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1 (The following was had in open court on September 19th,
2 2008. For prior transcription, see Volumes I and II of this
3 transcript.)

4 THE COURT: Number CR-2008-41-L, United States of
5 America versus Larry Douglas Friesen. Parties ready to
6 proceed?

7 MR. KUMIEGA: United States of America is ready, your
8 Honor.

9 MR. MARTIN: Ready, your Honor.

10 THE COURT: Ladies and gentlemen of the jury, I'll
11 just mention one thing, I forgot to mention this. Sometimes we
12 go a little longer than we anticipate without a break, and
13 sometimes it's a little too long for some of you. So if you'll
14 let me know, raise your hand if you need a short break to use
15 the restroom, or if you need to stand and stretch, we can stand
16 at ease while we do that. We went a little long last night
17 after the break. Even though we go a little long we can still
18 take a short five-minute break sometimes.

19 Ready to call your next witness?

20 MR. KUMIEGA: Yes, your Honor. Your Honor --

21 THE COURT: Will you be using the chart?

22 MR. KUMIEGA: Excuse me?

23 THE COURT: Are you going to be using this chart
24 again?

25 MR. KUMIEGA: Not -- I don't believe today, your

1 Honor.

2 THE COURT: Take it down because it blocks my view of
3 defense table.

4 MR. KUMIEGA: Yes, sir.

5 THE COURT: Thank you.

6 THOMAS WINTER,

7 called as a witness, having been duly sworn, testifies as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. KUMIEGA:

11 Q. Mr. Winter, would you introduce yourself to the jury,
12 please?

13 A. Thomas Winter from Ohio.

14 Q. Mr. Winter, can you pull the microphone closer to you,
15 please?

16 And you live in Ohio; is that correct?

17 A. Yes.

18 Q. And where, please?

19 A. Stone Creek, Ohio.

20 Q. Where is that near, one of the big cities, please?

21 A. Thirty miles south of Canton.

22 Q. Okay. And Canton is the middle of the state?

23 A. Yeah, basically.

24 Q. What do you do for a living, please?

25 A. Independent truck driver.

1 Q. How long have you been doing that?

2 A. Eighteen years.

3 Q. Now, you also collect something, is that correct, or
4 you're an aficionado of something; is that correct?

5 A. Yes.

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

7 A. Just firearms in general, started collecting machine
8 guns, I don't know, back in the early '80s.

9 Q. And how many machine guns do you have in your collection?

10 A. In my possession now I only own two machine guns, right
11 at the moment.

12 Q. All right. Have you traded and bought and sold machine
13 guns since the '80s?

14 A. Yes.

15 Q. You brought a machine gun today to court with you; is
16 that correct?

17 A. Yes, sir.

18 Q. And what type of machine gun did you bring to court?

19 A. It's a Mark II Sten.

20 Q. And how long have you had that machine gun?

21 A. I bought that in December of '06.

22 Q. And what did you pay for it, please?

23 A. It was a trade deal, money-wise probably around about
24 \$2,500.

25 Q. And you had companion paperwork when you purchased the

1 firearm; is that correct?

2 A. Yes, sir.

3 MR. KUMIEGA: Your Honor, may I approach the witness
4 with the firearm?

5 THE COURT: Yes.

6 Q. (By Mr. Kumi ega) Sir, is this the case that you brought,
7 please?

8 A. Yes, sir.

9 Q. Can you look at it before I ask you a question, and see
10 if it's all intact?

11 A. Okay.

12 Q. Is that the gun you brought?

13 A. Yes, sir.

14 Q. And is that -- is that companion paperwork with that
15 firearm?

16 A. Yes, sir.

17 Q. And you drove that from Ohio to Oklahoma City for today's
18 presentation; is that correct?

19 A. Yes, sir.

20 MR. KUMIEGA: Your Honor, at this time the United
21 States would move for introduction of Government's Exhibit 6.0
22 into evidence, the machine gun.

23 THE COURT: 6.0?

24 MR. KUMIEGA: Yes, your Honor.

25 MR. MARTIN: No objection.

1 THE COURT: Will be admitted.

2 MR. KUMIEGA: Your Honor, may I approach the witness
3 and pull the machine gun out?

4 THE COURT: You may approach.

5 Q. (By Mr. KumiEGA) Mr. Winter, you described that firearm
6 as a Sten, a Mark II Sten; is that correct?

7 A. Yes, sir.

8 Q. And it is a machine gun; is that right?

9 A. Yes, sir.

10 Q. That means it fires how, please?

11 A. Pardon?

12 Q. In your definition, what is a machine gun, please?

13 A. I don't know. An automatic weapon, you know, select
14 fire.

15 Q. Okay. Let me ask you: Does that firearm have a serial
16 number on it?

17 A. Yes, sir.

18 Q. Can you show the jury where the serial number is, please?

19 A. It's located right there (indicating) on the receiver.

20 Q. It's on the receiver?

21 A. Yes, sir.

22 Q. And can you read that number into the record, please?

23 A. E682.

24 Q. You said you also have paperwork when you bought that
25 machine gun; is that correct?

1 A. Yes, sir.

2 Q. And can you tell us who manufactured that firearm from
3 the paperwork, please?

4 A. Yes, sir. It's made by Charles Erb.

5 Q. Is there a date? Do you remember when it was
6 manufactured?

7 A. No, actually there is not. The only date I have is the
8 date I purchased it.

9 Q. All right. What date is that, please?

10 A. That would be in December of '06.

11 Q. Okay. How do you know it was manufactured by Charles
12 Erb?

13 A. It's stamped on the gun and his name and address is on
14 the paperwork.

15 Q. Okay.

16 MR. KUMIEGA: Your Honor, may I take the firearm from
17 the witness and display it on the ELMO, or the DOAR system?

18 THE COURT: Yes.

19 MR. KUMIEGA: Your Honor, may the witness take the
20 receiver off, I mean the handle off so I can --

21 THE COURT: Yes.

22 MR. KUMIEGA: Thank you.

23 Apparently, your Honor, this is not going to be able to
24 focus because of the quality of the firearm. May I publish it
25 to the jury?

1 THE COURT: May I see it first?

2 MR. MARTIN: I didn't hear.

3 THE COURT: I just wanted to see it before he --

4 Any objection?

5 MR. MARTIN: No, your Honor.

6 THE COURT: Let's have the court security officer come
7 up.

8 Mr. Kumi ega. Thank you, Mr. Bostic.

9 Q. (By Mr. Kumi ega) Now, Mr. Winter, you said you had this
10 weapon for how long, please?

11 A. Since '06.

12 Q. And you said this is an Erb machine gun; is that correct?

13 A. Yes, sir.

14 Q. Was there any particular reason why you wanted an Erb
15 machine gun?

16 A. No. I was just looking for something, I mean, he's got a
17 good reputation and stuff and I happened to find a decent deal,
18 so I just purchased it.

19 MR. KUMI EGA: I have no other questions of this
20 witness, your Honor.

21 THE COURT: Mr. Martin.

22 MR. MARTIN: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. MARTIN:

25 Q. Mr. Winter, in front of you, in that notebook --

1 MR. MARTIN: If I might approach?

2 THE COURT: You may approach.

3 Q. (By Mr. Martin) This notebook. I'm going to ask you to
4 look in that notebook, if you would, at Exhibit No. -- I got my
5 book upside down -- 41, Tab 41. Have you found that, sir?

6 A. Yes, sir.

7 Q. And you note in that tab there are two photographs of
8 firearms in there. Do you see those two firearms, sir?

9 A. Yes, sir.

10 Q. Reviewing those photographs, sir, and on the second
11 photograph without regard to the written material on there, do
12 you recognize that firearm in those photographs?

13 A. Yes, sir.

14 Q. It's your firearm, sir?

15 A. The first picture, yes. The second one I really can't
16 tell you but I assume it is.

17 Q. Do you see the serial number on the second picture, sir?

18 A. Yes, sir.

19 Q. Is that your serial number?

20 A. Yes, it is.

21 Q. Okay. Now, at the time those pictures were taken, if
22 that is your firearm, you wouldn't have owned them in 2004,
23 would you, sir?

24 A. No, I wouldn't.

25 Q. Okay. Now, sir, I believe you identified yourself as

1 kind of a gun collector; is that right?

2 A. Yes, sir.

3 Q. Do you have any kind of special licenses, are you a
4 licensed dealer?

5 A. No. I -- I shoot a lot of competition with military
6 firearms, and that's basically what I'm interested in.

7 Q. But you're not a licensed dealer to buy or sell?

8 A. No, sir.

9 Q. Let me ask you, as I -- I'm going to bring back your
10 firearm and ask you if you can locate for me the manufacturer
11 stamp on that firearm.

12 A. Mr. Erb's, I presume?

13 Q. You said he was the manufacturer.

14 A. Yes. Right here (indicating).

15 Q. Where is that, sir? I didn't say the serial number, the
16 manufacturer stamp.

17 A. The E would probably be his stamp.

18 Q. Okay. Is there any other stamp on that besides the
19 serial number that would indicate that, who manufactured that
20 firearm?

21 A. No, sir, not to my knowledge. There's markings on the
22 kit that were -- whoever manufactured the parts, but there --
23 like British Arsenal markings or something like that?

24 Q. And you understand, maybe you don't, and so I'm not
25 trying to put words in your mouth, that the gun is actually the

1 tube, right?

2 A. Yes, sir.

3 Q. Okay. So on the tube it's your testimony that other than
4 the serial number, there's no marking as to who the
5 manufacturer might be?

