 Q. Photograph 2.15, please.

19 A. Another Norinco SKS 7.62 caliber semi-automatic rifle.
20 This is going to be serial number No. 1-1802354.

21 Q. Government's Exhibit 2.16.

22 A. It's an U.S. carbine M1 .30 caliber semi-automatic rifle.
23 Let's see. And it had serial number 851400.

24 Q. Government's 2.17, please?

25 A. 2.17 was a note that has a firearms description and then

1 numbers that look like possible prices out to the side.

2 Q. Can you read that into the record, please?

3 A. Says 1, then Mk11 suppressor, 400, micro Uzi pistol nine
4 millimeter, 1600, right below that says silencer, and looks
5 like Nolan suppressor, 400. Sten Mark II subgun nine
6 millimeter 1200, Walther PPK pistol with silencer, 900, and
7 Stinger .22 caliber, 250.

8 Q. Government's Exhibit 2.18, please.

9 A. It's a display case that was in the office that contained
10 the Derringer I talked about earlier, as well as some rounds of
11 ammunition and the knife.

12 Q. 2.19.

13 A. It's a firearm that was located inside a closet in the
14 main office.

15 Q. All right. Can you particularly tell either the serial
16 number of that weapon and if it had a silencer, please?

17 A. I can't tell from the photograph.

18 Q. Do you remember seizing it?

19 A. It wasn't seized.

20 Q. Okay. Why not?

21 A. Honestly, I didn't make the determination what was seized
22 or not. I spoke with Delbert Knopp and he said take this or
23 don't take this.

24 Q. All right. That's the agent here; is that right?

25 A. Yes.

1 Q. He's the case agent; is that right?

2 A. That's correct.

3 Q. Government's Exhibit 2.21, please. What is that, sir?

4 A. That is a pistol that was in the drawer of Doug Friesen's
5 office.

6 Q. And why the elongated barrel, please?

7 A. It has a silencer affixed to it.

8 Q. And did you record a serial number in your records?

9 A. I didn't. No.

10 Q. Now, you also said that you took the videotape of the
11 search of Mr. Friesen's residence; is that correct?

12 A. That's correct.

13 Q. And you reviewed that and you believe that 3.0, the
14 actual tape, is copied correctly and accurately in Government's
15 Exhibit 3.01; is that right?

16 A. Yes.

17 MR. KUMIEGA: Your Honor, may the United States play
18 Government's Exhibit 3.01 into evidence?

19 MR. MARTIN: Your Honor, I'm assuming we'll take the
20 audio out again.

21 MR. KUMIEGA: Yes.

22 MR. MARTIN: Based on what's just happened, I have a
23 limiting instruction I would like to present to the Court.

24 THE COURT: All right.

25 (The following was had at the bench, out of the hearing of

1 the jury:)

2 MR. MARTIN: I don't know what purpose it was to ask
3 him the serial number other than to find out that some of the
4 guns did not have serial numbers, which may cause some concerns
5 with some of the jurors. I would ask the Court to instruct the
6 jury that the fact that some of the firearms they just viewed
7 don't have serial numbers is no concern and not a violation of
8 the law and they should not consider it. And I've written
9 something out along that line. But the serial number -- we're
10 not charged with any of these weapons that was shown. That's
11 the concern. We've got a bunch of guns they've introduced that
12 don't have anything to do --

13 THE COURT: Why don't you ask the agent in
14 cross-examination about that.

15 MR. MARTIN: I intended to do that, but I think the
16 jury ought to know.

17 THE COURT: Why don't you ask the agent in
18 cross-examination, if it's something that's confusing then
19 we'll discuss it further.

20 (The following was had in open court, within the hearing
21 of the jury:)

22 MR. KUMIEGA: Your Honor, may I play the tape with the
23 narration by the agent?

24 THE COURT: Yes.

25 (Government's Exhibit 3.0 played with the following

1 commentary:)

2 Q. (By Mr. Kumi ega) What is that, sir?

3 A. That is the residence that was in the search warrant for
4 the residence of Doug Fri esen.

5 Q. Do you know the address, please?

6 A. I don' t know the address.

7 Q. Can you give the jury a general whereabouts the residence
8 is located at?

9 A. It's just to the north of downtown. I don' t know if it's
10 in Heritage Hills, but in that general vicinity.

11 Q. Is the address 524 NW 17th Street?

12 A. That's what it looks like.

13 Q. Can you describe to the jury what kind of state of repair
14 the building is in?

15 A. The residence seemed to be undergoing a major remodeling
16 project, so it was in various states of construction.

17 Q. What part of the building is this?

18 A. You went up a flight of stairs to get to the porch; it
19 would be on that level of the house. I believe there was one
20 level above and I think there's a basement in this house.

21 Q. Tell the jury where you're at, please.

22 A. That was the back porch and that's entering back on the
23 main level which I'm guess that's the living room area. It's
24 under so much construction it was sometimes hard to
25 differentiate levels of the house. This is going up the stairs

1 to the next level.

2 MR. KUMIEGA: Your Honor, I'm going to ask the tape be
3 stopped and advanced to the basement.

4 THE COURT: Okay.

5 Q. (By Mr. Kumi ega) Agent, what's going on here?

6 A. This is going downstairs.

7 Q. To where?

8 A. I think that's back in the main level. And now it's
9 going back down towards the basement of the residence.

10 Q. What room is this, please, if you know?

11 A. I don't know how to describe it. It's obviously a poker
12 table and stuff like that. The bar area. I don't know what
13 you call it.

14 Q. Is this still in the basement?

15 A. Yes.

16 Q. What room is that, sir?

17 A. Looks like a storage closet.

18 Q. And what room is this?

19 A. Kind of like a shop area. There's, like, tools and stuff
20 like that.

21 Q. What is that?

22 A. It's a gun safe.

23 Q. Where is it located, for the record?

24 A. It's in the basement of the residence.

25 Q. Do you know what was found there?

1 A. I know there were guns. I didn't participate in the
2 search. Once I shot the video I left.

3 Q. Okay. Continue. Was there construction work going on in
4 that part of the building?

5 A. Seems like there was some.

6 MR. KUMIEGA: Stop that. Go back a little bit.

7 Q. (By Mr. Kumi ega) When you were down there were there
8 other agents there?

9 A. Yeah.

10 Q. Do you know if these firearms were being inventoried by
11 anyone?

12 A. I'm assuming after the video they would have been.

13 Q. Do you know where the machine gun was located?

14 A. I don't know.

15 Q. Agent, some of the items were seized by your agency and
16 brought to your office in Oklahoma City; is that correct?

17 A. Yes.

18 THE COURT: Can we turn the lights on, Mr. Kumi ega?

19 MR. KUMIEGA: Yes, sir.

20 Q. (By Mr. Kumi ega) And who was the agent, sir, that was
21 making the determination what firearms to seize and not seize?

22 A. Special Agent Delbert Knopp.

23 MR. KUMIEGA: Your Honor, if I may have a moment.

24 THE COURT: Yes.

25 (Brief pause)

1 MR. KUMI EGA: Your Honor, we pass the witness.

2 THE COURT: Cross-examine, Mr. Martin.

3 CROSS-EXAMINATION

4 BY MR. MARTIN:

5 Q. Agent Booker, while ago you've shown us two videos that
6 you took, I believe one of them was of Mr. Friesen's office,
7 the law office, correct?

8 A. Correct.

9 Q. One of them was of the house, correct?

10 A. Correct.

11 Q. And I think not only did you do what they call an entry
12 video, but you did an exit video, correct?

13 A. Yes.

14 Q. And I believe you testified on direct examination of
15 various types of firearms that were actually located in the
16 office. You pointed them out and Mr. Kumi ega had you say what
17 they were and what the serial numbers were on them. Do you
18 remember that?

19 A. I don't think that he did for -- well, which ones? The
20 ones in the gun safe?

21 Q. The ones at the office.

22 A. The ones in the gun safe. Yes.

23 Q. You went through a list of what the weapons were,
24 photographs?

25 A. Correct.

1 Q. And, for example, Mr. Kumi ega asked you, I think it was
2 Exhibit 1.19, which has been admitted. 1.19 is a gun in a
3 closet, right?

4 A. Let me see it.

5 Q. Excuse me. 2.19. I apologize. I'm sorry.

6 A. That is -- that's a gun in a closet.

7 Q. And that weapon wasn't even seized by --

8 A. It wasn't.

9 Q. -- Agent Knopp, but you took a picture of it anyway?

10 A. Yes.

11 Q. And you understand, I think you testified some of the
12 weapons that you took pictures of you couldn't find the serial
13 numbers on them; is that right?

14 A. Some of them didn't have serial numbers, correct.

15 Q. You couldn't find serial numbers on them?

16 A. That's correct.

17 Q. You didn't take them all apart and remove the sights and
18 break them down to see if they had serial numbers that you
19 couldn't locate?

20 A. No.

21 Q. So you were unable to find immediate visible serial
22 numbers on some of them?

23 A. Correct.

24 Q. And you know, none of those firearms are a subject of
25 this indictment, don't you, sir?

1 A. No, they are not.

2 Q. Okay. And they are, as far as we're concerned they are
3 not anything that's considered, that's outlined in this
4 indictment that the government has filed against my client or
5 got issued against my client?

6 A. Not that I'm aware of.

7 Q. Okay. You know, do you not, sir, that the only firearm
8 that my client is charged with is a Sten machine gun?

9 A. That is my understanding. Yes.

10 Q. Okay. As a matter of fact, we haven't even seen a
11 photograph of that from your testimony, have we, sir?

12 A. No, we haven't.

13 Q. You've shown us photographs are of how this house looked
14 and the office, because they were both searched, on June 10th,
15 2004, correct?

16 A. Yes.

17 Q. And you also showed us what was in the safe in the office
18 on June 10th, 2004, correct?

19 A. Yes.

20 Q. You understand, you know a, and I hope I get the name
21 right, and I apologize if I don't, an Inspector Valerie Rowden
22 and Inspector, I think it's Haley McGrew?

23 A. Yes.

24 Q. With the ATF?

25 A. I do know them.

1 Q. Okay. They are compliance inspectors, right?

2 A. Yes, they are.

3 Q. You understand they had gone to both of these locations,
4 the office and the house 16, 18 months earlier in February of
5 2003?

6 A. I knew they had done a compliance inspection, I actually
7 don't think I realized they went to the house.

8 Q. Okay. More important, we'll let them say where they
9 went, but you weren't with them, were you, sir?

10 A. No.

11 Q. And you don't know how the house looked or what was
12 located or disclosed on February 19th of 2003, some 16 some-odd
13 months earlier, do you, sir?

14 A. No. I wasn't there.

15 Q. And you don't know if any of the firearms that you've
16 shown this jury were in a safe, in an display case, in a closet
17 or not, do you, sir?

18 A. I don't know where they were 16 months prior to me being
19 there, correct.

20 Q. Okay. So everything you've shown us is how you know it
21 was on June 10th, at least when you got there?

22 A. That's correct.

23 Q. Now --

24 MR. MARTIN: One moment, your Honor.

25 (Brief pause)

1 Q. (By Mr. Martin) Also on June 10th, 2004, when you were
2 there, did you participate in the seizure of any die stamps?

3 A. At which location?

4 Q. At either of the locations.

5 A. I don't remember any die stamps being at the office.

6 Q. Okay. Do you remember any being at the house?

7 A. I didn't do the house.

8 Q. Okay. All right. And by die stamps, you understand I'm
9 talking about stamps you put a serial number on with with a
10 hammer?

11 A. I know what you're talking about.

12 Q. I want to make sure -- all right, sir. You didn't do
13 anything at the basement in the house then?

14 A. After watching the video I do recall I did shoot the
15 video at the office, then I went to the residence, and then I
16 almost immediately left, because I have very little
17 recollection of that residence.

18 Q. Other than what you've seen on the video?

19 A. Yeah. I went there and shot the video and then I went
20 back to the office. I basically was involved in the search of
21 the office and had little to do with the residence at all,
22 short of shooting the video for them.

23 Q. Was that a nice dog?

24 A. He seems fine.

25 Q. Okay.

1 MR. MARTIN: Thank you.

2 THE COURT: Any redirect?

3 MR. KUMIEGA: No, your Honor.

4 THE COURT: Agent Booker, you may be excused, and I
5 would tell you you're not to discuss your testimony you've
6 given here today with other persons who may be a witness in
7 this matter. You may be excused.

