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1 (The following was had in open court on September 18,
2 2008. For further transcription, see Volume I of this
3 transcript.)

4 THE COURT: This is Case Number 2008-41-L, United
5 States of America versus Larry Doug Friesen. Counsel ready to
6 proceed?

7 MR. KUMIEGA: Yes, your Honor.

8 MR. MARTIN: Ready, your Honor.

9 THE COURT: Good morning.

10 Mr. Kumi ega, you may call your next witness.

11 MR. KUMIEGA: Your Honor, before I start, I think we
12 have two stipulations regarding Exhibits 1.0 if 1.10.

13 THE COURT: 1.0 and 1-point what?

14 MR. KUMIEGA: 1.10, your Honor. The first one is the
15 licensing records of Mr. Friesen, he's a federal firearms
16 licensee, and the second is out of his business records in
17 1.10, your Honor.

18 THE COURT: And the stipulation is what?

19 MR. KUMIEGA: My understanding is that Mr. Martin will
20 stipulate to have those documents introduced.

21 MR. MARTIN: Your Honor, we will stipulate to the
22 authenticity of the records Mr. Kumi ega is seeking to admit
23 under Exhibit 1.0 and Exhibit 1.10.

24 THE COURT: All right. You may call your next
25 witness.

1 MR. KUMI EGA: Yes, your Honor. The United States
2 would like to call Valerie Rowden.

3 VALERIE ROWDEN,
4 called as a witness, having been duly sworn, testifies as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. KUMI EGA:

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

9 A. Yes. My name is Valerie Rowden.

10 Q. And how are you employed?

11 A. I'm an industry operations investigator with the Bureau
12 of Alcohol, Tobacco, Firearms & Explosives.

13 Q. All right. That's a mouthful. What does that really
14 mean? What do you do, please?

15 A. We inspect the federal firearms licensees and explosives
16 licensees to make sure they are in compliance with the laws and
17 regulations.

18 Q. When you say a "federal firearms licensee", what does
19 that mean, please, in layman's terms?

20 A. Means they've been licensed by ATF to deal in firearms.

21 Q. All right. Let's tell the jury something about your
22 background. How long have you been doing this, please?

23 A. I've been an investigator, or inspector investigator
24 since 1997.

25 Q. And do you -- any specific training for that position,

1 please?

2 A. Yes. I attended New Professional Training in 1999, and
3 I've had many, many hours of on-the-job training, and several
4 miscellaneous training courses over the years.

5 Q. And you said you've been doing this since 1997; is that
6 correct?

7 A. Yes. I became an inspector in 1997.

8 Q. And what did you do prior to that, please?

9 A. I was a secretary and then an investigative assistant for
10 ATF.

11 Q. Okay. For what years, please?

12 A. From 1990 -- excuse me. From 1994 -- this confuses me
13 every time. I went to work for the government in 1979, and in
14 1984 I went to work for ATF. So from '84 to '97 I was employed
15 either as a secretary or investigative assistant.

16 Q. All right. And you said in 1997 you became an inspector?

17 A. That's correct.

18 Q. Now, you that said you inspect the federal firearms
19 licensees; is that correct?

20 A. Yes, sir.

21 Q. And you said these people are licensed by the government
22 to sell firearms; is that correct?

23 A. That's correct.

24 Q. And let me ask you this: What do you have to do, what
25 does a licensee have to do to comply with, I guess the rules

1 and regulations of being a person authorized by the federal
2 government to sell guns?

3 A. He has to keep proper inventory and records before, and
4 go through all the checks and everything before he transfers a
5 firearm.

6 Q. Can you tell us what you said, he's to keep proper
7 records. Can you tell the jury the background you have to do
8 to comply with these rules, please?

9 A. You have to -- if you're a licensee, any firearm you
10 receive after becoming a licensee you must enter it into an
11 acquisition and disposition book, and if you dispose of it the
12 disposition has to be recorded in that record, and there has to
13 be some official document that documents the disposition. In
14 other words, how he got rid of the firearm.

15 Q. All right. So when you say "acquisition", that means
16 when he gets the gun?

17 A. That's right.

18 Q. And that means he's got to record it?

19 A. Yes.

20 Q. And if he sells it what does he do? Is there another
21 similar notation?

22 A. Yes. He has to record the disposition or how he
23 transferred the firearm.

24 Q. And in this recording, on his books, what type of
25 information does he have to put down on the records for each

1 firearm that he either acquires or sells?

2 A. He would have to record the date he acquired it, who he
3 acquired it from, the manufacturer, the caliber, the serial
4 number, and the description of the gun.

5 Q. Okay. Now, you said you've been doing this since '97?

6 A. Yes, sir.

7 Q. Do you go here in Oklahoma City? Tell us where you have
8 to travel to inspect gun dealers.

9 A. We cover the state of Oklahoma out of the Oklahoma City
10 office.

11 Q. Okay. And typically, tell us how a gun inspection, or
12 how does it work, what do you do, please?

13 A. We start off by doing an inventory, which is hands-on
14 examination of all firearms, and then we compare that to the
15 records. After we do that, we compare the records to the book,
16 and actually look at the records and make sure that they
17 contain all accurate and required information.

18 Q. Okay. So you look at all the guns that are -- that is in
19 his inventory, and then you compare them to the records. Is
20 that what happens?

21 A. Yes, sir.

22 Q. Now, let's say if I'm a gun dealer and I have my own
23 firearms. How does that work, please?

24 A. If you have your own personal firearms at your business
25 premise or place of storage they have to be marked and/or

1 segregated from your inventory.

2 Q. All right. And why is that, please?

3 A. For inventory purposes. If we come in and they are all
4 just commingled there's no way we can tell if they're personal
5 or business firearms, therefore, you can't get an accurate
6 inventory to compare to the records.

7 Q. When you say "inventory", is that a hands-on inventory?

8 A. Yes, sir.

9 Q. And what you do you mean by -- what does that mean,
10 please?

11 A. It means a hands-on examination of each firearm. We pick
12 it up, record the serial number, and description of the gun.

13 Q. Okay. So you have your documents then and you record
14 everything in there?

15 A. Yes, sir.

16 Q. Okay. In your career then, how many different businesses
17 have you looked at then?

18 A. I've completed over 600 inspections, firearms and
19 explosives.

20 Q. Okay. And did you examine guns in each of the businesses
21 that you -- that were licensed?

22 A. Of the firearms licensees, yes, sir. If they had
23 inventory.

24 Q. Okay. And these businesses, do they -- are there big
25 differences between, let's say, a big gun store and a small gun

1 store?

2 A. I'm sorry?

3 Q. Is there a difference between a big concern, a big
4 manufacturer or a big dealer versus the small guy that sells
5 guns?

6 A. Basically it's the same procedure no matter what the size
7 of the business is.

8 Q. Let me ask you this: I guess there's no way of telling
9 how many guns you looked at in your career; is that correct?

10 A. I have no idea.

11 Q. Okay.

12 A. Hundreds of thousands. I don't know.

13 Q. Okay. Is there any specific training on how you examine
14 a firearm?

15 A. The best training is just doing it over the years, over
16 and over and over again. We do have some basic training in
17 NPT, but just after looking at so many guns you get a feel for
18 it, you know where to look, and if they are dirty, you need to
19 wipe them off. Different things.

20 Q. When you say "NPT", what --

21 A. New Professional Training in Glencoe, Georgia.

22 Q. Okay. Now, is a serial number an important component of
23 the firearm?

24 A. Yes, it is.

25 Q. All right. Can you explain to the jury why, please?

1 A. You have to have a serial number -- according to the Gun
2 Control Acts you have -- each gun has to have a unique serial
3 number to that manufacturer. That's the way you trace it.
4 Otherwise there would be no tracing ability or accountability.

5 Q. Are you also familiar with other extrinsic numbers on a
6 firearm, such as a part number?

7 A. Part numbers, model numbers, calibers.

8 Q. Okay. And what will you record when you do your
9 inventory to see if the merchant, the dealer, is in compliance,
10 please?

11 A. We actually record all that information.

12 Q. Okay. Do you also have a partner sometimes when you, or
13 partners when you are going to do an inspection on a federal
14 firearms dealer?

15 A. Yes. Sometimes.

16 Q. Who usually aids you and tell us about that, please?

17 A. Sometimes on inspections, in fact, a lot of times on
18 inspections we take a second investigator with us to assist,
19 especially in inventory purposes.

20 Q. Okay. Now, for you to knock on Mr. Friesen's door, you
21 have to show that he's a federal firearms licensee; is that
22 correct?

23 A. That's correct.

24 Q. If you can look at Government's Exhibit 1, please. It's
25 going to be in that big book.

1 A. Okay.

2 Q. What is that, Ms. Rowden, please?

3 A. These are the copies from the National Licensing Center
4 of Larry Doug Friesen doing business as Lobo Arms at 1309 North
5 Shartel, Oklahoma City.

6 Q. Okay. And 1309 North Shartel, that's his place of
7 business; is that correct?

8 A. That's correct.

9 Q. And that's also his law office; is that right?

10 A. Yes, sir.

11 Q. And on -- let me see here, on February 19, 2003, was Mr.
12 Friesen licensed by the United States to sell firearms?

13 A. Yes, he was.

14 Q. Now, my understanding is that you went out there on, more
15 than -- like, six times, or had six contacts, is that correct,
16 with Mr. Friesen?

17 A. Yes, sir.

18 Q. Okay. So you have that licensing deal and you're going
19 to do the inspection. Did you get any information from
20 Washington, D.C. about some firearms he had in his possession
21 before you went out there to do the licensing inspection?

22 A. Yes, sir. I contacted the NFA branch.

23 Q. And NFA, what does that stand for?

24 A. National Firearms Acts branch.

25 Q. Okay.

1 A. And received an inventory for him.

2 Q. All right. And what did this inventory consist of,
3 please?

4 A. It consisted of 17 firearms: Three machine gun, a
5 sawed-off shotgun, a pin gun, and other firearms.

6 Q. Can you look at in that book, please, Government's
7 Exhibit 1.3, and is that the type of information you were armed
8 with when you went out to Mr. Friesen's law office or
9 establishment, please?

10 A. Yes, sir. We have this information; however, it's in a
11 little different format. It's in a printout that shows us each
12 one of these firearms.

13 Q. You got a separate format from Washington?

14 A. Yes, sir.

15 Q. Is that the same information in 1.3?

16 A. Yes, sir, it is.

17 Q. And what form or shape is the format placed into, please?

18 A. It's just a computerized printout of each gun, each
19 firearm.

20 Q. And you said that he had three machine guns?

21 A. Yes, sir.

22 Q. All right. What other type firearms did he have, just
23 generally, please?

24 A. Silencers, sawed-off shotgun, and a pin gun.

25 Q. And a pin gun, What is a pin gun?

1 A. It's just a small little gun that looks kind of like a
2 pin, it shoots normally one projectile at a time.

3 Q. Like a Derringer?

4 A. No, not quite.

5 Q. So you're armed with this information, and you said
6 you've been doing this many years, did you have a partner that
7 day?

8 A. Yes.

9 Q. Who is that, please?

10 A. Her name an Investigator Haley McGrew.

11 Q. Worked together before?

12 A. Yes.

13 Q. Okay. How did this inspection start, and let me ask you,
14 was it a routine inspection?

15 A. Was it -- it was a routine inspection insofar as at that
16 time we were inspecting zero disposition dealers and dealers
17 that had been in business for ten years or more. So Mr.
18 Friesen fell into both of those categories. I was in the
19 office one day and our assistant brought to my attention that
20 she had received, was going through the files and noticed he
21 had a zero disposition document and that he had been in
22 business for approximately ten years.

23 Q. All right. "Zero disposition", in layman's terms, what
24 does that mean, please?

25 A. It means at the time of his renewal when he renewed his

1 license he indicated on that renewal form that he had not sold
2 any firearms in the previous three years.

3 Q. How often do you have to renew your FFL?

4 A. Every three years.

5 Q. And is there a tax you have to pay?

6 A. It's -- I think it's a \$90 renewal fee.

7 Q. Okay. When somebody signs up for, to get an FFL, is
8 there companion paperwork to tell a person who is going to sell
9 firearms what they are responsible to do as to selling the
10 guns, recording, that type stuff?

11 A. I'm not sure I understand.

12 Q. Like if I became an FFL, and I'm going to start selling
13 guns, and I pay my fees and put in my applications, does the
14 federal government send me something that says, Mr. Kumi ega,
15 you need to do this, this, and this?

16 A. Yes, sir. They send an entire packet of information
17 including the federal firearms laws and regulations and all the
18 forms that they need to do that.

19 Q. Okay. So there is a notice from the government of what I
20 need to do?

21 A. They have a copy of the laws, yes, sir, provided, the
22 federal firearms regulations and laws, and it is their
23 responsibility to make themselves familiar with to comply with
24 those.

25 Q. Let me ask you this: This FFL, is this like a

1 self-reporting honor code system really?

2 A. Yes. Basically. I mean, we're not there every day to
3 oversee it.

4 Q. And you said he's never been inspected?

5 A. That's correct. He's never been inspected.

6 Q. All right. You get out to his law office, and let me ask
7 you this: Why did you go out there and not to his house? Why
8 did you go to his law office?

9 A. That was his license premise.

10 Q. Okay. And just for the record, can you take a look at
11 his licensing, that is Government's Exhibit No. 1, can you read
12 into the record the name of the business you were investigating
13 or were going to inspect on February 19, 2003?

14 A. It's Larry Doug Friesen doing business as Lobo Arms at
15 1309 North Shartel.

16 Q. And for the record, what city and state, please?

17 A. Excuse me. Oklahoma City, Oklahoma.

18 Q. Okay. What time did you go out there, please?

19 A. It's in the morning, between eight and nine sometime.

20 Q. All right. And tell us how this inspection process
21 started.

22 A. We enter the premise and talk to his receptionist. She
23 told us Mr. Friesen was not in at that time. We showed her
24 identification and told her for what purpose we were there, and
25 she said Mr. Friesen would be in soon and we sat and waited on

1 hi m.

2 Q. All right. You're not a law enforcement person; is that
3 correct?

4 A. No, sir.

5 Q. You don't have a gun?

6 A. No, sir.

7 Q. You don't have a badge?

8 A. No, sir. We have credentials.

9 Q. How were you dressed that day.

10 A. We were wearing slacks and blouses, just casual business
11 attire.

12 Q. All right. You finally meet up with Mr. Friesen?

13 A. Yes.

14 Q. Tell us about your initial dialogue with Mr. Friesen.

15 A. We meet. I tell him why we're there and he said, well,
16 what do we need to do, and I said, well, first of all we need
17 to conduct an inventory. He said, fine. I've got some of my
18 firearms upstairs. We followed him into his office and began
19 an inventory.

20 Q. Okay. You say you follow him upstairs. Is that on the
21 second floor?

22 A. Yes, sir.

23 Q. Okay. Hang on for a second. If you can look at
24 Government's Exhibit 2.02, please. Can you see that in front
25 of you?

1 A. Yes. I can see it.

2 Q. Is that the law office you went to that day?

3 A. Yes, sir.

4 Q. So you go there and he says come on upstairs, and you go
5 up to his law office?

6 A. Yes. His office.

7 MR. MARTIN: Excuse me, your Honor. Ours isn't on.

8 I apologize, your Honor.

9 Q. (By Mr. Kumi ega) You follow Mr. Friesen upstairs?

10 A. Yes, sir.

11 Q. Did you go up some stairs or something?

12 A. Yes, sir.

13 Q. Can you describe the office for the jury, please?

14 A. It's a very nice looking building, and his building --
15 his office was on, I believe, the southeast corner of the
16 second floor.

17 Q. Okay. When you went up there, what happened?

18 A. Mr. Friesen produced, or provided three firearms for us
19 to inventory. And we were chatting in the meantime. We
20 inventoried those guns and he told us at that time that the
21 majority of his firearms were at his residence along with his
22 records.

23 Q. Okay. Let me ask you this: Do you have a notation or
24 can you describe for the jury what guns you saw in his office,
25 please?

1 A. Can I refer to my notes?

2 Q. You bet.

3 A. We inventoried the Stinger pin gun, a Remington
4 short-barrel shotgun and a North America Arms Derringer.

5 Q. When you say a short-barrel shotgun, that's a sawed off
6 shotgun; is that correct?

7 A. That's correct.

8 Q. Okay. You make the inventory and he says everything else
9 is at his residence?

10 A. Yes, sir.

11 Q. Okay. Now, from your understanding of that, something
12 about off-storage sites, are you allowed to look at some places
13 outside his business?

14 A. Yes. 27 CFR 47823 allows us to inspect off-site storages
15 if licensees have guns stored somewhere other than their
16 premise.

17 Q. Did he invite you to his house?

18 A. Yes, he did. He said the remainder of my inventory is at
19 home, and I said we'll have to look -- we have to look at your
20 inventory. And he said we can go there right now, would you
21 like to ride with me, and I said, no, thank you, we'll take our
22 own vehicle.

23 Q. All right. You went to his house?

24 A. Yes, sir.

25 Q. And a long drive from the business?

1 A. Just a couple minutes.

2 Q. Do you know the address of the house, for the record?

3 A. I think it's 524 Northwest 17th.

4 Q. Oklahoma City, Oklahoma?

5 A. Oklahoma City, Oklahoma.

6 Q. Okay. You go there, and where in the house did you go,
7 please?

8 A. We walked through the main living space, or what appeared
9 to be, and went directly downstairs to the basement portion of
10 the building and entered a shop area where he had a safe.

11 Q. When you say "safe", can you describe that for the jury,
12 please?

13 A. It was a large firearms safe, metal safe with a
14 combination lock on it.

15 Q. Okay. And you're going to conduct the inventory; is that
16 right?

17 A. That's correct.

18 Q. Okay. Who opened the safe?

19 A. Mr. Friesen did.

20 Q. Let me ask you this: At this point as this inspection is
21 going on, can you tell the jury, can you recite to the jury how
22 his demeanor appears to be?

23 A. He's very calm and relaxed and talking about the guns,
24 talking about his friends he knows or acquaintances of his that
25 are in law enforcement, things like that.

1 Q. All right. The gun is opened, I mean, the gun safe is
2 opened; is that correct?

3 A. That's correct.

4 Q. And you said you were armed with that document knowing
5 what type of firearms he has, the NFA weapons?

6 A. NFA weapons only.

7 Q. And you have pad and a pencil?

8 A. That's correct.

9 Q. And tell us how this thing starts, please.

10 A. Mr. Friesen would take a firearm out of the safe, hand it
11 to me, I would read the description off to Ms. McGrew who would
12 record it in our records.

13 Q. Okay. So it's basically, is it like pull something out,
14 give it to you, you look at it and you give it to Ms. McGrew;
15 is that right?

16 A. That's correct.

17 Q. Who is the recording person?

18 A. I actually didn't hand her the firearm. I read the
19 description of the firearm to her and she would record it on
20 paper.

21 Q. Okay. How many firearms did you inventory at that time?

22 A. Forty-six firearms.

23 Q. Okay. Any problem with any --

24 A. I'm sorry. Forty-five firearms in the safe.

25 Q. You recorded each serial number?

1 A. Yes.

2 Q. Any problem seeing any of the serial numbers?

3 A. No, sir.

4 Q. Okay. Is he commenting on each firearm as he hands it to
5 you and your associate is writing it down?

6 A. That's correct.

7 Q. Tell us what he's saying, please.

8 A. Just general comments about the firearms and just
9 chatting, you know, where he got some of the firearms,
10 different things.

11 Q. Okay. Is he now also identifying certain firearms that
12 are segregated? Can you tell the jury about that?

13 A. Yes. As -- when we got there he did not have records, so
14 -- and he told me that some of the guns were personal guns,
15 which we went through the process, I told him I had to
16 inventory all the guns since they weren't marked or segregated,
17 or I asked him if they were marked or segregated, and he said
18 no. So as we took the guns out of the safe he would tell us if
19 some of the guns were personal firearms or business firearms.

20 Q. And would you make notations of that?

21 A. Yes. We made notation of that on our records. Yes.

22 Q. All right. Is there some type of regulation that
23 requires somebody to segregate their personal firearms from the
24 business records?

25 A. There's an industry circular that says you will segregate

1 them, yes, or mark them in some way.

2 Q. Okay. You talked about records. At what point in the
3 inspection process did you ask him to see the records?

4 A. When we first arrived. We told him we would need to
5 conduct an inventory and have his records to compare the
6 inventory to.

7 Q. And did you get them immediately?

8 A. No, sir.

9 Q. What did he say about them?

10 A. At first he thought the records were at his office. He
11 looked around for a while and then he said, as I said, the
12 remainder of his inventory and his records must be at his
13 residence.

14 Q. Okay. You go to the residence, you start the inspection,
15 or I guess the inventory; is that right?

16 A. That's right. We're doing an inventory.

17 Q. All right. Is there any more conversation about the
18 records?

19 A. Yes. You know, we asked him if he's got the records and
20 he looks around and he doesn't find the records.

21 Q. Okay. Was that -- did you go to any other part of the
22 residence during this compliance inspection?

23 A. No, sir.

24 Q. Now, after you completed the inventory of the safe, the
25 gun safe, did Mr. Friesen give you any other firearms?

1 A. He went upstairs and retrieved a firearm and brought it
2 down.

3 Q. Did you follow him?

4 A. No, sir.

5 Q. Okay. And you recorded that firearm; is that correct?

6 A. Yes, sir.

7 Q. So there -- so -- so in total there's how many again and
8 how many in the safe and one upstairs?

9 A. There's 45 total.

10 Q. Okay. Now, at any point did Mr. Friesen tell you about
11 the weapons on the NFA, you know, the saw-off shot -- I mean,
12 the machine guns, the silencers, et cetera? Did he mention
13 that?

14 A. We actually inventoried some of the firearms that were on
15 his NFA during the inventory.

16 Q. Okay. As you're going through this, did he mention about
17 a missing something?

18 A. Yes. He did -- towards the end of the inventory, I told
19 Mr. Friesen that we had not seen all the firearms on his NFA
20 registry, and he indicated or told me at that time that one of
21 them was in the possession of Bobby Hunter, who is an Edmond
22 police officer.

23 Q. All right. And did he say how he was going to get it
24 back?

25 A. He said that Bobby Hunter was trying it out for the TAC

1 team and he would call Bobby Hunter and have him bring it back
2 so we could inventory it.

3 Q. And later on that day you did inventory it; is that
4 correct?

5 A. Yes, sir, we did.

6 Q. All right. For the record, can you describe the gun that
7 silencer that was not included in the inventory that day,
8 please.

9 A. It's an AWC Thundertrap .30 caliber silencer, serial
10 number G1270.

11 Q. Can you look at Government's 3.15.1, and 3.15.2, please?

12 A. Okay.

13 Q. You got that at a later date; is that correct? Do you
14 know what that is?

15 A. A silencer.

16 Q. Can you flip to 3.15.2?

17 A. Uh-huh.

18 MR. KUMIEGA: Your Honor, may I approach the witness
19 with Government's Exhibit --

20 THE COURT: You may approach.

21 Q. (By Mr. Kumiaga) Is that the silencer you saw later on?

22 A. Yes, sir.

23 Q. Okay. Is that the same serial number that you just read
24 seconds ago?

25 A. Yes, sir. It has G1270 recorded on the silencer.

1 Q. Okay. Now, any more conversations about the records,
2 about his actual documents or sales or transactions?

3 A. Yes. We still have not located his acquisition and
4 disposition record.

5 Q. Okay. And did you ask him again about that?

6 A. I'm sorry?

7 Q. Do you ask him again about that?

8 A. Yes, we did.

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

10 A. He said he didn't know where his records were, he kept
11 looking for them, and -- but he said he would find them and
12 provide them to us.

13 Q. Okay. Now, at a certain point during the February 19th
14 compliance he gave you some documents; is that correct?

15 A. Yes, he did.

16 Q. When did he give it to you, and describe to the jury what
17 it was, please.

18 A. He provided us copies of his Form 3s and Form 4s for his
19 NFA weapons, they were in a binder, and those are the only
20 records he could provide that day.

21 Q. Okay. And what did you do with those records, please?

22 A. I took them to the office and made copies of them and
23 returned them to him the next day.

24 Q. All right. You Xeroxed them; is that correct?

25 A. That's correct.

1 Q. If you can look at Government's Exhibit No. 4.0, please.

2 And do you recognize that, please?

3 A. Yes.

4 Q. What is it, please?

5 A. It appears to be a copy of the forms that he gave us that
6 day on February 19th.

7 Q. Okay. And are those the actual forms or Xeroxed copies?

8 A. These are Xeroxes of the Xeroxing.

9 Q. Okay. And have you looked at those, please?

10 A. Yes.

11 Q. And are those records, were they accurately copied by you
12 during this process?

13 A. Yes, sir.

14 Q. And given to you by Mr. Friesen, I guess in the morning
15 of February 19th, 2003?

16 A. That's correct.

17 MR. KUMIEGA: Your Honor, at this time the United
18 States would move for the introduction of Government's Exhibit
19 4.0 into evidence.

20 MR. MARTIN: No objection, your Honor.

21 THE COURT: Will be admitted.

22 Q. (By Mr. Kumi ega) Can you describe the types of firearms
23 that are contained in Government's Exhibit 4.0?

24 A. They are registered firearms under the National Firearms
25 Act. Again, it's the same -- do you want me to read each one?

1 Q. Just describe what's in there, please.

2 A. They are forms that show that some non-tax paid transfers
3 of Mr. Friesen and some tax paid transfers of the registered
4 weapons he has.

5 Q. If you can look at the first page, what is that, please?

6 A. It is a Form 3 showing a non-tax paid transfer, or a tax
7 exempt, excuse me, transfer, to Mr. Friesen.

8 Q. Okay. And let me ask you this: In No. 3, it's going to
9 be over here, would you read this into the record and what does
10 this signify, please?

11 A. Says it was manufactured by Charles N. Erb, nine
12 millimeter submachine gun, serial number E683.

13 Q. All right. And the model number, please?

14 A. Sten Mark II.

15 Q. And what's this indicate (indicating), please?

16 A. The serial number.

17 Q. Okay. And this?

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

19 Q. Okay. Now, you review that at that point?

20 A. No, we did not review these records at that point.

21 Q. Okay. You reviewed it at the office later on; is that
22 right?

23 A. Yes.

24 Q. All right. Now, you said that when you went out there
25 you were armed with that information; is that correct?

1 A. Yes.

2 Q. And you knew then that Mr. Friesen had these weapons; is
3 that correct?

4 A. That's correct. I had a list of 17 firearms that were
5 registered to Mr. Friesen.

6 Q. And did you know about this weapon that he was supposed
7 to have in his possession?

8 A. It was on the list. Yes, sir.

9 Q. And did you know the serial number that was associated
10 with that weapon?

11 A. Yes.

12 Q. Okay. You had it with you?

13 A. I had it with me. I didn't have them all memorized, I
14 mean, I matched them all up as I looked at each gun.

15 Q. Okay. What happens next, please, in the morning?

16 A. We leave his house to return to his office. Actually, we
17 finish inventorying the firearms in the safe, and I tell Mr.
18 Friesen, I asked Mr. Friesen if he has any more firearms and he
19 said no, he doesn't, or indicated he did not. And I told him
20 that he had several firearms on his registry that we had not
21 inventoried. So he thinks about it for a minute and that's
22 when I find out about the silencer that Bobby Hunter has, and
23 he also all of a sudden remembers he has some firearms back at
24 his office that we had not seen yet.

25 So we leave his residence en route to his office. We

1 arrive at the office and get out of the a car and he tells us
2 that he called the office and his office is being used, and
3 that we can't go into his office at that point but we can come
4 back a little bit later in the day and continue the inventory.

5 Q. Did he say why, specifically why, why you couldn't finish
6 the inventory?

7 A. He said he had a coworker using his office.

8 Q. What did you take that to mean?

9 A. Indicated to me that there was somebody in his office,
10 and the firearms would be there so that we could not get to
11 them.