6 A. Well, the E -- the E682 is the serial number, but the E
7 refers to Erb, is the way it was explained to me.

8 Q. Other than that, sir. That's my question.

9 A. Yeah. I understand your question.

10 Q. There's no other --

11 A. No. Not to my knowledge, no.

12 Q. Okay. Now, sir, how many owners -- if you want to lay
13 your firearm down, it's fine.

14 How many owners have had that gun prior to you?

15 A. As far as I knew, two Class 3 dealers.

16 Q. All right. And let me ask you, sir: Since you obtained
17 that gun in December of 2006, have you done anything to it,
18 such as paint it, repair it, modify it or alter it in any way?

19 A. No, sir.

20 Q. Okay. It's in basically the condition that you received
21 it in?

22 A. Yes, sir.

23 Q. All right. And do you have any other Erb firearms?

24 A. No, sir, not right at the time.

25 Q. Okay.

1 MR. MARTIN: Your Honor, I think it would be prudent
2 that we approach before I go into my next line of questioning.

3 THE COURT: All right.

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

6 MR. MARTIN: He just testified that Erb has a good
7 reputation as a gun dealer, and I have hundreds of pages of
8 documentation as to bad reputation of Erb. And I think I can
9 cross-examine him about, not all of them, but I guess
10 cross-examine him about Erb's reputation for being a
11 not-so-good gun manufacturer, and all the violations that he's
12 committed in the past because of his testimony under
13 examination. I wanted to give Mr. Kumi ega an opportunity to
14 object outside the presence of the jury before I delved into
15 that, your Honor.

16 MR. KUMI EGA: Mr. Erb is going to testify. He would
17 be perfect to explain away these minor violations. This
18 gentleman is just --

19 THE COURT: There's been no foundation laid how he
20 knows the reputation or anything else. So he just said as far
21 as he knows he's got a good reputation. So to me, unless there
22 is some foundation laid that he's had lots of dealings with him
23 or he knows his reputation throughout the gun community and all
24 that, why, I think it would be improper to do it, based on what
25 his answer is to the one question.

1 MR. MARTIN: Well --

2 THE COURT: If you want to lay some foundation for his
3 knowledge of Mr. Erb then we can discuss it.

4 MR. MARTIN: I'll try to do that.

5 THE COURT: Otherwise --

6 MR. MARTIN: The reports I've been provided are not
7 minor violations.

8 THE COURT: Whatever they are, I'm just saying that
9 would be --

10 MR. MARTIN: Very well.

11 THE COURT: Appear to be more proper cross-examination
12 of Mr. Erb, because you can delve a little bit into how he
13 knows Mr. Erb's reputation, but based on the one question and
14 his one general answer, that's not enough.

15 MR. MARTIN: Very well.

16 THE COURT: And you can go it into with Mr. Erb
17 without much reservation, if you want to do that. Didn't sound
18 like he knows him personally.

19 MR. MARTIN: I'll inquire into that, your Honor. If
20 he doesn't --

21 THE COURT: Okay.

22 (The following was had in open court:)

23 Q. (By Mr. Martin) Mr. Winter, I believe you said somebody
24 told you that that, quote, E on the serial number was the
25 manufacturer mark or something?

1 A. Yes, sir.

2 Q. Who told you that, sir?

3 A. Dealers that I've dealt with over the years.

4 Q. You don't have somebody's name, just dealers?

5 A. Well, Class 3 dealers, the gentleman that I bought this
6 one off of, Ronald Carmen.

7 Q. Okay. As a matter of fact, his name is on one of those
8 exhibits you just looked at, Exhibit 41, right?

9 A. Yes, sir.

10 Q. Now, let me ask you: Have you ever met Erb?

11 A. No, sir, I have not.

12 Q. You don't know Erb?

13 A. No, sir.

14 Q. Okay. And you're not -- other than this firearm, have
15 you ever owned another Erb firearm, sir?

16 A. No, sir.

17 Q. Okay. And as far as his reputation, did somebody just
18 tell you that?

19 A. Meaning?

20 Q. You said he had a good reputation.

21 A. Yes, sir. Yes. He's well-known in the Class 3 business.

22 Q. Who told you that, sir?

23 A. Well, everyone that has anything to do with it knows Mr.
24 Erb.

25 Q. Mr. Carmen?

1 A. Mr. Carmen.

2 Q. Okay. Now, sir, except for this reference to this trial
3 here, has the ATF ever come out and looked at that firearm?

4 A. Not since I've owned it. No, sir.

5 Q. Okay.

6 MR. MARTIN: Very briefly, your Honor.

7 (Brief pause)

8 Q. (By Mr. Martin) You've never talked to anyone at the ATF
9 about Mr. Erb, have you, sir?

10 A. No, sir.

11 Q. Okay.

12 MR. MARTIN: Nothing further.

13 THE COURT: Anything further?

14 MR. KUMIEGA: Pass the witness, your Honor.

15 THE COURT: Mr. Winter, you may be excused, and I
16 would advise you that you're not to discuss the testimony
17 you've given here with other persons that may be a witness in
18 this case.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: You may be excused.

21 Call your next witness.

22 MR. KUMIEGA: Yes, your Honor. The United States
23 would like to call Tim Holland with the ATF.

24

25

1 THE COURT: I don't know what you want.

2 MR. KUMIEGA: I wanted to know if the Court wanted to
3 see the firearm.

4 THE COURT: Is this a different firearm?

5 MR. KUMIEGA: Yes, sir.

6 THE COURT: Show it to the witness to identify it,
7 then we'll --

8 Q. (By Mr. Kumi ega) Mr. Holland, you're here to introduce a
9 firearm to the jury; is that correct?

10 A. Yes, sir.

11 Q. And you were tasked to get the firearm from an
12 individual; is that correct?

13 A. Yes, sir.

14 Q. Can you tell the jury where you went to and who you got
15 it from, please?

16 A. I got the firearm from Murray Beckford, and I went on
17 September 10th. I flew to Milwaukee, he lived about an hour
18 outside of Milwaukee in Cascade, got a rental car and went to
19 his residence and retrieved the firearm.

20 Q. In front of you, sir, is Government's Exhibit 1.6. It's
21 going to be the document, please.

22 A. Okay.

23 Q. Do you see 1.6 in front of you?

24 MR. KUMIEGA: Your Honor, may I approach and show him
25 the document?

1 THE COURT: Yes.

2 Q. (By Mr. Kumi ega) Agent, can you please take that out of
3 sleeve, please?

4 A. Okay.

5 Q. What is that, please?

6 A. It's a -- looks like it's from our National Firearms
7 Branch, and this is showing that Murray Beckford got the --
8 paid the tax stamp for this firearm.

9 Q. All right. Who did he get the gun from, please?

10 A. From John Walker, says "Birmingham Pistol Wholesale".

11 Q. All right. Does it say what date he received it?

12 A. It's dated September 5th. I don't know if that's the day
13 he approved it. Let me look back here and see. Says May 14th
14 of '86 at the bottom.

15 Q. Is that the manufacturer's license or Form 2?

16 A. Yes, it is.

17 Q. And who manufactured the gun, please?

18 A. It's Charles Erb.

19 Q. Okay.

20 A. Junior.

21 Q. Charles Erb, Jr. Is there an address associated with
22 that?

23 A. Looks like it says "RD 1", I don't know if it's Road 1 or
24 something else, it says "Fredricktown, Pennsylvania".

25 Q. Okay. What I have here is Government's Exhibit No. 7

1 proper. Can you look at this, please?

2 A. Okay.

3 Q. Is that the gun you received from the other person that
4 you just mentioned that you went to, flew to Milwaukee?

5 A. Yes, sir.

6 MR. KUMIEGA: Your Honor, at this time the United
7 States would move introduction of that firearm into evidence.

8 MR. MARTIN: No objection.

9 THE COURT: Will be admitted. What's the number on
10 it?

11 Q. (By Mr. Kumi ega) Agent, can you read to the jury and the
12 Court the serial number of that gun?

13 THE COURT: No. The exhibit number.

14 MR. KUMIEGA: No. 7, your Honor.

15 THE COURT: Seven. Go ahead. You can answer the
16 question, Agent.

17 THE WITNESS: The serial number is E, as in echo, 685.

18 Q. (By Mr. Kumi ega) All right.

19 MR. KUMIEGA: Your Honor, may the United States
20 publish that gun to the jury?

21 THE COURT: Do you want to take the handle off?

22 MR. KUMIEGA: Yes.

23 THE COURT: Mr. Bostic.

24 Where is the serial number on it, Agent.

25 THE WITNESS: It is located on the top right here

1 (indicating). It's located right on the top of the barrel
2 right there.

3 THE COURT: Okay. Mr. Bostic.

4 Q. (By Mr. Kumi ega) Agent, what model firearm is that,
5 please?

6 A. It's a Sten Mark II.

7 Q. All right. Can you, I guess, if you can look at the
8 other book, look at Government's Exhibit 7.0.1, please.

9 A. Okay.

10 Q. And what is that, please? First of all, can you identify
11 that?

12 A. Yes. It appears to be a Sten Mark II submachine gun.

13 Q. Is there a serial number present on that?

14 A. Well, I don't see a serial number. It's just a picture
15 of the gun, I can't --

16 Q. Okay.

17 A. -- tell if there is one on there or not.

18 MR. KUMI EGA: Your Honor, if I can have just a moment.

19 (Brief pause)

20 Q. (By Mr. Kumi ega) Sir, can you look at Government's
21 Exhibit 7.0.2, please. The next page.

22 A. Okay.

23 Q. Did you see a serial number on that?

24 A. Yes, sir.

25 Q. And is it the same as the machine gun that you just

1 introduced?