8 Call your next witness.

9 MR. KUMIEGA: Your Honor, the United States would
10 like to call Delbert Knopp.

11 DELBERT KNOPP,
12 called as a witness, having been duly sworn, testifies as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. KUMIEGA:

16 Q. Sir, can you introduce yourself to the jury, please?

17 A. Delbert Knopp.

18 Q. And how are you employed?

19 A. I'm an investigator with the Oklahoma County District
20 Attorney's Office.

21 Q. All right. Back in June 10th of 2004, how were you
22 employed, please?

23 A. As a special agent with the Bureau of Alcohol, Tobacco &
24 Firearms.

25 Q. Tell us something about your background. How long had

1 you been an ATF agent before going to the district attorney's
2 office?

3 A. I retired from ATF prior to going to work for the district
4 attorney's office, and I spent 34 years with ATF.

5 Q. And in what capacity, please?

6 A. As supervisor, special agent, you know, headquarters
7 officer.

8 Q. Now, you're the case agent in the case of United States
9 versus Larry Friesen; is that correct?

10 A. That's correct.

11 Q. And what is the case agent, please? What do they do,
12 please?

13 A. That's the agent that basically manages the case. That
14 agent completes reports, assembles evidence for prosecution,
15 presents it to the U.S. attorney, works with the U.S. attorney
16 getting ready for prosecution. That -- there may be many
17 agents involved in the case where they are responsible for
18 certain portions, but you're the overall manager of the case.

19 Q. Now, you saw the videos today from the residence and from
20 the law office; is that correct?

21 A. That's correct.

22 Q. And you were there on June 10, 2004; is that right?

23 A. In both locations. Yes.

24 Q. And during the search, during the search warrant, you
25 seized a machine gun; is that right?

1 A. That is correct.

2 Q. Now, how did you get into the house? Did you get a
3 search warrant?

4 A. We had two search warrants, one for the residence, and
5 one for the house of Mr. Friesen.

6 Q. And how were they executed, please?

7 A. We had two search teams. We went to both locations
8 pretty much simultaneously. We arrived at both approximately
9 7:30 in the morning. I was at the house when we executed the
10 search warrants, other agents were at the office. We attempted
11 to make entry to the house. We went up and knocked on the door
12 basically and nobody responded and we pretty well determined
13 nobody was there. Shortly after that, we got a call from one
14 of the agents at the office who told us that Mr. Friesen was at
15 the office. After that, I went to the house and contacted
16 Mr. Friesen.

17 Q. Who accompanied you during the search of the office,
18 please?

19 A. I didn't participate in the actual search. What I did is
20 I went to the office, talked to Mr. Friesen, explained to him
21 that we had a search warrant for both locations, presented him
22 with the search warrant. And I asked him if he had anything,
23 any firearms that were loaded, anything that would hurt --
24 possibly harm somebody, and if he had any valuables.

25 Q. Let me ask you this: What part of the search warrant did

1 you hand Mr. Friesen, please?

2 A. It would have been the search warrant along with the
3 attachments to the search warrant, which would include the
4 description of the premises, which would be a photograph and a
5 description, along with an attachment that would contain the
6 items we're looking to search -- seize.

7 Q. You had a list of the items that were, you were looking
8 for at both locations; is that correct?

9 A. That's correct.

10 Q. Can you look at Government's Exhibit 3.1, please.

11 A. Yes.

12 Q. What is that, please?

13 A. That's the original video taken by Agent Booker at the
14 residence of Mr. Friesen.

15 Q. Okay.

16 MR. KUMIEGA: Your Honor, may we display Government's
17 Exhibit 3.1 into evidence, please?

18 THE COURT: Any objection, Mr. Martin?

19 MR. MARTIN: You're going to play the video, Ed?

20 MR. KUMIEGA: No, the photograph.

21 THE WITNESS: I'm sorry. I was talking about 3.0,
22 you're talking about 3.1?

23 Q. (By Mr. Kumi ega) Yes, sir.

24 A. That's the actual compact disk, and the -- of the
25 residence.

1 Q. It's 3.1, Mr. Knopp?

2 A. Right. That's the compact disk made of the video.

3 THE COURT: I think that's 3.01.

4 MR. KUMI EGA: 3.01.

5 THE WITNESS: Oh, I'm sorry.

6 Q. (By Mr. Kumi ega) Just straight 3.1.

7 A. That is the residence.

8 MR. MARTIN: I have no objection to that, your Honor

9 THE COURT: Is there a series of these photographs?

10 MR. KUMI EGA: Your Honor, I think it's going to be
11 somewhat disjointed. I think I would like to have Mr. Knopp
12 explain, but if the Court wants me to introduce the whole 3
13 series it's going to be 3.1 to 3.16.2. I'm willing to do that,
14 your Honor.

15 THE COURT: Any objection?

16 MR. MARTIN: Your Honor, let me just put some numbers
17 out here. 3.2, 3.3, 3.4, 3.5, 3.11 and 3.11.1, 3.12, 3.13,
18 3.15, 3.15.1, and 3.16, your Honor, I object based on motions
19 that have been previously filed and heard, and also based upon
20 the earlier objections that were made at the bench as to the 2
21 series of exhibits.

22 There are some specific objections as to certain ones,
23 your Honor. As they come in I may draw the Court's attention
24 to more specific ones.

25 THE COURT: I guess we'll go one at a time then, Mr.

1 Kumi ega.

2 MR. KUMI EGA: Okay.

3 Q. (By Mr. Kumi ega) Agent, you testified the first location
4 you searched was a law library, is that correct, for the
5 business; is that right?

6 A. No -- correct. We actually made entry into the business
7 first. That's where I contacted Mr. Friesen. I didn't
8 actually conduct a search of the business.

9 Q. Okay. As to the business, when you handed him the search
10 warrant and you had a conversation with him as you testified;
11 is that correct?

12 A. That's correct.

13 Q. And you asked him about any firearms that were located in
14 the law office; is that right?

15 A. That's correct.

16 Q. Tell us how he responded and in what manner, please.
17 And, again, what time did this start, please?

18 A. It started approximately 7:45. It was probably close to
19 eight o'clock by the time I got over there. The agents had
20 already made entry. I contacted Mr. Friesen, gave him the
21 search warrant with the attachments, and then asked him if
22 there were any, were there firearms and any valuables they he
23 needed to --

24 Q. How did he respond, please?

25 A. He stated that he had a library hidden vault that

1 contained firearms, and then he stated he had firearms up in
2 his office, and I accompanied him to his office. At that
3 location he described where he had firearms up in his office,
4 and opened the drawer to his desk. He had some cash in there,
5 he took custody of that. And there was an opener for the
6 hidden vault in the library, and he pointed that out and took
7 that.

8 Q. Can you describe this opener, as you called it, for the
9 vault or for the library shelves? Can you explain that to the
10 jury, please?

11 A. It's basically similar to an opener you would use to open
12 your car door with, electronic opener to unlock the car door or
13 lock the car door.

14 Q. All right. Did he show you how to operate that device?

15 A. He maintained it.

16 Q. Okay.

17 A. And then from there we went into an adjoining office
18 where he retrieved a key for the vault itself to open the
19 vault.

20 Q. All right. During the course of the, your first entry,
21 did Mr. Friesen tell you about firearms that were on the second
22 floor?

23 A. Yes. He pointed out where the firearms were on the
24 second floor.

25 Q. All right. And would you look at Government's 2.19 in

1 your packet?

2 A. 2.9?

3 Q. 2.19.

4 A. Okay. Yes. I have that.

5 Q. Is that one of the firearms he pointed out to you?

6 A. No. He simply told me that he had a firearm in there.

7 Q. All right. If you look at Government's 2.21. Did he
8 tell you about that too?

9 A. Yes.

10 Q. All right. And did you -- is that part of the photograph
11 process; is that correct?

12 A. Yes.

13 Q. And did he also tell you about an NFA weapon that was
14 also upstairs?

15 A. Yes, he did.

16 Q. After you gathered that information, what happened next,
17 please?

18 A. We went downstairs to the library where Mr. Friesen
19 opened the hidden library vault, or storage room, with the
20 clicker, and then pointed to the firearms safe that contained
21 firearms.

22 Q. Was the firearms safe locked or unlocked?

23 A. It was locked, and we left the keys with the searching
24 agents.

25 Q. Who opened the safe?

1 A. I was not there when it actually got opened.

2 Q. Have you seen that safe?

3 A. I saw the safe closed and I've seen the photographs, and
4 I've seen the firearms.

5 Q. All right. And how would you describe the safe for the
6 jury, please?

7 A. It's a typical firearms safe that would hold long guns
8 and handguns, and probably close to six feet tall and maybe
9 three feet wide.

10 Q. And is it heavy or is it light?

11 A. No. It would be substantial.

12 Q. Now, you said that -- did Mr. Friesen pull open the door
13 of the swing panel out?

14 A. That's what I said in my report, however, it pushed in.

15 Q. The vault pushed in?

16 A. Right.

17 Q. What happens after you examined that type of, examined
18 the safe behind the bookshelf? What happened next, please?

19 A. Pretty much Mr. Friesen accompanied me back to his house
20 where he allowed us in the house. Again, we went through
21 pointing out where the firearms, any firearms were, or any
22 valuables. We first went up to the upstairs bedroom where he
23 retrieved, again retrieved some cash --

24 Q. This is in the residence?

25 A. This is in the residence. -- and pointed out some

1 firearms in that room. Then we went to the basement where he
2 opened the safe.

3 Q. All right. Can you look at Government's Exhibit 3.2,
4 please?

5 A. Yes.

6 Q. What is that, please?

7 A. That's the safe in the basement of the residence that Mr.
8 Friesen opened.

9 MR. KUMIEGA: Your Honor, may I have a moment?

10 THE COURT: Yes.

11 (Brief pause)

12 MR. KUMIEGA: Your Honor, as to Government's Exhibit
13 3.1 and 3.2, we would like to have them admitted.

14 MR. MARTIN: Your Honor, based on my earlier motion to
15 suppress, I object.

16 THE COURT: Objection will be overruled. 3.1 and 3.2
17 will be admitted.

18 MR. KUMIEGA: Can you display 3.1, please.

19 Q. (By Mr. Kumi ega) That's the entrance; is that correct?

20 A. That's correct.

21 Q. Do you know the address for the record, please.

22 A. 524, I think, Northwest 13th if I'm recall. If I can
23 check my report. 524 Northwest 17th. I was wrong.

24 Q. That's Oklahoma City; is that correct?

25 A. That's correct. Oklahoma City, Oklahoma.

1 Q. And the address of the law office, please.

2 A. 1309 North Shartel, Oklahoma City.

3 Q. Oklahoma City, Oklahoma; is that right?

4 A. That's correct.

5 Q. Let's look at Government's Exhibit 3.2, please.

6 A. 3.2 is the safe.

7 Q. All right. During the course of you examining the safe,
8 did you find a Sten machine gun in there?

9 A. Yes. Mr. Friesen had earlier at the office in reviewing
10 the search warrant and the items to be seized stated that his
11 -- one of the items -- there were two items on the search
12 warrant to be searched for and seized. One was the Sten with
13 the serial number E683, nine millimeter submachine gun, and
14 one --

15 Q. Was there also a part number?

16 A. The second one was a Sten nine millimeter machine gun
17 with a, the D part number listed as the serial number.

18 Q. All right. And did he make any statements to you either
19 at the law office or at the business regarding the Sten machine
20 gun?

21 A. Yes. At the business he stated that the first one, the
22 E683 Sten was in his basement safe at his house, and that the
23 second one he had no knowledge of.

24 Q. Okay. What happens next, Agent?

25 A. In -- as he opens the safe he points to the top shelf of

1 the safe.

2 Q. Stop there. Let's look at the exhibit.

3 MR. KUMIEGA: Your Honor, may I approach and give the
4 agent a pointer?

5 THE COURT: Yes.

6 Q. (By Mr. Kumi ega) Okay. Agent.

7 A. Okay. He points to the top shelf up here (indicating)
8 and states that's my registered gun, and that's the gun the
9 girls looked at, they were in a hurry and missed the serial
10 number.

11 Q. All right. And did you record that in one of your
12 reports?

13 A. Yes, I did.

14 Q. If you can look at Government's Exhibit 3.3 and 3.4,
15 please.

16 A. Yes. 3.3 is the close-up of the two top shelves of that
17 same safe.

18 Q. That's 3.3. And what's 3.4, please.

19 A. 3.4 is a close-up of the actual top shelf of that safe
20 containing the Sten submachine gun.

21 MR. KUMIEGA: Your Honor, at this time the United
22 States would like to move admit Government's Exhibit 3.3 and
23 3.4 into evidence.