12 Q. Okay. Did he say particularly what part of the office,
13 or just the office?

14 A. He just said his office.

15 Q. All right. So at this point you break off the first part
16 of the inspection process?

17 A. That's correct.

18 Q. Okay. And it says here on this chart, 2/19/03 two times
19 you go back again; is that correct?

20 A. Yes, sir.

21 Q. Approximately what time did you go back?

22 A. Approximately four hours later, sometime mid afternoon or
23 early evening.

24 Q. Where did you go back to, please?

25 A. We went to his business premise at 1309 North Shartel.

1 Q. Okay. Tell us what happened.

2 A. We arrived there and Mr. Friesen had several guns sitting
3 out and we began to inventory those firearms.

4 Q. Okay. Now, you said you go back?

5 A. Upstairs to his office.

6 Q. Okay. You go back upstairs to his office?

7 A. Yes, sir.

8 Q. Okay. And you said there were guns displayed? Take your
9 time.

10 A. I'm sorry. Go ahead.

11 Q. Okay. You said there were guns displayed?

12 A. Yes.

13 Q. How were they displayed?

14 A. He just had some firearms sitting out for us to look at.

15 Q. Do you remember where in the office?

16 A. Kind of a sitting area in his office.

17 Q. And what guns did you see there?

18 A. We saw a Ruger Mark II .22 caliber pistol with an
19 attached NFA Amphibian .22 caliber silencer, serial number on
20 the Ruger was 21985205, and on the silencer was F524. We also
21 saw a Ruger .22 caliber rifle, serial number 24093022 with an
22 attached RSE .22 caliber silencer, serial number S137. We saw
23 the AWC Thundertrap .30 caliber silencer, serial number G1270,
24 which Mr. Friesen had said Mr. Hunter had returned to him, and
25 a Sten nine millimeter machine gun.

1 Q. Regarding transfer of the silencer, is there paperwork
2 documenting that?

3 MR. MARTIN: Your Honor, I object to the relevance of
4 the transfer of the silencer. We're not charged with that.

5 MR. KUMIEGA: It shows the intent of moving items that
6 he's supposed to have in his inventory, your Honor.

7 THE COURT: Objection will be overruled.

8 Q. (By Mr. Kumi ega) To transfer a silencer, from your
9 understanding, do you need to have proper paperwork?

10 A. Yes, sir, you do.

11 Q. Tell us what type of paperwork.

12 A. You need to fill out an application to send it into the
13 National Firearms branch and you cannot lawfully transfer a
14 registered weapon until you receive approval from the branch.

15 Q. Even if the person is a police officer?

16 A. Even -- doesn't matter who that person is.

17 Q. So there's got to be an accounting for every time you
18 move these NFA type weapons; is that correct?

19 A. That's correct.

20 Q. Okay. All right. You said there's a pistol with a
21 silencer, a rifle with a silencer, and a machine gun?

22 A. And a silencer.

23 Q. And, right, and the silencer. And again, is Ms. McGrew
24 with you?

25 A. Yes, she is.

1 Q. Okay. And can you -- all right. So now you're
2 inventorying these weapons?

3 A. Yes.

4 Q. You're sitting down? How is it going at this point?

5 A. Sitting on the couch mostly. Yes.

6 Q. Okay. And who is doing the recording, if you remember?

7 A. I'm examining the firearms and Ms. McGrew was recording
8 it.

9 Q. We get to the Sten machine gun. And does he hand you the
10 Sten machine gun?

11 A. Yes, he does.

12 Q. Or did you pick it up?

13 A. Gets it out of his closet and hands it to me.

14 Q. All right. And do you attempt to inspect or inventory
15 the machine gun?

16 A. Yes, I did.

17 Q. How do you do that, please?

18 A. I pick up the gun and examine it, you know, by looking
19 for a serial number or any other markings to tell me what it
20 is.

21 Q. In front of you, ma'am, is Government's Exhibit 3.16, the
22 Sten machine gun.

23 A. Uh-huh.

24 MR. KUMIEGA: Your Honor, may Ms. Rowden stand up and
25 show the jury how she examined the machine gun, please?

1 THE COURT: Yes.

2 THE WITNESS: I always just look very carefully all
3 over the receiver for any markings to let us know what the gun
4 is. I'm sorry. And after careful examination of this firearm
5 there was only one number that I saw on it that could possibly
6 be a serial number, even though it's not in the right location,
7 and that number is D95843.

8 Q. (By Mr. Kumi ega) Okay.

9 A. And I actually got up and walked to a window for better
10 light to make sure that I could see all the numbers on the
11 firearm.

12 Q. All right. Let me ask you this, ma'am. You can sit
13 down. Did you know what number to look for?

14 A. At that point I didn't, even though I had reviewed his
15 registry before, as I said I didn't have all the numbers
16 memorized. But when I read the number to Ms. McGrew, she
17 pointed at the registration record that we had the printout and
18 I could see that that number did not match the number that I
19 had just read to her. So I asked her at that point to examine
20 the firearm and see if she could see a different number on it.

21 Q. Let me ask you this: Can you tell the jury, you said
22 you're in his office on the second floor, right?

23 A. Yes, sir.

24 Q. The light is on in the office?

25 A. Yes, sir.

1 Q. Were there windows in the office?

2 A. Yes.

3 Q. How good was the lighting conditions for you?

4 A. I did step closer to the window so that I could have
5 better lighting, but it was very good lighting.

6 Q. All right. Did you see a serial number that says E683 on
7 that firearm?

8 A. No, sir.

9 Q. All right. Now, the firearm in front of you, how would
10 you describe it, please, its wear condition, please?

11 A. The paint, the finish is very worn, it's scratched up.

12 Q. Did it appear -- was that -- was it like that, when
13 you're looking at it here in September of 2008, is that the
14 same condition it was back in February 19, 2003?

15 A. Yes, sir, it is.

16 Q. Okay. And is there a number, a serial number on that
17 now?

18 A. Yes, sir.

19 Q. Was that there when you saw it on that day?

20 A. This serial number was not on this firearm the day I
21 examined it.

22 Q. Did that firearm appear to be -- you said there is no
23 difference; is that correct?

24 A. No difference other than the new serial number.

25 Q. Okay. That serial number that you see, from your

1 experience doing that, does that appear -- how would you
2 describe that serial number from all other serial numbers
3 you've seen in your career?

4 A. It's extremely sloppy, irregular, and very, very large
5 numbers compared to most serial numbers.

6 Q. Okay. Now, after you couldn't find the E683, the serial
7 number, what did you do next?

8 A. When I couldn't find it -- actually, you know, I read the
9 number that I did see on it, and Ms. McGrew showed me the form
10 and I could see that was not the registered serial number. I
11 examined it a little bit further, I could not find another
12 number, so I handed it to Ms. McGrew and asked her to examine
13 the firearm.

14 Q. All right. And did she do the same thing that you did?

15 A. Yes, she did.

16 Q. Did you watch her do the same thing?

17 A. Yes, I did.

18 Q. Did that firearm, did that appear to have -- was there
19 new paint on it, or --

20 A. It appeared exactly like it does now with the exception
21 of the E number.

22 Q. Okay. You hand it to McGrew, she looks at it, and is
23 there conversation between you at this point, you and her?

24 A. Yeah. I mean, we're talking about --

25 Q. About the number?

1 A. Right.

2 Q. What do you do next with that machine gun?

3 A. I asked Mr. Friesen if that is the serial number, if he
4 can examine and it see if he sees any other serial number, or
5 if he thinks that D number is the serial number.

6 Q. All right. You hand him the gun. Does he examine it in
7 front of you?

8 A. Yes, he does.

9 Q. What does he tell you about that?

10 A. He says he sees no other number but that, that the serial
11 number must be the D95843.

12 Q. Did you tell him about the E number?

13 A. At that point I told him that that was not the registered
14 serial number of, or that was not the serial number on the Sten
15 machine gun that was registered to him, and I asked him to look
16 further. And he was still looking at the gun and he began
17 talking very rapidly and saying that, telling us about how
18 these machine guns were stamped out in garages and kitchens in
19 World War II, and he didn't know, maybe the serial number was
20 marked on the inside, but this was the firearm that was
21 registered to him.

22 Q. Okay. Now, you said you recorded the D number or D part
23 number on the magazine; is that correct?

24 A. Ms. McGrew did.

25 MR. KUMI EGA: Your Honor, may I approach and take the

1 machine gun from her?

2 THE COURT: Yes.

3 Q. (By Mr. Kumi ega) Now, can you describe to the jury how
4 this, how the D part number appeared to you?

5 A. It was very legible.

6 Q. Okay. Let me see if I can show you, first of all -- oh,
7 let me ask you this: Is there certain places on a firearm
8 pursuant to regulation where a serial number needs to be
9 placed?

10 A. Should be on the frame or receiver of the firearm.

11 Q. Okay. Do you know where on the frame or receiver,
12 basically?

13 A. There is no specific place it has to be on the frame or
14 the receiver. Somewhere where it can't easily be obliterated.

15 Q. When you say it has got to appear on the firearm, does
16 that mean it could be on the inside, or where does that mean?

17 A. No. It has to be on the outside of the receiver.

18 Q. Okay.

19 A. It has to be visible.

20 Q. Okay. So you've got to see it?

21 A. Yes.

22 Q. Okay. Now, I'm going to zoom out here. Is this the
23 firearm? This is the firearm; is that correct?

24 A. Yes, it is.

25 Q. Is that the serial number that you now --

1 A. That serial number, yeah, that I saw today. That number
2 was not there the day, on February 19th.

3 Q. Okay. Let's see if I can get the D number or the part
4 number. Now, is that the D number?

5 A. Yes, it is.

6 Q. And how would you describe the visibility of the D number
7 versus the now serial number you see on the firearm?

8 A. It is less visible than the E683.

9 Q. All right. Any change in Mr. Friesen's demeanor when you
10 gave him the gun to say look for the serial number?

11 A. No. As I said, he started speaking very rapidly and
12 talking about how these Sten guns were stamped out by average
13 citizens in their garages in kitchens in World War II.

14 Q. Okay. Now, let me understand this. You said that you
15 looked at the guns separately; is that right?

16 A. Yes.

17 Q. You gave it to Ms. McGrew, she did the same?

18 A. Yes.

19 Q. And then she hands it to Mr. Friesen?

20 A. Yes.

21 Q. He looked at it separately?

22 A. Yes.

23 Q. Let me ask you this: At any time did any -- all three of
24 you examine it collectively?

25 A. We didn't all three hold it at the same time but, yes, we

1 were looking at it all three together. We were all three right
2 there.

3 Q. Okay. What happens next, please?

4 A. That concluded our inspection that day.

5 Q. Okay. You leave and you go back to the office; is that
6 correct?

7 A. That's correct. And Mr. Friesen indicated that he would
8 have his records for me the next morning.

9 Q. Okay. And that's going to be on February the 20th; is
10 that correct?

11 A. That's correct.

12 Q. Okay. So did you make arrangements to come back on that
13 day?

14 A. Yes.

15 Q. You come back with Ms. McGrew on the 20th?

16 A. I believe I came back by myself that day.

17 Q. And did you meet Mr. Friesen?

18 A. Yes.

19 Q. And let me ask you this: Have you been taking good
20 records of your conversation or --

21 A. I kept notes, yes, sir.

22 Q. And tell us about that conversation, please, on the 20th.

23 A. Mr. Friesen said he had been unable to locate his
24 firearms -- his records. I'm sorry.

25 Q. Did he give an explanation?

1 A. No. He just said he was -- he didn't know why, he just
2 could not find them.

3 Q. Okay. And did you make arrangement to meet him at
4 another time?

5 A. He told me that day he would very diligently keep looking
6 for his records and that he would call me as soon as he found
7 them.

8 MR. KUMIEGA: Your Honor, at this time the United
9 States would ask the Court to publish Government's Exhibit 3.16
10 to the jury so they can look at the part number, look at the
11 serial number for -- I think this machine does not do it
12 justice regarding the serial numbers and the parts number, your
13 Honor.

14 MR. MARTIN: Your Honor, I object. I've got some
15 cross-examination about that very point that I think is rather
16 relevant.

17 THE COURT: Objection will be sustained at this time.

18 MR. KUMIEGA: May I renew that after
19 cross-examination, your Honor?

20 THE COURT: Yes.

21 Q. (By Mr. Kumi ega) All right. On the 20th you went back,
22 he said he didn't find them; is that correct?

23 A. That's correct.

24 Q. Didn't find the records?

25 A. He had not found his records.

1 Q. What records -- now, he gave you some records, the NFA
2 records?

3 A. Right.

4 Q. What records are you looking for?

5 A. We're looking for his acquisition and disposition record
6 that he's required by law to keep.

7 Q. All right. And how were these supposed to be kept? Is
8 there any particular model it's supposed to be or protocol,
9 please?

10 A. Yes. The regulations tell you exactly how you have to
11 record the information, and you've got to have the date you
12 receive it, who manufactured it, and the caliber, the serial
13 number, and who you received it from. And then disposition
14 information if you've transferred it.

15 Q. Let me ask this: There has been some conversation about
16 a Form 4473. What is that, please?

17 A. It's -- ATF Form 4473 is completed by a purchaser of a
18 firearm, and they have to answer questions and certify on it
19 that they are not a prohibited person, and now we do NTS
20 checks, and then if they get an approval on the NTS check the
21 firearm could be transferred.

22 Q. Inspector, let me ask you this: How come you didn't
23 seize 3.16 after you couldn't find the serial number, please?

24 A. I don't have the authority to do that.

25 Q. Okay. And who has the authority?

1 A. Special agents in our office.

2 Q. Okay. And you're a compliance inspector?

3 A. Yes. I also wanted to search the record for that number
4 to see if it was a legally registered machine gun.

5 Q. Let me ask you this: On the 20th, did Mr. Friesen ever
6 mention about finding the Sten serial number?

7 A. No, sir. He never spoke of the Sten machine gun.

8 Q. That type of a conversation, did it ever come up until
9 the inspection was completed on March 4th, 2003?

10 A. No, it did not.

11 Q. Okay. Now, there is a phone call on the 25th of
12 February; is that correct?

13 A. That's correct.

14 Q. Can you tell us about that? And is that with Mr.
15 Friesen?

16 A. Mr. Friesen called me and said he had located his
17 records, they had fallen behind his safe and that he was going
18 to do whatever he could do that day to retrieve them behind the
19 safe, and I could pick them up on the following day.

20 Q. And we're talking about a safe at the, is it the
21 residence?

22 A. Yes.

23 Q. Okay.

24 A. Or that's what I thought he --

25 Q. You only saw one safe that day; is that correct?

1 A. That's correct.

2 Q. And the safe was where, please, again for the record?

3 A. In the basement of his residence.

4 Q. Okay. Now, there was -- there was testimony -- let me
5 ask you this: Was the house under construction when you went
6 out there in '03?

7 A. The basement portion of his house was under construction.

8 Q. On the 26th of February, 2003, did you go back to the law
9 office?

10 A. Yes, I did.

11 Q. And tell us what happened that day, please.

12 A. Briefly met with Mr. Friesen and got his records and took
13 them to the office.

14 Q. Okay. What records did he give you, and what type of
15 shape are the records, please?

16 A. He provided me copies, or his copies that were like Xerox
17 copies of an acquisition and disposition book, and his original
18 for ATF 4473s.

19 Q. Okay. And what format did he give it to you, please?

20 A. They were in a binder.

21 Q. Can you describe the binder for the jury, please?

22 A. I don't remember specifically what the binder looked
23 like, but it was just an average three-ring binder.

24 Q. How many three-ring binders were out there, if you
25 remember? Did he talk about one or two, if you remember?

1 A. The first one we saw had the NFA records in it.

2 Q. Okay. And that was in a separate binder?

3 A. Yes.

4 Q. Okay. And then he gave you another binder; is that
5 correct?

6 A. That's correct.

7 Q. What did you do when you got those records, please?

8 A. I took them to the office to make copies of them.

9 Q. All right. And did you, in fact, do that?

10 A. Yes.

11 Q. And did you return the originals?

12 A. Yes, I did.

13 Q. Can you look at Government's Exhibit 4.1?

14 A. Four-point --

15 Q. One, please. And what is 4.1, please?

16 A. 4.1 is a copy of the acquisition and disposition record
17 that Mr. Friesen gave me on February 27th.

18 Q. In short, that's his gun records; is that correct?

19 A. That's correct.

20 Q. And you made copies of the gun records and gave it back
21 to him?

22 A. Yes, sir.

23 MR. KUMIEGA: Your Honor, at this time United States
24 would move for introduction of Government's Exhibit 4.1 into
25 evidence, please.

1 MR. MARTIN: No objection.

2 THE COURT: Will be admitted.

3 Q. (By Mr. Kumi ega) Is that all that happened that day, you
4 picked up the records?

5 A. Yes, sir.

6 Q. Okay. Now, the next thing, my understanding is you go
7 out there on the 27th of February '03; is that right?

8 A. That's correct.

9 Q. Okay. And what does he say to you?

10 A. We return his records and he tells us that he -- he tells
11 Ms. McGrew and I both that he remembered he had some other
12 firearms in the basement of his house that he forgot to have us
13 inventory that day. And I told him it was too late in the day
14 for us to go then, that -- and I was fixing to go on vacation
15 and that Ms. McGrew would contact him the following week to set
16 up a date and look at those other firearms.

17 Q. Okay. And that was the end of that day; is that correct?

18 A. Yes, sir.

19 Q. Now, on the 4th of March, 2003, you were not involved in
20 any conversations with Mr. Friesen; is that correct?

21 A. That's correct. I was not there.

22 Q. Let me ask you this: Did your office receive either a
23 letter or a fax from Mr. Friesen on or about March 4th, 2003?

24 A. Ms. McGrew told me that when she returned to the office
25 on March 4th that there was a letter addressed to me from Mr.

1 Friesen which contained his personal firearms book.

2 Q. Did you see that letter?

3 A. It wasn't really a letter, it was just an envelope with a
4 book in it.

5 Q. Did you look at that book?

6 A. Yes.

7 Q. And if you look at Government's 4.3. Is that the book,
8 please?

9 A. Yes, sir, it is.

10 Q. And that's the information that was sent to your office;
11 is that correct?

12 A. Yes.

13 Q. And is there a title for it? What is it called, please?

14 A. Says "firearms personal."

15 Q. Okay.

16 MR. KUMIEGA: Your Honor, at this time the United
17 States would move for introduction of 4.3 into evidence,
18 please.

19 MR. MARTIN: 4.3, no objection.

20 THE COURT: Will be admitted.

21 Q. (By Mr. Kumi ega) Now, at some point then, ma'am, you
22 were now gathering information to compare what, please? What
23 is the next step in your compliance inspection process, please?

24 A. We would compare the inventory to the firearms records
25 and the 4473s.

1 Q. Okay. How do you do that? How does that work, please?

2 A. We take the inventory that, the actually inventory we
3 conducted and matched it to the firearms in his records to see
4 if all firearms were accounted for. And we also take the
5 4473s, and take out the firearms that have been disposed of.
6 We had to do that for Mr. Friesen because he had not recorded
7 any disposition information in his book. Normally the licensee
8 by law would have done that himself.

9 Q. Okay. Let's look at -- now, you only looked at -- you
10 said you only saw one safe in the basement; is that correct?

11 A. That's correct.

12 MR. KUMIEGA: Will you show 3.2, please?

13 Q. (By Mr. Kumi ega) Let me ask you this, and is that the
14 standard way you do all these things, you compare your recorded
15 notes versus the documents that are furnished?

16 A. Yes.

17 Q. Okay.

18 MR. KUMIEGA: Your Honor, I think --

19 Q. (By Mr. Kumi ega) If you can look at 4.2, please. What
20 is that, please?

21 A. These are copies of the 4473s that Mr. Friesen provided
22 to me.

23 MR. KUMIEGA: Your Honor, according to my records and
24 from the people at my counsel table I think I failed to move
25 that into evidence, unless I did.

1 THE COURT: Move which?

2 MR. KUMI EGA: 4.2, your Honor.

3 THE COURT: I don't have it marked in evidence. Any
4 objection?

5 MR. MARTIN: No, your Honor.

6 THE COURT: Will be admitted.

7 Q. (By Mr. Kumi ega) Now, is there a protocol then when you
8 compare, do you write up some type of report making the
9 comparison between things that you actually had hands-on
10 inventory versus the records?

11 A. Yes, we do, normally.

12 Q. And how do you do that? Tell the jury how do you that,
13 please.

14 A. I'm sorry. I don't understand.

15 Q. Would you tell the jury the protocol, how you make the
16 comparison and did anybody aid you in doing that, please?

17 A. We take the inventory, and as I said before, licensees
18 are required to record their disposition information in their
19 books, and in Mr. Friesen's case he had not done that, so we
20 went through his acquisition and disposition book comparing the
21 firearms there to the firearms that he said he had transferred,
22 or recorded on these 4473s as being transferred, and gave him
23 credit for transferring those firearms, and then took the
24 remainder of the firearms in the book and compared it to the
25 actual inventory.

1 Q. You know, the items that you compared then were the NFA
2 stuff that you got from Washington; is that right?

3 A. Yes, sir.

4 Q. And his acquisition and disposition; is that correct?

5 A. Yes, sir.

6 Q. And the personal firearms that he mailed to your office?

7 A. Personal firearms record. Yes.

8 Q. You didn't look at the out-of-business stuff; is that
9 correct? That's the three things you looked at, is that
10 correct, or did you?

11 A. We had his NFA record, his actual inventory, his
12 acquisition and disposition record, his personal firearms
13 record, and the 4473s.

14 Q. Okay. And you made an analysis of that; is that correct?

15 A. That's correct.

16 MR. KUMIEGA: Your Honor, may I display the summary
17 chart so Ms. Rowden may explain her findings regarding Mr.
18 Friesen's inventory as of March 4, 2003?

19 MR. MARTIN: What's the date, Mr. Kumi ega?

20 MR. KUMIEGA: It's going to be a snapshot on March
21 4th, 2003.

22 MR. MARTIN: May I ask a question, your Honor, of Mr.
23 Kumi ega before we do that?

24 THE COURT: Yes.

25 (An off-the-record discussion was had between counsel

1 out of the hearing of the jury:)

2 MR. MARTIN: Well, your Honor, we'll object to it --

3 THE COURT: What is it you want to show?

4 MR. MARTIN: -- based on accuracy.

5 MR. KUMIEGA: The summary chart, your Honor, what
6 information Ms. Rowden developed.

7 THE COURT: I'm sorry?

8 MR. KUMIEGA: A summary of the information she
9 compiled to show what the final results were of her compliance
10 inspection analysis.

11 THE COURT: Do you have that?

12 MR. KUMIEGA: It's a chart that I showed to counsel.

13 THE COURT: I don't have it. I haven't seen it.

14 MR. KUMIEGA: Your Honor, if I have a side bar and
15 show you the chart. I don't have a small copy of it.

16 (The following was had at the bench, out of the hearing of
17 the jury:)

18 MR. MARTIN: Judge, that is my copy.

19 THE COURT: And you're not wanting to introduce this?

20 MR. KUMIEGA: No, it's a demonstrative exhibit.

21 MR. MARTIN: My objection is the chart is completely
22 inaccurate. Every firearm is accounted for in the records that
23 they've introduced, and I'll have to cross-examine her over
24 every specific one, and I've got the records to support it.
25 But if he wants to do it, I'll object.

1 MR. KUMI EGA: The purpose of the chart is to show on
2 the date the compliance inspection was concluded they couldn't
3 find it all. So it's a snapshot on that day because it shows
4 the guns were disbursed per violation of FFL --

5 MR. MARTIN: Every firearm is accounted for on that
6 day. I'm telling you I object. I'm going to rip her apart if
7 you want to do it.

8 THE COURT: Okay. I'll allow you to do it and take
9 care of it on cross-examination.

10 MR. MARTIN: I want my objection on the record.

11 THE COURT: Objection will be overruled.

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

14 Q. (By Mr. Kumi ega) Ma'am, is this a summary that you
15 prepared for presentation today?

16 A. Yes, sir, it is.

17 Q. And this shows -- let me ask you this: This shows that
18 during your analysis Mr. Friesen had 74 total firearms; is that
19 correct?

20 A. Actually, he only had 61 firearms. His records revealed
21 that he should have had 73 firearms.

22 Q. All right. And you looked at -- let me see here -- the
23 National Firearms Registration Transfer; is that correct?

24 A. Yes, sir.

25 Q. The acquisition and disposition record that he provided

1 to you?

2 A. That's correct.

3 Q. The personal firearms record that he provided to you; is
4 that correct?

5 A. Yes, sir.

6 Q. And the ATF form that he also provided to you; is that
7 correct?

8 A. The ATF Form 4473.

9 Q. Now --

10 THE COURT: Excuse me just one second. Ms. Youngberg,
11 could I get a copy -- can you go next door and make a copy? I
12 can't see the summary chart. So --

13 MR. MARTIN: Your Honor, I have another copy I haven't
14 written on. I may need it back for cross.

15 THE COURT: All right. Do we need to make a copy of
16 this, Mr. Martin? Do you need this back?

17 MR. MARTIN: I have a feeling I'm not going to get to
18 her before lunch anyway, Judge.

19 MR. KUMI EGA: I think I'm going to be wrapping up
20 soon, your Honor.

21 MR. MARTIN: Go ahead, Judge. I can get it from you
22 when I need it.

23 THE COURT: Okay. Go ahead, Mr. Kumi ega.

24 MR. KUMI EGA: Thank you.

25 Q. (By Mr. Kumi ega) Now, you made the comparisons of the

1 records and your actual story; is that correct?

2 A. Yes.

3 Q. Okay. Now, my understanding is it's the guns that Mr.
4 Friesen is supposed to have in his possession because he's a
5 federal firearms licensed dealer on March 2003 that he needs to
6 have in his possession; is that correct?

7 A. Yes, sir. If he has a firearm in his acquisition and
8 disposition record, and in this case his personal record also,
9 that there is no disposition documents for, it should have been
10 in inventory on that day.

11 Q. Basically, according to my understanding then, he's got
12 to show you all his inventory, including personal weapons and
13 business weapons on the date of the inspection?

14 A. Normally, we don't look at personal firearms, but since
15 they were all commingled, I had no idea on that day what was a
16 personal firearm or what was a business firearm. There was no
17 way for me to determine that. So I had to inventory all
18 firearms.

19 Q. And did you ask him during this whole process if he
20 turned over every firearm that he had in his possession?

21 A. Yes, I did.

22 Q. And you came up with a conclusion by looking at the --

23 A. His records --

24 Q. -- his records --

25 A. -- and the actual inventory.

1 Q. Your hands-on inventory?

2 A. Yes.

3 Q. All right. And my understanding is that from your
4 analysis, and just on this day, on March of 2004, I mean 2003,
5 13 firearms are missing; is that correct?

6 A. He had not accounted for 13 firearms in his records.

7 Q. Okay.

8 A. In his records and the NFA record.

9 Q. Okay. So 74 in his recorded inventory, in his books, 61
10 that you actually found, hands-on?

11 A. Yes, sir.

12 Q. And you said that 13 are unaccounted for, and the last
13 one is the Sten Mark machine gun with the E683 serial number;
14 is that correct?

15 A. That is correct.

16 Q. Yes.

17 A. The 74 firearms also includes his 17 NFA firearms that he
18 never recorded in any record, which is according -- the first
19 thing up there, the National Firearms Record, Transfer Record.

20 Q. This up here (indicating)?

21 A. Right.

22 Q. Now, you said you've been doing inspections for how long,
23 please?

24 A. Since 1997.

25 Q. How would you categorize the files that were presented to

1 you, please?

2 A. They were out of -- nothing was in order, they were
3 incomplete. It was very difficult to determine exactly what
4 was going on.

5 Q. Were you trying to recreate the records then?

6 A. Basically, yeah. Like I said, we had to take the 4473s
7 and give him credit, if you want to say give him credit, for
8 the firearms he had disposed of, because he had not recorded
9 that information in his book.

10 Q. All right.

11 A. So we had to go through and take those out and --

12 Q. After he gave you the records and after you were done
13 with your analysis, was there any more conversations with Mr.
14 Friesen per telephone?

15 A. No. Oh, yes, but not in reference to the inspection,
16 other than I told him I had not prepared my report.

17 Q. Okay. Okay. Did Mr. Friesen tell you that any of these
18 firearms were somewhere else? Did he give you any explanation
19 of the firearms that were missing?

20 A. I never discussed those missing firearms with him.

21 Q. Okay. Okay.

22 MR. KUMIEGA: Your Honor, if I can have a moment with
23 the case agent.

24 THE COURT: Yes.

25 (Brief pause)

1 Q. (By Mr. Kumi ega) Ms. Rowden, you've got this marked in
2 red, the Erb Sten Mark II machine gun.

3 A. Yes, sir.

4 Q. Why do you have it there when a Sten machine gun was
5 presented to you?

6 A. Because the Sten machine gun that I inventoried is not
7 the machine gun that's registered to Mr. Friesen.

8 Q. The seven more guns that he said that were going to be
9 inventoried, are they included in the analysis?

10 A. Yes, they are.

11 Q. Okay. And that was Ms. McGrew's task; is that right?

12 A. Yes, sir.

13 Q. And the vast majority of the firearms that you
14 inventoried back in '03 came from the safe in the basement?

15 A. That's correct.

16 MR. KUMI EGA: 3.2, please.

17 Q. (By Mr. Kumi ega) Is that it?

18 A. From that safe. Yes, sir.

19 Q. Okay.

20 MR. KUMI EGA: Your Honor, may I have a conversation
21 with Ms. Webb?

22 THE COURT: Yes.

23 (An off-the-record discussion was had out of the presence
24 of the jury:)

25 Q. (By Mr. Kumi ega) Ma'am, during the preparation for your

1 testimony, did you have an opportunity to look at a video clip
2 associated with this investigation?