2 A. It appears that it's, has the same serial number. The
3 first number isn't real clear, but it looks like it's 685,
4 E685.

5 MR. KUMIEGA: Your Honor, at this time the government
6 would move for introduction of Government's Exhibit No. 7.0.2
7 into evidence.

8 MR. MARTIN: No objection.

9 THE COURT: Will be admitted.

10 Q. (By Mr. Kumi ega) That's it; is that correct?

11 A. Yes, sir.

12 Q. Agent, if you look at that machine gun where the magazine
13 port is second to the firearm, does it appear to be welded or
14 unwel ded?

15 A. It's welded. It's a very good weld. It's been smoothed
16 down.

17 MR. KUMIEGA: No further questions.

18 THE COURT: You may cross-examine.

19 MR. MARTIN: May I retrieve the firearm, your Honor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. Officer, I'm going to hand you back Exhibit, I believe
24 it's Exhibit 7.

25 A. Yes, sir.

1 Q. I know you've only been with the ATF a few years, but
2 you're pretty familiar with their regulations, would you agree,
3 sir?

4 A. Yes, sir.

5 Q. Okay. You're familiar with their regulations that
6 requires a manufacturer when they manufacture a gun to put
7 their stamp on the receiver?

8 A. Yes, sir.

9 Q. Is there a manufacturer's stamp on that receiver, sir?

10 A. I do not see one.

11 Q. Okay. Behind you there should be --

12 MR. MARTIN: If I might approach.

13 Q. (By Mr. Martin) Government's Exhibit No. 6, should be
14 another Sten firearm. It's right here. Would you look at that
15 one and tell me whether or not you see a manufacturer's stamp
16 on the receiver of that one?

17 A. I do not.

18 Q. All right, sir. Now, I know you went and retrieved this
19 firearm to testify in court today. Did you take any
20 photographs of any firearm in relation to this investigation,
21 sir?

22 A. No, sir.

23 Q. Now -- I'm sorry. Did I interrupt you?

24 A. No.

25 Q. I thought I heard you start to say something.

1 A. No, sir. That wasn't me.

2 Q. I apologize. Mr. Kumiaga had you look at Exhibit, I
3 think it was 1.6 about the origin of this firearm. Do you
4 recall that, sir?

5 A. Yes, sir.

6 Q. And you looked at a document that basically was dated May
7 14th, 1986. Do you recall that, sir?

8 A. Yes, sir.

9 Q. Okay. I'm going to show you another document, sir, and
10 ask you -- hand you what has been previously introduced into
11 evidence as Defendant's Exhibit No. 100, sir --

12 A. Okay.

13 Q. -- and ask you, is that also an ATF Form 2?

14 A. Yes, sir.

15 Q. That's this right here, at the bottom it says Form 2?

16 A. Yes, sir.

17 Q. It's dated April 20, 1986, right?

18 A. Yes, sir.

19 Q. And there's a list of firearms, are there not, sir, on
20 that?

21 A. Yes, there is.

22 Q. As a matter of fact, they are identical to the firearms
23 that you just went over on May 14, 1986, are they not?

24 A. Yes, sir. I see E685 on there.

25 Q. Right there (indicating). I've highlighted it on my

1 copy, right?

2 A. Yes, sir.

3 Q. Okay. And have you ever seen either Government's Exhibit
4 1.6 or Defendant's Exhibit 100 before, sir?

5 A. No, sir.

6 Q. There is no disputing the fact that those are -- the two
7 dates of manufacture are approximately a little less than a
8 month apart?

9 A. Yes, sir.

10 MR. MARTIN: Nothing further.

11 THE COURT: Mr. Kumiega.

12 RERECT EXAMINATION

13 BY MR. KUMIEGA:

14 Q. Can you look at 1.6?

15 A. Yes, sir.

16 Q. Is there a Form 2 in there?

17 A. Yes, sir.

18 Q. Is there a difference between that Form 2 and the
19 certified copy in the defendant's exhibit?

20 A. There is a difference in the date.

21 Q. Okay. And what about on the side of the numbers?

22 A. There is a difference.

23 Q. What's the difference?

24 A. The defendant's exhibit has an X by every one of the
25 firearms, the other Exhibit 6, I believe, or 1.6 does not. And

1 actually, the first serial number it says E676, looks like
2 there's a little bitty 8 by that. I don't even know if that's
3 a number or if someone scratched that with a pen and didn't
4 mean to write a number, but looks like the number 8 to me.

5 Q. Okay.

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

7 RE-CROSS-EXAMINATION

8 BY MR. MARTIN:

9 Q. Both of those documents, Government's Exhibit 1.1, and
10 Defendant's Exhibit 100, are copies, wouldn't you agree, sir?

11 A. Yes, sir.

12 Q. And without the original document, no one can know when
13 any of those marks were put on there. Would you agree with
14 that, sir?

15 A. Yes, sir.

16 Q. The Xs or the little 8, the Xs on the defendant's
17 document, or the 8 on the government's document right?

18 A. Yes, sir.

19 Q. You made a statement like maybe somebody accidentally did
20 that, and you don't know that?

21 A. Right. It looks like an 8 to me, but it's so small it's
22 hard to tell.

23 Q. Other than those two things you pointed out and the
24 obvious date difference, they are identical pretty much;
25 wouldn't you agree?

1 A. Yes, sir. 1.6 is not copied quite as good, so at the
2 bottom it's hard to tell, looks like the paper was actually
3 folded a little bit, but it looks like they were made from the
4 same document, both copies.

5 Q. So the government's copy is not quite as good as the
6 defendant's copy?

7 A. That is correct.

8 Q. As a matter of fact, you were talking about the
9 government's copy 1.6, the very first one I think you said it
10 was E68 -- 676 and then there is the little thing there. Is
11 that what you're calling an 8?

12 A. Yeah, that's it. It's just blown up bigger on the
13 government's exhibit so it's easier to see. On the defendant's
14 exhibit it's smaller so it doesn't look like an 8 so much
15 there.

16 Q. Same thing?

17 A. Looks like the same mark. Yes, sir.

18 MR. MARTIN: Nothing further.

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

20 THE COURT: Agent Holland, you may be excused. I
21 would advise you you're not to discuss the testimony you've
22 given with other witnesses who may be a witness in this matter.

23 THE WITNESS: Yes, sir.

24 THE COURT: You may be excused.

25 Call your next witness.

1 MR. KUMI EGA: Your Honor, the United States would like
2 to call Howard Kong.

3 THE COURT: Who?

4 MR. KUMI EGA: Howard Kong.

5 HOWARD KONG,
6 called as a witness, having been duly sworn, testifies as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. KUMI EGA:

10 Q. Sir, can you introduce yourself to the jury, please?

11 A. Yes. My name is Howard Ho-Wah Kong. Last name is
12 K-O-N-G, middle name H-O-W-A-H.

13 Q. And Mr. Kong, how are you employed, please?

14 A. I work for the Bureau of Alcohol, Tobacco, Firearms &
15 Explosive as a firearms and toolmark examiner.

16 Q. And how long have you been doing that, please?

17 A. I've been a firearms and toolmark examiner for about
18 seven years now, and I was an IBIS specialist for the previous
19 five. And "IBIS" stands for Integrated Ballistics
20 Identification System. It is a digital imaging system.

21 Q. Now, could you tell us something about your educational
22 background, please?

23 A. Yes. I have a bachelor of science degree in materials
24 engineering from the San Jose State University, and that's in
25 San Jose, California. Materials engineering is the application

1 of material science in engineering. Material science is the
2 study of material behaviors and properties.

3 Q. Now, you said that right now you're a -- what's your
4 specialty, please?

5 A. I'm a firearms and toolmark examiner.

6 Q. Okay. And you office out of a certain region here in the
7 United States; is that correct?

8 A. Yes. Western United States.

9 Q. And where do you have your physical office, please?

10 A. It's in Walnut Creek, California. It's outside of the
11 San Francisco bay area.

12 Q. All right. Now, you're a firearms and toolmark examiner;
13 is that correct?

14 A. Yes.

15 Q. And have you ever worked in firearms identification?

16 A. Yes. That is my principal duty is to do firearms
17 examination and identification. What that means is I look at
18 bullets, cartridge cases, toolmarks and determine if they are a
19 match.

20 Q. And what's the difference, if you can tell the jury,
21 between a firearms identification and toolmark identification,
22 please.

23 A. Yes. They are pretty much the same. A firearm is a type
24 of toolmark identification. A firearm is just another tool.
25 It's going to leave marks on there that are reproduceable and

1 that have potential to be identified to the gun that made it.

2 Q. Now, do you have any specialized training in the work
3 that you do for ATF, please?

4 A. Yes. I completed the ATF National Firearms Examiner
5 Academy. It's a yearlong course on firearms and toolmark
6 identification. It consists of classroom lectures, hands-on
7 exercises, and we go out to manufacturers to look at their
8 manufacturing processes. I've been to 14 firearms factories,
9 and two tool manufacturers. And I see the way they use to make
10 their parts including to apply serial numbers on their guns.

11 Q. Let me ask you this: Do you teach any courses to other
12 law enforcement, I guess, scientists in your specialized area
13 of work?