24 MR. MARTIN: Same objection.

25 THE COURT: Be overruled. Will be admitted.

1 MR. KUMI EGA: Show us 3.3, please.

2 THE WITNESS: These are the top two shelves. Right
3 there (indicating) is the Sten submachine gun on the top shelf.

4 Q. (By Mr. Kumi ega) Okay. How is it configured at that
5 point?

6 A. It's lying up there with the shoulder stock detached.

7 Q. Okay. And 3.4. What is that, please?

8 A. That's the Sten submachine gun, and that's the shoulder
9 stock to the Sten submachine gun.

10 MR. KUMI EGA: Your Honor, may I approach the agent
11 with Government's Exhibit 3.16, the actual machine gun, and
12 show that to the jury?

13 THE COURT: Yes.

14 MR. KUMI EGA: For the record, your Honor, obviously
15 this was checked by United States marshals and ATF, and it's
16 disabled.

17 Q. (By Mr. Kumi ega) Agent, is that the firearm that you
18 seized on June 10th, 2004?

19 A. Yes, it is.

20 Q. And that came from then 3.2, 3.3 and 3.4?

21 A. Same firearm. Yes.

22 MR. KUMI EGA: Your, Honor at this time the United
23 States would like to move into evidence Government's Exhibits
24 3.16.

25 THE COURT: Objection will be overruled. Will be

1 admitted.

2 Q. (By Mr. Kumi ega) Now, you seized the firearm at that
3 time; is that correct, sir?

4 A. Yes, we did.

5 Q. Okay. What happens next, please?

6 A. The -- shortly after that Mr. Friesen left the residence
7 along with John Nelson who had arrived.

8 Q. All right. Can you look at Government's Exhibits 3.5,
9 3.6, and 3.7, please.

10 A. Yes.

11 Q. And can you identify that for the jury?

12 A. Yes. That's photographs of that same workroom in the
13 basement where the gun safe is contained, and these photographs
14 are showing the workbench and items on the wall adjacent to the
15 safe. 3.6 is a closer-up photograph of the workbench just to
16 the left of the safe. And then going on towards the, to the
17 left, panning to the left which would be along the north wall
18 of the basement towards the west end of that room is another
19 photograph of the work area, the workbench with cabinets and a
20 TV monitor in the corner.

21 Q. You just identified 3.5, .6 and .7; is that correct?

22 A. That's correct.

23 MR. KUMI EGA: Your Honor, we ask they be admitted.

24 MR. MARTIN: Same, your Honor.

25 THE COURT: Objection will be overruled. They will be

1 admitted.

2 Q. (By Mr. Kumi ega) 3.5, please. This is the gun safe with
3 the -- in the gun room; is that correct?

4 A. Yes. That's the -- that's just backing up in the gun
5 room with a wider shot of the room. That shows the peg board
6 on the wall next to the gun safe, the workbench to the left of
7 the gun safe, and then that metal poll that you can see towards
8 the front is a -- some kind of shelving supporting some --

9 Q. Can you use the pointer, please, and show us that?

10 A. This is the workbench next to the gun safe (indicating),
11 this would be the north wall of the basement. This is a poll
12 with some shelving up in here. And then next photograph
13 continues this way.

14 Q. That's 3.6; is that correct?

15 A. That's correct.

16 MR. KUMI EGA: Show that, please.

17 THE WITNESS: That was 3.6. I think 3.7 would be the
18 next one.

19 Q. (By Mr. Kumi ega) Let's look at 3.7.

20 A. And this is just continuing on in that same room with
21 shelving up high and low, and on the west wall of that room.

22 Q. Okay. Now, when you took the Government's 3.16, that's
23 the machine gun, did you record either a part number off that
24 or a purported serial number?

25 A. It made it into our inventory as the purported serial

1 number.

2 Q. All right. And was there also a part number on that?

3 A. Yes, there was.

4 Q. Can you read that into the record, please.

5 A. The part number is the number that was on the search
6 warrant application for the -- one of the machine guns we were
7 looking for, and it's D95843.

8 Q. All right. And then this purported serial number, what
9 is that? Can you tell the jury where that's located, please?

10 A. The part number is located on the bottom of the magazine
11 well, then the serial number is down here in front of the
12 trigger.

13 Q. All right. And how many inches is the part number from
14 the purported serial number, please?

15 A. Approximately six inches.

16 Q. Okay. Now, did you have any other conversation with Mr.
17 Friesen as you are looking at the items in the basement?

18 A. No. Other than -- well, I did. We were aware that he
19 had a Gatling type gun set up in his residence.

20 Q. Explain that to the jury, please.

21 A. It's -- best I can describe it, it's six receivers and
22 barrels from a rifle, all mounted in a circular fashion, with a
23 crank on a mount of some sort. I never saw the thing.

24 Q. All right. You got that information from who, please?

25 A. Well, I got it from Mr. Friesen, for one.

1 Q. What did he say about that?

2 A. He stated that he thought it had been moved by the
3 workers, and suggested that it may be in the backyard under a
4 tarp.

5 Q. Was it found during the course of the search on June
6 10th, 2004?

7 A. We never found it. No.

8 Q. Now, you also seized some physical evidence in that
9 basement; is that correct?

10 A. Yes.

11 Q. And can you look at Government's Exhibit 3.8, please.

12 A. Yes.

13 Q. And can you look at the companion photograph of the
14 physical evidence, 3.8.1?

15 A. Yes.

16 Q. What are those, please?

17 A. Those are -- That's a center punch with numbers and
18 letters, basically what we call the dies used for punching
19 numbers or letters into metal or some surface like that.

20 Q. All right. And what's 3.9 and 3.10, please?

21 A. 3.9 is the photograph of basically the bar and the
22 cardroom located just outside the door of the basement
23 workshop, and you encounter it as you come down the stairs.
24 It's in the basement of the house.

25 Q. And 3.10?

1 A. That's a bookcase in that same general area on the south
2 wall of that little gameroom area with the books and
3 videotapes.

4 MR. KUMI EGA: Your Honor, at this time the United
5 States would move for the introduction of 3.8, 3.8.1, 3.9, and
6 3.10 into evidence.

7 MR. MARTIN: No objection.

8 THE COURT: Will be admitted.

9 MR. KUMI EGA: May I approach?

10 THE COURT: Yes.

11 Q. (By Mr. Kumi ega) Agent, what is that exhibit, please?

12 THE COURT: Which one is that number-wise?

13 MR. KUMI EGA: 3.8, your Honor.

14 THE COURT: Excuse me?

15 MR. KUMI EGA: 3.8, your Honor.

16 THE WITNESS: That's the actual punch and number set
17 that we found in Mr. Friesen's workroom in one of the shelves.

18 Q. (By Mr. Kumi ega) Can you hold it up and display it to
19 the jury, please?

20 A. (Complies) And this was on the outside, just a label.

21 Q. Can you read that into the record, please?

22 A. "Auto center punch number and letter, 38-piece set."

23 Then this is the interior.

24 Q. And what's -- you said 3.81, that's a photograph of that;
25 is that correct?

1 A. Yes.

2 Q. Now, again, where was that found, please?

3 A. That was found in the shelving in the northwest corner of
4 that room that contained the gun safe and all the -- the
5 workroom.

6 MR. KUMIEGA: And would you display 3.9, please?

7 Q. (By Mr. Kumi ega) What's that, agent?

8 A. That's the card game, or gameroom with the bar and the
9 shelves containing books and videotapes and other items.

10 Q. And 3.10?

11 A. That's the closer-up view of the shelves containing the
12 videotapes and books.

13 Q. Okay. Now, other than seizing 3.8, the die set, you
14 seized some video, a VHS tape and some other paperwork; is that
15 correct?

16 A. That's correct.

17 Q. 3.11 and 3.11.1. What are those, please?

18 A. 3.11 is a videotape that's "How to Build a Sten Mark II
19 or Mark V from a Kit."

20 Q. And what is 3.11.1, please?

21 A. It's a compact disk copy of a video, VHS "How to Build a
22 Sten Mark II or Mark V from a Kit."

23 Q. Now, did you view the videotape in its entirety?

24 A. Yes.

25 Q. Did you also view the compact disk 3.11.1 in its entirety

1 that copied the actual VHS tape?

2 A. Yes.

3 Q. Did it copy it correctly?

4 A. It's correct, yes.

5 MR. KUMI EGA: Your Honor, at this time we would ask
6 admission of 3.11 and 3.11.1 into evidence.

7 MR. MARTIN: Your Honor, I object based on search
8 warrant, the motion to suppress objection.

9 THE COURT: That's 3.11 and 11.1?

10 MR. KUMI EGA: Yes, your Honor.

11 THE COURT: Objection will be overruled.

12 MR. KUMI EGA: Your Honor, if we can dim the lights, I
13 would like to ask that 3.11.1 be played.

14 THE COURT: Okay. How long is the tape?

15 MR. KUMI EGA: It's about three to five.

16 THE COURT: Thirty-five minutes?

17 MR. KUMI EGA: No, three to five. We'll only play the
18 first portion of the tape, your Honor.

19 THE COURT: Okay.

20 MR. KUMI EGA: Your Honor, since this is not a
21 narration by an agent, it's audio to go with the tape, we would
22 like to have the audio played, your Honor.

23 THE COURT: Okay.

24 (Government's Exhibit 3.11.1 played for the jury)

25 Q. (By Mr. Kumi ega) Agent, the last part, what was that

1 displayed?

2 A. That displayed a template that can be purchased by
3 individuals, and they place it over the tube and it shows you
4 where to make your precise cuts to manufacture a machine gun.

5 Q. The tube is the machine gun, is that correct, the
6 receiver?

7 A. Yes. The receiver with the cuts in it is the machine
8 gun.

9 Q. Okay. The machine gun that was seized June 10, 2004, was
10 that a Mark II or a Mark III?

11 A. That was set up in a configuration of a Mark III. It had
12 a longer tube, receiver tube.

13 MR. KUMIEGA: Your Honor, we can put the lights back
14 on if you want.

15 Q. (By Mr. Kumi ega) Mr. Knopp, Government's Exhibit 3.2.
16 Have you seen that before, please?

17 A. 3.2?

18 Q. Excuse me. 3.12.

19 A. Yes, I have.

20 Q. Where did you find that and what is it, please?

21 A. That was in the basement workroom with the safe where the
22 machine gun came from. And it was on some shelving just to the
23 west of the door, entry door.

24 Q. And what does it purport to be, please?

25 A. It's ATF Form 4, and attached documents for the transfer

1 of a suppressor, okay, a Sten Mark II submachine gun E683, all
2 to James Howard Bugg in Oklahoma City.

3 Q. And the date on that application, please?

4 A. There is a typed date on the application here of January
5 29, 2004.

6 Q. All right.

7 MR. KUMIEGA: Your Honor, United States would move for
8 introduction of Government's Exhibit 3.12 into evidence.

9 MR. MARTIN: Same objection, your Honor.

10 THE COURT: Be overruled. Will be admitted.

11 Q. (By Mr. Kumi ega) Agent, Government's Exhibit 3.13, where
12 did you find that, please?

13 A. That was found in the same general location on the
14 shelves in the basement safe room, workroom, with 3.12.

15 Q. And what do those document purport to be, please?

16 A. That's instructions for the manufacture of a machine gun
17 along with parts orders, a note with parts, different machine
18 gun type parts noted, advertisement for Cobray machine gun
19 replacement parts, several other firearm replacement parts from
20 RPG, another paper for original Cobray machine gun replacement
21 parts.

22 Q. So in toto, Agent, what we have there is you said
23 instructions for something?

24 A. Yes. Instructions and then there is a handwritten RPG
25 order form for parts.

1 Q. All right.

2 MR. KUMI EGA: Your Honor, at this time the United
3 States would move for introduction of Government's Exhibit 3.13
4 into evidence.

5 MR. MARTIN: Same objection, your Honor.

6 THE COURT: Will be overruled. Will be admitted.

7 Q. (By Mr. Kumi ega) Is there a manual and parts list found
8 in -- manual and parts list contained in that government's
9 exhibit?

10 A. Yes.

11 Q. All right. Just, can you summarized that for the jury,
12 please?

13 A. That's a typed instructions for -- it's divided into two
14 sections. It's for the design specifications for a Cobray
15 machine gun, the second is a -- instructions for reproducing
16 the machine gun.

17 Q. All right. At this time when you're doing the search
18 warrant on 6/10/04, Mr. Friesen has three lawfully registered
19 machine guns in his possession according to ATF records; is
20 that correct?