3 A. Yes, sir.

4 Q. All right.

5 MR. KUMIEGA: Your Honor, at this time the United
6 States would like to play Government's Exhibit 3.0.1, the video
7 clip of the office with the appropriate parts redacted out.

8 THE COURT: Anything new that we didn't hear before?

9 MR. KUMIEGA: It's going to show the jury where Ms.
10 Rowden actually examined the Sten machine gun. It's very
11 short.

12 THE COURT: Okay.

13 MR. KUMIEGA: It's just a portion.

14 THE COURT: All right.

15 (Clip from Government's Exhibit 3.0.1 played for the jury,
16 with the following commentary:)

17 Q. (By Mr. Kumi ega) Ma'am, are you familiar -- is this the
18 location you examined the firearms at, please?

19 A. Yes, sir, it is.

20 Q. Especially the Sten machine gun. If you can look at
21 that, please. You never saw any gun safe in the law office; is
22 that correct?

23 A. No, sir, I did not.

24 Q. Ma'am, are you familiar with any of these scenes, please?

25 A. Yes. That's Mr. Friesen's office.

1 Q. Okay. Is that where you examined the Sten machine gun?

2 A. Yes. Not in the restroom, but in his office.

3 Q. Okay.

4 (Video concluded)

5 MR. KUMIEGA: Nothing further, your Honor.

6 MR. MARTIN: Judge, may we approach for a moment?

7 THE COURT: Okay.

8 (The following was had at the bench, out of the hearing of
9 the jury:)

10 MR. MARTIN: I've got quite a few records to retrieve.
11 Can we take a short break or can we come back after an early
12 lunch, unless you want me to just take off.

13 THE COURT: Well, I would like for you to take off.

14 MR. MARTIN: I can take off. I won't get done, I know
15 that.

16 THE COURT: That's fine.

17 MR. MARTIN: I need to go retrieve a couple of
18 documents.

19 THE COURT: We'll take a break at about ten till, 15
20 or ten till.

21 MR. MARTIN: Okay. Thank you.

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

24

25

1 CROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. Ms. Rowden, as I understand, or Inspector Rowden, as I
4 understand, you've been doing this particular type of function
5 for several years.

6 A. Eleven years.

7 Q. Eleven years. And that's an inspector where you go out
8 and inspect firearms dealers' firearms basically?

9 A. Yes.

10 Q. Like, I'm not a firearms dealer, okay, and if I have a
11 firearm you don't have the authority to come to my house and
12 look at my records and know where I keep them, right?

13 A. If you're not a firearms dealer?

14 Q. I'm telling you I'm not, okay?

15 A. Okay. No, I do not.

16 Q. So if you show up at my door and say I want to see my
17 personal firearms, since I'm not a firearms dealer, you don't
18 have that authority, right?

19 A. I do not.

20 Q. Okay. Likewise, firearms dealers have personal firearms,
21 do they not?

22 A. Yes, some of them do.

23 Q. Okay. As a matter of fact, my client Doug Friesen told
24 you that he had personal firearms, did he not?

25 A. In the process of inventorying the firearms, yes.

1 Q. He told you he had personal firearms, did he not?

2 A. Yes.

3 Q. Okay. And anyone who is a firearms dealer that has
4 personal firearms, you are not entitled to inventory those
5 firearms, are you, ma'am?

6 A. Industry Circular 7230 tells us if their personal
7 firearms and business firearms are commingled and they are not
8 marked or segregated then, yes, we will inventory all firearms.

9 Q. If I have 25 firearms under my -- if I'm a firearms
10 dealer and I have 25 personal firearms under my sink that I've
11 told you are my personal firearms, you don't have the authority
12 if I'm a firearms dealer to examine or inspect those, do you,
13 ma'am?

14 A. I do if they are commingled with your inventory.

15 Q. Listen to my question, it's real simple. If I have 25
16 firearms segregated that are personal, I've told you they are
17 personal and they are under my sink in my kitchen, you do not
18 have authority to inspect those. Do you understand the
19 question?

20 MR. KUMIEGA: Objection, your Honor, to the tone.

21 That's --

22 MR. MARTIN: I'll change my tone. I apologize. I
23 would just like an answer to the question I asked.

24 THE WITNESS: No.

25 Q. (By Mr. Martin) No, you don't have the authority to

1 inspect them?

2 A. No. If they are segregated in your inventory, no, I do
3 not.

4 Q. Okay. Now, Mr. Friesen, from what I understand based on
5 Government's Exhibit 1.3 --

6 MR. MARTIN: If we could put that up.

7 Q. (By Mr. Martin) There's 11 on this page, and -- there's
8 11 on this page and on the next page a total of 15 I'll call
9 them specialized weapons, I think you call them NFA firearms;
10 is that right?

11 A. What exhibit is that, sir?

12 Q. 1.3.

13 A. That's the actual numbers of categories on there, but
14 there are actually 17 firearms listed. Number two has two
15 firearms.

16 Q. Okay. There's 15 numbered but there's 17 total?

17 A. That's correct.

18 Q. And those are NFA records of the, quote, for lack of a
19 better word, special firearms, Class 3 firearms that Doug had,
20 right?

21 A. That were registered to Mr. Friesen.

22 Q. Okay. And you first -- now, you received the records for
23 those from him on February 19th; isn't that true?

24 A. Yes, sir.

25 Q. And they were accurate?

1 A. I actually never got around to examining those against
2 the firearms.

3 Q. You never got around to doing what? I'm sorry?

4 A. We never actually compared his NFA records to the
5 firearms he had in his registry.

6 Q. Go back to page 1. So you didn't compare his records for
7 Item No. 10, right there, with what he had in his registry?

8 A. No. I compared the -- I didn't take the Forms 3s and 4s
9 and match them to his book. He didn't have them in his book, I
10 couldn't compare them to his records.

11 Q. On February 19th you got his records relating to all
12 these guns, right?

13 A. His NFA records. Yes, sir.

14 Q. And you just told me you didn't even look at those
15 records?

16 A. Yes, I did. I'm sorry. I misspoke.

17 Q. So you got the records and you looked at them and they
18 were accurate?

19 A. Yes.

20 Q. Okay. So all Class 3 firearms, the records were accurate
21 on, right?

22 A. He did not have any of his NFA firearms records in his
23 acquisition and disposition book.

24 Q. He still had them all, right?

25 A. All but the Sten Mark --

1 Q. Well, that's your testimony. He had them all -- the Sten
2 is going to be in question in every question I ask, okay.
3 Let's just exclude the Sten for now.

4 A. Okay.

5 Q. Excluding the Sten, he had all the records, all the
6 firearms, right?

7 A. He had all the firearms. Yes.

8 Q. Okay. And your testimony is that Sten -- as a matter of
9 fact, you don't dispute that's the same Sten you saw that day,
10 do you, ma'am?

11 A. That is the Sten that I examined on February 19th.

12 MR. MARTIN: Your Honor, per stipulation, Mr. Kumi ega
13 has agreed to the admission of Defendant's Exhibit 37.

14 MR. KUMI EGA: For the record, your Honor, these are
15 photographs taken by the defendant's investigator. We have no
16 objection to that.

17 THE COURT: Defendant's 37 will be admitted.

18 MR. MARTIN: Okay.

19 Q. (By Mr. Martin) Now, you said that -- let me -- I'm
20 getting a little out of track here, but you -- where is the --
21 I'm sorry.

22 This is the serial number that Mr. Kumi ega showed you of
23 the Sten. Do you see that?

24 A. Yes, sir.

25 Q. Okay. And you see, looks like it's got some scratches on

1 it, things like that?

2 A. Uh-huh.

3 Q. And were any of those present when you saw it, the
4 scratches?

5 A. The gun was scratched all over and the paint was very
6 worn. That specific scratch?

7 Q. Right. Do you know? Do you remember?

8 A. I can't say to each individual scratch. No, sir.

9 Q. I want you to look at Defendant's Exhibit 37, there's a
10 book up there. I tell you what, I'll just make it easier. The
11 glare may -- let me grab your book there. In front of you
12 there should be a book that has defendant's exhibits in it.

13 A. I have a lot of books up here. I'm sorry.

14 Q. This is Defendant's Exhibit 37. Do you see that, ma'am?

15 A. Yes, sir.

16 Q. I represent to you that picture was taken in
17 approximately February or March of this year. Do you see that
18 picture, ma'am?

19 A. Yes, sir, I do.

20 Q. There's no scratches on that gun in the area of that
21 picture, are there, ma'am?

22 A. Not in this photograph.

23 Q. Okay. These scratches that are on the firearm here that
24 I've got here, I'm holding the gun under the DOAR, if you'll
25 look over on the monitor, they aren't in that picture, are

1 they?

2 A. No, sir, they don't appear to be.

3 Q. Okay.

4 MR. KUMIEGA: Your Honor, may I approach the Court
5 regarding that photograph? I want to make sure that there is
6 nothing being deceptive here. I want to tell the Court what is
7 going on regarding that.

8 THE COURT: You'll have a chance on redirect.

9 MR. KUMIEGA: Okay.

10 Q. (By Mr. Martin) Now, you understand, do you not, ma'am,
11 that because of your training and background and years of
12 experience with the ATF that if one of these 17 numbered items
13 in Defendant's Exhibit, or excuse me, Government's Exhibit 1.3,
14 we threw it up there a while ago, there's 17 items, 15
15 numbered, 17 items, if it can't be accounted for or you can't
16 find the serial number or something, that that can be an
17 unregistered machine gun or an unregistered NFA weapon, right?

18 A. Yes, sir.

19 Q. And that's a serious offense?

20 A. Yes, sir.

21 Q. And that would be something that if someone had that,
22 they would want to know about, wouldn't they? If you couldn't
23 find the --

24 A. If I had an unregistered weapon I would want to know
25 about it. Yes.

1 Q. Now, you didn't tell Mr. Friesen at any time that the
2 failure of you to locate that serial number was going to result
3 in him having criminal charges filed against him, did you?

4 A. No, sir, I did not.

5 Q. As a matter of fact -- well, let me -- you didn't -- you
6 say you don't have the authority to seize that weapon?

7 A. That's correct.

8 Q. And you hadn't told Mr. Friesen that he might be charged
9 if you don't find that serial number, and you didn't break the
10 gun down either, did you?

11 A. No, we did not take the firearm apart.

12 Q. Okay. And prior to the execution of the search warrant,
13 nobody had seen that gun, had they?

14 A. I'm sorry?

15 Q. Prior -- you were there on February 19th, right?

16 A. Yes, sir.

17 Q. And you were -- were you -- you were there on June 10th,
18 2004, 16, 18 months later, right?

19 A. No, sir, I was not.

20 Q. You weren't there when the search warrant was executed?

21 A. No, sir.

22 Q. Were you there after the search warrant? Did you see
23 that firearm on that day?

24 A. No, sir, I did not.

25 Q. When is the first time you saw it after that?

1 A. It was -- I don't know the specific date, but it was
2 sometime after the warrant. I was not present at the warrant.

3 Q. Within a matter of days?

4 A. Yes, sir.

5 Q. Okay. So --

6 A. I believe it was the first time I was in the office after
7 that date.

8 Q. So the first time you were in the office after June 10th,
9 2004, you were shown this weapon?

10 A. Or the first time, yes, that Mr. Knopp and I were in the
11 office at the same time.

12 Q. Okay. And you didn't make it a point to let Mr. Friesen
13 know that the failure to find that serial number was of
14 substantial importance to you?

15 A. No, I did not. I told him that the registered number was
16 not on the firearm.

17 Q. And you also --

18 A. Or that was not the registered serial number.

19 Q. You also asked him if he had any other Stens, didn't you?

20 A. No, sir. I don't remember that specifically. No.

21 Q. Well, do you remember -- did he have any other Stens
22 registered?

23 A. He did not -- he had a registered Sten machine gun. I
24 did not see it on the day of the inventory.

25 Q. He had a registered Sten machine gun, right?

1 A. He had one on his registry. I never saw it.

2 Q. Well, you're saying -- what you're saying is it's your
3 testimony this is not that gun that he had registered?

4 A. That's correct.

5 Q. Although right now as we stand in court today you're not
6 disputing the fact that there's a serial number on there that
7 matches the one that's on his registry; is that correct?

8 A. I'm not disputing that. No.

9 Q. Okay. And although you didn't seize it, you're aware
10 that you could have had it seized?

11 A. Sir, I have no authority to seize it. I did the proper
12 procedure when I got back to the office after the search and
13 reported that to criminal enforcement.

14 Q. You were there how many times on the 19th?

15 A. I was in his office twice on the 19th.

16 Q. How many times on the 20th?

17 A. Once.

18 Q. 26th, 24th, when were you there after that?

19 A. The 26th and 27th.

20 Q. Okay. In March?

21 A. I was not there in March.

22 Q. Could you have not just said to Mr. Knopp, come on out
23 here with me to Doug's and we'll get this on the 20th, on the
24 day after that? Could you have done that?

25 MR. KUMIEGA: Objection, your Honor. Speculation.

1 Not part of the case.

2 THE COURT: Be overruled.

3 Q. (By Mr. Martin) Could you have done that?

4 A. I guess I could say anything, but I followed procedures.

5 Q. Well, could you have done that? Yes, sir or no, sir?

6 A. That is not the way that we do that, sir. I don't go to
7 Mr. Knopp and say come with me and get this.

8 Q. That would have been too easy?

9 A. It just wouldn't have been following procedures.

10 Q. Well, could you have said, hey, Doug, you know, there's
11 not a serial number on this firearm that we can find, and if we
12 don't find a serial number you're going to be indicted for
13 possession of an unregistered machine gun, why don't you let me
14 have this, voluntarily sign a release to me and I'll take it
15 with me, and we'll break it down and look at it and see if we
16 can find a serial number to avoid you being indicted? Could
17 you have done that?

18 A. No, sir. That would not be our procedure.

19 Q. Wouldn't have got your indictment, would it?

20 MR. KUMIEGA: Asked and answered, your Honor.

21 THE COURT: Sustained.

22 Q. (By Mr. Martin) Did you have the authority from the
23 information you had on that date you think to go get a search
24 warrant to go back when you went on the 10th or, excuse me, on
25 the 19th, the 20th, or any days in March later on to seize that

1 weapon?

2 MR. KUMI EGA: Objection. She's not a law enforcement
3 officer. She doesn't have the authority to do that.

4 THE COURT: She knows her own authority, I guess, Mr.
5 Kumi ega, so I'll overrule that objection.

6 THE WITNESS: I do not have the authority to get a
7 search warrant.

8 Q. (By Mr. Martin) You've seen the search warrant
9 affidavit, have you not, ma'am?

10 A. Yes, sir, I have.

11 Q. And you know you are the main source of information that
12 ultimately got this search warrant 18 months later; isn't that
13 true?

14 A. I know that the information I gave to Mr. Knopp is in
15 that warrant, or the affidavit for the warrant.

16 Q. Could you not have given it to him on the 20th or the
17 19th --

18 MR. KUMI EGA: Objection, your Honor. Asked and
19 answered.

20 THE COURT: Overruled.

21 Q. (By Mr. Martin) Could you not have given it to him --

22 A. I didn't see --

23 Q. -- not 18 months later?

24 A. I did give him that information.

25 Q. I said not 18 months later.

1 A. I did give him the information in March. Until I
2 searched the D95843 number, I didn't know that it was an
3 unregistered machine gun.

4 Q. When did you know that, ma'am?

5 A. After I had Denise Brown run it in the NFA record.

6 Q. Well, you knew the day you saw it with no serial number,
7 or no visible serial number, it was an unregistered machine
8 gun, you just testified to that, didn't you?

9 A. I ran that D95843 to make sure it was not a registered
10 number, even though it was in an improper location.

11 Q. Exactly. You knew this was not a serial number because
12 that's not where they are supposed to be, right?

13 A. I suspected it was not.

14 Q. Well, you're a trained ATF agent and you know the serial
15 number has to be somewhere on this tube, don't you?

16 A. Yes, sir.

17 Q. Is that D on the tube?

18 A. No, sir.

19 Q. The D is on this magazine well, right?

20 A. Yes, sir.

21 Q. And it -- it's either a part number or a serial number
22 for this magazine well, wouldn't you agree?

23 A. Yes, sir. But sometimes the registry, sometimes the
24 registry has other numbers that are on guns on it, so we always
25 run those numbers.

1 Q. Would you agree, my question was, that this D number is
2 either a serial number or a part number for the magazine well?

3 A. I actually don't know what it is. I'm not that familiar
4 with those machine guns.

5 Q. Okay. But you knew and you know that it was not the
6 serial number that goes on this tube?

7 A. I know it's not the registered serial number. Yes.

8 Q. Now --

9 THE COURT: Mr. Martin, if we're going to another
10 subject matter we might take our break for lunch.

11 MR. MARTIN: Probably a good spot, your Honor.

12 THE COURT: Okay. Ladies and gentlemen, we'll take
13 our break for lunch, and we'll reconvene at approximately one
14 o'clock. I will give you the same admonitions I've given you
15 each time we've had a break.

16 All rise while the jury exits.

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

19 THE COURT: We're in recess until one p.m.

20 (A recess was had, after which the following was had the
21 bench, out of the hearing of the jury:)

22 THE COURT: Something about this photograph?

23 MR. MARTIN: Do what?

24 MR. KUMIEGA: I just want to make a record, when Mr.
25 Martin handed a photograph taken by the investigator -- the

1 investigator to Valerie Rowden there was some marks that were
2 missing, two of them from the gun we showed. I want to make a
3 record that the marks that were taken off were forensic tests
4 done by chemists in San Francisco, or California, to show the
5 composition of the paint, there was only one layer of paint.
6 So I don't want to mislead the Court or the jury or Ms. Rowden
7 about those marks. It was done by forensic people.

8 MR. MARTIN: You're going to have this person here,
9 right?

10 MR. KUMIEGA: Oh, yes.

11 THE COURT: So there's no issue about --

12 MR. MARTIN: I didn't mean to raise an issue.

13 MS. SYKES: Just one other thing. When was that test
14 conducted though?

15 MR. KUMIEGA: I don't know.

16 MS. SYKES: But it was prior to Mack and I visiting
17 the U.S. Attorney's office last week?

18 MR. KUMIEGA: It was in discovery; you've got
19 everything. But I just want to say that there's no kind of
20 alteration of the evidence when in fact it was done by the
21 forensic people. That's all.

22 THE COURT: When was the photograph made?

23 MR. MARTIN: Shortly after the indictment. Ed made
24 the gun available in February, so February or March.

25 THE COURT: 2008?

1 MR. MARTIN: Right after the indictment, he let us
2 have a photographer come in and take a bunch of pictures.

3 MR. KUMI EGA: I just don't want the impression left
4 with the jury there was alteration.

5 MR. MARTIN: I wanted to make sure she understood
6 those scratches weren't there when they examined it on February
7 10th and that was the purpose of my questioning her. I didn't
8 mean to imply anything sinister.

9 MR. KUMI EGA: That's the -- I got the implication
10 there was some kind of, somebody was messing with the evidence,
11 and obviously it was not. It's forensic testing.

12 THE COURT: So the scratches when she first saw it --

13 MR. KUMI EGA: There's a big scratch on it.

14 THE COURT: There's a big scratch. And that was not
15 there when they looked at it, it is there now, and that was
16 caused by the testing?

17 MR. KUMI EGA: Yes, your Honor.

18 THE COURT: Okay. So maybe if there is some issue you
19 can work out a little stipulation.

20 MR. MARTIN: The reason I brought it up is that
21 scratch would draw your attention to that area where the serial
22 number is, and that scratch was not there on February 10th when
23 she inspected it, so I wanted to make sure there was not --
24 that would draw your attention to that spot, and he's going to
25 have an expert testify to that.

1 LAW CLERK: But all she said was the whole gun was
2 scratched.

3 THE COURT: She couldn't identify a particular
4 scratch. Your expert can testify to that, that will take care
5 of it.

6 MR. MARTIN: Thank you.

7 (The following was had in open court:)

8 MR. MARTIN: Mr. Martin, you may continue your
9 cross-examination.

10 Q. (By Mr. Martin) Ms. Rowden, you're familiar with,
11 because of your involvement in this investigation, the transfer
12 of Government's Exhibit 3.16, the transfer history, are you
13 not?

14 A. I know it was transferred lawfully to Mr. Friesen, the
15 gun that was registered to that serial number.

16 Q. The transfer history. Are you familiar that Mr. Erb
17 supposedly manufactured this gun. Are you familiar with that?

18 A. Yes.

19 Q. You're familiar that from Denise Brown that the gun was
20 transferred lawfully supposedly to Mr. Perry, R.J. Perry?

21 A. I'm not familiar with that history.

22 Q. You're not --

23 A. Not personally.

24 Q. Have you reviewed the records that are available through
25 the ATF of the five owners of this firearm?

1 A. I've seen them, but I haven't studied them, as far as
2 each person that was lawfully transferred to.

3 Q. Okay. You don't know who the five owners are, but you
4 would agree with me that there are five owners, prior owners?

5 A. I know there was more than one, yeah, more than one or
6 two.

7 Q. Okay. And my question is this: The ATF does not have
8 any policy, procedure, rule, or regulation requiring that
9 somebody from the ATF inspect a firearm prior to its transfer
10 from owner to owner?

11 A. None that I know of.

12 Q. So nobody inspected this gun when Erb sold it to, in this
13 instance, Mr. Perry?

14 A. Not that I'm aware of.

15 Q. And nobody inspected this gun when it was transferred by
16 Mr. Perry to Mr. Kemmerer?

17 A. Sir, not that I'm aware of.

18 Q. There's no policy for that that you're aware of?

19 A. That's correct.

20 Q. And the same would apply for Mr. Kemmerer to John Guy
21 Walker?

22 A. Yes, sir.

23 Q. And from Mr. John Guy Walker ultimately to Mr. Friesen?

24 A. Yes, sir.

25 Q. So in essence, the first time the ATF ever physically saw

1 this gun was February 19th, 2003?

2 A. I cannot say that, sir.

3 Q. Well, do you have any records --

4 A. I have no idea if the previous owners were inspected, if
5 the gun was inventoried at that time. I have no idea.

6 Q. Is your -- do you have any records to reflect that this
7 gun has ever been seen prior to February 19th?

8 A. I do not. No, sir.

9 Q. Okay. So as far as you know, February 19th, 2003, is the
10 first time that that gun was ever seen by the ATF?

11 A. As far as I know, yes, sir.

12 Q. Yes, ma'am. Okay. And you know that it was manufactured
13 sometime in 1986?

14 A. Yes, sir.

15 Q. Let me ask you: I'll represent to you that yesterday
16 there was an agent, ATF Agent Booker, testified that there were
17 two serial numbers on a couple of shotguns that were seized
18 during the search warrant that they could not find serial
19 numbers on due to paint. Have you ever encountered that?

20 A. I've seen some firearms that it makes it difficult to
21 read because of the finish on the gun. Yes.

22 Q. Because of being paint or whatever, rust?

23 A. Camouflage finishes sometimes make it hard to see, but
24 usually if you get it in the right light or get a magnifying
25 glass you can read the numbers.

- 1 Q. Have you ever had to disassemble a gun to try to find the
2 --
- 3 A. No, sir, I have not.
- 4 Q. Never known anybody to have to remove the rear sight off
5 of a gun to find a --
- 6 A. Not a sight, but maybe a scope occasionally off of a
7 rifle.
- 8 Q. Okay. But no disassembly occurred in this case, right?
- 9 A. During my inspection?
- 10 Q. Yes.
- 11 A. No, sir.
- 12 Q. Okay. And you didn't use any type of magnification, like
13 a magnifying glass or anything to carefully inspect the gun,
14 did you, ma'am?
- 15 A. No, sir.
- 16 Q. Okay. Now, I think you testified, or at least your
17 records may reflect that on March 26th, 2003, you contacted
18 Denise Brown and confirmed there was no such serial number as
19 D95-whatever; is that right?
- 20 A. I think that's when I asked for it in writing, because I
21 had done it verbally via the telephone earlier than that.
- 22 Q. So it would have been -- would have been prior to the
23 completion of your compliance inspection?
- 24 A. Actually, the compliance inspection was never completed.
25 We discontinued the compliance inspection at the request of

1 Agent Knopp.

2 Q. So when you testified earlier that at the conclusion of
3 your compliance inspection you found that there were 13
4 firearms unaccounted for, does that mean you never really
5 completed the compliance inspection?

6 A. I testified that on March 4th, all the records I had
7 available to me on March 4th, that was my findings.

8 Q. Okay.

9 A. We never completed the inspection.

10 Q. All right. And so on March 4th, you had on that date, I
11 guess Doug had already provided to you his records on, what,
12 February 26th?

13 A. Yes, sir.

14 Q. And on the 19th he gave you his NFR records; is that
15 right?

16 A. NFA records.

17 Q. NFA records. I apologize.

18 A. That's okay.

19 Q. The acronyms get to me. So his NFA, that's the special
20 guns, the machine guns, silencers, things like that?

21 A. Yes, sir.

22 Q. And he gave you those on the 19th?

23 A. He gave me the registration papers for those weapons,
24 yes.

25 Q. Okay. And did he give you the acquisition and

1 di s p o s i t i o n p a p e r s f o r t h o s e ?

2 A. No, he did not. He never recorded any of his NFA weapons
3 in an a c q u i s i t i o n r e c o r d o r d i s p o s i t i o n r e c o r d .

4 Q. He di dn' t?

5 A. No. They were never recorded in his a c q u i s i t i o n a n d
6 d i s p o s i t i o n r e c o r d .

7 Q. Is there -- this is the NFA, the fi r e a r m s , t h e s i l e n c e r s
8 a n d e v e r y t h i n g e l s e ?

9 A. That was not an a c q u i s i t i o n a n d d i s p o s i t i o n r e c o r d , w h e n
10 w e r e t a l k i n g a b o u t N F A r e c o r d s , t h e y w e r e j u s t t h e F o r m 3 s a n d
11 F o r m 4 s t h a t s h o w s t h a t t h e y w e r e l a w f u l l y t r a n s f e r r e d t o h i m .

12 Q. My q u e s t i o n i s : D i d h e p r o v i d e t o y o u t h e a c q u i s i t i o n
13 a n d d i s p o s i t i o n r e c o r d s f o r t h e N F A f i r e a r m s , t h e 17 f i r e a r m s
14 t h a t a r e s p e c i a l i z e d f i r e a r m s ?

15 A. They were never recorded -- t h e a c q u i s i t i o n a n d
16 d i s p o s i t i o n r e c o r d t h a t h e p r o v i d e d m e , n o n e o f t h o s e N F A
17 f i r e a r m s w e r e r e c o r d e d i n i t .

18 Q. I t h i n k l a y i n g o n t h e f l o o r i n f r o n t o f y o u i s a b l u e
19 b o o k , I t h i n k i t ' s G o v e r n m e n t ' s E x h i b i t 3 . 1 4 . I m a y b e w r o n g .
20 I s t h e r e a n e x h i b i t n u m b e r o n i t o r n u m b e r o n i t ?

21 A. 3 . 1 4 .

22 Q. Yes. I s t h a t t h e n u m b e r o n i t ?

23 A. Yes, s i r .

24 Q. Okay.

25 MR. MARTIN: A n d i f I m i g h t a p p r o a c h , y o u r H o n o r ?

1 THE COURT: You may approach.

2 Q. (By Mr. Martin) Are you familiar with what an
3 acquisition and disposition book looks like?

4 A. Yes, sir.

5 Q. Inside that, this has been previously introduced, is that
6 an acquisition and disposition book?

7 A. That's what it says on the front of it. Yes, sir.

8 Q. Is that what one looks like?

9 A. It's how one can look. They take many forms.

10 Q. So it looks -- that's what this purports to be, right?

11 A. From the cover, yes, sir.

12 Q. Okay. I'll take that out just a minute, just this
13 portion, okay?

14 A. Okay.

15 Q. This is the book here, and then it has an inside page,
16 and let me ask you: Are you familiar with these firearms that
17 are listed therein, if you can see them?

18 A. I would have to compare them to my inventory.

19 Q. Well, are you familiar with one in particular, let me
20 just zoom in on one because I know you're familiar with one of
21 them very well.

22 MR. KUMIEGA: Your Honor, I would like to object to
23 this line of questioning. We've got to establish when that
24 book was taken versus when she did the inventory. I think
25 there is a 20-, 16-month lag. I want to let the jury know

1 that --

2 THE COURT: Mr. Kumi ega, you'll have an opportunity to
3 redirect.

4 Q. (By Mr. Martin) You're familiar with this firearm here,
5 E683, Charles Erb, nine millimeter Sten II submachine gun,
6 3/11/96?