14 A. Yes, I do. I'm an instructor with the ATF academy. I
15 teach serial number restorations. I've done six classes across
16 the U.S. and in Mexico.

17 Q. Okay. Serial --

18 A. I'm sorry. I was going to describe the class a little
19 bit. Basically we teach examiners how the serial number is
20 applied onto the gun, how they get obliterated and how we would
21 restore to visualize the numbers that were on the gun.

22 Q. And how long have you been doing that specialized area of
23 work, please?

24 A. About four years.

25 Q. Okay. Now, you were tasked as part of this investigation

1 to analyze a machine gun; is that correct?

2 A. Yes.

3 Q. And what type of machine gun were you given to look at,
4 please?

5 A. I was given a Sten Mark III carbine, machine carbine.
6 Same thing as machine gun.

7 Q. All right. And do you remember the serial number, or the
8 number, identification numbers you were looking at pursuant to
9 your investigation?

10 A. Yes. The marks that I was looking at was, it was --
11 well, E683 was stamped on the body of the receiver, and those
12 were the markings that I was looking at.

13 Q. All right.

14 MR. KUMIEGA: Your Honor, may I approach the witness
15 with the firearm?

16 THE COURT: Excuse me?

17 MR. KUMIEGA: May I approach the witness with the
18 firearm?

19 THE COURT: Yes.

20 Q. (By Mr. Kumiega) Sir, can you identify that gun, please?

21 A. Yes. This was submitted to me as Exhibit 1 in this
22 investigation.

23 Q. All right. And can you tell the jury what generalized
24 analysis you did before we get into specifics, please, on the
25 firearm?

1 A. I looked at the marks in front of the trigger mechanism
2 housing, and I was examining the toolmarks that were present
3 there. And I also looked at the characteristics of the
4 firearm, and I identified it as a certain model.

5 Q. All right. And what type of, I guess, tools or
6 instruments did you use to do your work today when you made the
7 analysis, please?

8 A. I used a stereo microscope to look at the marks. I also
9 made silicon casts of the marking so I could view it under
10 another more high power microscope.

11 Q. Did you take any, I guess, photographs of your work?

12 A. Yes, I did.

13 Q. And approximately how many photographs did you take,
14 please?

15 A. Approximately ten.

16 Q. All right. Can you look at -- there's going to be a book
17 in front of you, Government's Exhibit No. 9.

18 A. This one?

19 MR. KUMIEGA: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. (By Mr. Kumiega) If you can flip to Government's Exhibit
22 9, look at each picture carefully, and tell me if -- who made
23 those pictures, please?

24 A. These are pictures that I and a colleague of mine took
25 together.

1 Q. All right.

2 A. They are in my notes package.

3 Q. All right. And the name of your colleague, please?

4 A. Sarah Walbridge. She's a forensic chemist.

5 Q. Again, what's your official title?

6 A. I'm a firearms and toolmark examiner.

7 Q. All right. Now, have you ever testified in court as an
8 expert witness?

9 A. Yes, I have.

10 Q. All right. Approximately how many times, please?

11 A. Five times.

12 Q. All right. Where did you examine the Sten Mark III gun,
13 please?

14 A. Where did I examine it?

15 Q. Yes.

16 A. Location or the location of the firearm?

17 Q. No. Where? What lab? Was there a laboratory?

18 A. Yes. ATF forensic laboratory in Walnut Creek,
19 California.

20 Q. Let me ask you this: Does that laboratory have any
21 specialized certification?

22 A. Yes. We are ASCLD certified. ASCLD is American Society
23 of Crime Lab Laboratory Directors.

24 Q. All right. And what's the purpose of that certification,
25 please?

1 A. They provide a set of procedures and protocols that you
2 have to follow, and we -- and the purpose of that is for
3 quality assurances. And we get inspected every so often and
4 we're one of the first laboratories to be certified by them and
5 they come out every so often to recertify us. What that means
6 is that with the quality assurances in place, all the work that
7 we do is peer reviewed by another qualified examiner, and
8 technically -- I'm sorry, administratively reviewed by the
9 supervisor.

10 Q. All right. You said it's peer reviewed; is that correct?

11 A. Yes.

12 Q. That means what, please?

13 A. That means they look at the notes that we take, and they
14 take a look at it to make sure the documentation supports the
15 conclusions that we are drawing from our observations.

16 Q. All right. You have a very interesting accent. Can you
17 tell the jury about that, please?

18 A. I'm Chinese. I was born in Hong Kong, and I speak
19 Cantonese, and English is my second language.

20 Q. When did you become an American citizen?

21 A. That was right during my senior year in high school, and
22 that would be 1979.

23 Q. Now, Government's Exhibit No. 9, you have identified as
24 your handiwork; is that correct?

25 A. Yes.

1 MR. KUMI EGA: Your Honor, at this time the United
2 States would move for introduction of Government's Exhibit No.
3 9 into evidence.

4 MR. MARTIN: Nine and 10? Is that what you said?

5 MR. KUMI EGA: Yes.

6 MR. MARTIN: Your Honor, I have two objections. One I
7 have a prior motion in this case to suppress, and number two is
8 remoteness.

9 THE COURT: Is this Exhibit 9 and 10?

10 MR. KUMI EGA: No. Just No. 9.

11 MR. MARTIN: Then as to 9 is my objection.

12 THE COURT: Is what?

13 MR. MARTIN: The previous motion to suppress, and
14 remoteness, your Honor.

15 THE COURT: Objection will be overruled.

16 Q. (By Mr. Kumi ega) Now, Mr. Kong, you took approximately
17 ten photographs; is that correct?

18 A. Yes, approximately. I don't remember the exact number.
19 I can check my notes if that's relevant.

20 Q. We'll look at Exhibit No. 9.

21 A. Okay.

22 Q. Let's look at the first photograph so we can give the
23 jury an overview of what we've got there. What is that,
24 please?

25 A. That is the overall picture of Exhibit 1 that was

1 submitted to me.

2 Q. All right. And that's the machine gun in front of you;
3 is that correct?

4 A. Yes. I set it down in the floor, but this is the -- this
5 is it.

6 Q. All right. And let's look at photograph No. 2, please.
7 What is that, please?

8 A. That is some markings that I observed on the machine gun.
9 It's on the side of the machine gun housing.

10 Q. Let's look at photograph No. 3. And what's that, please?

11 A. That is a close-up, or closer-up photo of the marks that
12 I was asked to take a look at.

13 Q. All right. And let's look at the next photograph, No. 4.

14 A. That is another photograph of the same markings as the
15 previous one, but at a slightly higher-magnification.

16 Q. And let's look at photograph No. 5.

17 A. It's the same, it's slightly magnified since the last
18 one.

19 Q. Photograph No. 6?

20 A. It's the same markings, the only difference now is that
21 this picture was taken under a microscope so that we could get
22 a higher magnification.

23 Q. And photograph No. 7?

24 A. I made some observations of the toolmarks that are
25 present in this marking, so another higher magnification

1 photograph taken under the microscope.

2 Q. And let's look at No. 8. Is that your handiwork?

3 A. Yes. This particular photograph shows some of the
4 markings that I was seeing when I'm looking at this mark under
5 the microscope.

6 Q. And let's look at photograph No. 9.

7 A. It's the same as the last one except higher magnification
8 and showing a specific area.

9 Q. Before we go into one more photograph, can you look at
10 Government's Exhibit No. 9.1.1. That's going to be on the next
11 page. What is that, please?

12 A. Are you referring to this one?

13 Q. Yes, sir.

14 A. This one?

15 Q. Yes. For observation purposes, for identification
16 purposes, did you take that picture?

17 A. I'm not sure if this is -- I have a picture similar to
18 this. I don't know if this is the same one or not. I thought
19 mine was in black and white. But I recognize what is shown in
20 the picture.

21 Q. All right.

22 MR. KUMIEGA: Your Honor, may I approach with the
23 actual exhibit?

24 THE COURT: Yes.

25 Q. (By Mr. Kumiega) What I have here is Government's

1 Exhibit No. 9.1 for identification purposes. Have you seen
2 that before?

3 A. Yes, I have.

4 Q. And what is it, please?

5 A. There are three silicon casts that I made of the
6 impressions on Exhibit 1.

7 Q. And the impressions of what, please?

8 A. Of the stamped serial number.

9 MR. KUMIEGA: Your Honor, at this time the United
10 States would move into evidence Exhibit 9.1.1, and I think
11 9.1.2. I apologize, your Honor, it's 9.1 and 9.1.1.

12 MR. MARTIN: Same objection.

13 THE COURT: And what exhibit? 9.1 and what?

14 MR. KUMIEGA: 9.1, your Honor, and 9.1.1.

15 Q. (By Mr. Kumi ega) This silicon impression, if you can
16 hold that up to the jury, please. How was that done, please?

17 A. It's a kit that I have, there are two parts to the kit, a
18 hardener and a gel that I mix together, and I have a certain
19 number of minutes before it sets. What I do is I apply it on a
20 surface that I want to replicate and let it set. Once it's set
21 it picks up all the imperfections on a surface that it's
22 sitting on. So when I peel it off I would have a replica of
23 what was on that surface except a mirror image of it. So
24 everything that's down on the surface is now up in the cast.

25 Q. Let me ask you this: Before we go into your analysis,

1 are the techniques that you are using to analyze this purported
2 serial number, are they commonly accepted in the field that you
3 work in, in tool and firearm examination?

4 A. It is accepted in the field that I am working and that
5 would be the field of firearms examination and identification.