21 A. Well, we only found two.

22 Q. Yes. But the other two, what other two firearms did he
23 have, please?

24 A. I think one was a Cobray Mac 11, and the other one I
25 don't recall off the top of my head.

1 Q. Would you remember if it was a SWC type machine gun?

2 A. Yes.

3 Q. Okay. Let's look at page No. 10 of those documents,
4 please.

5 A. Yes. Okay.

6 Q. Do you see it on the screen?

7 A. Yes.

8 Q. What is the significance of the "semi" on the left-side
9 and "auto" on the right side, please?

10 A. I could -- it appears to me that the -- they are all
11 firearms parts that are common, some of them are common with
12 semi-automatics and some are common with full automatics. But
13 the right-hand part labeled "auto" matches up pretty much with
14 the individual parts available for the Cobray submachine gun
15 parts kit contained in another location.

16 Q. What does semi mean from your experience and what does
17 auto mean from your experience. And could you point it out to
18 the jury, please?

19 A. The semi would be a term affiliated with a semi-automatic
20 firearm.

21 Q. What does that mean?

22 A. Well, semi-automatic hand gun or semi-automatic rifle
23 where it shoots one round with a pull of the trigger and
24 reloads itself ready for the next pull of the trigger.

25 Q. And the auto, please?

1 A. The auto to me would represent a full machine gun.

2 Q. Okay. Can you point out page 29, it's called a RPB
3 warning, please.

4 A. Yes. On the bottom of that form is a warning that is
5 notice to the buyer or the person thinking to order this that
6 RPB sells only replacement or spare parts for registered
7 machine guns. We do not sell conversion parts. Federal law
8 prohibits an individual from converting a semi-automatic weapon
9 to full auto fire.

10 Q. And that's hence the conversion part; is that correct?

11 A. That's correct.

12 Q. And if you look on page 35 and 37.

13 MR. MARTIN: May we approach, your Honor? I have an
14 objection as to this line of questioning.

15 THE COURT: Ladies and gentlemen, we're going to take
16 our recess for the afternoon for about 20 minutes, and we'll
17 reconvene the approximately 3:20. I will give you the same
18 admonitions that I've given you before, do not discuss the case
19 or reach any conclusions until you've heard all the evidence
20 and I've instructed you on the law.

21 All rise while the jury exits.

22 (The jury exits the courtroom, after which the following
23 was had in open court:)

24 THE COURT: Mr. Martin, what's your objection?

25 MR. MARTIN: This last line of questioning about a

1 bunch of advertisements that are seized in a search that have
2 nothing to do with this gun and the government cherry-picking a
3 bunch of specialized language that says certain things are
4 violations of that law that have nothing to do with this case
5 is highly prejudicial, totally irrelevant, and it's just a
6 bunch of speculation for the jury to think my client is
7 manufacturing other types of firearms he's not even charged
8 with, your Honor, I object to it. These papers don't have
9 anything to do, although they were seized during the search
10 warrant, don't have anything to do with this particular
11 firearm, the E683.

12 THE COURT: Mr. Kumi ega, what's the relevance?

13 MR. KUMI EGA: Your Honor, he's been charged with
14 possession of an unregistered machine gun. Obviously these
15 documents can aid him in the building of that machine gun.
16 It's highly relevant to his -- the charge in Count No. 5.

17 THE COURT: Is he being charged with anything other
18 than just having possession of this machine gun? Any other
19 parts? Is there any records that he's ordered these parts or
20 have any other parts --

21 MR. KUMI EGA: I think the inference from what the
22 agent is trying to tell the Court is that when you divide up
23 the documents between semi and full automatic there's an
24 inference that he's building a machine gun, and as the
25 government -- as the grand jury has indicted, Count 5 shows

1 that the Government's position is he has an unregistered
2 machine gun, and there are documents to support his building
3 that machine gun, your Honor. That's the purpose of this.
4 It's relevant evidence.

5 THE COURT: So you think he's ordered some of these
6 things to build this machine gun?

7 MR. KUMIEGA: I honestly don't know. But he has
8 hand-written, it's not, we have hand-written documents
9 that he's cut out and pasted to a form that shows that he went
10 more than just looking at a document, there is some type of
11 overt act to differentiate between the semi and automatic.
12 Also at this time even back in '86 you can't possess these
13 things. There was a cutoff on this. So I think this tends to
14 show that he knew that the gun that he had was unregistered,
15 and as the Government's evidence is going to show, he put on
16 the inspectors during the course of the inspection.

17 MR. MARTIN: He has -- I'm sorry.

18 THE COURT: Go ahead.

19 MR. MARTIN: He has two, I say he has three, but the
20 government will admit he has two lawfully owned machine guns.
21 The agent just testified that many of these parts go for a
22 Cobray automatic, which is what my client has and what the
23 government knows he has, your Honor. He's not charged with
24 manufacturing anything. He's charged with possessing
25 something. They have no evidence he's manufactured anything.

1 My consultant tells me these parts they are talking about on
2 this chart have nothing to do with the Sten. This is just,
3 this is just a big show for the jury. It's totally prejudicial
4 and irrelevant, your Honor.

5 MR. KUMIEGA: I imagine the expert is going to say
6 these parts could be readily converted into a Sten Mark III
7 machine gun, and I believe that's going to be some of the
8 evidence my forensic people can testify to when they look at
9 that list. It's interchangeable, Judge.

10 THE COURT: I'll overrule the objection and assume
11 that you're going to get there.

12 MR. KUMIEGA: Yes, sir.

13 MR. MARTIN: Your Honor, if he doesn't I'm going to
14 ask for an admonishment because he's got a list of --

15 THE COURT: We'll wait and see where he goes and you
16 can correct some of that on cross-examination, Mr. Martin, or
17 you can clarify it.

18 We'll be in recess until 3:20.

19 Mr. Martin, it would help to have some advance, I don't
20 know what else we have left that you may be objecting to other
21 than the motion to suppress objections.

22 MR. MARTIN: I've got --

23 THE COURT: But it would help for the Court to have
24 some advanced notice where we don't have the jury sitting there
25 waiting.

1 MR. MARTIN: I've got an email that I sent Ed of all
2 my objections, your Honor.

3 THE COURT: That would be helpful where I can be
4 looking at that and we don't have to have unanticipated lengthy
5 bench conferences.

6 MR. MARTIN: I'm sorry. This is the email I sent Ed,
7 Judge, with all the objections that --

8 THE COURT: All right.

9 MR. MARTIN: I apologize, Judge.

10 (A recess was had, after which the following was had
11 without the jury present:)

12 THE COURT: Mr. Martin, it's my understanding you
13 wanted to make a record on an objection to an exhibit that's
14 been admitted.

15 MR. MARTIN: Your Honor, Exhibit 3.13. During the
16 recess I believe we're in agreement that those, a portion of
17 that exhibit basically starting at Bates No. 2255 through Bates
18 2283, those are the advertisements and the list of parts and
19 things. My understanding is those part numbers from -- cannot
20 be used on a Sten, and there's no evidence to support those
21 part numbers, or any parts were ever ordered. And based upon
22 that and the record that we previously made, I'm asking at
23 least that portion, Bates 2255 through 2283 of Exhibit 3.13 be
24 excluded, and the jury admonished to disregard any testimony
25 about those portions of the exhibit.

1 THE COURT: Response, Mr. Kumi ega?

2 MR. KUMI EGA: Your Honor, the government's position is
3 that -- this is the handwritten document where a firearm is
4 broken down from a semi-automatic and an automatic. And the
5 government's position is that this is his intent to build a gun
6 because you would have too many replacement parts. It's almost
7 like it's not my gun is broken, I need parts 1, 2, and 4, I
8 have 29 parts here that I would need. And it would seem to
9 show Mr. Friesen's intent to build a firearm, build an fully
10 automatic machine gun.

11 THE COURT: And what is the government's position as
12 to how that would relate to the pending charges against him?

13 MR. KUMI EGA: Well, he has -- the government's
14 position is that he's got an unregistered machine gun in his
15 possession, he placed a serial number on the machine gun after
16 the compliance inspection. That gun was not registered to him,
17 and it would show his intent under 404(b) that he actively
18 sought out a weapon that was unregistered and he ordered parts,
19 maybe not to build that gun, but he had an intent when it was
20 divided into semi and auto to possess an unregistered machine
21 gun.

22 THE COURT: So is it the government's position that
23 perhaps they view the unregistered machine gun as one that he
24 could have built the same way?

25 MR. KUMI EGA: Well, your Honor, I think Agent Knopp

1 has a better understanding. I believe that's going to be
2 important, because the testimony would be that this is a garage
3 gun. This is the type of gun that you can build if you have
4 rudimentary knowledge of the machine, how to machine parts,
5 anybody can build a machine gun. And I think we can voir dire
6 Agent Knopp, or Inspector Knopp --

7 THE COURT: Is that part of the government's theory
8 though?

9 MR. KUMIEGA: Yes, it is. And there's one more thing
10 I would like to show. This is the next one we're going to
11 introduce, your Honor. I would like to have the Court rule on
12 this before we start. Here toward the end we have firing pin
13 N29 full, \$9.95. Now --

14 THE COURT: Is that all part of the same exhibit?

15 MR. KUMIEGA: Yes. It's all part of the packet. One
16 interpretation is that's a Mac 11 nine millimeter, full means
17 full auto, it's a firing pin. Another interpretation that
18 could be a Sten II, but it's a Mark II, full, 9.95.

19 Now, Agent, what do you say about that?

20 THE WITNESS: I think based upon the documents you've
21 got, the instructions, it probably goes along with the Cobray
22 Mac 11.

23 MR. MARTIN: That he lawfully has.

24 THE WITNESS: He's got one, plus he's got some semi
25 autos. This could easily be a conversion kit.

1 MR. MARTIN: Your Honor, he has a Mac 11 registered
2 fully automatic that he's entitled to have. That's a
3 replacement part.

4 THE COURT: Well, the Court is going to, based upon
5 what I understand the government's theory in this case is, the
6 Court is going to overrule the objection, and Mr. Martin, you
7 can certainly have ample opportunity both through
8 cross-examination of government witnesses to point out the
9 defendant's theory of the case. I'll overrule the objection.

10 Let's have the jury brought up, Ms. Youngberg.

11 (The jury was brought into open court)

12 THE COURT: You may proceed, Mr. Kumi ega.

13 MR. KUMI EGA: Thank you, your Honor.

14 Q. (By Mr. Kumi ega) Agent, page 35 and 37 of Exhibit 3.13
15 has a notation for full firing pin; is that correct?

16 MR. MARTIN: Can you tell me what page number that is?

17 MR. KUMI EGA: 2282.

18 THE WITNESS: Yes. The last entry is an item number
19 58, it's a firing pin for a M11 slash 9 full.

20 Q. (By Mr. Kumi ega) Okay. And from your experience, what
21 does that mean, please?

22 A. Well, it correspond with the replacement part kits for a
23 machine gun where it says a number 58 firing pin for M11, 9,
24 full or auto, please specify. That would be the firing pin for
25 a full automatic Cobray machine gun.

1 Q. In all fairness, Mr. Friesen has a Cobray machine gun; is
2 that correct?

3 A. Yes.

4 Q. There are multiple parts, if you go back the next page,
5 there are other parts associated with a Cobray machine gun; is
6 that correct?

7 A. Yes. He has an order form with three pages, two
8 completely filled out, and the last page ends up with the
9 firing pin for a Cobray machine gun.

10 Q. Okay. These could be replacement parts; is that correct?

11 A. Yes, they could.

12 Q. If the machine gun wears out you're going to have to
13 replace the worn out parts; is that correct?

14 A. That's correct.

15 Q. However, from looking at those three pages, if you can go
16 back to 1, 2, and 3, is that consistent with a gun that's
17 broken?

18 A. Normally, you wouldn't expect all those parts to break.
19 Remember, this form is contained with instructions on how to
20 convert a semi-automatic Cobray machine gun to full auto.

21 Q. Government Exhibit 3.14. What is that, please?

22 A. That is a blue three-ring binder containing firearms
23 records.

24 Q. And whose firearms records, please?

25 A. For Larry Doug Friesen.

1 Q. And where did you receive or seize that item, please,
2 sir?

3 A. I've got to put this away. Just a second.

4 These records were seized from the -- Mr. Friesen's
5 residence in the basement gun, or workroom where the gun safe
6 was on the same shelving with these last two items we
7 introduced.

8 Q. Okay. And that three-ring binder purports to be you say
9 gun records?

10 A. That's correct.

11 Q. From what dates, please? If you can give the jury a
12 summary of what that document contains.

13 A. Okay.

14 MR. KUMIEGA: Your Honor, at this time the United
15 States would ask the Court to admit 3.14 into evidence.

16 MR. MARTIN: Same objection, your Honor.

17 THE COURT: Will be overruled.

18 THE WITNESS: This contains several different records.
19 The first is a list of firearms marked as personal that -- they
20 show there were acquired from January '03 through March 6th of
21 '03. And then the second page again is marked personal, and
22 they show firearms that were acquired in February '94, through
23 it looks like January '03. And then there's a part, a section
24 marked description of firearms. This is a firearms acquisition
25 and disposition record for his firearms business. And they

1 contain sporadic dates of acquisition from '93, and the last
2 entry is March 30th of 1997.