7 A. I'm familiar with the fact that it should -- it's
8 registered to Mr. Friesen. I've never seen that gun.

9 Q. Are you familiar with the gun, ma'am?

10 A. Yes, sir, I'm familiar.

11 Q. Did I ask you if you had ever seen the gun? Was that
12 part of my question?

13 A. I thought that's what you asked me. You asked me if I
14 was familiar with it.

15 Q. Okay. Did I ask you if you had ever seen it?

16 A. I'm not familiar with that gun, sir. I haven't seen it.
17 Can't be familiar with it if I haven't seen it.

18 Q. Very well. Thank you.

19 In truth and fact, if you'll compare this to your records,
20 every -- and I'll use the terminology wrong, is it Class 2, is
21 that --

22 A. It's Title 2, Class 3.

23 Q. -- Title 2, Class 3 firearm that Mr. Friesen owns is in
24 there, is it not, ma'am?

25 A. Again, I would have to compare that to his record.

1 Q. Well, you have them there. I can pull it up. There's an
2 exhibit that has 17 on it, aren't there?

3 A. I've never seen this before, sir, except just a cursory
4 glance in the office. This is not a record Mr. Friesen
5 provided to me.

6 Q. It was seized by the ATF during the search warrant, was
7 it not?

8 A. I don't know, sir. I wasn't at the search warrant.

9 Q. Are you not familiar with the evidence in this case?

10 MR. KUMIEGA: Objection. Argumentative.

11 THE COURT: That will be sustained.

12 Q. (By Mr. Martin) Your testimony is this book that was
13 seized during the search warrant you've never looked at?

14 A. I did a cursory review or look at it. That contains
15 records I never saw during the inspection.

16 Q. It does?

17 A. Yes.

18 Q. In particular, you're saying you've never seen that A&D
19 book I've just pointed out to you?

20 A. Yes, sir. That's exactly right.

21 Q. Okay. As a matter of fact, there's a lot of records you
22 overlooked in this case, isn't that true, Inspector Rowden?

23 MR. KUMIEGA: Objection to the form of the question,
24 your Honor.

25 THE COURT: Be a little more specific, Mr. Martin.

1 Q. (By Mr. Martin) Every one of these records was provided
2 to you and you know the disposition of every one of these
3 records; isn't that true?

4 A. No, I do not. They were not-- there were no records for
5 those guns provided to me during the inspection.

6 Q. Well, Mr. Friesen provided you some records on February
7 26th, 19 -- excuse me -- 2003, right?

8 A. Yes, sir.

9 Q. After he told you he found his book and you came by and
10 got the book, copied it and took it back, right?

11 A. Yes, sir.

12 Q. Let's just start with No. 3. H&H model T7M8 nine
13 millimeter semi-automatic pistol, serial number 88024.

14 A. Yes, sir.

15 Q. You're saying you don't know what happened to that?

16 A. On March 4th, I had no record of where that firearm went.

17 Q. You had no record. On February 26th, if my math is
18 right, eight days earlier, Mr. Friesen gave you his personal --
19 gave you his A&D records, right?

20 A. He gave me some pages that contained acquisition
21 information. They were not in a proper acquisition and
22 disposition format.

23 Q. Did he give you --

24 MR. KUMIEGA: Objection, your Honor.

25 THE COURT: Let her answer the question what he gave

1 her.

2 Q. (By Mr. Martin) Go ahead.

3 A. It was not a bound box, it was loose-leaf pages and they
4 were pages that contained acquisition information, no
5 disposition information.

6 Q. You have those in front of you?

7 A. Yes, sir. I don't know what exhibit it is, though.

8 Q. Well, you have what he gave you in that book of yours,
9 don't you?

10 A. Yes, sir.

11 Q. Okay. And as a matter of fact, what he gave you is found
12 at Exhibit 4.2. Do you have Exhibit 4.2 of the Government's
13 there too? Do you have that exhibit, ma'am?

14 A. Yes, sir.

15 Q. And does that have Bates numbers in it, ma'am?

16 A. Yes, sir.

17 Q. And can you go to Bates No. 1168 for me?

18 A. I'm going -- they are out of order. So --

19 Q. So that -- are you familiar with a Form 4473, ma'am?

20 A. Yes, sir.

21 Q. And that is a transfer. That's a transfer form, right?

22 A. Yes, sir. It's a firearms transaction record.

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

24 THE COURT: Yes.

25 (Brief pause)

1 Q. (By Mr. Martin) Back to the No. 3 we were talking about,
2 you're familiar with the search warrant affidavit, are you not?

3 A. Not intricately.

4 Q. Well, you're familiar that there are disposition
5 documents relating to this firearm, right, the third firearm
6 here, No. 3?

7 A. I did not see a disposition document for that firearm.

8 Q. You've never seen a disposition document for 88024?

9 A. It wasn't in the records that he provided me on.

10 Q. Have you seen a disposition docket -- document since
11 then?

12 A. I'm not sure, sir.

13 Q. Are you familiar with ATF documents, ma'am?

14 A. Yes, sir, I sure am.

15 Q. Okay. I'm going to show you a document and ask you if
16 this -- it's not an exhibit so I'm just showing it to you -- if
17 that appears to be a disposition docket relating to that nine
18 millimeter semi-automatic weapon?

19 A. It has the same gun description. Yes, sir.

20 Q. Okay. And does this appear to be a record kept in the
21 normal course of business by the ATF?

22 A. Normal course of business by the FFL, or federal firearms
23 licensee.

24 Q. And you're familiar with the Bates stamp in this case
25 where evidence that was provided to us in this case, are you

1 not?

2 A. Yes, sir, I am.

3 Q. And this contains a Bates stamp from materials that have
4 been provided to us from the U.S. Attorney's Office, right?

5 A. As far as I know. Yes, sir.

6 MR. MARTIN: Your Honor, I provided an exhibit to Mr.
7 Kumi ega and asked him to review it because I'm going to move
8 for its introduction.

9 THE COURT: What's the exhibit number?

10 MR. MARTIN: Probably going to be 101, Judge.

11 THE COURT: All right.

12 MR. MARTIN: Your Honor, I'll move for introduction of
13 Exhibit 101.

14 MR. KUMI EGA: To which the United States objects.

15 THE COURT: What?

16 MR. KUMI EGA: To which we object.

17 THE COURT: Counsel approach.

18 (The following was had at the bench, out of the hearing of
19 the jury:)

20 THE COURT: What is this?

21 MR. MARTIN: It's a record to reflect No. 3 on their
22 chart, your Honor, has been transferred in 1995. It would have
23 been impossible for him to have had it physically present.
24 They obtained that document at the time of the search, but he
25 rebuts that that document, that that gun was, should have even

1 been in his inventory because it had already been sold in 1995.

2 THE COURT: And what's the objection?

3 MR. KUMIEGA: The objection is if the Court -- the
4 objection is on March 3rd, 2003, is the date he provided, the
5 date when the inspection was ended. If -- and then later on
6 got that document. The point is that that may have happened,
7 but when she did the inspection on that snapshot date it wasn't
8 there.

9 THE COURT: I'm sorry?

10 MR. KUMIEGA: It was not there during the time she did
11 the inspection. It was not in the records Mr. Friesen gave her
12 in March of 2003. Anything subsequent to that, that's all
13 these things reflect. It's a snapshot of what the records
14 reflect and what happened. If he's going to have her explain
15 that to the jury, then we have no objection. It's dates that
16 are important.

17 MR. MARTIN: He couldn't have had it because in 1995
18 somebody else owned it.

19 MR. KUMIEGA: I understand that.

20 MR. MARTIN: That explains why. You're going to put
21 it on your chart and say it wasn't there and I couldn't find
22 it, the record shows that he didn't own it on that date.
23 I should be able to attack her credibility and attack that
24 chart to show he couldn't have had it.

25 THE COURT: Just a minute. Is this record in ATF's

1 records, did they have this prior to --

2 MR. MARTIN: I don't know when they got that, your
3 Honor. I got this through discovery. I was under the
4 impression it was in Exhibit 4.02. We can't find it in that
5 exhibit. It was in the blue book that was seized during the
6 search.

7 MR. KUMIEGA: And that's why it's irrelevant, because
8 it's the snapshot on March of 2003 that counts.

9 MR. MARTIN: I can still go and attack her and say we
10 now know that gun was not in her possession.

11 THE COURT: I don't know if it attacks her, you can
12 point out why the gun wasn't there, but unless she had access
13 to this March -- I don't see how it attacks her credibility.

14 MR. MARTIN: Well --

15 THE COURT: I see the issue not as more whether her
16 credibility is being attacked or not attacked but rather the
17 admission of the document. So I'm going to admit the document,
18 then you can do whatever you want to on cross, and you can
19 straighten it out on redirect.

20 MR. MARTIN: Let me say this: If you want to object,
21 I'll probably have four or five more of the similar type
22 documents, your Honor, and you may want to make the same
23 objection.

24 THE COURT: All the documents that were seized during
25 the search?

1 MR. MARTIN: There will be others like this, yes, sir.

2 THE COURT: Seized during the search?

3 MR. MARTIN: And there are a couple that I know she
4 had in the book on this date. I'll go to the book for those.
5 They are already in.

6 THE COURT: But your objection is that they were
7 seized after your summary chart information was available.

8 MR. KUMIEGA: I agree. But I think if he can provide
9 to the witness what document, where it came from so she's aware
10 that it came -- it was --

11 THE COURT: She's going to have to look at it before
12 he can question her about it.

13 MR. KUMIEGA: But seems like it's misleading in a way.

14 MR. MARTIN: You're going to get redirect.

15 MR. KUMIEGA: I know. It's unfair.

16 THE COURT: You can't question her without her seeing
17 it.

18 MR. MARTIN: I'm going to give it to her, Judge. I've
19 shown it to her once.

20 THE COURT: I'm going to admit the documents, so I
21 understand your objection will be the same so we don't have to
22 have another bench conference.

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

25 MR. MARTIN: Your Honor, I'll move admission of

1 Defendant's 101.

2 THE COURT: Will be admitted.

3 Q. (By Mr. Martin) I'm going to hand you what has been
4 identified and introduced as Defendant's Exhibit 101, and ask
5 you, would you agree with me that that disposition form relates
6 to Item No. 3 here? Can you see the chart?

7 A. Barely.

8 Q. I'll put it back here, but --

9 A. I got it.

10 Q. H&H, this one right here?

11 A. Yes, sir.

12 Q. Okay. And No. 3 here, on February 10th, 2003, Doug
13 Friesen could not have had that firearm, isn't that true, based
14 on Exhibit 101?

15 A. Based on this exhibit.

16 Q. That firearm had already -- pardon me -- that firearm had
17 already been transferred to another individual, correct?

18 A. According to this form. Yes, sir.

19 Q. Okay. I'm going to show you what I've marked for
20 identification number as Defendant's Exhibit 102, and ask you,
21 again, if you are familiar with this form?

22 A. I don't know. Can I --

23 Q. Sure.

24 A. You mean that specific form?

25 Q. I'm asking you if you're familiar with generally that

1 form.

2 A. With the Form 4473. Yes, sir.

3 Q. And does that form relate to one of the firearms, one of
4 the firearms on this chart, in particular No. 4 here, I think
5 it is, a .38 caliber revolver?

6 A. Yes, sir, it appears to.

7 Q. CAA8977?

8 A. Yes, sir.

9 MR. MARTIN: Your Honor, I'll move for introduction of
10 Defendant's Exhibit 102.

11 MR. KUMIEGA: No objection.

12 THE COURT: Will be admitted.

13 Q. (By Mr. Martin) And according to Defendant's Exhibit
14 102, this firearm was transferred in 1996, right?

15 A. Yes, sir.

16 Q. And it would be physically impossible for Exhibit No. 4
17 to have been in Mr. Friesen's possession on that date according
18 to that document; is that correct?

19 A. According to that document. Yes, sir.

20 Q. And I'll also hand you Defendant's Exhibit No. 103, okay?

21 A. Okay.

22 Q. Ask you if it is also an ATF Form 4473 like the other two
23 I've already shown you?

24 A. Yes, sir, it is.

25 Q. And does it not relate to No. 2 here? I'll read the

1 serial number, or it's a .12 gauge shotgun, serial number
2 20949.

3 A. It says 20947 on this form, sir.

4 Q. A Benelli Model 121 M1 .12 gauge shotgun?

5 A. Yes, sir. But the serial number on here is 20947.

6 Q. Yeah. And you wrote some serial numbers down wrong too,
7 didn't you?

8 A. I occasionally do. Yes, sir.

9 Q. It's this gun?

10 A. I don't know, sir.

11 Q. Does it relate to Doug Friesen?

12 A. Yes, sir, it does.

13 MR. MARTIN: Your Honor, I'll move for introduction of
14 that one.

15 MR. KUMIEGA: No objection.

16 THE COURT: Will be admitted.

17 Q. (By Mr. Martin) And if the last digit it, in other
18 words, on this one, I won't write on Mr. Kumiega's chart, the
19 last digit here, instead of being a 9, it's written down 7,
20 right?

21 A. That's correct.

22 Q. And if the digit is written down wrong, that would
23 explain why he couldn't have No. 2 in his possession on that
24 date, wouldn't it?

25 A. If it was just a numerical -- yes.

1 Q. Okay. If we go to that exhibit, because that firearm was
2 transferred in 1995, right?

3 A. That's correct.

4 Q. Number -- I'm going to hand you what I'll mark for
5 identification purposes Defendant's Exhibit 104, and ask you if
6 it's also an ATF Form 4473.

7 A. Yes, sir, it is.

8 Q. And is -- does it relate to the firearm that is described
9 in No. 6, a Browning Model Stalker .10 gauge, No. 6 here,
10 10276NXT92?

11 A. Yes, sir.

12 MR. MARTIN: Your Honor, I'll move for introduction of
13 Defendant's Exhibit 104.

14 MR. KUMIEGA: No objection.

15 THE COURT: Will be admitted.

16 Q. (By Mr. Martin) Now, is that No. 6 that we just talked
17 about?

18 A. Yes, sir.

19 Q. Okay. And that shows that on 1994, that gun was
20 transferred to Mr. Friesen's personal firearm collection,
21 right?

22 A. Yes, sir.

23 Q. And as a personal firearm, as we discussed earlier, he
24 doesn't even have to provide those to you, right?

25 A. If he would have had them marked and segregated, no, sir,

1 I would n' t have had to seen them.

2 Q. Obviously they were segregated because you said you
3 di dn' t see i t.

4 A. I just was answering your questi on.

5 Q. Well, if you didn't see it it was probably segregated,
6 would n' t you agree? Maybe it was under a sink?

7 A. I have no idea, si r.

8 Q. Now, what's the serial number on that one?

9 A. 10276NXT92.

10 Q. Okay. Now, you inventoried some fi rearms i n Mr.
11 Friesen's basement, right?

12 A. Yes, si r.

13 Q. Okay. And did you prepare a work sheet of that
14 i nventory?

15 A. Yes, si r, I di d.

16 Q. I'm going to show you, is this a page from that work
17 sheet? Or you may have a better copy.

18 A. That is, I believe this is something Ms. McGrew di d at
19 the time of the search warrant. It's not my work sheet.

20 Q. It's not your work sheet? Now, you were provi ded, I
21 think we talked about, some records of Mr. Friesen's relating
22 to his -- that he provided you on the 26th, right?

23 A. Yes, si r.

24 Q. Okay. In there is there an Exhi bi t 1171? This was i n
25 the records that were provided to you by Doug, right, Exhi bi t

1 4.2?

2 A. I'm not sure. Let me look.

3 Q. I'll represent to you that that record came from Exhibit
4 4.2, which has previously been introduced by the government and
5 identified as records that were provided to you by Doug.

6 A. Yes.

7 Q. And is that a Remington shotgun, Model 870 .12 gauge
8 shotgun, serial number 43237M3?

9 A. The one I'm looking at has B432373M.

10 Q. One of the numbers is off one digit, right?

11 A. I don't know, sir.

12 Q. In fairness, let me bring this up to you. B47, I think
13 the registration shows 43, 2373M.

14 A. That is one digit differences. Yes, sir.

15 Q. Same model, same brand of gun and everything else?

16 A. Yes, sir.

17 Q. And that's No. 8 on there, right?

18 A. Yes, sir. Oh, no, sir, it is not.

19 Q. No, sir, it is not No. 8? Excuse me, you're right. No.

20 7. Is that --

21 A. Yes, sir.

22 Q. Did I put it on the wrong number?

23 A. Yes, sir.

24 Q. Okay. Thank you. Sorry.

25 Now, Mr. Friesen provided to you a personal firearm list,

1 di d he not?

2 A. Yes, si r.

3 Q. And when di d he do that?

4 A. I believe Ms. McGrew opened it at the office on March
5 4th.

6 Q. And on March 4th -- do you have that, ma'am?

7 A. Yes, si r.

8 Q. And could you go to that list for me?

9 THE COURT: What exhibit number is it, Counsel?

10 MR. MARTIN: I'm trying to find out from the
11 government, your Honor. I believe it's Exhibit 4.3.

12 Q. (By Mr. Martin) You have the personal firearm list with
13 you, don't you, ma'am?

14 A. I don't know what exhibit number it is.

15 Q. I think it's exhibit -- let me help out here. 4.3. Does
16 that -- is that the same thing right there?

17 A. Yes, si r.

18 Q. Okay. And you got it I think you said on March 4th?

19 A. Ms. McGrew opened it at the office on March 4th.

20 Q. And is that it up here?

21 MR. MARTIN: And could we zoom in on Item No. 6 up
22 here? Just get a little closer.

23 Q. (By Mr. Martin) Do you see Item No. 6 on Mr. Friesen's
24 personal list there, ma'am?

25 A. Yes, si r.

1 Q. That is a shotgun, is it not?

2 A. Item No. 6 is a Remington .12 gauge shotgun, or it
3 appears to be.

4 Q. And the serial number on that personal list is a, No. 6,
5 is it not, PC5429009?

6 A. I believe it's PC542709.

7 Q. And that's the same number that we have here on No. 8, is
8 it not? PC542709.

9 A. Yes, sir.

10 Q. So we know from the personal list Mr. Friesen gave you
11 that that firearm was accounted for as a personal weapon from
12 that list he gave you; is that right?

13 A. It was on his personal inventory. Yes, sir.

14 Q. And that's No. 8?

15 A. Yes, sir.

16 Q. And if we go to the next one, No. 9 on the list, that's a

17 A. No. 9?

18 Q. On this list right here.

19 A. Oh, I'm sorry.

20 Q. It's a .30 caliber rifle?

21 A. Yes, sir.

22 Q. And --

23 MR. MARTIN: Bonnie, could we zoom in on No. 7 up
24 there on the same list we just had?
25

1 Q. (By Mr. Martin) And there's a serial number on there, is
2 there not, a .30 caliber rifle, 457449; is that right?

3 A. Yes, sir.

4 Q. And if we go -- 457449?

5 A. Yes, sir.

6 Q. And that also is on the list, same list he provided you
7 as relates to that firearm?

8 A. Yes, sir.

9 Q. No. 9?

10 A. Yes, sir.

11 Q. That you got on March 4th?

12 A. Actually, it's No. 9 on there and No. 7 in here.

13 Q. Well, I'm talking about the chart. No. 9 on this chart.

14 A. Yes, sir.

15 MR. MARTIN: Let's go to the next page, if you would,
16 Bonnie. Thank you.

17 Q. (By Mr. Martin) No. 10. That's a Smith and Wesson
18 Airlite pistol, right?

19 A. Yes, sir.

20 Q. CAA4685?

21 A. Yes. SCA4685.

22 Q. I'm a little dyslexic. I apologize.

23 MR. MARTIN: If we could zoom in on No. 32 up there.

24 Q. (By Mr. Martin) On Mr. Friesen's personal list he gave
25 you March 4th, 2003, there's Airlite, what's the serial number?

1 A. It's SCA4685.

2 Q. Same serial number?

3 A. Yes, sir.

4 Q. Okay. Eleven, that's a pistol, it's CET5883, right?

5 A. Yes, sir.

6 Q. If we go to 33, the next number on there, there's an
7 Airweight CET5883?

8 A. Yes, sir.

9 Q. Same number?

10 A. Yes, sir.

11 Q. Given to you March 4th, 2003?

12 A. The book was. Yes.

13 Q. The personal list?

14 A. Yes, sir.

15 Q. That's where this is coming from?

16 A. Yes, sir.

17 Q. And then we go to No. 12, that's a Combat Commander Colt

19 A. Yes, sir.

20 Q. And that's No. 34 up there, right?

21 A. Yes, sir.

22 Q. Same number, right?

23 A. Yes, sir.

24 Q. Okay. So 10, 11, and 12, you had records that Doug had
25 provided you on March 4th, 2003, accounting for them, correct?

1 A. It lists them in the book. We never inventoried them.

2 Q. Lists them as personal weapons, right?

3 A. Yes, sir.

4 Q. Personal weapons that you're not entitled to see if they
5 are segregated, right? Right?

6 A. Yes. If --

7 Q. Okay. And at least those last five we went through you
8 have records of that were provided to you by Doug making them
9 his personal weapons, correct, ma'am?

10 A. I didn't count them, but yes, several of them there.

11 Q. So you would agree with me that, I say five, I may be
12 wrong, but several of them, we know the last three were --

13 A. The last seven firearms on the chart are from his
14 personal book.

15 Q. Right. Those are firearms, and I think at the beginning
16 of the cross-examination we made the point that if I have
17 firearms under my sink and I'm an FFL, a licensed dealer, and
18 they are segregated, you're not entitled to see them?

19 MR. KUMIEGA: To which we object. That's a
20 misstatement of her answer and the question.

21 THE COURT: Will be sustained. Rephrase your
22 question, Counsel.

23 Q. (By Mr. Martin) Do you have the right to see personal
24 firearms of a dealer that are segregated?

25 A. If they are segregated at the beginning of the

1 inspection, no.

2 Q. Now, let me ask you, ma'am: I believe you testified that
3 there's a silencer up there that Bobby Hunter had. Do you
4 recall that?

5 A. Yes, sir, I do.

6 Q. And Bobby Hunter, I believe, is a police officer with the
7 Edmond police force, right?

8 A. That's what I understand.

9 Q. And you were advised that he had that firearm for the
10 purpose of inspection and testing, right?

11 A. He said that he was trying it out for the Edmond TAC
12 Team.

13 Q. Okay. And you were talking about the transfer of that
14 firearm, and whether or not that was a transfer of the firearm.
15 Do you remember that, ma'am?

16 A. Yes, sir.

17 Q. And you're familiar that under, I'm assuming you're
18 familiar with the CFR relating to what a transfer amounts to, a
19 transfer, the intent to permanently be deprived of that? You
20 don't know?

21 A. No, I don't know. I don't --

22 Q. Okay. Was it your understanding that Bobby Hunter
23 permanently intended to hang on to that firearm, or was he
24 testing it out?

25 A. I have no idea what his intent was. I know that Mr.

1 Friesen didn't have it.

2 Q. Did you talk to Bobby Hunter?

3 A. Yes, I did.

4 Q. Okay. Did he tell you he intended to keep that?

5 A. He said that he had had it for three or four weeks, and
6 he had it to test-fire it or do a demo for the TAC team;
7 however, he had never gotten around to scheduling that.

8 Q. Had he bought it?

9 A. I have no idea.

10 Q. But it was returned and it's here now, it was actually
11 seized; is that right?

12 A. Yes, sir, it was.

13 Q. Now --

14 MR. MARTIN: Could we put up Exhibit 4.0?

15 Q. (By Mr. Martin) Do you have that in front of you, ma'am?

16 MR. MARTIN: If we could put up the first page of
17 Exhibit 4.0.

18 Q. (By Mr. Martin) Now, you were you provided these
19 records, where are these records or were these records that
20 were obtained during the search warrant?

21 A. I believe those are the records that I -- that were
22 provided to me.

23 Q. Okay.

24 A. I would have to look, though, at each page specifically
25 to determine that.

1 Q. Well, the point I'm going to ask you about is not about
2 the -- what I want to make sure I understand is, if these
3 records were provided to you, there's a lot of stuff marked out
4 on those records, right?

5 A. Yes, sir.

6 Q. Okay. When you received them they weren't marked out,
7 this was done for privacy purposes; is that right?

8 A. Yes, sir.

9 Q. Okay. I'm trying to -- the point I'm trying to make is
10 as a trial exhibit these have been, because of privacy
11 purposes, Mr. Friesen didn't not provide you the full documents
12 of all the documents in 4.0, did he?

13 A. That's correct.

14 Q. Okay. Now, I'm assuming, you said you've done over,
15 approximately in the neighborhood and maybe over 600 inventory
16 compliance inspections; is that right?

17 A. Yes, sir.

18 Q. And I'm assuming that you've been to all types of
19 facilities, professional, like Smith and Wesson or places like
20 that where they are really organized and everything, and then
21 you've been to some places where they were just garage shops.
22 Would that be correct?

23 A. Never been to Smith and Wesson but, yes, I've been in
24 very organized shops and extremely unorganized shops.

25 Q. Okay. Mr. Friesen is by no means the most unorganized

1 place you've been to, is it, ma'am?

2 A. The records were pretty much some of the most unorganized
3 I've ever seen but, no, his premise was in the unorganized.

4 Q. Well, the records show that he hasn't sold a gun, or had
5 not sold a gun since 1997, right?

6 A. I would have to look at 4473s, but I believe that's
7 correct.

8 Q. Do you think I made that up?

9 A. No, I do not.

10 Q. Sometime in 1997, maybe '98, maybe '96. Is that fair?

11 A. Sure.

12 Q. And he couldn't even find his records at first, right?

13 A. That's correct.

14 Q. It took him several days to find them. As a matter of
15 fact, he told you that they had fallen behind a safe and he had
16 to actually fish them out, right?

17 A. He told me that the day before I picked them up. Yes,
18 sir.

19 Q. And he said that he found them behind that safe that was
20 in his basement that y'all inspected, right?

21 A. He said behind the safe.

22 Q. Okay. Is that not what you thought, it was the one in
23 the basement?

24 A. Yes, sir. It was the only safe I knew of.

25 Q. Okay. And he had to get them out of that safe somehow,

1 or get them out from behind that safe somehow?

2 A. Yes, sir.

3 Q. And when you talked to him on the phone the day before he
4 provided them to you he didn't even have them in his possession
5 yet. Is that what you understood?

6 A. That's what I understood.

7 Q. He hadn't retrieved them yet, but he was going to do it,
8 whatever it took. Isn't that what he told you?

9 A. That's what he told me.

10 Q. Now, this chart that we've gone over today, this gun
11 here, let's just talk about that first gun. Are you aware
12 whether or not this gun was sold by him to CLEET in 1995,
13 ma'am?

14 A. No, I'm not.

15 Q. All right. And I can't remember which other one, if it
16 was 5 or not. Let me just ask you this about those records:
17 You never called Doug on the phone and said, hey, Doug, we've
18 done a compliance inspection and, gee whizz bang, we've got 13
19 unaccounted for firearms here. You didn't do that, did you?

20 A. No, sir, I did not.

21 Q. And the last one we haven't talked about is the Erb, the
22 machine gun, right?

23 A. Yes, sir.

24 Q. There's no disputing the fact that he had an Erb machine
25 gun registered to him, correct?

1 A. That's correct.

2 Q. And there's no disputing the fact that you saw an Erb
3 machine gun there that day, correct?

4 A. I never saw a machine gun that had an Erb marking or the
5 serial number E683 on it.

6 Q. Well, do you know what an Erb machine gun is?

7 A. I've never examined one personally.

8 Q. Okay. Well, let me just ask this question: You saw this
9 machine gun that day. Would that be a fair statement?

10 A. Yes, sir.

11 Q. Okay. And on this machine gun you wrote notes relating
12 to this part number next to the Erb machine gun in your
13 records?

14 A. Yes, I did.

15 Q. And would that be because Mr. Friesen told you this is
16 the Erb machine gun I have, and it's E685?

17 A. He told me that that was the Sten gun that was registered
18 to him.

19 Q. Okay. And the only Sten gun that was registered to him
20 is this one?

21 A. Yes, sir.

22 Q. Now, after March of 2003, you have other conversations
23 with Doug, do you not?

24 A. Yes, I do.

25 Q. As a matter of fact, in approximately May of 2003, a

1 couple months later, he called you on the phone, didn't he?

2 A. I don't remember -- I can look at my notes and tell you
3 what date.

4 Q. Did he call you on May 8th?

5 MR. KUMI EGA: Objection to approaching the witness,
6 your Honor.

7 THE COURT: You may approach.

8 Q. (By Mr. Martin) I'm going to show you your notes, ma'am.
9 Did he talk to you on May 8th?

10 A. Yes, sir.

11 Q. And on May 8th, did he tell you that he wanted to sell
12 some of the, quote, special firearms, Title 2, Class 3, Class
13 3, Title 2, whatever they are?