6 Q. And that area that you're going to testify to, is that
7 part of the area you've been teaching or have some published
8 papers, please?

9 A. Yes. This is techniques that I teach in my class.

10 Q. All right.

11 A. Or one of the many techniques that I teach in my class.

12 Q. All right. Mr. Kong, the first part of your examination
13 was to look for what, please?

14 A. I was looking -- well, I was looking at the impressions
15 overall to see what observations I can make.

16 Q. Your overall observations; is that correct?

17 A. Yes. Yes.

18 Q. And first of all, what things are you looking for when
19 you got the machine gun, please?

20 A. Well, I was looking for the -- the machine gun has a
21 coating on there, it's paint, and I'm looking at the paint to
22 see whether it was interrupted or not, are there any toolmarks
23 in that area, and what other marks there are pressing on this
24 surface.

25 Q. All right. So let's start with, I guess it's photograph

1 No. 1. That's on -- it's going to be, excuse me, photograph
2 No. 6 on the top.

3 MR. KUMIEGA: If we can bring that up, please.

4 Q. (By Mr. Kumi ega) This is your first photograph in that
5 series, is that correct, or one of the first photographs?

6 A. It's one of the photographs. It's the first one that was
7 taken under the microscope.

8 Q. All right. And the issue is what are you looking for at
9 this point?

10 A. Well, I'm looking at the structure of the, and the
11 quality of the impressed numbers on there. I notice that there
12 are duplicate stampings of it. If you look at the E on the
13 left there is -- it was stamped many times. That's visually in
14 there. And if you look at the 6 it's at least twice, et
15 cetera.

16 MR. KUMIEGA: Your Honor, may I approach the witness
17 and give him a laser pointer?

18 THE COURT: Yes.

19 Q. (By Mr. Kumi ega) You said the E has multiple stamps; is
20 that correct?

21 A. Yes. Right there (indicating).

22 Q. And can you point on the bigger screen also?

23 A. Oh, okay. (Complies)

24 Q. All right. And how many --

25 A. You can see on the 6 also. I'm sorry. I interrupted

1 you.

2 Q. The E has multiple stamps. Can you tell how many
3 approximately?

4 A. It's an incomplete stamp. It's difficult to tell. And
5 I'm not even sure that the stamp was an E. It may have been
6 something else combined with something else to create something
7 that looks like an E.

8 Q. All right. Let's look at photograph No. 8 in the series,
9 please. Now, you use the word on the bottom scribing; is that
10 correct?

11 A. Scribing.

12 Q. Scribing. Can you tell the jury what's the difference
13 between scribing and stamping, please?

14 A. Scribing is you took some kind of tool, it could be
15 anything, it could be a pencil, it could be a pen, it could be
16 a nail, it could be a punch, it could be anything, and you just
17 try to write in whatever you want to write it. It's like
18 freehand, and you are dragging it on top of the surface.

19 Q. All right. And that's just kind of like, what kind of
20 tool would do that?

21 A. Any kind of tool that has a pointed end, like a pencil,
22 ballpoint pen, a nail that's got a sharp tip, or something not
23 as sharp, like a punch.

24 Q. And the difference between that and the stamp, please?

25 A. Stamp is something that you put on the surface and you

1 will hit it with something like a hammer to generate some type
2 of force to compress the metal on the surface, and you would
3 get a depression of whatever the tool is. If you have, like,
4 an E stamp, for instance, there would be the E surface of the
5 stamp and that would be impressed into the surface.

6 Q. Now, the next step that you did, if you look at the
7 bottom of that. It's photograph No. 9. You get a clearer or
8 close-up of some of the numbers; is that correct?

9 A. That's correct. When I was looking at the numbers I
10 noticed that there was scribings adjacent to all, on top of or
11 underneath the stampings. And if we go back to the last one,
12 if we could.

13 Q. Photograph No. 8.

14 A. This might be a little hard, but I notice that right
15 along there there is -- there is a scribing of E, not just
16 stamp, but it's a very thin line. And then right where the
17 arrow, the second arrow from the top on the right that's
18 pointing to the beginning of a 6.

19 Q. Can you use the pointer to show it?

20 A. If you look at this arrow, it's pointing to the
21 beginning. Let me do that again, right there. It's pointing
22 to the beginning of the top of the 6 and it comes down like
23 that and comes up like this. This arrow, the second arrow on
24 the left-hand side, is pointing to the bottom of the 6. And
25 that's the scribing that I was observing on this surface here.

1 And then below that there is an 8 that was described on here.
2 The top loop is right about there and the bottom loop about
3 there. And below that there is a 3. And it's -- the top loop
4 is right about there, and the bottom is about there
5 (indicating).

6 And then I went ahead and I took a second photograph of
7 higher magnification, that would be the next photo on the
8 bottom of this page. And you can see that the 6 is a little
9 bit more clear in this photo. It starts up here and comes down
10 and around right there. And the 8 is like this (indicating).
11 I apologize, my hand is shaking a bit, but -- and the 3 is
12 about there and has a bottom of the loop on the 3.

13 Q. If we look at photograph No. 7 --

14 A. Before -- I'm sorry. Okay. Go ahead.

15 Q. What were you going to say? Complete the thought,
16 please.

17 A. Another observation that I made is that the scribing and
18 the stamping, the stamping goes over, right in there, over the
19 scribing and you don't see the scribing in the groove of the
20 stamping. Right there and right there. And if you look at the
21 8 you can see that there too. And it happens with the E also.

22 Q. All right.

23 A. But what that is --

24 Q. Go ahead.

25 A. What that is telling me is the scribing was done first

1 and then it was stamped because the stamping is obliterating
2 the scribing where they intersect.

3 Q. Did each of the numbers or each of the marks, E683, do
4 they have the same type of characteristics with apparently the
5 scribing first and then with the stamp?

6 A. The first three, yes. The last one did not overlap, so I
7 cannot say that.

8 Q. Okay. If we look at photograph No. 7, you took a
9 magnification of 50; is that correct?

10 A. Yes.

11 Q. Now, this part of the -- of your analysis is you're
12 looking for a different analysis, is that correct, than the
13 scribing and stamping; is that right?

14 A. Slightly different.

15 Q. All right. What are you looking -- what are you trying
16 to show the jury in this photograph, please?

17 A. There are several things on this photograph. The first
18 is that if you look along the impression just on either side on
19 the edge of the impression you can see the white and you can
20 see horizontal lines in the white area, and that's really good
21 here, and you can see that there too and there too. And what
22 that is is that's an area that does not have any more paint on
23 it. And if you look in the inside impression, you see the dark
24 area, that's still paint, and the horizontal marks that you see
25 there when I looked at the replica that I made with the silicon

1 cast I saw there were toolmarks there, and to -- and basically
2 what that is telling me is that when the stamping was happening
3 there was already a layer of paint on there. The stamp was
4 made, the edges kind of bulge up and contacted the stamp and
5 the paint got rubbed off. In the process of rubbing off the
6 paint there is also toolmarks that were left on their edges. I
7 have a schematic that I would like to show to help visualize
8 what is happening there.

9 Q. Wait a minute, please. Let me understand what you're
10 saying. This is -- what -- this mark here or groove is made by
11 what instrument, please?

12 A. It's some kind of die stamp. It's a stamp that has that
13 6 or something that's similar to a 6 in a mirror image.

14 Q. Let me ask you this: This is a stamp. Do you see any
15 scribings on this photograph?

16 A. I do. It's right along there (indicating). That's a
17 bottom of the 6.

18 Q. Okay.

19 A. Right there.

20 Q. Okay. Now, let me ask you this: This is the groove of
21 the stamp; is that correct?

22 A. Yes.

23 Q. And what is contained inside the groove, please?

24 A. The black that you see, it's paint. It's still there.

25 Q. Okay. So this here, groove of paint is paint; is that

1 correct?

2 A. Yes.

3 Q. And the sides of the groove basically don't have paint on
4 them; is that correct?

5 A. That's correct. And you see that as a light-colored
6 white because that's metal, and I also like to point out that
7 there are little horizontal marks right along the white area in
8 those toolmarks that were made by the stamp.

9 Q. Where is that, please?

10 A. It's all in the right area on the edge of the impression.
11 Right along there and right along there.

12 Q. All right.

13 A. And it's also there (indicating).

14 Q. So it's, like, if I'm a cobbler and I'm going to do a
15 stamp or knock something in it, does that stamping process with
16 the part of the stamp capture the paint?

17 A. It could, but it didn't in this case. Which area are you
18 referring to? The actual --

19 Q. Right here. Does it capture or push in the paint, into
20 the groove?

21 A. In this case it just pushed it in.

22 Q. All right. Just by stamping down; is that right?

23 A. Yes.

24 Q. All right. And because of that, that leads you to a
25 conclusion about the paint on the receiver; is that correct?

1 A. Yes. It led to me concluding that the paint was there
2 before the stamping was made.

3 Q. All right. Can you explain, again, why is there no paint
4 on the side here, please?

5 A. Yes. And I have a schematic, a cross-section or diagram
6 that I would like to use to visualize what's going on there.