3 Q. (By Mr. Kumi ega) All right. Now, the inspector,
4 Inspector Valerie Rowden has examined that exhibit; is that
5 correct?

6 A. Yes.

7 Q. Government's Exhibit 3.15, 3.15.1, 3.15.2. What is that,
8 please?

9 A. 3.15 is a silencer. It's an AWC Systems Technology
10 Thundertrap .30 caliber silencer, serial number G-1270.

11 Q. Where was that found?

12 A. That was found in the basement gun safe in one of the
13 shelves on the door.

14 Q. And 3.15.1 and 3.15.2 are the companion photographs; is
15 that correct?

16 A. Yes. It's a photograph showing the end of the silencer
17 barrel and a photograph of the silencer longways.

18 MR. KUMI EGA: Your Honor, the United States at this
19 time would ask the Court to admit Government's Exhibit 3.15,
20 3.15.1 and 3.15.2 into evidence.

21 MR. MARTIN: Your Honor, I object on the motion to
22 suppress and relevance.

23 THE COURT: Objection will be overruled. Will be
24 admitted. The pictures are all of the same silencer; is that
25 correct, Mr. Kumi ega?

1 THE WITNESS: That's correct.

2 MR. KUMI EGA: Can you show 3.15.1 and .2, please. And
3 3.15.2, please.

4 Q. (By Mr. Kumi ega) For the record, what is a silencer,
5 please?

6 A. It's a -- it requires a firearm with a threaded barrel,
7 you put it on the firearm, a semi-automatic firearm and it is
8 intended to reduce the sound of the firearm.

9 MR. KUMI EGA: Your Honor, may the United States
10 publish the physical item 3.15 to the jury so they can see what
11 the silencer is all about?

12 THE COURT: I think you can hold it up and that would
13 be sufficient.

14 MR. KUMI EGA: Okay.

15 Q. (By Mr. Kumi ega) Agent, is it light, is it heavy?

16 A. It's heavy.

17 MR. KUMI EGA: Your Honor, could HE go in front of the
18 jury and display.

19 THE COURT: I think everybody can see it. Can
20 everybody see it? They can see it.

21 Q. (By Mr. Kumi ega) Now, 3.16 is the firearm; is that
22 correct?

23 A. Yes.

24 Q. And 3.16.1 and 3.16.2 are photographs of that same
25 firearm; is that correct?

1 A. Yes.

2 MR. KUMI EGA: Your Honor, the United States would ask
3 the Court to introduce 3.16.1 and .2 into the record.

4 MR. MARTIN: Same objection, your Honor.

5 THE COURT: Will be overruled. Will be admitted.

6 Q. (By Mr. Kumi ega) That's the same Sten machine gun that
7 you showed to the jury before; is that correct?

8 A. Yes.

9 Q. And 3.16.1, please?

10 A. That shows the magazine well attached to the firearm with
11 the part number D95843.

12 Q. And we have a close-up in 3.16.2; is that correct?

13 MS. WEBB: That's it.

14 MR. KUMI EGA: Oh, it is. Okay.

15 Pass this witness, your Honor.

16 THE COURT: You may cross-examine.

17 CROSS-EXAMINATION

18 BY MR. MARTIN:

19 Q. Agent Knopp, let's start with that silencer, okay? I
20 think that's Exhibit 3.15, right?

21 A. Yes.

22 Q. Would you hold that U again? Just hold it up.

23 A. (Compl ies)

24 Q. My client is not charged with anything relating to that
25 silencer, is he, sir?

1 A. No, he's not.

2 Q. There's nothing illegal about his possessing that
3 silencer, is there, sir?

4 A. No, there's not. No.

5 Q. Okay. And we were talking just before the break, you
6 were talking about all these order forms that were on the back
7 of, I think -- let me put this back. It's 3.13, Bates 2282.

8 MR. MARTIN: Do you have that, Bonnie. Eddy said it
9 was page 35. I think it's the last page.

10 Q. (By Mr. Martin) Agent Knopp, the last item there, Item
11 58, firing pin M11 full, 9.95. Do you see that?

12 A. Yes.

13 Q. Okay. That is a firing pin for a Cobray machine gun, is
14 that right, or a Cobray semi-automatic; is that correct?

15 A. That's what I believe it to be. Yes.

16 Q. Okay. You know Mr. Friesen has a Cobray semi-automatic,
17 don't you, sir?

18 A. Yes, he does.

19 Q. You know Mr. Friesen has a Cobray registered automatic
20 machine gun, don't you, sir?

21 A. Yes, I do.

22 Q. And he can order both those parts, can't he, sir?

23 A. Sure.

24 Q. And as I understand, conversion kits where you convert a
25 semi-automatic to an automatic, they are regulated by the ATF,

1 aren't they, sir?

2 A. Yes.

3 Q. And there's three pages of parts here. There's one, two,
4 three. Not one of those parts is a conversion part, is it,
5 sir?

6 A. They can easily be used --

7 Q. Not one of those parts is a conversion part, is it, sir?

8 A. Not something that would be regulated by ATF. Yes.

9 Q. ATF doesn't regulate one of those 58 parts up there;
10 isn't that true?

11 A. Not that I'm aware of. No.

12 Q. As a matter of fact, the companies that make Cobray
13 firearms, the parts, they've gone out of business and you can't
14 get parts anymore, can you, sir?

15 A. I'm not aware of that, but that's possible.

16 Q. If they go out of business and you can't get parts, you
17 might want to store up?

18 A. That's possible.

19 Q. Okay, sir. You're the case agent in this case; is that
20 right?

21 A. That's correct.

22 Q. And I think you described for us that basically that
23 makes you pretty much in charge of everything; is that right?

24 A. Yes.

25 Q. Putting the case together.

1 Now, during this execution of the search warrant, it would
2 be fair to say that Mr. Friesen was courteous, polite, and
3 cooperative, wouldn't it?

4 A. Yes, it would.

5 Q. Okay. As a matter of fact, after you conducted the
6 search, there were two weapons that you knew he had that you
7 hadn't been able to find and you asked him to find them for
8 you; isn't that true, sir?

9 A. That could be. I don't recall, but it could be.

10 Q. Okay. Do you recall him helping you did find -- well,
11 you just don't remember?

12 A. Which weapons are you talking about?

13 Q. One was little pin .22 weapon that was in a display case
14 that you all couldn't find. Do you recall that?

15 A. I do recall that, yes.

16 Q. And you came up to him and said, Doug, we've convinced
17 ourselves you don't have this weapon and you should, and he
18 took you to where it was, didn't he?

19 A. I don't recall that he took me, but I recall that
20 happening. It might have been another agent. I wasn't at the
21 office during most of the search.

22 Q. Okay. But you know he helped and cooperated and pointed
23 out every firearm that they were looking for?

24 A. Yes. As far as I know.

25 Q. Okay. Now, you were talking about the, I believe it's

1 Exhibit 3.16. That's the Sten, right? It's sitting by your
2 legs I believe.

3 A. Yes.

4 Q. Would you pull that out for us, please, sir?

5 A. (Complies).

6 Q. Now, you are familiar with the entire inventory of
7 everything that Doug Friesen had, correct?

8 A. From the search warrants?

9 Q. Yes, sir.

10 A. Yes. I reviewed the reports and whatnot. I have them
11 available.

12 Q. Okay. How many Stens did you find in the search?

13 A. One.

14 Q. That one right there?

15 A. Yes.

16 Q. How many Stens does Doug Friesen have registered to him?

17 A. One.

18 Q. Okay. And I believe --

19 MR. MARTIN: If I might approach, your Honor?

20 THE COURT: You may approach.

21 Q. (By Mr. Martin) Let me borrow the firearm for a minute.
22 You testified that there was a number, a part number on this
23 weapon. Do you recall that, sir?

24 A. Yes. But it's not visible.

25 Q. I'm working on that. Hopefully I'll be able to --

- 1 A. I think we showed it on the, one of the last photographs.
- 2 Q. The part number that I'm talking about though is --
- 3 you're familiar where it is, aren't you, sir?
- 4 A. Yes.
- 5 Q. Well, let me go over here to you for this. The part
- 6 number that you were talking about that, the D number, the D95
- 7 number, that's it right there, isn't it, sir? Can you see it?
- 8 A. Yes. That's it.
- 9 Q. And can you read it without --
- 10 A. That's D95843.
- 11 Q. Okay. And you're familiar, you've been with the ATF you
- 12 said 30-something years?
- 13 A. Yes.
- 14 Q. And you're familiar with where serial numbers should be
- 15 on a particular part; is that correct?
- 16 A. That's correct.
- 17 Q. And a serial number on a Sten machine gun cannot be on a
- 18 magazine well, can it, sir?
- 19 A. It's required to be on the frame or receiver.
- 20 Q. Okay. So do you know agent -- Inspector Valerie Rowden?
- 21 A. Yes.
- 22 Q. Do you know Inspector Haley McGrew?
- 23 A. Yes.
- 24 Q. And do they know a serial number cannot be on a magazine
- 25 well?

1 A. Yes.

2 Q. They do inspection literally every day?

3 A. Yes.

4 Q. And they would know that a number on a magazine well is
5 not a serial number; wouldn't you agree, sir?

6 A. Yes, they do.

7 Q. And so from a standpoint of being an ATF officer, an
8 inspector, and a special agent yourself, you know this D number
9 that's on this part here, that's called the magazine well,
10 right?

11 A. That's correct.

12 Q. You know that number is not a serial number?

13 A. That's correct.

14 Q. And if I tell you it's a serial number or Mr. Kumi ega or
15 the judge or anybody tell you that's a serial number, you know
16 I'm mistaken, don't you, sir?

17 A. Yes. That's not a serial number that is properly placed
18 for the -- according to the statutes.

19 Q. Okay. Because by law that serial number has to be on --
20 this is easier for me to do -- the tube, right?

21 A. Yes. That would be the receiver, the frame or the
22 receiver.

23 Q. And that's this portion right here (indicating)?

24 A. That's correct.

25 Q. And I heard you testify that there was a serial number on

1 this receiver. Did you testify there was a serial number?

2 A. There was a number that had been placed on the receiver,
3 E683.

4 Q. E683. And that's this number in this area right here
5 (indicating)?

6 A. That's correct.

7 Q. Can you see that number or do I need to --

8 A. That's the location. You can't see it very well.

9 Q. I'll try to focus it. Well, I'm not very good with this
10 machine and I apologize. But that number is right there,
11 correct, E683?

12 A. That's correct.

13 Q. And that number in that location is on the tube, correct?

14 A. That's correct.

15 Q. And that's where it's supposed to be is on the tube,
16 correct?

17 A. The serial number is required to be on the tube or on the
18 receiver.

19 Q. And that's where it is on this one?

20 A. It's on the receiver.

21 Q. And what is the serial number of the Sten that is
22 registered to Doug Friesen?

23 A. E683.

24 Q. The same number that's on this firearm right here
25 (indicating)?

1 A. Yes.

2 Q. And during the -- I'll give you this back, sir.

3 During the execution of the search warrant you seized from
4 Doug's residence die stamps, right?

5 A. Yes.

6 Q. And that's Government's Exhibit 3.8. Right?

7 A. Correct.

8 Q. And these are those stamps, right?

9 A. That's correct.

10 Q. Do you see those numbers?

11 A. Yes.

12 Q. What are they?

13 A. E683.

14 Q. And you'll agree with me, sir, just by looking at those
15 numbers that those numbers could not have been used to put that
16 serial number on that gun?

17 A. That's correct.

18 Q. They are not even close?

19 A. That's correct.

20 Q. This is the only set of stamps you seized from Doug
21 Friesen?

22 A. Only set we could find.

23 Q. It was the only set of stamps you seized from Doug
24 Friesen; is that correct, sir?

25 A. That's correct.

1 Q. So the stamps that you seized don't match the stamps on
2 this Sten?

3 A. That is correct.

4 Q. Now, was Mr. Friesen with you when you went to the
5 basement to -- of the house?

6 A. Yes, when we made the initial entry.

7 Q. And did he voluntarily unlock the safe for you down
8 there?

9 A. Yes, he did.

10 Q. That would be the safe that the Sten was in?

11 A. That's correct.

12 Q. And pointed out for you on that top shelf, that's where
13 the weapon you were looking for was?

14 A. Yes.

15 Q. And there was an attempted transfer or, in approximately
16 January of 2004 by Mr. Friesen of that Sten to an individual
17 named Mr. Bugg; is that correct, sir?