14 A. Yes, sir, he did.

15 Q. He wanted to sell a couple of silencers and a machine
16 gun, right?

17 A. Yes, sir. Well, let me -- I'm sorry.

18 MR. MARTIN: May I approach, your Honor?

19 THE COURT: Yes.

20 THE WITNESS: He said he wanted to sell a couple of
21 silencers and a machine gun.

22 THE COURT: I think she found her notes.

23 MR. MARTIN: Okay.

24 Q. (By Mr. Martin) And he wanted to make sure he did it
25 properly, didn't he?

1 A. That's what he was asking me. Yes, sir. He asked me if
2 he could put them on consignment to sell them.

3 Q. He didn't want to do anything that would be
4 inappropriate. That's why he called you because he asked you
5 for advice on how to do that, didn't he?

6 A. Yes, sir.

7 Q. And you told him what would be appropriate under the ATF
8 guidelines and regulations?

9 A. Yes, sir.

10 Q. As a matter of fact, you told him, I think, or maybe
11 provided to him the forms that he would need to complete these
12 transfers lawfully, right?

13 A. I told him how he could do that. I don't remember if I
14 sent him the forms or not.

15 Q. Okay. And did he tell you which firearms he was wanting
16 to transfer?

17 A. No, he did not.

18 Q. And you know now, do you not, that one of the firearms he
19 intended on transferring was this gun?

20 A. Sometime after the search warrant I heard that there was
21 paperwork to transfer that firearm, paperwork had been found to
22 transfer that firearm.

23 Q. And the paperwork to transfer this arm that, this
24 firearm, you're familiar with, had the E683 serial number on
25 it, right?

1 A. I think so. Yes, sir.

2 Q. And so approximately two months later, May 8th of 2003,
3 he contacts you about the sale of a firearm, and the paperwork
4 reflects it's this firearm, right?

5 A. I have no idea when he filled out that paperwork.

6 Q. The conversation occurred on May 8th?

7 A. The conversation occurred on May 8th. Yes, sir.

8 Q. And whenever the paperwork was filled out, that serial
9 number was on the paperwork?

10 A. As far as I know.

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

12 THE COURT: Yes.

13 (Brief pause)

14 Q. (By Mr. Martin) The 19th of February, you went to Mr.
15 Friesen's office on two separate occasions, right?

16 A. Yes, sir.

17 Q. The first time you were there for how long?

18 A. I don't remember specifics. It wasn't very long; less
19 than an hour.

20 Q. Okay. And when I say that, I'm including going to the
21 basement at his residence.

22 A. You said the first two times you visited the office.

23 Q. Let me rephrase it. I'll start over, I'm not real good
24 on questioning sometimes. February 19th you went to his office
25 and you went to his residence on your first visit, right?

1 A. Yes, si r.

2 Q. Then you went back to hi s office, ri ght?

3 A. Yes, si r. On the fi rst vi si t on the 19th, we drove back
4 there but we di d not enter the offi ce.

5 Q. How long was that fi rst vi si t on the 19th? How long were
6 you there?

7 A. Several hours.

8 Q. Two? Three?

9 A. Approximate ly, I don' t remember exact ly, two, two and a
10 hal f. I' m not sure exact ly.

11 Q. And the second, you came back that afternoon for what
12 I' ll call the second vi si t on the 19th. How long were you
13 there?

14 A. Maybe 30, 40 mi nutes. Maybe a li ttle longer. I don' t
15 know exact ly.

16 Q. Okay. All ri ght. And I believe you testi fi ed that you
17 and Agent McGrew and Mr. Friesen on the second vi si t went
18 upstairs and looked at some other fi rearms?

19 A. Inspector McGrew and I and Mr. Friesen di d. Yes, si r.

20 Q. And that' s the fi rst time on the second vi si t that you
21 saw a Sten?

22 A. That' s correct.

23 Q. And in the sequence of events, how many fi rearms di d you
24 see there?

25 A. May I look?

1 Q. Sure. I want you to.

2 A. Six firearms.

3 Q. Okay. Which one was the Sten?

4 A. In that order, I believe it was the last one, but I'm not
5 positive.

6 Q. Okay. And how long did you view it?

7 A. We looked at it for several minutes. I examined it very
8 thoroughly, talked with Haley about it, she joined me, she and
9 I looked together, then I handed it to her, she looked at it,
10 then we gave it to Mr. Friesen. So it was several minutes we
11 were all looking at it.

12 Q. And it was ultimately decided then to write this D number
13 here, right?

14 A. That was the only number we saw on the firearm to record.

15 Q. Well, there's some other numbers on there.

16 A. They don't appear to be serial numbers, though.

17 Q. There's an AL254. I'm looking at it.

18 A. Yes, sir.

19 Q. And then above that D number there's an LB. Do you know
20 what that stands for?

21 A. No, I do not.

22 Q. And when you left you never told Mr. Friesen that in your
23 opinion he was in possession of an unregistered firearm, did
24 you, ma'am?

25 A. No, I did not.

1 Q. And he remains supposedly in possession of that
2 unregistered firearm until the search some 16, 18 months later,
3 right?

4 A. As far as I know. I have no idea where that gun went in
5 between.

6 Q. Well, it was still in his possession when the search
7 warrant was executed?

8 A. Yes, it was.

9 Q. But the ATF let him maintain that, they let them hang on
10 to it for 18 months, right?

11 A. Yes, sir.

12 MR. MARTIN: Nothing further.

13 THE COURT: You may redirect.

14 MR. KUMIEGA: To save the Court time and save the jury
15 time, if I may have a couple of minutes to go over these
16 numbers and I can flash them quick to the inspector, and I
17 think I can save a lot of time instead of going through each
18 document and flash it on the board or flag it and go over.

19 THE COURT: I'm not sure what you need.

20 MR. KUMIEGA: I'm asking for a ten or 15-minute
21 recess, your Honor, so I can get the documents and present them
22 to the inspector, and save people a lot of time instead of us
23 flipping through the materials.

24 THE COURT: I was planning on having about another 30
25 minutes before we had a recess.

1 MR. KUMI EGA: Judge, I think we really would save -- I
2 think I can save a lot of time if we go right through it
3 instead of flipping back and going through it all. That's all.

4 THE COURT: Ladies and gentlemen, we'll take about a
5 20-minute recess at this time. I'll give you the same
6 admonition.

7 All rise while the jury exits.

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

10 THE COURT: Mr. Martin, I have a question. I don't
11 have a copy of, I don't believe I have a copy of your -- I
12 don't have a copy of --

13 Ms. Rowden, you may be excused while we're in recess.

14 I don't believe I have a copy of the exhibits that were
15 introduced relating to this chart. Let me ask you, and, of
16 course, I saw the ones that related to the bottom part of it.
17 Those earlier exhibits that you introduced, are those records
18 of transfers, that's what I understood, I saw the one at the
19 bench conference, are those records of transfers of those
20 firearms?

21 MR. MARTIN: They are, your Honor. They are all
22 identical, and I apologize, I did not realize that they -- I
23 was under the impression they were already in under another
24 exhibit, and that's what, and they weren't. A couple of them
25 were, but the ones that I introduced I intended to borrow, copy

1 and disseminate to everyone.

2 THE COURT: But they are all records of transfers?

3 MR. MARTIN: Yes, sir. They are Form ATF 4473, I
4 believe is what they are. Yes, sir.

5 THE COURT: Were they in -- I'll ask Mr. Kumi ega, were
6 they in the ATF's transfer records?

7 MR. KUMI EGA: Yes. Everything I believe is Bates
8 stamped, but I think out of brevity --

9 THE COURT: No, no. My question is, were those
10 exhibits in the ATF records on March 4th?

11 MR. KUMI EGA: No. I believe they are in the search
12 warrant.

13 THE COURT: No. No. I understand they were in Mr.
14 Friesen's records, and they were obtained in the search
15 warrant, but my question is, from what I saw on that one
16 exhibit, 101 or whatever it was, it looked like it was a form
17 that you send in to the ATF and transfer; is that right, Mr.
18 Martin?

19 MR. MARTIN: No, your Honor. It's not a form you send
20 in. And there is a dispute, your Honor, and it's not a dispute
21 to be taken up in the courtroom, but we believe there are
22 records that were provided to Ms. Rowden that she doesn't have,
23 but I didn't want to go there with that.

24 THE COURT: But those records, those exhibits were not
25 forms that you send in to the ATF, transfer forms?

1 MR. MARTIN: That's correct, your Honor.

2 THE COURT: Those are records that you just keep
3 personally; is that correct?

4 MR. MARTIN: If you're a firearms dealer you're
5 required by law to keep them and they have -- the originals of
6 those are now in ATF custody because he surrendered his
7 license.

8 THE COURT: No. No. I understand that. But what I'm
9 talking about on March 4th, were those transfer records, had
10 they been already sent in to ATF?

11 MR. MARTIN: On March 4th. No.

12 THE COURT: That's all -- because her chart she said
13 according to the firearms registration and transfer record she
14 didn't account for those. So I was wondering if in '95, when
15 that one gun was transferred, the 101, whether that had been
16 sent in in '95 or whether those are records you keep in your
17 own personal records.

18 MR. MARTIN: You're required by law, I believe, to
19 keep those, your Honor, and you don't send them in until you
20 surrender your license, is my understanding.

21 THE COURT: So they would not have been in the ATF
22 records on March 4th?

23 MR. MARTIN: No. The first time -- well, we think
24 that we provided them to them on the 19th, or the 26th.

25 THE COURT: I'm not asking that. I'm just asking,

1 they would have been in the ATF records back in '95 when the
2 transfer was made.

3 MR. MARTIN: Right.

4 THE COURT: Okay. We'll be in recess for about 15
5 more minutes.

6 (A recess was had, after which the following was had in
7 open court:)

8 THE COURT: Mr. Kumi ega, you may re-exami ne.

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

10 REDI RECT EXAMI NATION

11 BY MR. KUMI EGA:

12 Q. Ms. Rowden, after the break did you have an opportuni ty
13 to peruse some of these records?

14 A. Yes, I did.

15 Q. Okay. Now, first of all, let's go over the Form 4473s.
16 You used that to compile the chart; is that correct?

17 A. Yes, I did.

18 Q. 4473s are what again?

19 A. They are fi rearms transaction records, and I used the
20 ones that were provided to me by Mr. Friesen on 2/19 of '03.

21 Q. Okay. Those things are sel f-reporting documents; is that
22 correct?

23 A. Yes, si r.

24 Q. ATF doesn't have a central reposi tory in when you sell a
25 fi rearm the document goes to D.C. or whenever, correct?

1 A. No, sir. The licensee maintains the record.

2 Q. Okay. The dealer keeps the records?

3 A. Yes, sir.

4 Q. So you have no idea from your background when you look at
5 documents that accuracy of the documents; is that correct?

6 A. That's correct.

7 Q. And everything that you did, the chart that you compiled
8 is a snapshot of your inventory on March 4th, 2003; is that
9 correct?

10 A. Yes, sir.

11 Q. All right. March 4th, 2003. That's the Polaroid you
12 took that day; is that correct?

13 A. At that instant. Yes, sir.

14 Q. Okay. Anything subsequent to that, such as the book that
15 was found in the search warrant, you never had the opportunity
16 to look at; is that correct?

17 A. That's correct.

18 Q. You can't -- are you telling the Court or the jury you
19 can't account for the accuracy of those documents?

20 A. All I can account for is the documents he provided to me,
21 and not to their accuracy.

22 Q. Okay. Let me ask you this: Testimony is that Mr.
23 Friesen sent your office personal firearms records; is that
24 correct?

25 A. That's correct.

1 Q. And what's the number on that, please, if you can look in
2 the records? Is that 4.1? No, excuse me, that's 4.3.

3 A. Okay.

4 Q. Take a look at that. Do you see that?

5 A. Yes, sir.

6 Q. That's what he gave you; is that correct?

7 A. This is what he mailed to the ATF office. Yes.

8 Q. All right. And you're telling -- you're telling the jury
9 that from 12, I think going up at least to number 8, you never
10 found them in your inventory?

11 A. From 12 to 6 --

12 Q. Okay.

13 A. -- actually, the last seven -- between 12 and 6 are --
14 were firearms out of his personal book.

15 Q. Okay. Out of his personal book?

16 A. Yes.

17 Q. You never found them when you did the inventory; is that
18 correct?

19 A. That's correct.

20 Q. All right. You don't know the accuracy of that document;
21 is that correct?

22 A. No, I do not.

23 Q. This is what he gave you subsequent to you going into the
24 gun cabinet or the gun vault in the residence?

25 A. Yes, sir.

1 Q. Okay. You never found those guns?

2 A. We never inventoried those firearms.

3 Q. Okay. Now, let me ask you this: Counsel asked you
4 questions about personal firearms and business firearms; is
5 that correct?

6 A. Yes, he did.

7 Q. When you did the inventory search starting on February
8 19th, 2003, Mr. Friesen was present; is that correct?

9 A. Yes, he was.

10 Q. And how was he telling you which guns were personal and
11 which guns were business?

12 A. He would just verbally indicate when he picked up each
13 gun.

14 Q. And what are the rules regarding that, please?

15 A. In Industry Circular 72-30 it tells you, as a licensee,
16 if you're going to have your firearms in your business premise
17 or places of storage, then you have to have them segregated
18 and/or marked as personal firearms.

19 Q. Right. And he didn't do that; is that correct?

20 A. The majority of the firearms we inventoried were all
21 commingled. Yes.

22 Q. The analogy was about the firearms under the sink. Do
23 you remember that question?

24 A. Yes, I do.

25 Q. All right. Mr. Friesen's place of business to sell

1 fi rearms is the law office; is that correct?

2 A. Yes, sir.

3 Q. And that's the yellow line; is that right?

4 A. Yes, sir.

5 Q. Okay. Does he have to account for all his personal
6 fi rearms in his place of business when you're doing an
7 inventory?

8 A. Not normally, but if they are commingled, then yes, we
9 inventory every firearm.

10 Q. And if they are commingled, let me ask you this: How
11 would a reasonable person, or what's the ATF regulation for
12 segregating personal versus business?

13 A. Industry Circular 72-30 says they will be tagged as
14 personal or segregated somehow such as all my personal firearms
15 are in this one location, every other firearm here is a
16 business firearm.

17 Q. Okay. During the time you commenced the search, or the
18 inspection both at the office and at the residence, did he ever
19 say -- tell you about the segregation of the firearms or were
20 there any documentations to support that?

21 A. No. He had no records to support any -- I mean, there
22 were no records at that point.

23 Q. Okay. Let me ask you this: You have now examined, after
24 you were on the stand, you now examined your records and your
25 summary chart; is that correct?

1 A. Yes, si r.

2 Q. Are there any mi stakes in there you can tell the jury
3 about?

4 A. Yes, there is one mi stake on there. Gun No. 6, a
5 Browning Model Stalker .10 gauge shotgun, serial number
6 10276NXT92, appears to be properly disposed of on an ATF Form
7 4473. It was the second fi rearm listed on that form, and I
8 overlooked it in my analysi s.

9 Q. So there are two fi rearms on that form?

10 A. That' s correct.

11 Q. And you missed the second one?

12 A. That' s correct.

13 Q. So are you telling us that there are now 12 fi rearms that
14 you believe are still unaccounted for?

15 A. Yes, I do.

16 Q. Okay. So thi s number --

17 THE COURT: Wait a mi nute. When you say "still
18 unaccounted for", you mean as of March 4?

19 Q. (By Mr. Kumi ega) Yes. As of March 3, 2003.

20 A. March 4th.

21 Q. March 4th, 2003. Okay. Now --

22 MR. KUMI EGA: Your Honor, I believe I have a
23 sti pulati on that we talked about. Your exhi bi ts, Counsel , 101
24 to 104.

25 MR. MARTI N: Correct.

1 MR. KUMI EGA: Your Honor, I think there's a
2 stipulation that these firearms were not found in the records
3 that Mr. Friesen provided the inspector in February 2003, but
4 were discovered during the search warrant on June 10th, 2004.

5 MR. MARTIN: The stipulation is that the records, the
6 exhibits, your Honor, were not within the records. Exhibits
7 104 through -- 101 through 104, the exhibits, not the firearms.

8 THE COURT: They were not in the records -- they were
9 in the records that were seized in the search warrant; is that
10 right?

11 MR. KUMI EGA: Correct, your Honor.

12 THE COURT: Mr. Friesen's records?

13 MR. KUMI EGA: Correct.

14 MR. MARTIN: Yes, sir.

15 Q. (By Mr. Kumi ega) Let me ask you this, Inspector: What
16 is the relevance of the guns seized, excuse me, the record book
17 seized during the search warrant as opposed to your analysis
18 some 16 months before that?

19 A. None. It has no bearing on what I did that day or
20 analyzed that day.

21 Q. And why not?

22 A. Because as of that point we had that many firearms
23 missing and there was still a registered Sten machine gun, NFA
24 registered Sten machine gun that we had never seen, and there
25 was an unregistered machine gun in Mr. Friesen's presence, or

1 in hi s possessi on.

2 Q. Now, there was a questi on about the silencer. Mr.
3 Friesen told you that he transferred the silencer to --

4 MR. MARTIN: Your Honor, I object to the word
5 "transfer". I don't believe that's ever been used and
6 testi fied to.

7 THE COURT: That will be sustained.

8 Q. (By Mr. Kumi ega) What does Mr. Friesen say to you about
9 the silencer that went to the police officer?

10 A. He said he had given it to Bobby Hunter to try out for
11 the TAC, or try it out for the TAC team, and Bobby Hunter was
12 in possession of the silencer.

13 Q. Okay. Do you still stick by the statement that for him
14 to do that he needed proper ATF paperwork from the NFRTR?

15 A. That's correct. He needed to have it registered to, or
16 apply for registrati on to transfer it to Bobby Hunter prior to
17 handing the silencer over to Bobby Hunter.

18 Q. Do you know what's found in Title 26 United States Code
19 5861?

20 A. The NFA, National Fi rearms Act.

21 Q. All right. And it talks about transfers of guns
22 illegally; is that correct?

23 A. That's correct.

24 Q. And let me ask you this: Is the bottom line, if you
25 transfer a fi rearm wi thout permissi on it's a felony?

1 MR. MARTIN: Your Honor, I object to this whole line
2 of questioning.

3 THE COURT: I don't think she's qualified as a legal
4 expert.

5 MR. KUMIEGA: Okay. Can I show her the document, your
6 Honor, if she can read the statute?

7 THE COURT: She's not a lawyer. I don't think she's
8 qualified as a legal expert. She can testify as to her
9 understanding as a compliance officer what you can do and not
10 do.

11 Q. (By Mr. Kumi ega) Now, you said that you're not a law
12 enforcement officer; is that correct?

13 A. That's correct.

14 Q. And the timing of an indictment is not in your purview;
15 is that correct?

16 A. That's correct.

17 Q. The investigation is really not in your purview either;
18 is that right?

19 A. That's correct.

20 Q. Who does the criminal investigations?

21 A. The criminal enforcement side, special agents of ATF.

22 Q. Okay. And you do, would you call the administrative
23 side?

24 A. Compliance inspections.

25 Q. Okay. Now, during your analysis -- excuse me, going into

1 the business, you were armed with the fact that he had these
2 NFA weapons, the 15 or 17 that were flashed up there in one of
3 the exhibits; is that correct?

4 A. Yes, sir.

5 Q. And you knew that he's supposed to have a Sten machine
6 gun Mark II with E683; is that correct?

7 A. That's correct.

8 Q. But you only found the D98543 number; is that correct?

9 A. Yes, sir.

10 Q. Did you have an inkling at that time that something was
11 wrong?

12 A. Absolutely. I knew that there was a firearm that was
13 registered to him that I had not seen, and I suspected at that
14 moment that ---

15 MR. MARTIN: Your Honor, I object to whatever she
16 suspected. I think it's just total speculation and giving her
17 a chance to make a speech, and I object.

18 MR. KUMIEGA: We'll withdraw the question.

19 Q. (By Mr. Kumi ega) You were armed with E683, right?

20 A. With the registry with that number on it. Yes.

21 Q. Upstairs with you and the defendant and Ms. McGrew, the
22 only number you found was a part number; is that correct?

23 A. D95843.

24 Q. Is the machine gun next to you, please, the unregistered
25 machine gun?

1 MR. MARTIN: Your Honor, I object to Mr. Kumi ega
2 referring to it as the "unregi stered machi ne gun". It's an
3 exhi bi t, i t' s 3. 16.

4 THE COURT: It wi ll be sustained.

5 MR. KUMI EGA: May I approach, your Honor?

6 THE COURT: Yes.

7 Q. (By Mr. Kumi ega) Inspector, do you see the D part
8 number?

9 A. Yes, sir. I can see where it is; I have to put my
10 gl asses on to actual ly read it, though.

11 Q. You see it?

12 A. Yes, sir.

13 Q. And you do you see the E, the purported E serial number?

14 A. Yes, sir, I do.

15 Q. Which is easier or harder to read?

16 A. The E683.

17 Q. Is easier or harder?

18 A. It's easier, much easier to read.

19 Q. Okay. And how many -- can you show the jury the finger
20 span between that and the serial number, please?

21 A. About that far (i ndi cati ng).

22 Q. Now, serial numbers. One of the questions was you never
23 di sassembl ed the fi rearm; is that correct?

24 A. That's correct.

25 Q. Are you supposed -- are fi rearms supposed to be

1 disassembled to search for serial numbers?

2 A. Absolutely not.

3 Q. Can you tell us why not?

4 A. The serial number should be in a visible area on the
5 receiver of the firearm. You should not have to disassemble
6 it.

7 Q. Now, regarding the condition of the firearm, you said,
8 let me ask you this: Is that firearm in basically the same
9 state that when you first observed it back in February of 2003?

10 A. Yes, it is. The paint is very worn and scratched up.
11 There may be some new and additional scratches, and it now has,
12 another difference is it now has E683 on the firearm.

13 Q. Okay. Was there -- did you ever see any paint camouflage
14 through your ten years or so doing this on that firearm?

15 A. Have I ever -- did this firearm have paint on it?

16 Q. Yes. Do you think it was distorted or the serial number
17 was covered up through your experience?

18 A. No, I do not.

19 Q. Now, you gave that gun to Mr. Friesen, the Sten, right,
20 during the inspection?

21 A. Yes.

22 Q. And what -- again, what did he identify as the serial
23 number?

24 A. He identified D95843 as the only number he could find on
25 the gun, so he assumed it was the serial number.

1 Q. And did he give it to you -- tell you about some kind of
2 historical account of the firearm?

3 A. He said that these -- he said he thought -- when I told
4 him that that did not match the serial number on his registry,
5 he said that maybe the serial number was on the inside of it or
6 something, because these were stamped out in garages and
7 kitchens by citizens during World War II.

8 Q. Let me ask you this, ma'am: When you get business
9 records from a dealer are they supposed to be formatted in a
10 certain way?

11 A. Yes.

12 Q. Tell us about that, please.

13 A. The acquisition and disposition record?

14 Q. Yes.

15 A. They should be in a bound form, and they should include
16 all the acquisition information such as the date they acquired
17 it, who they acquired it from, the manufacturer, the caliber,
18 the type of firearm it is, the serial number, the -- I hope
19 I've said everything -- the date that it was disposed of, who
20 it was disposed of, and if it was an individual, their address,
21 or, if it's a licensee, their name and their license number.

22 Q. Are you telling the jury now that the document you
23 received in Government's Exhibit 4.2, if you can look at that.

24 A. 4.2.

25 Q. Excuse me. I think I got the wrong -- what is the

1 acqui si ti on and di s po si ti on, the A&D, what is it? 4.1.

2 A. Okay.

3 Q. Again, what are those, please?

4 A. This is the -- a copy of the acqui si ti on and di s po si ti on
5 record that Mr. Friesen provided to me on February 26th.

6 Q. Okay. Did he tell you that was the nature of the
7 documents he was gi vi ng you?

8 A. We had been looking -- he had been looking for his
9 acqui si ti on and di s po si ti on record for almost a week. Yes. He
10 said this was -- in fact, it says, "Fi rearms Acqui si ti on and
11 Di s po si ti on Record" on the page.

12 Q. Is that -- and is that in your writing or his writing?

13 A. That's actual ly typed on the page, a heading on the page.

14 Q. Did you put it on there?

15 A. No, I did not.

16 Q. Who put it on there?

17 A. I assume Mr. Friesen did, or -- I don't know.

18 Q. Let me ask you this: Is there something pecu li ar about
19 that form of record that he gave? Is there something mi s si ng?

20 A. Yes. It's not bound and there's no di s po si ti on
21 i nformation.

22 Q. What does that mean?

23 A. It means it's not in compl iance with the regu la ti ons.

24 Q. So he gave you the acqui si ti on side; is that all that's
25 in there?

1 A. That's is all that's in here. There is no disposition
2 information.

3 Q. Now, anything subsequent to March of '03, you can't tell
4 if the guns were there or not; is that correct?

5 A. I'm sorry. I didn't understand that.

6 Q. You did an inventory on March 3rd, excuse me, March 4th,
7 2003. That's the snapshot date, right?

8 A. That's the day we inventoried the last of the firearms.
9 Yes.

10 Q. All the records after that, including the search warrant,
11 are stuff that Mr. Friesen created that was found during the
12 search; is that correct?

13 A. Right. Doesn't mean I had it.

14 Q. Right. You don't know about whether the document, the
15 accuracy of those documents. Is that what you're telling the
16 jury?

17 A. No, I do not.

18 Q. You still stand by 12 firearms, not 13?

19 A. Twelve. Yes.

20 Q. You were using glasses, reading glasses. Are you still
21 certain about not seeing that serial number?

22 A. I'm absolutely positive.

23 Q. And was the lighting good enough for you on that day?

24 A. Yes. You know, I examined it in the room, and because I
25 did not find E683, I went to the window to make -- be doubly

1 sure that I had not missed it because of lighting, stood by the
2 window for a long time and examined it, and Ms. McGrew stood
3 right beside me and we both looked at it, and I handed it over
4 for her to do a self-examination. If -- can I add something?

5 Q. No. In the context of that examination, was there
6 something else that was going on? When you said "add
7 something", was that --

8 A. No. I was just going to say if I ever felt like I needed
9 more light I would have taken the gun outside or gotten a
10 flashlight. I would have done whatever I needed to do to feel
11 sure there was no other number.

12 Q. All right.

13 MR. KUMIEGA: Your Honor, if I may have a moment.
14 (Brief pause)

15 MR. KUMIEGA: Your Honor, since this concludes my
16 redirect of the inspector, I would ask that the firearm be
17 published now to the jury.

18 THE COURT: Let's wait.

19 Mr. Martin, do you have any recross?

20 MR. MARTIN: You bet.

21 THE COURT: Okay.

22 RECCROSS-EXAMINATION

23 BY MR. MARTIN:

24 Q. Prior to cross-examination I bet you were just as sure
25 that this chart was 100 percent accurate as you were that that

1 number wasn't on that firearm; isn't that true?

2 A. To the best of my ability.

3 Q. And now we know for sure that -- make sure I'm right here
4 -- you were definitely wrong on this one, number 6; is that
5 correct?

6 A. That's correct.

7 Q. And had I not cross-examined you, you would have told
8 that jury, and told that jury under oath that I am dead
9 positive we never saw that gun and I can't account for it from
10 the records that were provided to me; is that right?

11 A. Yes, sir.

12 Q. And you -- I don't know what's -- 3/4/03. These records
13 were based upon that date, 3/4/03, right?

14 A. Yes, sir.

15 Q. And that's the date you got Doug's personal list, right?

16 A. It's the date it was received in the office and the date
17 we inventoried the last, or Ms. McGrew inventoried the last
18 firearms.

19 Q. And obviously you'll agree with me, those personal
20 firearms that were on the list that were provided to you are
21 still on this list?

22 A. Yes, they are.

23 Q. And so number 8 and 9 on your list he has identified as
24 personal firearms, right?

25 A. Yes. They came from his personal book.

1 Q. And you asked him to provide you a log of his personal
2 firearms, and so 8 and 9 on this list means I own these, right?

3 A. I assume he does.

4 Q. So --

5 A. Or he was claiming to.

6 Q. So he claimed to own number 8, he claimed to own number
7 9?

8 A. Uh-huh.

9 Q. Meaning they are in his possession, they are accounted
10 for, he owns them personally?

11 A. He did not provide them for me to inventory at any time
12 on February 19th or March 4th when Haley was there, or Ms.
13 McGrew.