7 Q. Hold on. We're not going to be able to do that, but if
8 you can explain to the jury why this occurs, please.

9 A. Okay. What happens is, let's say we're looking at a
10 surface on the metal and you're taking a stamp and you're
11 stamping into it. When that happens you're making an
12 impression in the metal. And when you do that, the metal is
13 made of crystalline grains, that's the structure of the metal.
14 And what's happening is the stamp is compressing those grains
15 smaller. Right along the edge -- the metal has to go
16 somewhere, it doesn't all compress. So right along the edge it
17 kind of bulges out a little bit, so you get something that's,
18 you know, let's say you have a V stamp, you would see a V but
19 at the edges it kind of bulges out a little bit above the
20 surface. And when the stamp hits it, it can remove -- it can
21 leave marks on that bulge area, and it can remove the paint
22 that's present if it's got any paint. So that's why in this
23 picture here, that's why we're seeing the white all along the
24 edges. If you look at the deeper or the wider impressions,
25 that's where most of the paint is removed. Some of less

1 shallower you don't have that big of a bulge, so you get less
2 of that effect.

3 Q. Now, you said you've been to different industry
4 manufacturers of firearms; is that correct?

5 A. Yes.

6 Q. And you've looked at serial numbers, I mean, that's part
7 of your expertise; is that correct?

8 A. Yes.

9 Q. Can you tell the jury typically how a serial number is
10 placed on a receiver or tube, please, for a machine gun?

11 A. Yes. Sure. There is a mechanism that has the numbers on
12 a die, and it's typically called roll stamp, R-O-L-L, roll
13 stamp. And the number would just be rolled over onto the
14 surface of the gun by hydraulic power. That's one way to do
15 it.

16 Another way is by simple stamping where the serial number
17 is on a stamp in a line and hydraulic power would just push
18 down on it and it would just make an impression on the surface.
19 That is the typical way to do that. There are other ways to do
20 that, but that's not relevant here.

21 Q. Okay. In the manufacturing process that you examined --

22 A. Yes.

23 Q. -- at what point is the serial number applied to the tube
24 or the receiver of the firearm?

25 A. If you were to put a coating on top of the serial number,

1 you would apply the serial number first and then you would put
2 the coating on there.

3 Q. All right. So the serial number goes on first, then a
4 coating after that?

5 A. Yes.

6 Q. Now, if we go back to photograph No. 6, the one above
7 that. Is this the serial number that you're looking at, Mr.
8 Kong?

9 A. Yes.

10 Q. How is that different from a serial number that's placed
11 on by a typical manufacturer?

12 A. It's different because the number is -- some are higher
13 than others, they are not in a line, usually a manufacturer
14 serial number would be pretty consistent and pretty even. A
15 manufacturer serial number typically is only stamped once, and
16 usually the whole impression is visible. In this case, it's
17 stamped multiple times on each of the characters, and sometimes
18 the stamping is not complete. Like on the 8, for instance, you
19 only see portions of the 8 in each of the stampings. What I'm
20 referring to is, like, down here on the bottom, you see, like,
21 three or four curves in there, and when you come up, there is
22 only, like, one or two lighter or shallower stampings of that
23 portion of the 8.

24 MR. KUMIEGA: Your Honor, at this time --

25 MR. MARTIN: Your Honor, I don't have any objection to

1 the introduction of Government's Exhibit No. 8.

2 THE COURT: No. 8?

3 MR. KUMIEGA: Yes, your Honor.

4 THE COURT: Okay. Will be admitted.

5 MR. KUMIEGA: Your Honor, may Agent Knopp approach the
6 witness and assist in showing him different machine guns,
7 please?

8 THE COURT: Yes.

9 MR. KUMIEGA: If you can find Government's Exhibit No.
10 6, I think that's 682, and 7 is 685. Show 682, please.

11 Q. (By Mr. Kumi ega) Do you see the serial number of that,
12 Mr. Kong?

13 A. Yes. I see it.

14 MR. KUMIEGA: And, Agent, if you can show Mr. Kong
15 685, please. If you can hand him what's marked Government's
16 Exhibit No. 8.

17 Q. (By Mr. Kumi ega) First of all, can you tell the jury
18 what that is, please, if you know?

19 A. It's a metal tube that looks like it's got cutouts that
20 possibly can be turned into a receiver for one of the Sten
21 machine guns.

22 Q. And can you see if there's a serial number on there,
23 E705, please?

24 A. E705?

25 Q. Yes.

1 A. Yes.

2 Q. All right. Now, let me ask you this: You looked at E682
3 and E685; is that correct?

4 A. Yes.

5 Q. And you obviously examined, you've done a presentation on
6 the suspect serial number, E683?

7 A. Yes.

8 Q. Can you, first of all, tell the jury is there consistency
9 between E682 and E683, please? Excuse me. E682 and E685, the
10 bookend serial numbers.

11 A. The numbers were put on -- it's good quality serial
12 numbers, the way it's applied on there. You only see it once,
13 it made a good impression, a deep impression, and it's in a
14 location that's a similar location.

15 Q. All right. And the tube, Government's Exhibit No. 8,
16 E705, do you see that serial number?

17 A. Yeah.

18 Q. And how would you compare that to 682 and 685, please?

19 A. It looks a little different simply because the other ones
20 are finished and this one is still in the processing stage.

21 Q. All right. And is there a manufacturer's mark, is there
22 another number or alphanumeric number attached to E705,
23 please?

24 A. 705?

25 Q. Yes. You see 705?

1 A. There is something above it. I cannot make out what it
2 is. It may or may not be a manufacturer marking. There is a
3 -- there is a, what looks like a painted marking on here, but
4 that may just simply be the steel tube, the manufacturer of the
5 steel tube rather than the manufacturer of the receiver.

6 Q. All right. Let me ask you this: The tube that you have,
7 the Government's Exhibit No. 8. Is that typical of putting on
8 a serial number before it's painted?

9 A. Serial numbers are put on at different stages. I don't
10 know -- I cannot answer that question because, like I said, it
11 is put on in different stages depending on the manufacturer's
12 preference, so whether some manufacturer would like to put it
13 on sooner, some after it's finished. So that's a difficult
14 question for me to answer that.

15 Q. All right. Let me ask you this: When you compare 682
16 and 685 to the machine gun you analyzed in your laboratory in
17 California, E683, is there differences between those numbers?

18 A. Yes.

19 Q. All right. How would you categorize through your
20 experience E683?

21 A. It's quite different from the two that I saw because of
22 the quality of the stampings, the way it's set up, meaning that
23 some numbers are higher and lower. And like I pointed out, the
24 coating was put on prior to the stamping, and that's not
25 typical of what manufacturers do.

1 Q. Now, then, you did your analysis first and you gave it to
2 one of the chemists, the machine gun to one of the chemists in
3 your office; is that correct?

4 A. Yes.

5 Q. We'll get into that later. Is the mark E683, is that
6 inconsistent with the manufacturing process you have studied in
7 your career?

8 A. Is it consistent?

9 Q. Or inconsistent.

10 A. Yes, inconsistent. It's not what I expect a manufacturer
11 to do when they apply the serial number onto their product.

12 Q. You said there were multiple stamps or scribings on E683;
13 is that correct?

14 A. Yes.

15 Q. And you say -- when you say "multiple", can you give the
16 jury your best reasoned analysis on how many is multiple,
17 please?

18 A. For the stamping, two, three. I saw -- each of the
19 characters was stamped at least twice, and some are three and
20 some as many as four. I didn't actually go through and try to
21 count them all. Like I was saying, even the E that I was
22 looking, I'm not even sure that it was an E stamp. It could
23 have been something else combined with something else. It
24 could have been an F stamp combined with something that's
25 straight.

1 MR. KUMI EGA: Your Honor, if I may have a moment with
2 the case agent.

3 THE COURT: Yes.

4 (Brief pause)

5 MR. KUMI EGA: Your Honor, may the United States
6 publish Government's Exhibit No. 8, the tube, to the jury?

7 THE COURT: While they are doing that, Mr. Kumi ega,
8 because of the other matter we need to take up, I'm thinking
9 about stopping for lunch, and I don't know if you're almost
10 finished, or whether this is a good breaking point, or where
11 are you?

12 MR. KUMI EGA: If you want me to break here, your
13 Honor, I could.

14 THE COURT: So you've still got more direct?

15 MR. KUMI EGA: A couple more minutes.

16 THE COURT: We'll wait.

17 MR. KUMI EGA: I'll break then, your Honor.

18 THE COURT: We can wait if you've only got a couple of
19 minutes.

20 MR. KUMI EGA: The government offers Mr. Kong up for
21 cross-examination.

22 THE COURT: We're going to break, Mr. Martin.

23 MR. MARTIN: I'll take more than a couple of minutes,
24 Judge.

25 THE COURT: Any other questions, Mr. Kumi ega?

1 MR. KUMI EGA: Just briefly then, your Honor.

2 Q. (By Mr. Kumi ega) Sir, have you reached a conclusion then
3 regarding the placement of E683 on that Sten Mark II machine
4 gun, excuse me, Mark III machine gun, please?

5 A. Exhibit 1?

6 Q. Yes.

7 A. The one that was submitted to me?

8 Q. Yes.

9 A. Yes. The markings is in a different location than the
10 two that you showed me earlier.

11 Q. Okay.

12 A. The one that says E682 and the other one.

13 Q. And how would you describe your research or your work
14 experience, your analysis, how would you describe E683 that you
15 examined?

16 A. You mean the quality of it?

17 Q. Yes. Oh, yes.

18 A. It's very poor quality. It's something that a
19 manufacturer wouldn't put out, and -- yeah.

20 Q. All right. And your next conclusion is that regarding
21 the capture of the pushing of the paint. Can you tell the jury
22 about that, please?