18 A. That's correct.

19 Q. As a matter of fact, you seize the paperwork relating to
20 that transfer, correct?

21 A. Yes.

22 Q. Because when you transfer something, a tax has to be
23 paid, a background check has to be done, and ultimately the
24 transfer of that weapon is either approved or disapproved by
25 the ATF, correct?

1 A. That's correct.

2 Q. And that occurred after the compliance inspection in
3 February of '03, but before the search warrant was executed in
4 June of 2004; is that right?

5 A. That's right.

6 Q. So I think it was January of 2004, so about six months
7 prior to the execution of the search warrant, the paperwork was
8 prepared; is that right?

9 A. It appears there is several sets of paperwork prepared,
10 and I'm not -- some were dated in November of '03, some were
11 dated in January. So I'm not sure when it was all actually
12 prepared.

13 Q. All right, sir. Were you familiar with whether or not
14 Mr. Friesen obtained that paperwork from Valerie Rowden with
15 the ATF?

16 A. I wasn't aware of it, but that's very possible.

17 Q. Now, I believe your testimony was that Mr. Friesen, Doug
18 told you that when the inspectors saw that Sten, the firearm
19 3.16, that they were in a hurry and they didn't see or
20 overlooked, words to that effect, the serial number?

21 A. That's correct.

22 Q. Okay. And somehow or another you have a search warrant
23 that has a number D95-something-something as the serial number,
24 right?

25 A. Yes. We were searching for two Sten submachine guns.

1 Q. And you found one Sten with the numbers for both machine
2 guns that you were looking for?

3 A. Well, we were still searching for two machine guns;
4 however, we did find a machine gun that containing both
5 numbers.

6 Q. Well, you knew, Valerie Rowden told you, did she not,
7 that the number that she wrote down, the D95843 was on the
8 magazine well?

9 A. Yes, she did.

10 Q. So you knew that was not a serial number?

11 A. I believed it was not a serial number and we went to the
12 extent of checking it through NFA and found that it was not
13 registered. So, yes, I believed it was not a serial number.

14 Q. Because it was on the magazine well?

15 A. That's correct.

16 Q. But you asked for a search warrant and obtained a search
17 warrant to search for a firearm that would have a serial
18 number, a D serial number on the tube where it was supposed to
19 be; isn't that true?

20 A. I didn't specify where it would be; however, that was the
21 only number that we had to describe one of the Stens we were
22 looking for.

23 Q. Okay. And the Sten that you were looking for was -- had
24 a D95843 on it, and it had a D95843 on the magazine well,
25 correct?

1 A. That is correct.

2 Q. And the Sten, 3.16, has a D95843 on the magazine well,
3 correct?

4 A. Now, you're -- yes. The Sten that we have here has a D
5 number on the magazine well.

6 Q. And you believe today, isn't it true, that that Sten is
7 the same Sten that Valerie Rowden wrote the D number down on
8 and saw about 16, 18 months earlier in February 19th of 2003,
9 don't you, sir?

10 A. Yes. Her partner Haley McGrew was there during the
11 search.

12 Q. Do you believe that to be the same gun, sir?

13 A. Yes.

14 Q. Okay. Now, you even went a little further --

15 MR. MARTIN: Your Honor, may I have just a moment?

16 THE COURT: Yes.

17 (Brief pause)

18 Q. (By Mr. Martin) After the execution of the search
19 warrant it didn't end; isn't that right?

20 A. What's that?

21 Q. After the execution of the search warrant you conducted
22 further investigation?

23 A. Yes.

24 Q. As a matter of fact, you went out and contacted the
25 person that supposedly made these tubes; did you not, sir?

1 A. Yes, I did.

2 Q. Do you know an individual by the name of Charles Erb,
3 Jr.?

4 A. Yes. I met with him at his business premises.

5 Q. And you've probably talked to him extensively, have you
6 not, sir?

7 A. Talk to him two times.

8 Q. Okay. Were they extensive conversations?

9 A. Yes. They were fairly extensive.

10 Q. You talked to him, I can't tell by your report, but looks
11 like you talked to him --

12 MR. MARTIN: May I approach, your Honor?

13 THE COURT: You may approach.

14 Q. (By Mr. Martin) I'm going to hand you a copy of a
15 report, maybe you can refresh my memory. When did you talk to
16 Mr. Erb on that report?

17 A. I don't believe I talked to him on this report.

18 Q. Does it tell when you did talk to him?

19 A. That's what I was looking for. No. I don't think it's.

20 Q. Wrong report?

21 A. -- wrong report.

22 Q. That's why I couldn't find it then.

23 But the way you got to Mr. Erb was you got some records
24 from the NFA, which is what, the National Firearm -- Ms. Brown
25 --

1 A. Registration and Transfer Record. Yes.

2 Q. You contacted them because you wanted to know where this
3 gun came from, right?

4 A. Yes.

5 Q. And they provided you, I think it's called a Form 2, did
6 they not, sir?

7 A. I was -- at some point I received information that a Sten
8 E683 was registered to Mr. Friesen. I think I had that prior
9 to the search warrant, and I knew it was manufactured by Mr.
10 Erb.

11 Q. And did the ATF provide you or did you obtain a Form 2
12 relating to this and show it to Mr. Erb, sir?

13 A. Yes, I did.

14 Q. Okay. Now, I apologize. I did have the wrong report.
15 Did you participate in an interview of Mr. Erb on July 8, 2004,
16 July 9th, 2004?

17 A. Yes, I did.

18 Q. Okay.

19 A. I think it was July 9th, 2004, when we actually visited
20 the, or it was actually July 8 when we visited. We traveled
21 out there and traveled back.

22 Q. Very well. In the course of that interview did you show
23 him a Form 2 that he acknowledged to you was the registration
24 for this firearm, did he not, sir?

25 A. Yes. It was a document he submitted to register a series

1 of firearms that he had manufactured on the same day.

2 Q. Okay. If we take this, and I'll try to -- here's the
3 report, because you had some attachments to the report of
4 things you had showed him, right?

5 A. Probably.

6 Q. At the back you have all the attachments?

7 A. Yes.

8 Q. And one of the attachments is the Form 2?

9 A. I don't know. This looks like a Form 2 that shows the
10 firearms; however, this is not the one that was in the
11 certification.

12 Q. I know. That's the one you showed Mr. Erb, isn't it?

13 A. It's possible.

14 Q. Well, look at the Bates numbers, you gave them to me, and
15 tell me that it's not.

16 A. It probably is.

17 Q. So the Form 2 that you showed Mr. Erb and he identified
18 as how he registered this gun has previously been introduced
19 into evidence as Defendant's Exhibit No. 100, hasn't it, sir?

20 A. Yes.

21 Q. And that is this form that we've previously talked about
22 that shows that he registered on April 20, 1986, E683. Do you
23 see that right here (indicating)?

24 A. Yes.

25 Q. And that's the form you showed him and that's the one he

1 acknowledged was the form that he sent to the ATF to register
2 these?

3 A. Yes. I'm not certain at this point whether I got that
4 from him or that's the one I actually carried out there.

5 Q. Well, that's the one, according to your report, that you
6 got from the NFA, is it not, sir?

7 A. I don't know. I'll have to look here.

8 Q. Well, you got a form from the NFA, did you not?

9 A. At some point, yes. Prior to the search warrant we
10 received it.

11 Q. And you'll agree with me, this form I got from you, that
12 FRI0239. That's a specialized number that's Bates-stamped by
13 the ATF, right, or the U.S. attorney's office?

14 A. Yes.

15 Q. I got that from y'all?

16 A. Yes.

17 Q. Let me ask you, sir: Did you not prepare a report that
18 said that the NFA branch provided you additional information
19 concerning the manufacture of machine guns, Sten machine gun by
20 Charles Erb. Erb has submit documentation to the ATF for the
21 manufacture of over 400 Sten type machine guns. On April 20th,
22 1986, Erb filed Form 2 notice of firearm manufacture or import
23 to register 25 machine guns, all described as Sten MKII nine
24 millimeter machine guns with serial numbers starting E676 and
25 ending with E700. Did you not say that?

1 A. Yes, I did.

2 Q. And April 20th, 1986, correspond with Defendant's Exhibit
3 No. 100, doesn't it, sir?

4 A. Yes.

5 Q. Not the blue -- certified blue ribbon documents that Ms.
6 Denise Brown brought in here today and have been introduced
7 under government -- under another exhibit number, right?

8 A. That's correct.

9 Q. As far as you know from your presentation to Mr. Erb,
10 this is the only form he's ever seen and this is the only one
11 he's ever acknowledged as registering E683; isn't that true,
12 sir?

13 A. He had his own documentation, but that's the form that is
14 in my report. That's what we worked off of.

15 Q. That's what you showed him?

16 A. Yes.

17 Q. And Erb's -- excuse me, Mr. Erb's working out of
18 basically a shop, a garage, isn't he, sir?

19 A. Yes. It's a -- basically a basement shop with his living
20 quarters above it.

21 Q. And did you take some pictures or have somebody take some
22 pictures while you were there?

23 A. Yes, we did.

24 Q. In front of you is a defendant's exhibit book, one of
25 them, let me -- there should be one that says Defendant's

1 Exhibi ts. Very good. You found it.

2 This place doesn't look like Smith and Wesson, does it,
3 sir?

4 A. No.

5 Q. Would you look at Defendant's Exhibi t No. 51, under Tab
6 51. There should be about three exhibi ts under that tab.

7 A. Okay.

8 Q. Do you see those, sir?

9 A. Yes, I do.

10 Q. And are those photographs that were taken of Erb's place
11 of business while you were out there probably in July of 2004
12 or sometime thereafter?

13 A. Yes, they would have been.

14 Q. And do they accurately represent what you saw that day?

15 A. Yes.

16 MR. MARTIN: Your Honor, I move for all exhibi ts under
17 tab 51.

18 MR. KUMI EGA: No objecti on, your Honor.

19 THE COURT: Will be admi tted.

20 MR. MARTIN: Bonnie, would you put up 51, please.

21 Q. (By Mr. Martin) Now, this is -- the first page of 51 9s
22 Bates 1489. Now, is that the sign there, Charles Erb,
23 Established in 1975, Gunsmi th?

24 A. Yes.

25 Q. Okay. And is this the main entrance to his facility?

1 A. Yes, it is.

2 Q. Okay.

3 MR. MARTIN: Could we go to the next Bates number.

4 Thank you.

5 Q. (By Mr. Martin) Now, what is this?

6 A. That's standing inside the doorway of his shop looking
7 back out, and it shows some of his machining tools on the left
8 there.

9 Q. Up here at the top.

10 A. Right. To the left.

11 Q. To the left.

12 A. Looks like two big mixers.

13 Q. Right up here (indicating)?

14 A. Yeah.

15 Q. Okay. There's one here and one over there?

16 A. That's correct.

17 Q. Okay. And there's a bunch of boxes and stuff stacked in
18 the back; is that right?

19 A. That's right.

20 Q. And if you want some candy for a quarter you can probably
21 get it right there, right?

22 A. Yes, that's correct.

23 MR. MARTIN: And could we have it next one, please.

24 Q. (By Mr. Martin) And what is this photograph?

25 A. This is another photograph of the same area, his

1 machining tools.

2 Q. Okay. And that's another tool up there, right?

3 A. That's the same ones.

4 Q. Okay. All right. And this is generally how Erb's shop
5 looked; would you agree, sir?

6 A. Yes. Pretty much. There's a long room that you're
7 looking at there, and then there's a doorway leading to another
8 larger room where he had inventory and some tools.

9 Q. Okay. Now, during the course of your investigation, sir,
10 let me ask you: Did you cause to be obtained for your
11 investigation photographs of other Sten tubes or completed guns
12 that were supposedly manufactured by Erb?

13 A. Yes, I did.

14 Q. Would you look, sir, at Exhibit 38, please. Should be
15 two or three pages to it.

16 A. Yes.

17 Q. Does that appear to be photographs of a Sten serial
18 number E679 that you caused to be taken and provided to me in
19 discovery actually in this case?

20 A. If these are the ones we provided you in discovery it's
21 tough to tell by themselves, but what did you say the serial
22 number was?

23 Q. At very beginning of that Exhibit 38 it should say E679.

24 A. Yes. We received photographs, we turned them over to
25 you, I believe there was probably more of this gun, and I do

1 not see a serial number in the ones you have -- you've given me
2 here.

3 Q. Well, the very first picture is a picture of what
4 purports to be a serial number, would you not agree? It's kind
5 of hard to read, but that's the picture I got from you.