14 Q. Personal records? Personal records?

15 A. He did not provide those firearms for inventory.

16 Q. They are personal firearms, right? He identified them as
17 personal firearms?

18 A. On that form, yes, he did.

19 Q. Okay. He does not -- he doesn't give up his Second
20 Amendment right to possess a firearm just because he's an FFL,
21 does he?

22 A. No, sir, he does not.

23 Q. And these personal firearms you are not entitled to look
24 at if they are segregated?

25 A. We --

1 Q. -- do you -- are you, ma'am?

2 MR. KUMI EGA: Objection. Let her --

3 MR. MARTIN: I asked a question. Are you entitled
4 to --

5 THE WITNESS: When we conducted the inspection they
6 were not segregated.

7 Q. (By Mr. Martin) Well, you didn't even see them.

8 A. That's correct. I did not see those firearms.

9 Q. So he says I own them, they are not there, so they are
10 segregated. Would you agree with that? Maybe they were under
11 his kitchen sink.

12 MR. KUMI EGA: Objection. Speculation.

13 THE WITNESS: I have no idea where they were.

14 Q. (By Mr. Martin) Well, they weren't shown to you, would
15 you agree with that?

16 A. Yes, I do agree with that.

17 Q. And you agree with me on March 4th he said I have them in
18 my possession, these are my personal firearms. Do you agree
19 with that?

20 A. That's what he put on the piece of paper. Yes.

21 Q. And he also said that items number 10, 11, and 12, are my
22 personal firearms too, on March 4th?

23 A. There they are listed in his personal book.

24 Q. I have them?

25 A. I don't see anywhere on that document that says I have

1 these.

2 Q. Well, you asked him to provide you a personal list and he
3 gave you a personal list of weapons I have, my personal
4 firearms, right?

5 A. Yes. He sent it to the office.

6 Q. How could they be personal firearms if he doesn't have
7 them? Maybe I'm misunderstanding. Do you understand my
8 question?

9 A. No, I didn't.

10 Q. Okay. He represents to you in this list that I have five
11 firearms, number 8, 9, 10, 11, and 12, right?

12 A. Yes, sir.

13 Q. As personal firearms, right?

14 A. Yes, sir. They were on his personal inventory.

15 Q. Meaning he possesses them, owns them, right?

16 A. I assume.

17 Q. Okay. Now, you keep testifying as some kind of an expert
18 about the Federal Firearms Regulations that because of the
19 rules of the Federal Firearms Regulations. Are you familiar
20 with the Federal Firearms Regulations Reference Guide, ma'am?

21 A. Yes, sir, I am.

22 Q. And you keep referring to a special -- pardon me --
23 section number, right? An industry circular, you've mentioned
24 it several times. Do you remember that industry circular
25 number?

- 1 A. Yes, sir, I do.
- 2 Q. What is that?
- 3 A. Can I look at my book, please?
- 4 Q. Okay. Sure.
- 5 A. Right here. Industry Circular 72-30.
- 6 Q. 72-30. Is that the same one I have here, Industry
7 Circular 72-30?
- 8 A. It's a little different. It's what it's numbered. Yes,
9 sir.
- 10 Q. Okay.
- 11 A. It's in a different format than mine.
- 12 Q. It's in a different format, but it says that number,
13 right?
- 14 A. Yes, sir, it does.
- 15 Q. I tell you what, why don't you follow along with me and
16 we'll see if it's the same one.
- 17 "Industry Circular 72-30. Purpose" --
- 18 You tell me if I read it wrong.
- 19 "The purpose of this circular is to urge licensed
20 firearm dealers to identify their personal collection
21 of firearms kept at business premises."
- 22 Did I read that right?
- 23 A. You sure did.
- 24 Q. It says "to urge"; is that right?
- 25 A. Yes, sir.

1 Q. Does it say in that purpose you have to have, as you
2 testified about?

3 A. It says, further down here it says:

4 "A presumption exists that all firearms in a business
5 premise are for sale and accordingly must be
6 entered into the records."

7 Q. Does it say "have to have", was my question.

8 A. No, it does not.

9 Q. Okay. It's an urging; is that right? Is that what I
10 said, is that what I read?

11 A. It's an industry circular giving instructions to
12 licensees.

13 Q. Urging them to segregate, right?

14 A. That's what the language says. Yes, sir.

15 Q. Okay. Now, if I have, for example, one of these
16 firearms, items 8 through 12, let's just say, as one of my
17 personal firearms, and I'm an FFL dealer, and you show up for
18 an unannounced compliance inspection, which is what happened in
19 this case, and one of them is in the shop, it isn't going to be
20 there, is it?

21 A. I'm sorry?

22 Q. If one of them is in the shop getting repaired or reblued
23 or corrected, it won't be there when you show up for an
24 unannounced compliance inspection, will it?

25 A. Are you talking about a firearm that's in inventory?

1 Q. I'm talking about as in items 8 through 12, a personal
2 firearm.

3 A. If it was in his -- it should have been logged out of his
4 record to whatever gunsmith was working on it.

5 Q. A personal firearm, you have to keep a record of in your
6 logs that have to be provided to you?

7 A. No, sir, you don't if they are, again, if they've been
8 marked and there's records that identify them as personal
9 firearms. When we were doing the inventory I could not tell.

10 Q. Now, his business is his office, right?

11 A. Yes, sir.

12 Q. Those firearms were not at his office, were they, ma'am?

13 A. They weren't anywhere that I saw.

14 Q. So then they wouldn't have to be logged or anything?

15 A. Well, his residence was a place of storage, an extension
16 of his business place.

17 Q. You didn't see the firearms, you don't know that they
18 weren't being worked on, that he hadn't loaned them to a
19 friend? You don't know what happened to them?

20 A. No, I do not.

21 Q. But you did receive a record from him indicating five
22 were personal, you're saying you made a mistake on six, seven
23 there's one serial number off, isn't there, ma'am?

24 A. Yes. There is one number difference.

25 Q. You actually have number 7 in your inventory except that

1 7 on the records that you have is a different number?

2 A. That's correct.

3 Q. These others --

4 A. Excuse me. I don't have it in inventory. There was a
5 disposition document for that serial number.

6 Q. Okay. Minus one number?

7 A. It was a different number.

8 Q. A different number. You've seen acquisition and
9 dispositions on some of these others dating back to 1995 which
10 would have made it physically impossible for him to have had
11 them, have you not, ma'am?

12 A. You showed me some 4473s. Is that what you're referring
13 to?

14 Q. Right.

15 A. Yes, sir.

16 Q. Exhibits 101, 102, 103, 104, which would account for four
17 more guns, right?

18 A. Actually, 104 is the gun I said I did in error.

19 Q. 104 actually was in Government's Exhibit 4.02?

20 A. No. Yes, it was. 104 was in Government's Exhibit -- I
21 had this form. Yes, sir.

22 Q. Okay.

23 A. And I said that was my error.

24 Q. I guess you just didn't see it, did you?

25 A. Actually, it's a very common error with gun dealers also

1 when there's more than one gun on the form to miss the second
2 gun. It's very common, and probably would have been caught if
3 we had done a reconciliation.

4 Q. You had since September -- excuse me -- March 4th, 2003,
5 this is September 18, 2008, five and a half years to do a
6 reconciliation. How long do we have to wait for you to get the
7 records right, ma'am?

8 A. We never did a reconciliation. We discontinued the
9 inspection.

10 Q. Just indicted him instead?

11 A. I didn't do that.

12 MR. MARTIN: Nothing further.

13 THE COURT: Mr. Kumi ega?

14 MR. KUMI EGA: Yes, your Honor, as a follow-up to his
15 cross-exami nati on.

16 THE COURT: Go ahead.

17 REDI RECT EXAMI NATION

18 BY MR. KUMI EGA:

19 Q. Ma'am, on the 19th, when you either were there for the
20 first time or the second time, did you ask Mr. Friesen if this
21 was all the firearms he had in his possession?

22 A. Yes, I did.

23 MR. MARTIN: Your Honor, that's beyond the scope of
24 cross, recross.

25 MR. KUMI EGA: Obvi ousl y i t' s --

1 THE COURT: Be overruled.

2 Q. (By Mr. Kumi ega) You asked him when you exited that day
3 did he have any more firearms to show you; is that correct?

4 A. I asked him if he had any other firearms in inventory.

5 Q. Including business and personal; is that right?

6 A. That's correct, because they were commingled.

7 Q. And what did he tell you?

8 A. He said he had no other firearms.

9 Q. Thank you.

10 MR. KUMI EGA: Your Honor, the United States now would
11 ask for the --

12 MR. MARTIN: That opened a new door, your Honor.

13 THE COURT: All right.

14 RE-CROSS-EXAMINATION

15 BY MR. MARTIN:

16 Q. You came back and he showed you some more firearms,
17 didn't he?

18 A. He didn't show them to me, showed them to Inspector
19 McGrew.

20 Q. He said, hey, there's some other firearms, when Ms.
21 McGrew came back on a later date, that I forgot about?

22 A. That's correct.

23 Q. And he tried to show you everything as far as other than
24 these that we've talked about already too much, he tried, he
25 tried to show you everything that he could, and we'll exclude

1 these, okay?

2 A. I'm sorry?

3 Q. How many other firearms did he show you or Ms. McGrew
4 after the 19th?

5 A. I believe -- can I look?

6 Q. I wish you would. I want you to be accurate.

7 A. Seven firearms.

8 MR. MARTIN: Nothing further.

9 MR. KUMIEGA: No other questions, you Honor. We ask
10 that the firearm be published.

11 THE COURT: I'll just ask the jury, do they want to
12 see the firearm passed along at this point?

13 (Jurors indicate affirmatively)

14 MR. MARTIN: Your Honor, my concern is if we do that
15 we're going to delay further witnesses, because I don't want
16 the jury to look at it while other questions are being asked.

17 THE COURT: They are not going to look at it but five
18 minutes.

19 MR. KUMIEGA: Your Honor, can we use one of the court
20 officials to hand the firearm to the jury instead of me?

21 THE COURT: All right.

22 MR. KUMIEGA: And, your Honor, may Ms. Rowden point
23 out the serial number and part number before we start the
24 examination?

25 THE COURT: I think she's done that several times.

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

2 THE COURT: All I would ask is please not point it at
3 the judge or another juror.

4 MR. MARTIN: Judge, could we approach while we're
5 doing that. We don't need it on the record. I just want to
6 visit with you and Mr. Kumi ega a second.

7 (An off-the-record discussion was had at the bench:)

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

11 THE WITNESS: Yes, sir.

12 THE COURT: You may be excused.

13 Call your next witness.

14 MR. KUMI EGA: Yes, your Honor. The United States
15 would like to call Haley McGrew.

16 HALEY MCGREW,
17 called as a witness, having been duly sworn, testifies as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. KUMI EGA:

21 Q. Ma'am, would you introduce yourself to the jury?

22 A. My name is Haley McGrew.

23 Q. How are you employed?

24 A. I'm an entry operations investigator for the Bureau of
25 Alcohol, Tobacco, Firearms & Explosives.

1 Q. You're an inspector for ATF; is that correct?

2 A. That's correct.

3 Q. How long have you been doing that, please?

4 A. Since February of 2001.

5 Q. And prior to that work, can you tell the jury what else
6 you did, please?

7 A. I was employed with the Tulsa area ATF office as
8 investigative assistant in February of 1999. Prior to that I
9 worked for the U.S. Army Corps of Engineers for 13 years.

10 Q. In what capacity?

11 A. I was a program analyst. I had set -- I served as a
12 program analyst in several operations and maintenance field
13 offices.

14 Q. Let me ask you this: You also had on-the-job training to
15 be an inspector, or a compliance inspection for people who have
16 federal firearms licenses; is that correct?

17 A. That's correct.

18 Q. Okay. And you did that since, what, you said 2000?

19 A. February of 2001.

20 Q. 2001. And have you ever worked in tandem with Ms.
21 Rowden?

22 A. Yes, I have, on several.

23 Q. All right. Basically, how many inspectors are there in
24 Oklahoma City, please?

25 A. I believe that there are about eight to ten of us.

1 Q. Okay. And you're tasked to, I guess, regulate the
2 firearms, the sale of firearms; is that correct?

3 A. That is correct.

4 Q. Okay. You also -- you were involved in going to Mr.
5 Friesen's business in February 2003; is that correct?

6 A. That's correct.

7 Q. February 19, 2003, did you go with Inspector Rowden to
8 Mr. Friesen's office?

9 A. Yes.

10 Q. And the purpose was, please?

11 A. The purpose was to conduct a federal firearms compliance
12 inspection.

13 Q. All right. And did that commence by going to his
14 business?

15 A. Yes, it did. That was his premise address.

16 Q. Okay. And can you tell us in summary fashion what
17 happened initially the first time you knocked on the door,
18 please?

19 A. We both arrived early that morning, and we identified
20 ourselves to the receptionist and stated our purpose, which was
21 to conduct a firearms compliance inspection there, and that we
22 would need to see Mr. Friesen in order to do so.

23 Q. All right. And he came out and met you; is that correct?

24 A. Yes. He was not at the office at that time, and he
25 arrived a short period later.

1 Q. Then when he showed up did you inform him of the reason
2 for your visit?

3 A. Yes, we did. We identified ourselves and told him the
4 purpose of our visit.

5 Q. All right. Now, again, for the record, on that day,
6 February 19, 2003, he was a federal firearms licensee?

7 A. That's correct.

8 Q. Meaning that there were certain things he had to follow;
9 is that correct?

10 A. That's correct.

11 Q. All right. What happened after you informed him of the
12 inspection? If you can again in a summary fashion tell us what
13 happened in the morning.

14 A. He stated that he had -- we told him that we would need
15 to conduct an inventory of his firearms, and that we would need
16 to see all the records that he was required to keep.

17 Q. All right. How did he respond.

18 A. He was a little nervous, he talked rapidly, but was very
19 agreeable, and he said that he had some firearms upstairs and
20 that we would inventory those.

21 Q. All right. Is that -- so the first set of firearms were
22 the ones on the second floor?

23 A. Yes, sir.

24 Q. Particularly where on the second floor, please?

25 A. Particularly there were firearms that he had when we

1 first observed, I believe, that they were in the cedar closet,
2 and there was a firearm under his desk, the shotgun, and there
3 was a display case that had a Stinger, which is a small
4 firearm, and a Derringer.

5 Q. Did you make a proper recording of that?

6 A. Yes. We inventoried those and recorded them.

7 Q. All right. Did he tell you anything else about any other
8 firearms in his business?

9 A. No.

10 Q. All right. What happens next, please?

11 A. He told us that the remainder of his business, or his
12 inventory was at his house.

13 Q. All right. And how did you get to his house?

14 A. We followed him there in our vehicle to his house to
15 finish the rest of the inventory of firearms.

16 Q. All right. Were you invited? Did you just say we're
17 going to go over there? Tell the jury about that, please.

18 A. We stated that we would need to see the rest of the
19 firearms in order to complete the inventory, which is the
20 purpose of our visit. And he said the rest of the firearms are
21 at my residence, he said I can drive you, and we said that we
22 would follow him in our vehicle.

23 Q. And you in fact did that; is that correct?

24 A. That's correct.

25 Q. And tell us what happened when you got to the house.

1 A. He directed us into the house, we followed him down to a
2 basement area where there was a safe which he opened and we
3 inventoried those firearms.

4 Q. All right. Approximately how many firearms were in the
5 safe, please?

6 A. I think there were about 46 firearms in the safe.

7 Q. And tell us how the procedure was -- how you were doing
8 the hands-on inventory of the firearms, please.

9 A. He would -- he opened the safe and he would pull firearms
10 out, and we would observe them and record the manufacturer and
11 the serial number and what type of firearm it, like a shotgun
12 or pistol, and the caliber.

13 Q. Okay. Ma'am, if I could look at Government's Exhibit
14 3.2, please.

15 A. Yes.

16 Q. Now, it's my understanding that photograph was taken in
17 June of 2004; however, was the gun or the gun safe basically in
18 the same type of condition substantially when you first went
19 there in February of 2003?

20 A. Yes.

21 Q. All right. Tell us how that was working. Who would do
22 what and explain what's going on as the guns are being recorded
23 by you people.

24 A. I was recording the information about the firearm, Mr.
25 Friesen would pull the firearm out of the safe, and he and Ms.

1 Rowden would look at the firearm, and I would record.

2 Q. Was Mr. Friesen making any comments vis-a-vis each gun as
3 it was being examined by both of you?

4 A. He would make a statement every now and then, one he
5 believed to be a personal firearm, and one would be considered
6 a business firearm.

7 Q. Were there any tags or any notations to show the
8 difference between the business firearm and the personal
9 firearm independent of what Mr. Friesen was saying?

10 A. No. None of the firearms were tagged as business or
11 personal.

12 Q. Okay. How long did that take, if you know?

13 A. I would say that took a couple hours, approximately.

14 Q. Okay. And after that was concluded, was there any
15 conversation about Mr. Friesen's records, his business records,
16 his disposition records?

17 A. Yes. He said that at the time he couldn't locate his
18 business records, but that he would look for them and provide
19 those to us.

20 Q. All right. Was that -- where was that conversation about
21 the business records? Was that at the office or at the
22 residence?

23 A. It was at the residence, that I remember.

24 Q. Did Mr. Friesen display every firearm that he possessed
25 that day to you?

1 A. I believe that he did.

2 Q. What did he say about firearms he showed you, please?

3 A. When we were in the vault area he would, like I said,
4 pull them up and describe this is a personal gun, this is a
5 business gun, nothing was tagged. And he said there were more
6 firearms located at his office.

7 Q. All right. And did you, in fact, go back there?

8 A. Yes, we did.

9 Q. Okay. And did you commence an inventory of the office at
10 that time?

11 A. No. We went back to the office, though.

12 Q. All right. You go back to the office, is that right away
13 after you finish the inspection or look-see at the residence?

14 A. Yes.

15 Q. Tell us what happens next, please.

16 A. He said there were more firearms at his office, and we
17 said we need to look at those. And so we got in the vehicles,
18 followed him back to the office.

19 Q. Okay. And where did you go in the office, please?

20 A. We walked upstairs to his office area, and it was
21 occupied.

22 Q. How do you know that?

23 A. The door was shut and Mr. Friesen said his associate was
24 using it.

25 Q. All right. And did you come back later?

1 A. Yes.

2 Q. All right. How much time later, please?

3 A. It was approximately about four hours later.

4 Q. And when you went back did you go to the office?

5 A. Yes.

6 Q. And again, did you meet Mr. Friesen?

7 A. Yes.

8 Q. And what happened then, please?

9 A. Then he took us upstairs to his office area at that time,
10 and we inventoried the remainder of the firearms.

11 Q. Okay. Now, initially you said you inventoried three
12 firearms on the top floor the first time you went there?

13 A. Right.

14 Q. Then you go to the residence and you inventory
15 approximately 46 you said?

16 A. I think so.

17 Q. Then you go back four hours later and you inventory more
18 firearms; is that right?

19 A. Yes.

20 Q. How many firearms did you inventory in the second floor
21 on February 19, 2003?

22 A. We inventoried the display case guns, the Stinger and the
23 Derringer -- and I'm going to need to confer if that's okay.

24 Q. Sure.

25 A. We inventoried six firearms when we returned to the

1 office.

2 Q. Okay.

3 MR. KUMI EGA: A document fell. If I could retrieve
4 that.

5 Q. (By Mr. Kumi ega) You marked out how many you
6 inventoried?

7 A. Six.

8 Q. Six. And that was all upstairs?

9 A. Yes.

10 Q. Okay. This is all together or the second time?

11 A. The second time. Later that day we returned to the
12 office and inventoried six firearms.

13 Q. Okay. And what's the office look like, please?

14 A. When you walk in there's a desk, Mr. Friesen's desk,
15 there were two chairs, there's a sofa down from it with a round
16 table.

17 Q. All right. And what about the lighting conditions?

18 A. I thought the lighting was good.

19 Q. At any time did Mr. Friesen hand you a machine gun?

20 A. Yes.

21 Q. And was it the Sten machine gun?

22 A. Yes.

23 Q. Who did he give the gun to first, please?

24 A. Inspector Rowden.

25 Q. And what happened after she looked at and examined the

1 fi rearm?

2 A. She examined the fi rearm and I was again recording the
3 data, and she found a number on the magazine well, and she
4 stated the number, the D number.

5 Q. You had documentation that he had nothing registered
6 under D; is that correct?

7 A. Correct. It's the National Firearms Registration and
8 Transfer Record which lists all his registered NFA weapons, and
9 the Sten machine gun, the D number was not it.

10 Q. Okay. Were you ever -- did Ms. Rowden give you the
11 fi rearm?

12 A. Yes, she did.

13 Q. Did you examine it?

14 A. Yes, I did.

15 Q. I think behind you is Government's Exhibit 3.16. Do you
16 see the machine gun?

17 A. Yes.

18 Q. Can you look at that, please, look at that fi rearm? Is
19 that the same fi rearm you examined back in February, 19, 2003?

20 A. Yes.

21 Q. How do you know that?

22 A. On the magazine well there's this D number that we
23 recorded.

24 Q. Okay.

25 A. And it's in the same condition that I remember seeing it.

1 Q. Tell the -- show the jury what you did with the gun to do
2 a, I guess an inspection, please.

3 A. May I stand up to do so?

4 Q. Please.

5 A. We hold the firearm up in a safe direction, and we look
6 for the serial number, supposed to be on the receiver. If we
7 don't readily see it, we start looking at other places,
8 underneath, on the side, every location that we can find if we
9 need to at this point to do it so we'll examine it.

10 Q. And did you, in fact, do that?

11 A. Yes.

12 Q. Sit down, please. Now, did you do that, did you do that
13 examination just collectively or separately?

14 A. We did it both.

15 Q. You did it separately by yourself?

16 A. Yes.

17 Q. And then you did it with Ms. Rowden?

18 A. Yes.

19 Q. At any point in time did you invite Mr. Friesen to look
20 at the firearm?

21 A. Yes.

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

23 A. Yes. Once Ms. Rowden had looked at the firearm she also
24 gave it to me to try to find any number that matched the serial
25 number in his National Firearms Registration and Transfer

1 Record. I couldn't see the number other than the D number that
2 was on the magazine well, and so I gave the firearm back to Ms.
3 Rowden who then gave it to Mr. Friesen to look for the serial
4 number.

5 Q. All right. And what type of inspection did he do, if you
6 remember, regarding that machine gun?

7 A. He looked at it also completely. He took his time.

8 Q. And what number did he come up with?

9 A. He came up with the same number that we saw, the D number
10 on the magazine well.

11 Q. And what did he say about the D number?

12 A. He said that was it, he identified it as the serial
13 number.

14 Q. And did he say anything else about that firearm?

15 A. Yes. He said that they were manufactured rapidly during
16 World War II in France.

17 Q. Okay. Now, you said you've been doing this since '03,
18 '01?

19 A. 2001.

20 Q. Okay. And again, you've done how many?

21 A. Over 250 compliance inspections.

22 Q. Okay. Is there anything unusual about that serial number
23 from your examination of that gun?

24 A. Yes.

25 Q. Okay. Now, your testimony is that there was no serial

1 number on that gun that day; is that correct?

2 A. That's correct.

3 Q. What do you see unusual now, please?

4 A. I see a big serial number down below the very small
5 number that I saw that day.

6 Q. Okay. What does that mean to you, doing this for several
7 years?

8 A. Means it was placed on there after the inspection.

9 Q. Okay. Now, let me fast-forward to March the 4th, 2003.
10 You went with Ms., I guess Beverly Thomas to Mr. Friesen's
11 office; is that correct?

12 A. Yes.

13 Q. What was the purpose of that, please?

14 A. On, I believe it was February 27th, 2003, after we
15 returned Mr. Friesen his records he identified some additional
16 firearms that he had not shown us during the initial inventory,
17 and we made arrangements at that time to come back, and March
18 4th is when I came back to finish up the inventory.

19 Q. Let me ask you this: Now, you were out there both --
20 twice on the 19th; is that correct?

21 A. That's correct.

22 Q. And what other times did you go out there besides the
23 last day?

24 A. Besides the last day?

25 Q. Yes.

1 A. I believe that we, like I said, on the 26th, Ms. Rowden
2 retrieved the records, and on the 27th we both returned them.

3 Q. Okay. So you were there, you were there the 26th but not
4 the 20th and not the 27th; is that correct?

5 A. The 27th I accompanied Ms. Rowden back to take Mr.
6 Friesen's records back.

7 Q. Did you ever -- let me ask you this: Was there any
8 conversation about disclosing all his firearms to you?

9 A. Yes. On March 4th.

10 Q. What did he -- well, even before that, was there any
11 conversations about I've shown you all my firearms? Can you
12 tell the jury about that, please?

13 A. On the initial inventory on February 19th, after we had
14 made the second trip back to the office, he did not tell us
15 that there were any more firearms.

16 Q. Did you ask him is that your whole collection?

17 A. Yes. Ms. Rowden did.

18 Q. All right. And how did he respond?

19 A. That's it.

20 Q. But during that -- but after that you said he keeps
21 calling you guys up and finding more guns; is that right?

22 A. Right.

23 MR. MARTIN: Your Honor, I think on direct you
24 shouldn't lead your witness, and I object.

25 THE COURT: Will be sustained.

1 Q. (By Mr. Kumi ega) You had other conversations after the
2 19th?

3 A. Yes.

4 Q. And are you inventorying more guns?

5 A. Yes. On February 27th he declared more firearms that we
6 had not seen.

7 Q. And you recorded those; is that right?

8 A. Yes.

9 Q. I guess the exit interview, the last day on March 4th,
10 2003 you went into Mr. Friesen's business premises; is that
11 correct?

12 A. That's correct.

13 Q. Okay. And for what reason, please?

14 A. As I stated earlier, on February 27th he said that there
15 were more firearms to inventory, and on March 4th that was my
16 purpose to go out there was to record that firearm information
17 so that we can conclude that firearms inspection.

18 Q. All right. And did you, in fact, do that?

19 A. Yes, I did.

20 Q. How many guns did you inventory that day, please, or
21 firearms?

22 A. I looked at a Mossberg 500, and also six SKS receivers
23 that were mounted on a round object, kind of like a Gatling
24 gun.

25 Q. Where was that located, please?

1 A. The Gatling gun was located in a construction area down
2 in the basement of his residence, that's my memory, to the
3 left.

4 Q. Okay. Is that where these conversations occurred?

5 A. Yes.

6 Q. Did you ever go back to his business?

7 A. No.

8 Q. Okay. Did you ask him questions about where he kept his
9 firearms in his business?

10 A. Yes, I did.

11 Q. All right. Now, how is his firearms, his license, his
12 FFL, how is it? Under what name is he licensed to sell guns?

13 A. I believe he's licensed as Douglas Friesen, Lobo Arms,
14 and the address is his law office, the premise address.

15 Q. Is that basically the ground zero where you have to,
16 where he's got to conduct business out of?

17 A. Yes.

18 Q. Okay. What significance is his place of business
19 regarding selling guns?

20 A. An FFL's license premise, they maintain their records and
21 generally their firearms there at that premise, although they
22 are allowed to have off-site storage of firearms.

23 Q. And you asked him certain questions about his storage of
24 guns; is that correct?

25 A. Yes.

1 Q. Just particularly in what part, what area?

2 A. I asked him if -- I wanted to review the storage location
3 of his firearms.

4 Q. Is that for the business or for the residence?

5 A. For -- I did it for both.

6 Q. Okay.

7 A. Because we had seen guns at the residence and at his
8 premise.

9 Q. Okay. And then you asked him questions about where he
10 stored firearms in his business?

11 A. Yes.

12 Q. All right. And why is this material to the
13 investigation, if you can explain to the jury, please?

14 A. For two reasons. Obviously, we were there to conduct a
15 federal firearms compliance inspection, and an important part
16 of that is to get all the firearms recorded to be able to
17 compare them with his records to ensure compliance. And the
18 second reason, that day I already knew that we had a registered
19 machine gun that we had not seen.

20 Q. Okay. And so you were asking the question for what
21 purpose then?

22 A. For inventory purposes. To find out if we've got all the
23 firearms recorded for a compliance inspection and also we still
24 knew that we had a registered machine gun that we had not seen.

25 Q. How would that -- how would knowing where he stored the

1 guns in the business aid you in your inspection, please?

2 A. If we know where the firearms obviously are stored, then
3 it aids us also to record those, and to be able to make sure
4 that our compliance inspection is accurate when compared with
5 his A&D to be able to determine compliance.

6 Q. Do you know the difference about segregation between
7 personal firearms and business firearms?

8 A. Yes.

9 Q. All right. Ma'am, if you can look at, I guess it's CFR
10 478.125(a). Have you ever seen that before, if you have the
11 book with you?