23 A. Yes, my next -- yes. I also concluded that the coating
24 or the paint that's on the receiver was there before the
25 stamping of the E683 number.

- 1 Q. All right. The paint was on first, then it was stamped?
- 2 A. Correct.
- 3 Q. And you examined a gun that you -- from the
- 4 configuration, what type of Mark machine gun is that, please?
- 5 A. Exhibit 1 is a Mark III. I have two guns in my
- 6 laboratory collection that are Mark IIs, and there are two
- 7 major differences between them in the design.
- 8 Q. Have you seen those before?
- 9 A. Yeah.
- 10 Q. All right. Which is the Mark II?
- 11 A. It's -- Mark II is like Exhibit 1, and that's the one on
- 12 -- wait. Wait. I didn't say that right. Okay. Let me do
- 13 that again. Mark II is the one on the right.
- 14 Q. Your right, my left?
- 15 A. My right. Yes. This one with the grayer painting --
- 16 Q. All right.
- 17 A. -- coating. And the one on the right is the Mark III.
- 18 Q. All right. And that's what you examined; is that
- 19 correct?
- 20 A. Right.
- 21 Q. This type of gun?
- 22 A. Yeah. The major difference is you can see on there the
- 23 magazine housing, the one on the left, it's just a housing.
- 24 It's welded onto the receiver.
- 25 THE COURT: Excuse me. You confused me on right and

1 left. I don't know if he's talking about your right and left
2 or his right and left.

3 Q. (By Mr. Kumi ega) How about you pointing, Mr. Kong.

4 A. I'm going to point to the Mark III. If you look right
5 there (indicating) the magazine housing is welded onto the
6 receiver. If you look at the Mark II, if you look at that
7 there is a sleeve that the magazine housing is attached to, and
8 it's not attached directly onto the receiver. The reason for
9 that is that they wanted to allow the magazine to be rotated on
10 the receiver. That's why. There's a second thing that is
11 different too. The barrel of the firearm is attached to the
12 receiver by a nut. This is Exhibit 1.

13 Q. That's 3.16, right? That's your Exhibit 1, our 3.16?

14 A. I'm sorry. This is the firearm that I examined. This
15 one is, the barrel is attached to the receiver by a number of
16 fasteners or rivets. There are four in the front end, which
17 are those four, and seven on the back end. The Mark II has a
18 shorter nut that is a screw-on, and it just holds the barrel in
19 place. And those are two major differences between a Mark II
20 and a Mark III.

21 MR. KUMI EGA: Nothing further.

22 THE COURT: Ladies and gentlemen of the jury, we're
23 going to take our noon recess and we'll reconvene at 1:15. And
24 again, I will give you the same admonitions that I gave you
25 prior to all of the other recesses that we've had, to not

1 discuss the case or reach any conclusions. And you can leave
2 your notebooks in the seat and Ms. Youngberg will see that they
3 are secure.

4 All rise while the jury exits.

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

7 THE COURT: Mr. Martin, you brought to the Court's
8 attention --

9 You may be excused during the lunch hour, Mr. Kong.

10 Mr. Martin, you brought to the Court's attention prior to
11 trial this morning in chambers, I'm not sure whether you had an
12 objection or exactly what your objection was, if you did so, to
13 the testimony of, is it Sarah Walbridge, is that who it is, Mr.
14 Martin?

15 MR. MARTIN: Yes, sir.

16 THE COURT: And --

17 MR. MARTIN: Your Honor, in that regard, I may have my
18 date off, but sometime in June I received a one-page laboratory
19 report, which is referred to as Bates No. FRI 1853. And I think
20 I've got it actually in an earlier Bates number than that, but
21 that Bates number I got later on. But that was the extent of
22 the report that I had concerning her. My problem is multiple
23 fold, but the main one is that on September 9th, or September
24 10th, the Wednesday before trial in this case, I was given a
25 DVD, or excuse me, a CD with approximately three to 400 pages

1 of documents on it, and contained within that is about 30 or 40
2 pages of Ms. Walbridge's -- supporting documentation for her
3 conclusions. Since we've started this trial, your Honor, I
4 have been inundated with additional discovery materials and I
5 quite candidly am struggling every night to get through them
6 because we're now up to Bates 3043, or something like that. So
7 since September 10th, when I was at, like, 1700, I'm now at
8 3043, and having reviewed her report and given it the careful
9 consideration because I knew she was going to be called today,
10 there is no way I can -- there are specific scientific tests
11 that she performed that had I had this report much earlier I
12 could have had an expert conduct the same test and determine
13 the validity of her test. I don't know whether or not there is
14 such a science as she testified to, and I would say that at the
15 very minimum we need a Daubert hearing, or her testimony should
16 be excluded because we're in the middle of trial and I don't
17 know if I'm going to get any more discovery or not. But I've
18 received, like I said, approximately 13- or 1400 pages of
19 discovery materials. I'm in trial with you every day and every
20 night I'm trying to prepare for the next day and read all the
21 additional materials I'm getting. I don't think it's fair and
22 I think I should have had more than just this one-page report,
23 which I'll be happy if I need to make a copy or make an exhibit
24 or show it to the Court. But it has some rather bare
25 conclusions on it, not any of the underlying background that

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1 she has.

2 THE COURT: Mr. Martin, after you received that report
3 with the bare conclusions, did you pursue with the government
4 in getting any further details of how she reached those
5 conclusions?

6 MR. MARTIN: Mr. Kumi ega and I had conversations, your
7 Honor, and in all candor, I can't relate to you the substance
8 of the conversation. I don't believe he had the conclusions at
9 that time. I don't know if we discussed how she reached those
10 conclusions. I assumed, and I'm not saying Mr. Kumi ega had
11 this discussion, I assumed I would shortly thereafter be
12 getting this material that I got on September 10th. But I
13 don't know, I can't represent to you that I had a conversation
14 with Mr. Kumi ega about that fact.

15 THE COURT: Response, Mr. Kumi ega.

16 MR. KUMI EGA: Your Honor, Mr. Martin received the
17 documents when we did in June, June 10th I think of this year.
18 This is --

19 THE COURT: The original one-page conclusions?

20 MR. KUMI EGA: Wal bridge's conclusion. And as the case
21 is rocking along I called Mr. Martin up and I said, Mr. Martin,
22 under Rule 16 since we have no formal notice, because I'm
23 looking through your expert --

24 THE COURT: When was this call made or conversation?

25 MR. KUMI EGA: Maybe ten days ago or so, prior to me

1 receiving, probably about the 9th or the 8th, I believe I said,
2 Mr. Martin, I haven't got a request from you under Rule 16, but
3 I think we probably need to formalize this now, but I'm calling
4 up to get more information from Kong and Walbridge, Mr. Kong
5 who just testified, and with reciprocal discovery, so I'm
6 getting that as soon as possible and I imagine you want it and
7 I'm giving it to you because rule, under Rule 16 there is a
8 certain summary that they have to provide only on the
9 defendant's request. And I had ask -- Mr. Martin's requested
10 it so I'm giving it to you. So I gave him a Rule 16 summary
11 plus all the raw notes from the data collected by Kong and by
12 Walbridge. And I said, you know, Mr. Martin, Mack, I assume
13 you'll give me the same courtesy, and he said, of course. Yes.

14 So there is nothing different than what he got in June,
15 all it is is just super detailed under Rule 16 that the
16 government tried to comply with under the Federal Rules of
17 Evidence, your Honor.

18 MR. MARTIN: Maybe I'm mistaken, your Honor, but I was
19 under the impression, and I might be wrong, but local rules
20 require that these things be provided. I'm not saying Mr.
21 Kumienga didn't provide them when he got them, but I -- we have
22 local criminal rules that say if there's a discovery dispute
23 don't file a motion until you've talked it over. I was under
24 the impression when I got these that I had what there was
25 relating to this lady. I got Mr. Kong and I don't have any

1 problems with that.

2 May I have a moment, your Honor. Kendall remembers
3 something I can't.

4 (Brief pause)

5 MR. MARTIN: The other point is, your Honor, the
6 report that I'm complaining about, the report and data that I'm
7 complaining about was completed on June 5th. And her notes,
8 which appear to be written in April, I got the report, the
9 one-page June 5th, sometime in June, it's dated June 5th. Her
10 notes that I'm now complaining about appear to start sometime
11 in April, and conclude maybe as late as sometime in May, all
12 this background data. And I did get that, this one-page report
13 here, but everything that goes behind it that was completed
14 before and available before I never got. And I have -- I've
15 just received it as of September 10th.

16 And as I've already said, it's been difficult to get
17 through all the material because of all the things that have
18 been dropped on us, like reports for Erb that we can't read and
19 that we spent hours and hours looking at, and I'm asking that
20 you exclude her as a witness, quite honestly.

21 THE COURT: Response, Mr. Kumi ega.

22 MR. KUMI EGA: Your Honor, I got -- obviously, the
23 chemist is busy. She's just not going to drop everything to do
24 one case just for us. She's probably got hundreds of cases
25 across the country. She gave me the report, and I immediately

1 turned it over to Mr. Martin, this is the first report. Mr.
2 Martin was on notice of all her conclusions. Obviously,
3 obviously, he knows there is going to be some background
4 analysis. I called him up and I told him I'm getting some new
5 materials under Rule 16, I'm ordering them up, I'll give you
6 the whole packet because I did not get the whole packet
7 initially. He said, okay, and he'll give me his expert
8 reports. We were not targeting turning anything over. Soon as
9 I got it, Mr. Martin received it also, your Honor. But the
10 conclusions are the same, it's just how she got from point A to
11 point B. That's the only difference, so Mr. Martin was on
12 notice exactly what she was going to say. She's not deviating
13 from it. I don't know how else to explain it. But I followed
14 scrupulously Rule 16 to the discovery rules. We sat down
15 informally and we said we'll give each other the full file, and
16 we did that the whole time. And the discovery comes in, it
17 gets Bates stamped in my office and we turn it over almost
18 immediately to Mr. Martin.