6 A. Oh, yes. Now I can see it. It's kind of faint.

7 Q. I didn't take the picture, okay?

8 A. Yes.

9 Q. Okay.

10 MR. MARTIN: Your Honor, I would move for introduction
11 of Defendant's Exhibit 38.

12 MR. KUMIEGA: To which -- may we approach the bench,
13 your Honor?

14 THE COURT: Is this the discussion we had?

15 MR. KUMIEGA: Judge, my understanding -- I would like
16 to talk to you at side bar.

17 THE COURT: All right.

18 (The following was had at the bench, out of the hearing of
19 the jury:)

20 MR. KUMIEGA: My understanding was he was going to
21 show Mr. Erb if that's his handiwork. The agent doesn't know.
22 There is no foundation, this is the rankest form of hearsay.
23 It was part of our investigation and there is no foundation to
24 say who -- Erb can identify it, not Mr. Knopp. That was my
25 understanding in chambers, your Honor. I think this is a

1 different -- it's a different witness sponsoring the document.
2 I understood he was going to cross-examine Erb with it, not Mr.
3 Knopp. It's outside the realm of direct examination in the
4 first place. He's got no knowledge of that. He's just
5 presenting the evidence of what happened on June 10th and the
6 attendant circumstances, not the gun. That's why we called Mr.
7 Erb. That's what I stipulated to.

8 MR. MARTIN: I'm not asking him -- I'm introducing
9 them, your Honor. I've got about 20 of them. He's the
10 sponsor. I haven't asked him a question about the photographs,
11 of the gun photographs. I'm not going to. He was there. But
12 the guns I'm going to get into evidence when Erb is called, I'm
13 going to question him.

14 MR. KUMIEGA: Let Erb handle it.

15 THE COURT: He --

16 MR. KUMIEGA: That's why I am stipulating. He got it
17 through several different routes.

18 THE COURT: Will you stipulate to admission of all of
19 these?

20 MR. KUMIEGA: If Mr. Erb is going to testify, sure.
21 That's what I consented in the back, to have Mr. Erb identify
22 and make his --

23 THE COURT: But he can't identify or authenticate
24 them, but the agent can, I mean, it's only way he can get them
25 in unless you stipulate to their admission. You either have to

1 stipulate that they be admitted and authenticate based upon
2 them being pictures taken by ATF agent --

3 MR. KUMIEGA: Judge, I assumed Mr. Erb --

4 THE COURT: Mr. Kumi ega, you can't get them in through
5 Mr. Erb.

6 MR. KUMIEGA: Correct. I'll stipulate.

7 THE COURT: Well, that's what my question is. Are you
8 going to stipulate --

9 MR. KUMIEGA: Yes.

10 THE COURT: -- that all these pictures would be
11 admitted based upon them having been taken by ATF agents?

12 MR. KUMIEGA: If Erb says that looks like his
13 handi work.

14 THE COURT: No. Forget Erb. He's either going to
15 admit them or not admit them.

16 MR. KUMIEGA: I'm not going to go back on what I said
17 in chambers.

18 THE COURT: So they can all be admitted. You're not
19 planning on questioning him?

20 MR. MARTIN: I'm going to go through and have him
21 identify them all as pictures, because I was going to get them
22 admitted and then --

23 THE COURT: So if he stipulates they can all be
24 admitted --

25 MR. MARTIN: As ATF photographs of those particular

1 weapons --

2 THE COURT: Then you don't need Mr. Knopp.

3 MR. MARTIN: I would like an announcement to the jury
4 so they know.

5 THE COURT: We'll do it before you use them.

6 MR. MARTIN: I've got ATF reports, your Honor, that
7 will say that's what they are, if I have to.

8 THE COURT: Okay. But you're not going to use them
9 until Mr. Erb comes up; is that right?

10 MR. MARTIN: I don't plan on it unless it becomes an
11 issue. I think I'm entitled to do it the way I'm doing it.

12 THE COURT: Well, but we can save 30 minutes if he
13 stipulates to it.

14 MR. MARTIN: I understand, Judge. Can we admit them
15 now?

16 THE COURT: Yes, if he stipulates they can be
17 admitted.

18 MR. KUMIEGA: I'll stipulate to admitting them through
19 Erb.

20 THE COURT: We're not talking about --

21 MR. KUMIEGA: I'll do whatever the Court wants, but I
22 think it's unfair because --

23 THE COURT: Wait a minute, Mr. Kumiega. What's
24 unfair? To admit them?

25 MR. KUMIEGA: No.

1 THE COURT: Okay. Then they are going to be admitted.
2 You don't need to question Mr. Knopp about them, right?

3 MR. MARTIN: I would like to ask him a wholesale
4 question where were these pictures taken.

5 THE COURT: Why -- do you object? You're going to
6 object?

7 MR. KUMIEGA: Through Erb I will.

8 THE COURT: But Erb can't do it, Mr. Kumi ega. Erb
9 doesn't know who took the pictures.

10 MR. KUMIEGA: That's the whole point of it.

11 THE COURT: Let's don't do it one by one. It's not
12 unfair if you're going to stipulate.

13 MR. KUMIEGA: But the only person who can say this
14 looks like my handiwork is the manufacturer, not Mr. Knopp. He
15 doesn't know.

16 THE COURT: Mr. Kumi ega, you're talking about two
17 different things. We're talking about how you use them, and
18 that's what Mr. Erb's testimony. How Mr. Martin uses the
19 pictures, all I'm concerned at this point is that they be
20 admitted.

21 MR. KUMIEGA: Fine.

22 THE COURT: Whether Mr. Erb, whatever he wants to say
23 about them, he can't say anything unless they are admitted.
24 And you can't admit them through Mr. Erb without either a pure
25 stipulation on where they came from.

1 MR. KUMI EGA: And I will do that.

2 THE COURT: So you're going to do that right now?

3 MR. KUMI EGA: I was going to do it through Erb.

4 THE COURT: Mr. Kumi ega, Erb can't testi fy to the
5 authenti ci ty.

6 MR. KUMI EGA: How can the agent testi fy? He's j ust
7 got peopl e scattered and bringing back i nvestigati ve reports.

8 THE COURT: Because you're sti pulati ng that's what
9 happened and he seems to know, that's how.

10 MR. KUMI EGA: It does, but he doesn' t know, the gun i s
11 not here for the jury to look at.

12 THE COURT: It's not guns, we' re admi tti ng pi ctures.
13 If you want to go through all those --

14 MR. MARTIN: Real quick.

15 THE COURT: -- real quick, say di d you take these
16 pi ctures or are these pi ctures that were taken by FBI or ATF.

17 MR. MARTIN: I' ll ask hi m three real quick questi ons,
18 Judge.

19 (The fol lowi ng was had i n open court:)

20 Q. (By Mr. Marti n) Agent Knopp, i f you woul d, quickl y, or
21 take such ti me as you need, look at Exhi bi ts 39, 40, 41, 42,
22 43, 44, 45, 46, 47, 48, 49, and 50.

23 A. Thi rty-ei ght through 50, you say?

24 Q. Actual l y 38 through 52.

25 A. Looks to me you have a combi nati on of photograp hs here.

1 Some of these I didn't take and wasn't present.

2 Q. Were those pictures taken by ATF agents, sir?

3 A. Yes. It's hard to match these up without ours here
4 because I think you're missing some.

5 Q. Well --

6 A. But in general.

7 Q. The ones that are present, were they taken by ATF agents,
8 sir?

9 A. Yes, I believe they were.

10 Q. And as case agent you were responsible for directing that
11 that be done, correct, sir?

12 A. Yes. Actually I asked Tim Kelly to do this and he
13 accomplished it and then this was the results.

14 Q. Okay. So those were pictures that were taken by someone
15 of the ATF of various different firearms; is that correct?

16 A. Yes. We sent out formal requests for people to contact
17 individuals on this list of firearms manufactured by Erb, and
18 asked them to take photographs. And this is the result,
19 basically.

20 Q. And Exhibit 50 is a photograph of some die stamps that
21 Erb had; is that not correct, sir?

22 A. Yes. That's a photograph that we took on our second trip
23 to visit Mr. Erb.

24 Q. Okay. And Exhibit 52 are photographs that were taken of
25 Sten tubes; is that correct, sir?

1 A. There again, that would not be the first trip, that's the
2 second trip.

3 Q. But those are Sten tubes, the tubes, right?

4 A. Yes.

5 Q. Okay.

6 MR. MARTIN: Your Honor, I would move -- I believe
7 Exhibit 51 has been admitted. I will move admission of
8 Defendant's Exhibit 38 through 52.

9 MR. KUMIEGA: We'll stipulate per our bench
10 conference, your Honor.

11 THE COURT: Okay. Thirty-eight through 52 will be
12 admitted.

13 MR. MARTIN: May I have just a moment, your Honor?

14 THE COURT: Yes.

15 (Brief pause)

16 MR. MARTIN: Bonnie, could you put up Exhibit 50?

17 Q. (By Mr. Martin) Exhibit 50 that's been put up here is a
18 copy of the die stamps that Erb produced to you; is that
19 correct, sir?

20 A. That's correct.

21 Q. And those were never submitted to any laboratory for any
22 examination for comparison to the Sten E683 sitting behind you,
23 was it, sir?

24 A. At the time we took that photograph we had the E -- the
25 Sten with us, and it was obvious that those stamps weren't

1 anywhere close to that.

2 Q. Now can you answer my question?

3 A. No, it was not submitted to a laboratory.

4 Q. Okay. And when was this photograph taken?

5 A. That would have been on the -- our second trip out to see
6 Mr. Erb.

7 Q. What --

8 A. What date?

9 Q. Yeah.

10 A. I believe it was 2006 at some point.

11 Q. 2006?

12 A. Yes.

13 Q. 1996, 1988, so those stamps are at least 20 years old. Is
14 that what you're telling me?

15 A. I asked him to produce the stamp that he would have used
16 and this is what he showed me.

17 Q. Those stamps are at least 20 years old?

18 A. That would be my assumption, yes.

19 Q. And he makes thousands and thousands of firearms; would
20 you not agree, sir?

21 A. I'm sure he does.

22 Q. Probably tens of thousands if not thousands of thousands?

23 A. I couldn't put a number on it. I believe it was at least
24 500 or so Sten guns that he made.

25 Q. And he only has one set of stamps. Is that your

1 testimony?

2 A. That's the stamps he showed me that he said that he had
3 available for that. I don't know if he has other stamps, but
4 that's what he said he had available.

5 Q. And it's your belief he'll be here to testify, isn't it,
6 sir?

7 A. Yes.

8 Q. And this is also the record that he told you that he
9 registered those under Defendant's Exhibit 100?

10 A. Correct.

11 Q. Okay.

12 MR. MARTIN: Nothing further, your Honor.

13 THE COURT: Redirect?

14 MR. KUMIEGA: Yes, your Honor.

15 REDI RECT EXAMI NATION

16 BY MR. KUMIEGA:

17 Q. Mr. Knopp, the first question, one of the first series of
18 questions Mr. Martin asked you was about the "D" number on the
19 magazine well; is that correct?

20 A. Yes.

21 Q. Can you show again the jury where that is?

22 A. That's approximately right there (indicating).

23 Q. Okay. And part of the questioning is whether that ATF
24 knows that the part of the magazine where a number is will not
25 be the serial number; is that correct?

1 A. Repeat that.

2 Q. That the "D" number because it's on the magazine well
3 cannot be a serial number?

4 A. Because it's on the magazine it would not be a -- it
5 would not be an acceptable serial number. No.

6 Q. Okay. And ATF would know that; is that correct? ATF
7 knows that; that's part of their regulations?

8 A. Yes.

9 Q. And let me ask you this: Somebody who has at one time
10 the ability to buy and sell machines with this SOT, they would
11 know that also; is that correct?

12 A. I would certainly assume so.

13 Q. And, again, the E serial number, the E683, is just you
14 said six inches away from the D part number; is that correct?

15 A. Yes.

16 Q. Next question was about the stamps. You seized some
17 stamps at Mr. Friesen's residence; is that correct?

18 A. Yes.

19 Q. And did you submit them for testing?

20 A. No.

21 Q. Why not?

22 A. They obviously weren't stamps that were used to place the
23 E683 on the Sten gun in question that we have that we seized.
24 We just took them because they showed that he did possess
25 stamps and likely used them at one point.

1 Q. Can you look at Government's Exhibit No. 10, please.

2 A. Yes.

3 Q. Do you see on the first page there is two photographs of
4 Bates stamp 1887? Do you see that?

5 A. Yes.

6 Q. And on the second page on Bates stamp 1888; is that
7 correct?

8 A. Yes. It's a closer-up shot.

9 Q. At the top page?

10 A. Yes.

11 Q. Okay. And do those photographs accurately reflect the
12 number E683 on the Sten machine gun and Government's Exhibit
13 3.16?