12 A. Just a minute. Yes. I have it.

13 Q. Okay. Can you look up that number, please?

14 MR. MARTIN: What's the number again?

15 MR. KUMIEGA: Mr. Martin, it's 478.125(a).

16 THE WITNESS: Was it 478.125(a)?

17 Q. (By Mr. Kumi ega) Yes.

18 A. Or 124(a).

19 Q. 125(a).

20 A. Okay.

21 Q. Now, Mr. -- again, Mr. Friesen is a -- he's licensed to
22 sell guns?

23 A. Yes.

24 Q. So there are other requirements other than being a
25 citizen having guns; is that correct?

1 A. Right.

2 Q. Are you familiar with 478.125(a)?

3 A. Yes.

4 Q. Okay. Can you tell the jury what that's supposed to do,
5 please?

6 A. 478.125 is a regulation in the federal firearms that
7 requires federal firearms licensees to record acquisition and
8 disposition of all firearms in a bound record.

9 Q. Okay. So if I'm a federal firearms licensee, even
10 though I have personal guns in my collection I'm supposed to
11 record that?

12 A. Yes.

13 Q. Is that -- and that's what that regulation says?

14 A. 478, yes. During the period they are a licensee if they
15 acquire firearms they are required to record those in their A&D
16 book, their gun book, and then they can log it out as a
17 personal gun to themselves.

18 Q. Let me ask you this: Are you familiar with the circular
19 regarding the segregation of personal firearms and business
20 firearms?

21 A. Yes.

22 Q. And what does that mean to you, please, regarding that
23 circular?

24 A. That circular means to me, obviously, a lot of federal
25 firearms licensees have business guns available for sale and

1 then personal guns on their business premise that are theirs.
2 And in order to aid us in our inventory purposes, we require
3 that they tag those, or segregate them separately from their
4 business inventory.

5 Q. Okay. And is -- have you been following that procedure?

6 A. Yes.

7 Q. Now, you then ask him, and it's -- these are pointed
8 questions; is that correct?

9 A. Yes.

10 Q. And pointedly did you ask him about storing firearms in
11 his place of business, the law office?

12 A. Yes.

13 Q. And did you ask him the locations he stores the firearms?

14 A. Yes.

15 Q. And can you tell the jury how, in the context of your
16 dialogue with Mr. Friesen, what he told you regarding these
17 pointed questions, and again, tell the jury what you're saying
18 and what he's responding to.

19 A. When we were at his residence and I had recorded the
20 seven firearms, I reviewed the storage locations with him, and
21 I asked him to, okay, let's go over again where you've got
22 firearms stored. And he told me that he had firearms stored,
23 obviously, there at the residence in the basement, and he also
24 told me that he had a firearm upstairs in the bedroom, and then
25 he reviewed the office location. And he stated that he had

1 stored firearms in the display case, the two small guns, and in
2 the cedar-lined closet there was a rifle. He said that under
3 the desk there was a short-barrel shotgun mounted and a .45
4 caliber, and that there was a .22 pistol in the desk drawer.

5 Q. Okay. And was this just one offhand comment to him?

6 A. No.

7 Q. Tell us about that, please.

8 A. Okay. There were approximately, when he reviewed, when
9 we reviewed the storage location the first time -- and I'm
10 going to review my notes -- that day, at the time I was at his
11 house I reviewed the storage locations, and he stated that he
12 had six firearms located in his office, two firearms, again,
13 were in the small storage, the display case, one firearm was in
14 the cedar-lined closet and it was the .22 rifle with the
15 silencer attached, under his desk, again, the shotgun, and the
16 .45 caliber, and then the .22 pistol in the desk drawer. And
17 he said, obviously, the remaining firearms that are in my
18 basement in the safe and the mounted six SKS rifles that I saw.

19 Q. Did he tell you that's the end of his inventory, he's got
20 no other guns for you to see?

21 A. I reviewed it again with him just to make sure we covered
22 everything.

23 Q. I understand that. But what's the import of what he's
24 telling you regarding totality of all his guns?

25 A. The important thing that he's telling me about where his

1 guns are located is to make sure that we had everything
2 disclosed to us for the inspection purposes, and also, again,
3 there was the registered machine gun that I had not seen, or
4 Ms. Rowden.

5 Q. So my understanding then he's telling you you've seen
6 everything; is that right?

7 A. Right.

8 Q. Okay. Now, you said that you asked him about an office
9 desk on the second floor, a case on the second floor, a closet
10 on the second floor; is that correct?

11 A. That's correct.

12 Q. And how many times did you ask him that question?

13 A. I reviewed the storage locations with him four different
14 times.

15 Q. Okay. And how did he respond on each time, please?

16 A. Okay. On the first time when he reviewed the locations
17 with me, and again, he stated -- he went over all the firearms
18 in his office, the display case, the rifle in the cedar closet,
19 the shotgun and the .45 caliber under his desk, and pistol in
20 his desk drawer. And then he said the remaining firearms were
21 stored in a vault in the basement and the six SKS rifles on the
22 mounted object that I had just seen. And I reviewed it with
23 him again, and I said, okay, we've got guns in the office in a
24 cedar-lined closet, we've got them in that little display case,
25 we've got two guns under your desk, one gun in your desk

1 drawer, we've got guns in the vault, in the basement and these
2 SKSs. And then he said oh, yeah, he had a personal firearm in
3 his bedroom, which we had seen on February 19th. When he said
4 that, I reviewed all the locations again.

5 Q. Now, did the locations -- you're asking where he stores
6 his guns?

7 A. Right.

8 Q. Okay. You said how many times?

9 A. Four complete times.

10 Q. All right. Did he respond likewise in each manner?

11 A. Yes.

12 Q. Okay. And what was the response?

13 A. Again, he would say the same locations, at the residence
14 it was the vault down in the basement, the SKSs that I had just
15 seen, the firearm in his bedroom, and at the office it was the
16 two guns in the display case, the cedar-lined closet, the two
17 guns that were mounted under the desk and the one gun in the
18 desk drawer.

19 Q. You asked him if there were any other places in his
20 business where he stores guns?

21 A. Yes.

22 Q. How did he respond?

23 A. I said are the desk -- the guns mounted under the desk
24 and the gun in the desk drawer, the gun in the cedar closet and
25 the display, are those the only areas in your office that you

1 keep -- in your premises that you keep guns, and he stated yes.

2 Q. And did he say -- did you ask him are there any other
3 places --

4 MR. MARTIN: This is number seven, your Honor. I
5 object to the constant repetition of the same question.

6 THE COURT: Be sustained. I think you have asked it
7 several times.

8 MR. KUMIEGA: Well, I guess the dialogue was four
9 times.

10 MR. MARTIN: Well, your Honor, I object to Mr. Kumi ega
11 testifying as to how many times it was.

12 THE COURT: You can ask one more time and that's it.

13 MR. KUMIEGA: Thank you.

14 Q. (By Mr. Kumi ega) When you asked Mr. Friesen are there
15 any other locations that he stores firearms other than the
16 three places of storage, did he respond no?

17 A. Yes.

18 Q. Okay. Now, you were part of the search team in June
19 10th, 2006, or you were out there; is that correct?

20 A. Yes.

21 Q. Okay. Do you remember going to his conference room on
22 the first floor?

23 A. Yes.

24 Q. Do you remember going to the conference room that has the
25 bookshelves?

1 A. Yes. I saw it. Yes.

2 Q. Did you go inside when the bookshelves were pushed back
3 or pushed in?

4 A. During the warrant?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. Can you look at Government's Exhibits 2.1, please.

8 Did you see that on June 10th, 2004?

9 A. Yes.

10 Q. Okay.

11 A. Yes.

12 Q. All right. And you saw the interior of that same gun
13 safe; is that correct?

14 A. Yes.

15 Q. All right. Take a look at 2.2, please. Did you see
16 that?

17 A. Yes.

18 Q. The questions that you were asking him back in February
19 of '03, is that trying to find out where another gun safe was?

20 A. No. My intent was to get him to disclose where all his
21 firearms were so we could conduct an inventory.

22 Q. Okay. You wanted to know where he kept all his guns,
23 right?

24 A. Right. I wanted to know where he kept all his guns.

25 Q. And on that day he never told you about something hidden

1 behind in a secret room, did he?

2 A. No.

3 Q. Okay.

4 MR. KUMIEGA: Your Honor, if I can have just a moment.

5 (Brief pause)

6 Q. (By Mr. Kumi ega) For the record, Ms. McGrew, the person
7 you had all this dialogue, the defendant in this lawsuit, is he
8 present in the courtroom today?

9 A. Yes.

10 MR. MARTIN: We'll stipulate she can identify Mr.
11 Friesen, your Honor.

12 MR. KUMIEGA: No further questions from this witness,
13 your Honor.

14 THE COURT: You may cross-examine.

15 CROSS-EXAMINATION

16 BY MR. MARTIN:

17 Q. I think you said you've done approximately 250 compliance
18 inspections; is that right?

19 A. Yes.

20 Q. Did you ever seize a firearm or any type of weapon during
21 that compliance inspection?

22 A. No.

23 Q. Did you ever contact any agents after completion of the
24 compliance inspection and ask them to go out and seize
25 something?

1 A. After a compliance inspection I have went out and told
2 them my findings, yes, for them to go look and verify and if
3 they need to seize something. Yes.

4 Q. Okay. Did you ever advise Mr. Friesen, you or Inspector
5 Rowden, that the D number -- is the firearm up there, ma'am?
6 I'm sorry.

7 A. Yes.

8 MR. MARTIN: May I approach and retrieve it?

9 THE COURT: Yes.

10 MR. MARTIN: Thank you, very much.

11 Q. (By Mr. Martin) Did you or Mr. -- excuse me -- Ms.
12 Rowden ever advise Mr. Friesen that the number was not the
13 number that was registered to him?

14 A. Yes.

15 Q. And you're familiar with where the number is supposed to
16 be on these firearms, are you not, ma'am?

17 A. Yes.

18 Q. And you know that the number is supposed to be on this
19 tube area, the receiver I think it's called, right?

20 A. Yes.

21 Q. And the number that Ms. McGrew said, I think you said she
22 read the number to you and you wrote it down, right?

23 A. Yes.

24 Q. And the number she read to you was the number that was on
25 this magazine here?

1 A. Yes, sir.

2 Q. And that would not be the appropriate location for a
3 serial number for this gun, would it?

4 A. That's the only number we saw, so we recorded it.

5 Q. That would not be the appropriate location for the serial
6 number for this firearm?

7 A. No, sir.

8 Q. All right. And did you advise Mr. Friesen that failure
9 to find the serial number would result in him being indicted
10 for possession of an unregistered firearm?

11 A. No.

12 Q. Okay. You had reviewed his records, his business records
13 prior to going out there, right?

14 A. Negative.

15 Q. You hadn't contacted the NFA and got a copy of all his
16 NFA weapons prior to going out there?

17 A. You stated his business records. We did contact the
18 National Firearms Registration and Transfer Record and obtained
19 that, but we did not contact Mr. Friesen and get his business
20 records prior to inspection.

21 Q. Right. And as a matter of fact, this was an unannounced
22 inspection, right?

23 A. Yes. They all are.

24 Q. Well, they are not all unannounced. You don't just show
25 up at Smith & Wesson one day and say you want to do a

1 compliance inspection, do you?

2 A. My supervisor doesn't allow me to call people and give
3 them a heads-up.

4 Q. You mean if you go out to a major manufacturing company
5 you don't give them a heads-up you're coming out so they can
6 get things organized, you just show up totally unannounced?

7 A. I've never done a major manufacturer, but I've never
8 called a compliance person and told them that, yeah, I'm going
9 to show up in two days.

10 Q. Do you know a Guy named Charles Erb?

11 A. I don't know him.

12 Q. Do you know whether or not they've given him the heads-up
13 they are going to do a compliance inspection on him before?

14 A. I don't know. It's out of my area.

15 Q. Okay. Now, you knew that Mr. Friesen hadn't disposed of
16 any firearms since 1996, didn't you, ma'am?

17 A. After we reviewed his records it would probably indicate
18 so.

19 Q. Okay. And the process then, as I understand it, is that
20 from what you've explained, Ms. Rowden would look at the
21 firearm and she would read a serial number off and you would
22 write it down?

23 A. Yes, sir.

24 Q. And did that process continue throughout the entirety of
25 the process?

1 A. On February 19th, yes.

2 Q. Okay. And you all were there twice on the 19th?

3 A. Yes, sir.

4 Q. And the only other time you saw firearms you weren't with
5 Ms. Rowden, right?

6 A. On March 4th, no, she was not with me.

7 Q. You were with another agent?

8 A. Yes. I was with another inspector.

9 Q. Okay. Now, I believe you testified that on the 19th, you
10 left the office, went to the residence, then came back to the
11 office; is that right?

12 A. Right.

13 Q. And you went upstairs to Doug's office, Mr. Friesen's
14 office, and the door was shut to the office?

15 A. That's correct.

16 Q. And he advised you that there was an attorney in there
17 doing something and that you would -- asked you all to come
18 back?

19 A. Yes.

20 Q. I mean, he wasn't rude about it or anything, was he?

21 A. No, sir.

22 Q. And asked would you mind coming back in a few hours to
23 complete the inspection, right?

24 A. That's correct.

25 Q. And you all agreed to do that?

1 A. Yes.

2 Q. And so then you came back, what did you say, three or
3 four hours later?

4 A. Approximately.

5 Q. Okay. And when you were upstairs I think you said you
6 inventoried six firearms?

7 A. Yes.

8 Q. Okay. And of those six, was this (indicating) one of
9 those six firearms?

10 A. Yes, sir.

11 Q. Okay. And I think you testified that Ms. Rowden looked
12 at it, Inspector Rowden looked at that firearm, you looked at
13 that firearm, and then you let Mr. Friesen look at that
14 firearm, right?

15 A. Yes, sir.

16 Q. Now, I believe you testified you saw that gun again. You
17 were there during the search warrant?

18 A. Yes.

19 Q. Are you a law enforcement officer?

20 A. No, sir.

21 Q. What was your purpose there on day of the search warrant?

22 A. To assist.

23 Q. That was a law enforcement activity going on that day,
24 wasn't it?

25 A. Yes.

1 Q. Okay. And on that day you say that would be the next
2 time you saw the firearm, right?

3 A. Yes, sir.

4 Q. And on that day you say you saw a serial number, right?

5 A. Yes, sir.

6 Q. And that's led you to believe, or at least you testified,
7 that that number was put on there later, right?

8 A. Yes, sir.

9 Q. And are you telling me you couldn't have overlooked the
10 number, ma'am?

11 A. Nope.

12 Q. Couldn't have been painted over, ma'am?

13 A. No.

14 Q. Ever had a number painted over?

15 A. We have had guns that had been camouflaged over, but I
16 was able to get it.

17 Q. Ever made a mistake writing a number down?

18 A. Of course.

19 Q. As a matter of fact, the records of the ATF relating to
20 serial numbers on guns are replete with errors, aren't they?

21 MR. KUMI EGA: Objection.

22 THE COURT: Overruled if she knows.

23 THE WITNESS: Could you repeat the question?

24 Q. (By Mr. Martin) The records of the ATF relating to
25 serial numbers for firearms are replete with errors, aren't

1 they, ma'am?

2 A. I have no idea what headquarters' records have. Which
3 records are you -- could you be more specific?

4 Q. Well, when you go out and you write serial numbers down
5 you make mistakes, don't you?

6 A. You can.

7 Q. And those records are given to the head office, right?

8 A. They are given to the licensing center in our report.

9 Q. And if you make a mistake, then they get the error that
10 you've made, right?

11 A. We hope that our supervisor and people in the chain of
12 command if there is an error can catch it.

13 Q. Well, if Ms. Rowden read the number wrong or if you wrote
14 the number down wrong or if somebody read a number incorrectly,
15 the supervisor would have absolutely no idea, would they?

16 A. Possibly.

17 Q. Well, they are not there to look over your shoulder,
18 there weren't any supervisors there watching you that day, were
19 there, ma'am?

20 A. No, sir.

21 Q. Okay. Now, when you were there, I think you were talking
22 about March 4th, it seems like you made that, or Mr. Kumiaga,
23 one of you made that an important date because I think you were
24 talking to Mr. Friesen about his storage location. Do you
25 remember that?

1 A. Yes.

2 Q. Now, did you tell Mr. Friesen we need to know where
3 you're storing all your business firearms because we're, quote,
4 there's an unregistered machine gun in your possession or we
5 haven't seen a machine gun?

6 A. No, sir.

7 Q. Okay. Did you have anything to do with the preparation
8 of this document (indicating)?

9 A. Yes.

10 Q. Do you know what this is, ma'am?

11 A. Yes.

12 MR. MARTIN: May I approach?

13 THE COURT: Yes.

14 Q. (By Mr. Martin) Who prepared this, if you know?

15 A. It was, basically, it's a summary exhibit based on the
16 analyzation of the records of the completion inspection. It's
17 a summary of it.

18 Q. Have you talked to anybody about this since court
19 started?

20 A. About the chart?

21 Q. Yes, ma'am.

22 A. Since court started?

23 Q. Today.

24 A. No.

25 Q. Okay. This is a -- what part did you play in this, in

1 this document, ma'am?

2 A. Basically, during compliance inspection we'll review the
3 4473s, the A&D record and our written inventory and compare it
4 with those documents and come up with guns that possibly
5 haven't been logged into his A&D book, his gun book or guns
6 that are accounted for. In other words, guns that are listed
7 in his business records that we didn't see.

8 Q. Okay.

9 A. That's a summary of it.

10 Q. Okay. Would you agree with me that it's wrong?

11 A. I don't know. In what way do you think it's wrong?

12 Q. Every gun on there except for the Sten gun has been
13 accounted for?

14 MR. KUMIEGA: Objection, your Honor. That's --

15 THE COURT: That will be sustained.

16 THE WITNESS: At the time -- this is something I want
17 to make clear to you --

18 Q. (By Mr. Martin) Ma'am, I get to ask questions.

19 THE COURT: Wait, wait. Let's start all over. The
20 Court sustained the objection to the question, and ask counsel
21 to remember it's the witness who testifies, not counsel.

22 MR. MARTIN: I haven't asked her a question.

23 THE COURT: Well, I know, but you made a statement as
24 to what had occurred, and Mr. Kumiega has objected to that and
25 I sustained that. So disregard the last question. Start all

1 over.

2 MR. MARTIN: All right.

3 Q. (By Mr. Martin) Ma'am, as I understand, this was based
4 upon the records that were available as of March 4th, 2003,
5 right?

6 A. Yes.

7 Q. Okay. You received Mr. Friesen's, a list of records from
8 Mr. Friesen of his personal firearms, did you not?

9 A. Yes.

10 Q. And did you compare that list to this list here, ma'am?

11 A. We compared his business bound record and his personal
12 bound record with the 4473s and our inventory.

13 Q. Did you compare the list of personal firearms that Mr.
14 Friesen gave you on March 4th, 2003, to this, ma'am?

15 A. Yes.

16 Q. Isn't it true that items number 8, 9, 10, 11, and 12 are
17 on his personal firearm list, ma'am?

18 A. They could be, but we didn't see them during the
19 inventory.

20 Q. My question was: Isn't it true that items 8, 9, 10, 11,
21 and 12 are on his personal inventory list?

22 A. Yes. They were not accounted for during inspection.

23 Q. Well, under the law, personal -- I mean you've testified
24 about the law, personal firearms do not have to be provided if
25 they are segregated, do they, ma'am?

1 A. If they are segregated.

2 Q. You didn't see them, did you?

3 A. Those firearms we did not see during the inspection.

4 Q. What does "segregation" mean? That they are not there,
5 they are in a different location?

6 A. When we go into a business premise or an off-site storage
7 location, if guns are commingled, which means they are not
8 tagged and segregated, then ATF says that they are all
9 considered the business inventory.

10 Q. My question was: What does "segregate" mean; that it's
11 in a different location?

12 A. "Segregated" to me says that these guns all perhaps in
13 one gun safe are my personal firearms, and they are not part of
14 the business record.

15 Q. And those weren't -- those were on his personal list that
16 was provided to you later, right?

17 A. After the inventory.

18 Q. Right. On March 4th?

19 A. After the inventory. Yes.

20 Q. And 8 through 12 you'll agree are on that list?

21 A. Yes.

22 Q. Which says I have them?

23 A. I can't make that determination. He did not provide
24 those during the inventory. They might be written in his book,
25 but I didn't lay hands on it.

1 Q. Now, it's perfectly appropriate for a licensed dealer
2 like Mr. Friesen or any other licensed dealer to have personal
3 firearms?

4 A. Yes.

5 Q. And they don't have to show them to you, do they, ma'am?

6 A. It depends. If they are commingled, they do.

7 Q. There's an industry regulation that urges that they not
8 be commingled. Are you familiar with that?

9 A. Yes.

10 Q. Okay. Now, I think you -- I'm going to show you a couple
11 of documents, and ask you, do you recognize these two
12 documents, ma'am? Go ahead.

13 MR. KUMIEGA: Your Honor, may I inquire what documents
14 they are.

15 THE COURT: Do you have copies for Mr. Kumi ega, or let
16 him know what they are.

17 MR. MARTIN: I've advised him, your Honor.

18 THE WITNESS: Yes.

19 Q. (By Mr. Martin) Do you recognize those, ma'am?

20 A. Yes. I recognize the documents.

21 Q. Those are documents of the search and you're writing down
22 serial numbers of firearms that you saw that day, correct?

23 A. Correct.

24 Q. And one of those firearms you saw was a Browning Model
25 Stalker 10 gauge shotgun, isn't it?

1 A. Yes.

2 Q. I've actually highlighted it.

3 A. Yes.

4 Q. And as a matter of fact, it's on your chart here, is it
5 not?

6 A. Yes.

7 Q. And what serial number did you write down that day?

8 A. I wrote down 102167XT92.

9 Q. That's not the same serial number that's written down
10 here, is it?

11 A. No. We got that from his records. We did not see those
12 guns during inventory. We didn't lay hands on them. We got
13 those as being firearms in inventory, and that's what he wrote
14 in his records.

15 Q. You're saying that record is accurate, ma'am, and this
16 one is not accurate?

17 A. I'm saying that came from his bound record and this came
18 the day of the search warrant with the agent reading the serial
19 number.

20 Q. So you wrote that number down and it's a different
21 number?

22 A. Correct.

23 Q. And we don't have the firearm here to compare it to that
24 number or to your record, do we?

25 A. I don't have the firearm, no, sir.

1 Q. Okay. Now, let me borrow this a minute. Same would
2 apply with this second page here? This is the next page.
3 There's a Remington 870. Do you see that? This one right
4 here, Remington 870 12 gauge, serial number -- what number did
5 you write down?

6 A. I wrote down B432373M as in Mary.

7 Q. What was that last part?

8 A. M as in Mary.

9 Q. Oh, M as in Mary. I'm sorry. And again, we don't have
10 that firearm here to examine to compare it to your records or
11 these others?

12 A. I don't have it, sir.

13 Q. Now, you mentioned that you also, going back to March
14 4th, went to Mr. Friesen's house and inventoried some firearms,
15 right?

16 A. Yes, sir.

17 Q. And you, Mr. Kumiaga asked you specifically about storage
18 locations. Do you remember Mr. Kumiaga asking you about
19 storage locations?

20 A. Yes, sir.

21 Q. And you said to be completely accurate, or words to that
22 effect, I would really like to review my notes before I testify
23 about that, right?

24 A. Yes, sir.

25 Q. And you reviewed your notes. And do you have them there?

1 A. Yes.

2 Q. And do they have a Bates stamp on them, ma'am?

3 A. They've been discovered.

4 Q. Do they have a Bates stamp on them, ma'am?

5 A. No, sir. Would you like to look at them?

6 Q. Let me compare them.

7 MR. MARTIN: If I might approach, your Honor.

8 THE COURT: Yes.

9 Q. (By Mr. Martin) Is that the document you were looking
10 at?

11 A. Yes, sir.

12 Q. Okay. All right. Now, Mr. Friesen went to great lengths
13 -- excuse me -- Mr. Kumioga went to great lengths and you
14 testified to great lengths about you going over these storage
15 locations with my client four times. That seemed very
16 important.

17 A. It is important.

18 Q. And it would be something that would be something that's
19 so important you would probably write it down in your report I
20 would think, wouldn't you?

21 A. I did. Yes.

22 Q. Would you follow along with me, tell me if I read this
23 right. I'm at the bottom of the page.

24 "At this time I reviewed with Mr. Friesen his storage
25 locations."

1 Is that right?

2 A. Yes.

3 Q. "He stated he had six firearms located in his office,
4 which is his license premise and house, his law
5 practice, two firearms were in a small storage case
6 sitting on a desk, a .22 stinger and a .22 Derringer.
7 At his licensed premises upstairs in his office a
8 cedar-lined closet located adjacent to a bar, and .22
9 caliber rifle with silencer was stored, under his desk
10 a shotgun and .45 handgun are located, and in the desk
11 a .22 pistol. The remaining firearms are stored in
12 the safe in his basement at his residence and mounted
13 on six SKS rifles were located at the closet location
14 in the basement. I reviewed the above with him and
15 asked him if were [sic] leaving anything off. He
16 stated he had a personal firearm in his bedroom. I
17 reviewed all the locations again, the location in the
18 closet, in the office, desk, case, closet, residence
19 basement, and residence basement closet in his
20 bedroom, and asked him if he had any other storage
21 locations, he told me no. I specifically asked if the
22 desk case and closet were the other locations in the
23 office he stored firearms, he said yes. I told him
24 that I had noticed the closet location could not be
25 locked and asked him if he was concerned about that.

1 He said that no one but employees had access to the
2 office. After obtaining the inventory I asked
3 questions regarding -- after obtaining the inventory
4 and asking questions regarding storage Ms. Thomas and
5 I left Mr. Friesen's residence and returned to his
6 office."

7 First, did I read that right?

8 A. The last part, "we returned to the area office."

9 Q. No. Did I read that right or not?

10 A. You said "we returned to his office."

11 Q. Okay. "We returned to the area office."

12 A. Yes.

13 Q. Okay. With that correction, did I read that right?

14 A. I believe so.

15 Q. Okay. I do not recall reading anywhere in the report
16 that was written five and a half years ago that you went over
17 the storage locations with him four times, ma'am. Is that
18 accurate or is that inaccurate that that's not in the report?

19 A. Which report is that, sir?

20 Q. That's the report I just showed you.

21 A. I'm confused by your question. Could you state it again, .H1

21 McGrew - Cross/Redirect

22 please?

23 Q. Certainly. Certainly. Nowhere contained in the report
24 that I just read that you said you refreshed your memory so you

25 could be totally accurate when you testified today --

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1 A. Yes.

2 Q. -- that was written approximately five and a half years
3 ago does it say that you went over the storage locations with
4 my client four times.

5 A. No, sir. It doesn't say specifically that.

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

7 THE COURT: Yes.

8 (Brief pause)

9 MR. MARTIN: Nothing further.

10 THE COURT: Any redirect, Mr. Kumi Ega?

11 MR. KUMI EGA: Just give me a second, your Honor.

12 (Brief pause)

13 MR. KUMI EGA: Your Honor, if I may have a moment,
14 please, regarding the regulation.

15 THE COURT: All right.

16 MR. KUMI EGA: Just as point of clarification, your
17 Honor.

18 REDI RECT EXAMI NATION

19 BY MR. KUMI EGA:

20 Q. Ma'am, personal firearm collection -- and you looked at
21 478.125; is that correct?

22 A. 478.125?

23 Q. Right. And you also looked at the circular; is that
24 correct?

25 A. That's correct.

1 Q. My understanding, so the jury is perfectly clear, if
2 you're a federal firearms dealer you have to account in your
3 book when you sell guns, your personal firearms too; is that
4 correct?

5 MR. MARTIN: Your Honor, I object to a matter of law
6 this witness testifying about.

7 THE COURT: Mr. Kumi ega?

8 MR. KUMI EGA: Judge, that's the very essence of the
9 cross-examination questions that Mr. Mack Martin is asking the
10 witness.

11 THE COURT: Is this something she has knowledge of --

12 MR. KUMI EGA: Yes.

13 THE COURT: -- in compliance?

14 MR. KUMI EGA: Yes, she does.

15 THE COURT: Overrule the objection.

16 Q. (By Mr. Kumi ega) You have knowledge of these CFRs; is
17 that correct?

18 A. Yes, sir.

19 Q. You deal with them every day?

20 A. Yes, sir.

21 Q. Let me ask you this, last time: Did you -- my
22 understanding is that if you're a federal licensed dealer and
23 you have personal firearms, you have to account in your
24 acquisition and disposition books your personal firearms; is
25 that correct?

1 A. That's correct.

2 Q. So even though they are still segregated they've got to
3 be in the book?

4 A. Yes.

5 MR. KUMIEGA: No further questions.

6 THE COURT: Recross?

7 MR. MARTIN: Just a moment, your Honor.

8 (Brief pause)

9 RECCROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q. Ma'am, that's a record-keeping requirement, right?

12 A. Yes, sir.

13 Q. My client hasn't been indicted for that, right?

14 A. No.

15 Q. And just because they have been transferred from the
16 business to personal does not give you the right to inspect
17 personal firearms, does it, ma'am?

18 A. If they are commingled, and he had provided no records
19 otherwise. I couldn't distinguish.

20 Q. Well, the weapons that you didn't see weren't commingled,
21 were they, ma'am?

22 A. Those on the list that you provided as the exhibit?

23 Q. Well, you made the exhibit, not me, or not me -- the
24 government made that exhibit, not me.

25 A. Okay. The list of firearms that are on the exhibit are

1 in, according to Friesen's record, are in his inventory which
2 we did not lay hands on that day. They were not in his
3 possession, he did not disclose them to us.

4 Q. And if they are personal and they weren't commingled, you
5 didn't see them, they would be personal, you're not entitled to
6 see them; do you agree?

7 A. Would you repeat the question, sir? I'm sorry.

8 Q. Maybe I asked too many questions in one. If they are
9 segregated, you not entitled to see personal firearms of a
10 dealer; would you agree with that?

11 A. They need to disclose on the premise where all the
12 firearms are located. End of story.

13 Q. End of story?

14 A. Yes.

15 Q. If they are not on the premises --

16 A. If they are at an off-site storage location.

17 Q. Personal firearms.

18 A. Personal firearms that are recorded in their book and
19 that are at an off-site storage location, with their business
20 inventory, yes, we need to see it.

21 Q. They are not at the business, ma'am.

22 MR. KUMIEGA: Objection, your Honor. Stating firearms
23 that have are not been introduced, it's a hypothetical. He
24 should phrase it as such, your Honor.

25 THE COURT: Are you asking a hypothetical question,

1 Mr. Martin?

2 MR. MARTIN: I was trying to, but extra facts keep
3 getting thrown in there.

4 Q. (By Mr. Martin) I'm a federal firearms dealer, okay?

5 A. Okay.

6 Q. We'll assume that.

7 A. Okay.

8 Q. I have a location where I run my business, okay?

9 A. Okay.

10 Q. I have personal firearms that are independent of the
11 business. Do you understand that?

12 A. Okay.

13 Q. I keep them at a separate location.

14 A. Okay.

15 Q. I don't have to disclose those to you; would you agree
16 with that?

17 A. If you keep -- if I go to a federal firearms licensee and
18 you are licensed and you've acquired firearms during that
19 course of license and you've recorded them into your bound
20 record and logged them out to yourself as personal, and they
21 are not on the premise, then I would not need to see them for
22 inventory purposes.

23 MR. MARTIN: Nothing further.

24 THE COURT: Mr. Kumi ega?

25 MR. KUMI EGA: May I have one more question?

1 THE COURT: Sure.

2 REDI RECT EXAMI NATION

3 BY MS. MCGREW:

4 Q. Let me ask you thi s, ma' am: You' re an FFL, i f you have
5 your business and you get guns as a -- in your i nventory, are
6 you supposed to record them?

7 A. Yes.

8 Q. Even though they are personal ?

9 A. Even though they are personal .

10 Q. Because they are on your business premise; i s that
11 correct?

12 A. That' s correct.

13 MR. KUMI EGA: That' s all .

14 THE COURT: Ms. McGrew, you may be excused, and I
15 would advi se you you' re not to discuss the testi mony you' ve
16 given here wi th other persons who may be a wi tness i n thi s
17 matter. Thank you.

18 Counsel approach.

19 (The fol lowing was had at the bench, out of the hearing of
20 the jury:)

21 THE COURT: Who i s your next wi tness?

22 MR. KUMI EGA: I have a series of employees that we' re
23 going to put on the stand.

24 THE COURT: Series of employees? How long wi ll each
25 take?

1 MR. KUMI EGA: Fifteen minutes, depending on cross. I
2 have three people lined up if the Court wants us to go ahead.

3 THE COURT: Who is the shortest one?

4 MR. KUMI EGA: Height-wise?

5 THE COURT: Well, that's a whole new area.

6 MR. KUMI EGA: It is a whole new area.

7 THE COURT: We'll come back tomorrow. This is a good
8 breaking point.

9 MR. MARTIN: He's worn me out.

10 MR. KUMI EGA: I'm slick. Worn slick.

11 THE COURT: He's not charged with the employees. I
12 don't think you can examine the employees on this charge.

13 MR. MARTIN: I'm going to try, Judge.

14 THE COURT: We have to leave tomorrow, or quit
15 tomorrow at three o'clock, so I would like to move as quickly
16 as we could.

17 MR. KUMI EGA: I'm going to call people out of order
18 then. I have the forensic people flying in because of the end
19 of fiscal year everybody is screaming, so I'm going to call
20 three chemists tomorrow if that's okay: Gillis, Walbridge and
21 Kong.

22 MS. SYKES: Did we stipulate to the machine gun --

23 MR. MARTIN: We'll stipulate it's a machine gun. Is
24 Erb coming on for tomorrow?

25 MR. KUMI EGA: Not if the Court has to leave at three.

1 THE COURT: Are you going to do employees tomorrow?

2 MR. KUMI EGA: I think we can knock off some

3 employees --

4 THE COURT: I don't like that word, Mr. Kumi ega.

5 MR. KUMI EGA: What's that?

6 THE COURT: "Knock off" the employees in a machine gun
7 case?

8 Do you think one of those employees we can do in ten or 15
9 minutes?

10 MR. KUMI EGA: I can do Scully or Nelson. Nelson is an
11 employee.

12 THE COURT: Who is the shortest, briefest?

13 MR. MARTIN: I would say Scully.

14 THE COURT: Is he here?

15 MR. KUMI EGA: He's here, James Scully.

16 MR. MARTIN: This is the divorce deal, the firearm.

17 MR. KUMI EGA: He's going to say as collateral he gave
18 him some guns and he put the guns in the safe behind the
19 closet, the secret room safe.

20 MR. MARTIN: Then he picked them up six months later.

21 THE COURT: You don't have too many cross?

22 MR. MARTIN: Thirty or 40 minutes. I'll try to be
23 very brief.

24 THE COURT: I would like to be through by 5:30.

25 MR. KUMI EGA: We'll be done by quarter after.

1 THE COURT: Let's do that.

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

4 THE COURT: Call your next witness.

5 MR. KUMIEGA: Yes, your Honor. The United States
6 would like to call James Scully.

7 JAMES SCULLY,

8 called as a witness, having been duly sworn, testifies as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. KUMIEGA:

12 Q. Sir, can you introduce yourself to the jury, please?

13 A. My name is James Scully. I'm a Cleveland County deputy
14 sheriff assigned to the DEA.

15 Q. Okay. How long have you been with the sheriff's office
16 in Cleveland County?

17 A. Seven years.

18 Q. How long have you been assigned to the DEA special task
19 force?

20 A. Six years.

21 Q. And before joining the county sheriff's office, did you
22 have any law enforcement experience or any other experience,
23 please?

24 A. Yes, sir, 20 years, mostly at the Del City police
25 department.

1 Q. All right. Now, you know Mr. Friesen; is that correct?

2 A. Yes, sir.

3 Q. And how far back does your, I guess the nature of your
4 relationship go back with him, please?

5 A. Since September of 1997.

6 Q. And you were friends with him; is that correct?

7 A. Yes, sir.

8 Q. Okay. And at some point in the nature of your
9 relationship with him, he represented you in some legal
10 proceedings; is that correct?

11 A. That's correct.

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

13 A. In approximately, I would say around 1998, I had an
14 adoption, he took care of that adoption for me. Then in early
15 2000, I went through a divorce, and he handled the emergency
16 custody hearing and for about another year he handled the
17 custody hearing for me also on that.

18 Q. Let me ask you this: Did you and Mr. Friesen work out
19 some type of payment for his legal services for you?

20 A. Yes, sir.

21 Q. Can you tell us about that, especially regarding the
22 matter at hand, please?

23 A. Early part of 2000, I went to him on an emergency custody
24 hearing. I didn't have the money to retain him at the time, so
25 I gave him several guns as collateral to perform his services

1 until I came up with the money and got the guns back.

2 Q. How many guns did you give him?

3 A. I believe it was three or four.

4 Q. And just generally, what type of firearms did you give
5 him?

6 A. I believe, if I recall correctly, an AR 15, one or two
7 shotguns, and a Ruger handgun, I believe.

8 Q. Do you still have those firearms?

9 A. I have one of them.

10 Q. Okay. And that was the nature of your financial
11 transaction with him; is that correct?

12 A. Yes, sir.

13 Q. And at one point did you actually have to give him the
14 guns?

15 A. Yes, sir.

16 Q. All right. And this happened when? When did you --
17 where did you go to give him the guns, please?

18 A. His office on North Shartel, I believe it is.

19 Q. And when did you do that?

20 A. I believe it was around February or March of 2000.

21 Q. 2000. All right. And you go to the office with guns in
22 hand; is that right?

23 A. Yes, sir.

24 Q. And did you meet him at the office?

25 A. Yes, sir.

1 Q. And just tell us how you gave him the guns.

2 A. I went in the back door, he met me, went through the back
3 door into what I would call kind of a library or conference
4 looking room, at which time he said something like, watch this,
5 pulled out like an alarm for a car, pushed it, part of
6 bookshelves off the wall popped out a little bit. He grabs it,
7 pulls it open, showed me a secret room I'm guessing somewhere
8 in the neighborhood of four-by-eight or close to those
9 dimensions, had a gun safe and some shelves in it.

10 Q. Can you look at Government's Exhibit 2.1, please? Is
11 that the type of thing you saw back in 2000?

12 A. It appears to be.

13 Q. Okay. And this is where you -- how did you get to that?
14 Did you have to go --

15 A. You have to go through the door, the shelving area popped
16 out, he grabbed it, pulled it back and -- it's been a long
17 time, but best I can recall you went into this room, and I
18 don't remember if there was a doorway between it and the shelf
19 or not. I don't recall. We ended up going into the room and
20 there was a, as you go in I believe the safe was on the left
21 and some shelves on the right.

22 Q. And what did he say about the room or the safe?

23 A. I was one of the very, very few people that knew of its
24 existence.

25 Q. That's what he told you?

1 A. Yes, sir.

2 Q. And what happens next?

3 A. He opened the safe up and put my guns in the safe, and I
4 had not see any other guns in there at that time.

5 Q. All right. And when did you pick up the guns?

6 A. Best I recall several months later, and I picked them up
7 and if I recall correctly, there was a lever-action rifle or
8 something along with mine which was not mine.

9 Q. So you went back to the same place?

10 A. Yes, sir.

11 Q. Same secret room?

12 A. Yes, sir.

13 Q. And you got your guns back?

14 A. Yes, sir.

15 Q. Did you pay off your debt?

16 A. Yes, sir.

17 Q. You said you saw another firearm in there?

18 A. Yes, sir.

19 MR. KUMIEGA: Nothing further.

20 THE COURT: You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. Is it Agent Scully? Is that what you go by?

24 A. Task Force Officer Scully.

25 Q. Officer Scully then?

1 A. Yes, sir.

2 Q. Okay. Thank you. Now, you had actually met Doug in
3 firearms school sometime in the mid-90s, had you not, sir?

4 A. I believe it was September of '97, long range rifle
5 instructor school.

6 Q. Okay. And you sought him out as an attorney; would that
7 be fair?

8 A. Yes, sir.

9 Q. And you hired him, I think, at least you've testified
10 today, on two separate occasions, one for an adoption and one
11 for a matrimonial or divorce proceeding, family law matter,
12 right?

13 A. Yes, sir.

14 Q. And these happened, at least the last one happened in
15 about 2000; is that right?

16 A. Yes, sir.

17 Q. And he does practice his law for a living. You
18 understand that, don't you, sir?

19 A. Yes, sir.

20 Q. And he charged you a fee for the services that he
21 provided for you, did he not, sir?

22 A. Yes, sir.

23 Q. But as I understand, you didn't initially have the money
24 to retain him. Would that be correct?

25 A. Yes, sir.

1 Q. And so you offered to let him hold some firearms that you
2 had as collateral until you could pay the fee. Would that be
3 fair?

4 A. Yes, sir.

5 Q. And you all go to this -- you bring the firearms and he
6 takes you to the location that we've seen, the safe, right?

7 A. Yes, sir.

8 Q. And the safe is opened, and there is nothing in there; is
9 that right?

10 A. Correct.

11 Q. And you had, was it three firearms?

12 A. Three or four. I don't recall.

13 Q. Okay. Three or four firearms were placed in the safe.
14 And the empty safe, right?

15 A. Yes, sir.

16 Q. And about six months later, or so, sometime in 2000 or
17 first of 2001, you come back and you say, hey, Doug, I've got
18 your money, right?

19 A. Yes, sir.

20 Q. You pay him, you all go to that safe, the safe is opened,
21 and all three or four of your firearms are still there, right?

22 A. Correct.

23 Q. He didn't own them, you didn't transfer them to him, they
24 weren't part of an inventory of his, were they, sir?

25 A. He was holding them in lieu of until I paid him.

1 Q. He gives them back to you?

2 A. Yes, sir.

3 Q. And at that time you saw another firearm in there, right?

4 A. Yes, sir.

5 Q. You don't know whose it is?

6 A. No, sir.

7 Q. You leave and you've not been back since then? Not been
8 back -- excuse me -- you've not been back to that safe since
9 then?

10 A. Correct.

11 Q. Now, after seeking out Mr. Friesen and using his
12 services, and you didn't file any bar complaints or anything
13 against him, did you?

14 A. No, sir.

15 Q. Are you satisfied with the services you got?

16 A. For the most part.

17 Q. Okay. Maybe the result wasn't the way you hoped it would
18 be?

19 MR. KUMIEGA: Objection.

20 THE COURT: Be overruled.

21 THE WITNESS: They were adequate.

22 Q. (By Mr. Martin) All right, sir. The result was
23 adequate. Let me get back to this. You have been back to that
24 location, have you not, sir?

25 A. To which location?

1 Q. To his office.

2 A. To his office after that?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. Because you were given a ride by some ATF agents to that
6 office on March 25th to have you point the office out to them,
7 weren't you, sir?

8 A. In 2004?

9 Q. Well, let me --

10 MR. MARTIN: May I approach, your Honor?

11 THE COURT: Yes.

12 Q. (By Mr. Martin) I don't remember what day I said, but
13 2004, 2003?

14 A. 2003. Yes, sir.

15 Q. Okay. And do you recall who it was that gave you a free
16 ride to that location?

17 A. It was Agent Ray -- I don't recall his last name.

18 Q. An ATF agent?

19 A. Yes, sir.

20 Q. And he just wanted you to identify Mr. Friesen's office
21 as the place that you had gone to with those firearms, right?

22 A. Yes, sir.

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

24 THE COURT: Yes.

25 (Brief pause)

1 MR. MARTIN: Nothing further.

2 THE COURT: Anything further?

3 MR. KUMI EGA: No.

4 THE COURT: Officer Scully, you may be excused and the
5 Court would advise you not to discuss the testimony you've
6 given here today with other persons who may be a witness in
7 this matter.

8 THE WITNESS: Yes, sir.

9 THE COURT: You may be excused.

10 Mr. Kumi ega, we're doing so well, let's try one more
11 witness.

12 MR. KUMI EGA: Yes, your Honor.

13 THE COURT: Who is the witness?

14 MR. KUMI EGA: John Nelson, your Honor.

15 JOHN NELSON,

16 called as a witness, having been duly sworn, testifies as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. KUMI EGA:

20 Q. Mr. Nelson, can you introduce yourself to the jury,
21 please?

22 A. My name is John Nelson.

23 Q. And how are you employed?

24 A. I do carpentry work.

25 Q. And how long have you been a carpenter, please?

1 A. About nine years.

2 Q. And what did you do before that, please?

3 A. I retired from the restaurant business.

4 Q. All right. Did you have a restaurant located here in
5 Oklahoma City?

6 A. Yes.

7 Q. Which one was that, please?

8 A. Larry's Steakhouse.

9 Q. Where was that located?

10 A. 39th and Ann Arbor.

11 Q. And you now currently are a carpenter; is that correct?

12 A. Yes, sir.

13 Q. And at some point during this relationship or being a
14 carpenter, you work almost exclusively for Mr. Friesen; is that
15 correct?

16 A. Yes, sir.

17 Q. When did you start working for Mr. Friesen, please?

18 A. About nine years ago.

19 Q. All right. And for the last nine years you've been
20 basically doing things for Mr. Friesen; is that right?

21 A. Yes.

22 Q. Both -- where at, please?

23 A. I believe in about three different locations: His
24 current office, and a building next to it, and then the home
25 that he bought.

1 Q. Okay. So is that the home on -- which home is that,
2 please?

3 A. On 17th Street.

4 Q. Okay. You've done extensive remodeling at all those
5 locations; is that correct?

6 A. At two of them. Yes.

7 Q. That's going to be his business and his house?

8 A. Yes.

9 Q. Has he asked you -- let me ask you this: Did you
10 actually design some of the rooms for Mr. Friesen?

11 THE COURT: Clarify whether you're talking about the
12 home or office.

13 Q. (By Mr. Kumiaga) Let's start with the office. Did you
14 design the layout?

15 A. No.

16 Q. Who gave you those instructions?

17 A. It was already there when I started to do the trim work
18 and cabinetry.

19 Q. Let me get pointed: Do you know about a secret room
20 behind the library shelves?

21 A. Yes.

22 Q. Who built that?

23 A. I built -- I did the library room. The walls were in
24 place when I went in there.

25 Q. So there was a room behind there already?

1 A. No. There were four walls and then I did all the
2 cabinetry and trim work in there, and stayed away from one wall
3 about two and a half feet.

4 Q. So you knocked the wall back to make the space?

5 A. Yes.

6 Q. And did you help construct the bookshelves?

7 A. Yes.

8 Q. That's the pop-out bookshelf; is that correct?

9 A. Yes.

10 Q. And are they mechanically operated or electronically?

11 A. Mechanical.

12 Q. Okay. Do you know anything about some kind of remote
13 control device to pop it out?

14 A. Yes. There's a locking device which locks it once you
15 close it by remote, battery operated.

16 Q. Okay. And when did you build that, please?

17 A. I don't remember an exact date, but it seems like it's
18 been about maybe six years ago.

19 Q. Okay. And did you see a gun safe in there?

20 A. There is a safe in there. Yes.

21 Q. You don't believe it's a gun safe?

22 A. I don't know what kind of safe it is.

23 Q. Do you know anything about guns?

24 A. Very little.

25 Q. All right. Let me ask you this: You also did

1 construction at his house?

2 A. Yes.

3 Q. Back in June of 2004, were you the main contractor and
4 refurbishing or refinishing his house?

5 A. Probably. Yes.

6 Q. And let me ask you this: Were you instructed to build
7 hiding locations in the house?

8 A. Yes. There was a couple of areas.

9 Q. All right. Can you tell the jury what type of hiding
10 locations you made for him?

11 A. Well, he wanted built a safe room, and I took that to
12 mean by the way it's constructed from tornadoes and storms and
13 so forth that he could also store things in. And he actually
14 contracted for the welding of that room. And then I concealed
15 it with a door that opens and closes, which is not very
16 concealed. And then there is also a compartment behind some
17 cabinetry in the kitchen.

18 Q. Of the residence?

19 A. Yes.

20 Q. Was there some hidey hole in the business besides the --
21 in a bathroom in the business, in the law office?

22 A. Oh, in his business?

23 Q. Yes.

24 A. Yes. There's a cavity behind some existing cabinets that
25 was just there from space, open space that was already there.

1 Q. Okay. You don't know who installed the safe; is that
2 right?

3 A. No.

4 Q. But when you built the, I guess the room, a safe came in
5 there later on; is that right?

6 A. Yes.

7 Q. Okay. You never saw that safe opened up; is that
8 correct?

9 A. No.

10 Q. Now, other than having a business relationship with Mr.
11 Friesen --

12 THE COURT: Excuse me, Mr. Kumi ega. It's a little
13 confusing answer. You said you never saw the safe opened up;
14 is that correct, and he said no. So I don't know whether he
15 means that's not correct or --

16 MR. KUMI EGA: Yes, your Honor.

17 Q. (By Mr. Kumi ega) You never saw that safe opened, did
18 you?

19 A. No.

20 Q. You don't know what's in there?

21 A. No.

22 Q. You also have a personal relationship with Mr. Friesen?

23 A. Yes.

24 Q. You're friends?

25 A. Yes.

1 Q. Okay. Good friends; is that correct?

2 A. Yes.

3 Q. Okay. Did you know about his possession of machine guns?

4 A. No.

5 Q. Did you know about his possession of silencers?

6 A. Yes.

7 Q. But not the machine guns?

8 A. Not the machine guns.

9 Q. Do you know about his NFA weapons, other than machine
10 guns, silencer, pin guns, did you know about that?

11 A. No.

12 Q. Did you know about a sawed-off shotgun?

13 A. No.

14 Q. Okay.

15 MR. MARTIN: Your Honor, may we approach?

16 THE COURT: Mr. Kumi ega, let's -- I think we're going
17 a little too far here.

18 MR. KUMI EGA: Yes.

19 Q. (By Mr. Kumi ega) Let me ask you this, Mr. Nelson: You
20 bought a firearm from Mr. Friesen; is that correct?

21 MR. MARTIN: May we approach, your Honor?

22 THE COURT: Yes.

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

25 MR. MARTIN: The report I have indicates that he

1 bought a firearm from him three or four years ago when he was
2 not a licensed dealer, it was a personal firearm. And my
3 objection is that it's not inappropriate, that's perfectly
4 legal, and I object to him --

5 MR. KUMIEGA: If he's a licensed firearm dealer he has
6 to make a notation, and to fill out a form.

7 MR. MARTIN: He gave up his license in 2003.

8 MR. KUMIEGA: Right. He told us that he sold the gun
9 back in '02.

10 MR. MARTIN: Doesn't say that in any report.

11 MR. KUMIEGA: I'll ask him. That's what --

12 THE COURT: If he did it before '03 you can question
13 him, if it was after that --

14 MR. KUMIEGA: You're absolutely right.

15 THE COURT: -- then it's not relevant.

16 MR. MARTIN: He stated about three or four years ago
17 he purchased a .45 caliber pistol. That's as specific as I
18 have, your Honor. This was done in, this report is dated
19 January '07, three years, be 2004 --

20 THE COURT: Without leading him when he bought it, see
21 if you can pin it down without giving him a date.

22 MR. KUMIEGA: You're absolutely right.

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

25 Q. (By Mr. Kumi ega) Mr. Nelson, did you ever purchase a gun

1 from Mr. Friesen?

2 A. Yes.

3 Q. When?

4 A. I'm not sure of the exact date. I believe it's been
5 about three years ago.

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

7 MR. MARTIN: Your Honor, I object.

8 THE COURT: Let's see. He can ask how he pins the
9 date down.

10 Q. (By Mr. Kumi ega) How do you know that, sir?

11 A. How do I know when I bought it?

12 Q. Yeah.

13 A. I don't remember the exact date I bought it.

14 Q. Do you remember the year you bought it?

15 A. No. I just believe it's about three years ago.

16 Q. You went in front of a federal grand jury during this
17 investigation; is that correct?

18 A. Yes, sir.

19 Q. And let me ask you this: Who paid for your
20 representation?

21 MR. MARTIN: Your Honor, again, I'm going to object.

22 THE COURT: Be sustained.

23 MR. KUMI EGA: Your Honor, may I approach?

24 THE COURT: Yes.

25 (The following was had at the bench, out of the hearing of

1 the jury:)

2 MR. KUMI EGA: It shows bias, it's not privileged
3 information.

4 THE COURT: Bias about what?

5 MR. KUMI EGA: I think he's lying about purchasing the
6 firearm.

7 THE COURT: It's consistent with his prior testimony.

8 MR. KUMI EGA: I know, but it shows that his
9 relationship is beyond the pale. Mr. Friesen paid for his
10 representation.

11 THE COURT: What testimony is this?

12 MR. MARTIN: This is the grand jury.

13 THE COURT: It's consistent with that, Mr. Kumi ega.

14 MR. KUMI EGA: I don't remember where it was at. I'll
15 withdraw the question and I'll end right there.

16 THE COURT: I don't see him at this point as a hostile
17 witness, and there is no evidence that he's ever testified
18 differently.

19 MR. KUMI EGA: If I find that may I recall?

20 THE COURT: If you can find out when he bought the
21 gun?

22 MR. KUMI EGA: Yes.

23 THE COURT: Yes.

24 MR. KUMI EGA: I have no further questions.

25 MR. MARTIN: Your Honor, while we're here I would ask

1 you to advise the jury that they should disregard at this point
2 any testimony about the purchase of a firearm by this gentleman
3 by Mr. Friesen.

4 THE COURT: Okay. Any objection?

5 MR. KUMIEGA: No.

6 THE COURT: Okay.

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

9 THE COURT: Ladies and gentlemen, I'll tell you that
10 the question and the answer regarding the -- Mr. Nelson's
11 having purchased a firearm about three years ago from Mr.
12 Friesen is not relevant to any of the issues in this case and
13 should be disregarded.

14 Any other questions, Mr. Kumi ega?

15 MR. KUMIEGA: No, your Honor.

16 THE COURT: Mr. Martin, any cross-examination?

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

18 THE COURT: Yes.

19 (Brief pause)

20 CROSS-EXAMINATION

21 BY MR. MARTIN:

22 Q. Has your relationship with Mr. Friesen changed any since
23 this investigation has began, sir?

24 A. I don't believe very much. I think it's the same pretty
25 well.

1 Q. Has he treated you fairly?

2 A. Yes.

3 MR. MARTIN: Nothing further.

4 MR. KUMIEGA: Your Honor, may I approach regarding a
5 document?

6 THE COURT: Okay.

7 (The following was had at the bench, out of the hearing of
8 the jury:)

9 MR. MARTIN: What document are you looking at?

10 MR. KUMIEGA: Judge, this is the paragraph number 6.

11 THE COURT: What is this?

12 MR. KUMIEGA: This is -- he told us when he bought the
13 gun he said it was five years ago, and this is dated in '08,
14 and he relinquished his FFL in November of 2003.

15 THE COURT: Was it back five years ago?

16 MR. KUMIEGA: That would make it within the time
17 frame.

18 THE COURT: We don't know whether it would or not.

19 MR. KUMIEGA: Can I ask him?

20 THE COURT: I think it's a collateral issue that's not
21 important in this matter, Mr. Kumiega, and I think that it's so
22 -- '03 is still -- if he said ten years ago or something it
23 might have some relevance, but we're still in a borderline
24 area. We can spend a lot of time trying to pin it down, and he
25 said three or four years ago in his testimony which was sworn,

1 and before the grand jury he said three years ago, which is
2 consistent with the sworn testimony, so I think we need to move
3 along.

4 Anything else?

5 MR. KUMIEGA: No, sir.

6 (The following was in open court, within the hearing of the
7 jury:)

8 THE COURT: Mr. Nelson, you may be excused, and I
9 would advise you that you're not to discuss your testimony
10 you've given today with any persons who may be a witness in
11 this matter.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may be excused.

14 Ladies and gentlemen, I think we'll call it a day today,
15 and -- you want to stay here longer? We'll reconvene at
16 10 a.m. in the morning, and I would tell you that tomorrow I
17 have a matter that cannot be changed at a little after three,
18 so we're going to work until about three tomorrow. And I know
19 you'll be disappointed since it's Friday that you get a little
20 time off early on Friday afternoon. But we're going to be
21 involved in this case because of our delays up front that were
22 unavoidable most of next week. So I'm going to encourage
23 everybody to move along as far as fast as they can, and we'll
24 hopefully have no more delays, and I don't anticipate any more.
25 I think we've resolved all of those matters.

1 So again, I would admonition you to not read or listen to
2 anything relating to this case or do any research on the
3 internet or anywhere else on this case or the subject matter of
4 this case or any people involved in it, and don't reach any
5 conclusions until you've heard all the evidence and I've
6 instructed you on the law. If you'll leave your notebooks on
7 the seats Ms. Youngberg will lock them up safely and securely
8 tonight, and we'll begin in the morning promptly at ten a.m.

9 All rise while the jury exits.

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

12 THE COURT: We're in recess. Anything else, Mr.
13 Martin? You had your hand up.

14 MR. MARTIN: I've got a charley horse, Judge.

15 THE COURT: Anything else?

16 MR. MARTIN: No, sir. Anything else, Mr. Kumi ega?

17 MR. KUMI EGA: No.

18 THE COURT: We'll be recess until ten in the morning.

19 (Court stood in recess until September 19th, 2008. For
20 further transcription, see Volumes III through VII of this
21 transcript.)

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REPORTER' S CERTI F I C A T E

I hereby certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

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