14 A. Yes, they do.

15 MR. KUMIEGA: Your Honor, at this time the United
16 States would move for introduction of the ten series.

17 MR. MARTIN: Your Honor, because of my motion I have
18 to object.

19 THE COURT: Objection will be overruled. Will be
20 admitted.

21 MR. KUMIEGA: Will you please display the photographs?

22 Q. (By Mr. Kumi ega) Is those the photographs of the E683
23 serial number, the supposed serial number?

24 A. Yes. That's the photograph of the E683 number that was
25 on the Sten that we seized and submitted to the lab.

1 Q. Okay. The bottom picture, that's the number on the
2 bottom of the receiver; is that correct?

3 A. Yes. Can I show?

4 Q. Sure.

5 A. That's this number right here (indicating) with the E
6 being closest to this trigger housing.

7 Q. And if you could look at the next page on the top Bates
8 stamped 1888.

9 A. Yes.

10 Q. Is that the serial number that's placed on the firearm
11 that you seized on June 10th of 2004?

12 A. Yes, it is.

13 Q. The inspectors on that day, back in February of 2003,
14 they were looking for a serial number on that gun; is that
15 correct?

16 A. They were looking for the Sten E683. Yes.

17 Q. Okay. Now, one of the questions that Mr. Martin asked
18 you was the reason you did not take Mr. Erb's stamps is because
19 why when you went out there back in '06, I guess in November of
20 '06?

21 A. Because the -- we had the gun with these numbers, and the
22 stamps he displayed to us were obviously too small to be those
23 stamps.

24 Q. Okay. Now, during the course of your investigation, you
25 gave a form or attached a form to one of your reports that Mr.

1 Martin introduced as his Defendant's Exhibit 100; is that
2 correct?

3 A. Yes.

4 Q. Is there a difference between the numbers in that form
5 and the one in the certified copies that we introduced early in
6 part of the trial?

7 A. They contain the same numbers; however, they've got a X
8 behind each.

9 Q. Have you come across in your investigation any duplicate
10 serial numbers in the course of this investigation in the E
11 series by Mr. Erb?

12 A. No. The firearms we looked at or asked agents to look at
13 contain the numbers that are on Mr. Erb's application for
14 manufacture.

15 Q. The gun in question, 3.16, then has the purported serial
16 number E683 and a part number; is that correct?

17 A. Yes.

18 Q. Agent, when you went out to do the search on June 10,
19 2004, the affidavit articulated two different types, two types
20 of guns you were searching that day; is that correct?

21 A. That's correct.

22 Q. And why was that put in the affidavit, or the Court's
23 order, please?

24 A. Because based upon our investigation we believed that Mr.
25 Friesen did receive an Erb Sten machine gun with serial number

1 683.

2 Q. That was the one manufactured back in, or manufactured
3 but purchased in February of 1996, right?

4 A. That's correct. However, during the inspection, the
5 inspector did not find that firearm. So we were searching to
6 see if we could find it, and then we also identified the Sten
7 with the D part number which we believed to be the only number
8 on the Sten that they actually saw.

9 Q. All right.

10 MR. KUMIEGA: No further questions, your Honor.

11 THE COURT: Recross?

12 MR. MARTIN: Yes, sir.

13 RECCROSS-EXAMINATION

14 BY MR. MARTIN:

15 Q. The D number that was written down, Doug Friesen didn't
16 write that number down, one of the inspectors wrote it down,
17 right?

18 A. Yes. They maintained the work sheet that they wrote it
19 down.

20 Q. So one of the inspectors wrote that number down. And I
21 believe your testimony was that the D number is six inches away
22 from where the other number is; is that right?

23 A. Approximately, yes.

24 Q. Okay. Now, you seized from my client a bunch of
25 firearms. Would that be fair to say?

1 A. I believe we seized 12 out of the vault.

2 Q. Okay.

3 A. Plus the Sten gun and the silencer. So that would make
4 14.

5 Q. Okay. Pardon me. But you didn't seize one die stamp
6 from Erb?

7 A. No.

8 Q. And you didn't go back and say I don't want just the ones
9 you have, I want every die stamp you have so I can compare them
10 to that gun; is that true, sir?

11 A. I asked to see the die stamps --

12 Q. No, no. Is that true, did you seize one?

13 A. No, I didn't take any.

14 Q. You have the authority to get a search warrant to get
15 every one he had, didn't you, sir?

16 A. If I thought I had probable cause. At that point I don't
17 think we did.

18 Q. You could have asked him for them, couldn't you, sir?

19 A. Yes.

20 Q. But you didn't?

21 A. I asked him to --

22 Q. No. You didn't ask him for every die stamp he has?

23 MR. KUMIEGA: Objection. He's arguing with the
24 witness.

25 MR. MARTIN: He's not answering, Judge.

1 THE COURT: Objection will be overruled. Let him have
2 time, to answer, Mr. Martin.

3 Q. (By Mr. Martin) Did you ask him to give you every die
4 stamp he had?

5 A. I thought at the time that's what we were looking at. He
6 might have had some more he didn't tell me, but I don't know. I
7 didn't search his premises so I don't know.

8 Q. So the answer is no?

9 A. It could be yes, it could be no. I just don't know.

10 Q. Okay. And you just told Mr. Kumienga that you are aware
11 of no evidence of ever being any duplication of any E numbers
12 by Erb, didn't you, sir?

13 A. I told him -- I think what I told him, I may be wrong,
14 but was that those -- when we sent though agents out looking at
15 those numbers off that form, they didn't find any duplication,
16 they found the firearm with the serial number.

17 Q. You're aware of the term exculpatory evidence, are you
18 not, sir?

19 A. Yes.

20 Q. And you're aware that I have been provided substantial
21 amounts of evidence relating to possession, relating to
22 duplication of serial numbers by Mr. Erb, aren't you, sir?

23 A. The documents that were released to you I looked through
24 them, and there was --

25 Q. Are you aware of that or not, sir?

1 A. Yes. Yes.

2 Q. And you're aware that in the documents that were produced
3 to me, Mr. Erb on various occasion has been investigated by the
4 ATF for having duplicate serial numbers on firearms?

5 MR. KUMIEGA: To which we object, your Honor.

6 THE COURT: Will be overruled.

7 THE WITNESS: I think there's several instances. I
8 don't know how many.

9 Q. (By Mr. Martin) Okay. And you don't know if this is
10 one?

11 A. This particular firearm?

12 Q. This one right here (indicating). You don't know if
13 E683, is one also, sir?

14 A. If that is a duplicate, no. All I know is that he
15 applied to manufacture that gun and it was subsequently
16 transferred to different dealers and then to Mr. Friesen, and
17 we followed the paper trail.

18 Q. Where did this paper trail take you, the one that was
19 initiated on April 20th of 1986, because Debra, excuse me,
20 Denise Brown didn't bring any paperwork on this one?

21 A. Right. Apparently from my review of --

22 Q. You don't know; isn't that true?

23 MR. KUMIEGA: Well, Judge --

24 THE COURT: Let him answer.

25 MR. MARTIN: I apologize, your Honor.

1 THE COURT: From my review of the documents you
2 referred to earlier, it appears that this document was denied
3 by an inspection and it was approved after he machined his
4 receivers, is what I got out of it.

5 Q. (By Mr. Martin) Did you hear Ms. Brown testify this
6 morning that you file these, there is no denying or approving
7 it, that's a filed document, it's an ATF official document, you
8 got it and you showed it to Erb; isn't that true?

9 A. Yes.

10 Q. And you're aware then that on multiple occasions Erb has
11 duplicated serial numbers on firearms?

12 MR. KUMIEGA: Objection to misstating the facts,
13 multiple.

14 THE COURT: Will be overruled.

15 THE WITNESS: From -- again, I've looked through those
16 documents, and there was several occasions, but not more than
17 just a few as far as I could see. Most of what that, those
18 documents referred to was inspectors went out and found tubes
19 with serial numbers, but the cuts hadn't all been finished.

20 Q. (By Mr. Martin) And the serial numbers had also been
21 sold to other people?

22 A. On at least one occasion.

23 Q. Somebody had a gun in their possession with a serial
24 number on it like that E683, and they found a tube at Earl's,
25 excuse me, Erb's shop with E683, and I'm using that for

1 purposes of illustration, with that stamp on it; isn't that
2 true, sir?

3 A. That's my understanding. Both of them had serial numbers
4 stamped by Mr. Erb.

5 Q. So the statement that you aren't aware of duplication
6 means you're not aware of any duplication of the few guns y'all
7 all looked at?

8 A. That's correct.

9 Q. And you're also away, are you not, sir, that the
10 investigation that you and I are talking about of Erb related
11 to the firearms that were manufactured between April of 1986
12 and May 19th of 1986. Isn't that true?

13 A. Yes. They were the firearms made prior to the ban.

14 Q. And this firearm was right in that category; isn't that
15 true, sir?

16 A. Yes, it would have been.

17 MR. MARTIN: Nothing further.

18 THE COURT: Redirect?

19 MR. KUMIEGA: Just briefly, your Honor.

20 REDI RECT EXAMI NATION

21 BY MR. KUMIEGA:

22 Q. Agent, the -- in the search warrant affidavit you were
23 looking for a serial number for a firearm that did not have a
24 serial number; is that correct?

25 A. That is correct.

1 Q. There is no duplication, either the serial number was
2 there or wasn't; is that correct?

3 A. That would be correct.

4 Q. And the D part number was the reference by the
5 inspectors; is that correct?

6 A. That's the only number they could come up with on the
7 firearm they looked at.

8 MR. KUMIEGA: Nothing further, your Honor.

9 THE COURT: Anything further?

10 MR. MARTIN: Very briefly, your Honor.

11 THE COURT: All right.

12 RECCROSS-EXAMINATION

13 BY MR. MARTIN:

14 Q. Did you ever consider that maybe the inspectors just
15 missed the number like Doug said?

16 A. Certainly, I talked to them at length in preparing the
17 affidavit, and they were -- I've known these inspectors for
18 many years, I know they very thorough and they do a good job.
19 And we went over it, they did not see a serial number. When I
20 found this gun the serial number looked very odd, and we
21 continued our investigation.

22 Q. Did they say they used magnifying glasses?

23 A. No.

24 Q. As a matter of fact, in their inspection they found other
25 guns that didn't have serial numbers that were covered by

1 paint, didn't they, sir?

2 A. I don't believe they did.

3 Q. I'll question them about that.

4 MR. MARTIN: Nothing further.

5 THE COURT: Agent Knopp, you may retake your seat.

6 Ladies and gentlemen of the jury, this appears to be a
7 good stopping point, and we'll reconvene -- I've lost track of
8 the days. Is tomorrow Thursday? We'll reconvene on Thursday
9 morning at 10 a.m., and start promptly then. And I would
10 advise you again to not discuss the case or reach any
11 conclusions until you've heard all the evidence, and also to
12 not do any reading or investigating or listening to anything
13 that deals with the subject matter of this case or this case.
14 Also I think I forgot to mention when we, maybe I mentioned it,
15 but just in case I didn't, when we take a break or we end, take
16 a break during the day or we end for the day, don't stop in the
17 hallway here or the restroom or anything, go straight back down
18 to the jury assembly room. Did I tell you that? Okay. I'll
19 just tell you again. So with that, have a good evening, enjoy
20 the rest of this pretty day and we'll see you in the morning at
21 10 a.m.

22 JUROR: I have a question.

23 THE COURT: Yes, ma'am.

24 JUROR: As far as our notes, do we leave them here?

25 THE COURT: Leave them here, Ms. Youngberg will

1 collect them and lock them up. So nobody will see them, not
2 even your fellow jurors. Just leave them in your seat.

3 (The jury exits the courtroom, after which the following
4 was had in open court:)

5 THE COURT: We'll be in recess until ten a.m.
6 Anything further today, Mr. Martin?

7 MR. MARTIN: Does that mean we need to see you at 9:30
8 to tell you all the problem we're having?

9 THE COURT: I'm assuming we got most of those problems
10 worked out.

11 Who is your next witness, the two compliance inspectors?

12 MR. KUMIEGA: Yes, your Honor. Valerie Rowden and
13 Hal ey McGrew.

14 THE COURT: We'll be in recess until ten a.m.

15 * * * * *

16

17 REPORTER'S CERTIFICATE

18

19 I hereby certify that the foregoing is a correct
20 transcript from the record of the proceedings in the
21 above-entitled matter.

22

23 B. Jeanne Ring, RDR

24

25

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