19 THE COURT: I guess my problem is generally when you
20 get the conclusions in June, I'm assuming those conclusions are
21 based on certain theories and facts, which Mr. Martin says what
22 he got in September a few days before trial was all done back
23 in April and May. So I'm assuming all of that was done, and I
24 can't figure out why the expert didn't send all that background
25 material at the same time she did her conclusions, because that

1 would be the normal expert's report. Not only just your page
2 of conclusions, but how you reach those conclusions. And my
3 concern is is that a general practice of the government's
4 experts to just send the conclusion page and then not, unless
5 requested, send all of the reasoning for it?

6 MR. KUMIEGA: Judge, I had to call these experts up
7 and ask for Rule 16 summaries. I'm not even sure they were
8 aware of that necessity under the rule. So I prompted them to
9 give me the whole file. Obviously, I'm busy doing other cases.

10 THE COURT: I understand that.

11 MR. KUMIEGA: She's here; you can ask her. But the
12 science, obviously, the science has been well-tested. I don't
13 think there is going to be any problem with Daubert stuff. Mr.
14 Martin is on notice on the conclusions and this is not anything
15 hyper technical. It's technical, but it's not quantum physics.
16 We're dealing with basic chemistry and the conclusions are
17 two-fold that she's going to reach in this area. So I really
18 don't see the great length that Mr. Martin wants to explore
19 here because there really aren't any.

20 THE COURT: What are the nature of her conclusions
21 according to the April, or the June --

22 MR. KUMIEGA: She's going to say from her analysis,
23 one of the conclusions is that there was no solvent ever put to
24 that firearm, nothing was ever taken off that firearm, that
25 there was not -- the gun was not repainted. It's one of the

1 things that we were investigating and one of the allegations we
2 had from one of the witnesses from what happened in this case.
3 So we were getting ready to do that. There was only one coat
4 of paint on that firearm, and one coat only. That's my
5 understanding what she can testify. And she took paint samples
6 from different parts of that tube, and said they are all
7 consistent, there was no abrasives, no solvents, and the
8 spectrometer, the paint from two different locations are the
9 same. So her conclusion was there was only one layer of paint
10 and it's the same paint.

11 THE COURT: And are you planning on calling her next?
12 Is she your next witness?

13 MR. KUMI EGA: That's what we were planning to do, your
14 Honor. I have -- I can call her out of time. The reason we
15 called her out of time was the ATF was worried about budget
16 problems because of the end of the fiscal year, and they were
17 worried about not having people here or running out of money
18 for travel. That's why we called them out of time to
19 accommodate that budget. And I was never aware of a problem,
20 because I told Mr. Martin yesterday who we were going to call
21 as a witness, and it was early this morning he said that, oh,
22 by the way, I'm going to ask for some type of continuance
23 regarding the testimony of Ms. Walbridge.

24 THE COURT: Who else do you have for witnesses?

25 MR. KUMI EGA: We have four or five other witnesses.

1 Going to be basically employees from the building regarding his
2 storage of firearms in the secret --

3 THE COURT: Are they available for this afternoon?

4 MR. KUMIEGA: Yes.

5 THE COURT: Okay. Why don't we call those witnesses
6 and give Mr. Martin time to have the weekend to spend more time
7 reviewing her report and talking to his own experts, and then
8 the Court can make a decision on her testimony Monday. Plan on
9 having her here Monday.

10 MR. KUMIEGA: Yes, your Honor.

11 THE COURT: And as I said, we're going to come back at
12 1:15 and recess at 3:00, so will that allow you to get all
13 those other four or five employee type witnesses on?

14 MR. KUMIEGA: Your Honor, I think out of abundance of
15 caution we do have everybody here.

16 THE COURT: Okay.

17 MR. KUMIEGA: I think we might run out before 3:00,
18 but they are here, your Honor.

19 THE COURT: Okay. Okay. We'll be in recess until
20 1:15.

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

23 THE COURT: Mr. Martin, you may cross-examine.

24 MR. MARTIN: Thank you, your Honor.

25

1

CROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. Is it Mr. Kong, Agent Kong, Inspector Kong?

4 A. Mr. Kong would be fine. Thank you, sir.

5 Q. Thank you. In our -- your examination on direct, your
6 testimony on direct examination, on several occasions you made
7 reference to the fact that these tool markings you saw on what
8 you described as Exhibit 3.16, I think has been introduced as
9 Exhibit 3.16 --

10 A. Okay.

11 Q. -- the Sten, were not typical of commercial or factory
12 markings. Do you remember that testimony, sir?

13 A. Yes.

14 Q. Okay.

15 MR. MARTIN: Could we show the witness Exhibit 51?
16 Defendant's 51. I'm sorry.

17 Q. (By Mr. Martin) Now, is this what you would consider a
18 typical commercial factory that you were talking about when you
19 reached that conclusion, sir?

20 A. It's a little bit different. Yeah.

21 Q. Okay. If we can go to the second picture. Is that a
22 typical factory setting, commercial factory setting that you
23 were thinking of, sir?

24 A. Yes. It's got the machines in there, got tools in there.
25 The space is a little bit more cramped, but it's not typical of

1 the factories that I've been to.

2 Q. Okay. Have you ever been to a factory like that?

3 A. I've been to some that are somewhat close to that, but I
4 would say this is at the other extreme.

5 Q. Do you know a guy named Charles Erb?

6 A. I do not.

7 Q. I think there's one more photograph. Can you see that
8 one, sir?

9 A. Yes.

10 Q. And I guess my -- the question I have, when you said
11 commercial or factory markings, this is not the setting you
12 were thinking of, was it, sir?

13 A. Well, I wasn't thinking of any kind of setting, I was
14 thinking of the product that was being sold.

15 Q. You were talking about in the impressions that these
16 marks that were made by hydraulics and special machines?

17 A. Yes.

18 Q. Okay. Is that a typical factory or commercial marking?

19 A. That would produce markings that are typically sold as
20 commercial products.

21 Q. If a place like this takes a hammer and a stamp on a
22 round object and hits it, is that what you would consider
23 typical commercial or factory markings?

24 A. Some markings are produced in the way that you just
25 described that are sold commercially. Some, for instance, the

1 Norincos in China.

2 Q. I'm sorry, I couldn't --

3 A. The Norinco rifles in China, that are made in China are
4 done that way.

5 Q. All right, sir.

6 A. They are -- okay.

7 Q. Did I interrupt you?

8 A. No. I was just going to say there are other markings on
9 different parts of the gun that are not necessarily the serial
10 number that are put in by hand also.

11 Q. Okay. Well, I'm going to try to keep my questions to the
12 serial number markings. Okay?

13 A. Okay.

14 Q. As a matter of fact, if we back up a little bit, did you
15 work for the ATF in 1986, sir?

16 A. I'm sorry. 1986?

17 Q. Yes, sir.

18 A. I was not with the ATF at that time.

19 Q. I think you said you graduated from high school in '79?

20 A. That's correct.

21 Q. Okay. And so are you aware of the rules and regulations
22 of the ATF currently relating to serial number impressions?

23 A. Yes, I am.

24 Q. Are you familiar that the ATF now has regulations as to
25 the depth, height, spacing and so forth as relates to serial

1 numbers?

2 A. Definitely there is a -- there is a requirement for the
3 depth of the impressions and the height of the impressions, but
4 I'm not sure there is a spacing requirement.

5 Q. Okay. And that rule was not in existence in 1986, was
6 it, sir?

7 A. No, it was not.

8 Q. A person could take a screwdriver or an ice pick and
9 scratch E683 on a receiver like I think is in evidence, is it
10 No. 7, the little -- the receiver up here I think.

11 A. I don't think it's here. I think it might be back there.

12 MR. MARTIN: Do you have that, Mr. Knopp?

13 Q. (By Mr. Kumi ega) A guy could take an ice pick and just
14 scratch some numbers on this and that would meet the
15 regulations back in 1986, wouldn't it?

16 A. I'm sorry. I don't know what the regulations are in
17 1986. I'm just familiar with what is present.

18 Q. Well, you're familiar with the reason they changed the
19 regulation, are you not, sir?

20 A. I believe I know what the reason is. I only saw the
21 regulation, I did not see something that explains why that
22 regulation was enacted.

23 Q. Are you familiar with the fact that they were being worn
24 off, serial numbers would be worn off?

25 MR. KUMI EGA: Objection, your Honor. It's not part of

1 his expertise as he just stated.

2 THE COURT: Be sustained.

3 Q. (By Mr. Martin) Do you know when the new rule went into
4 effect, sir?

5 A. I believe I do.

6 Q. When was that?

7 A. I believe it's 2002.

8 Q. Okay. And were there, prior to that rule, regulations as
9 to the depth that a serial number had to be, if you know?

10 MR. KUMIEGA: Same objection, your Honor.

11 THE COURT: If he knows, he can answer.

12 THE WITNESS: Could you ask the question again,
13 please?

14 Q. (By Mr. Martin) Certainly. If you know, do you know
15 whether or not there was a minimum depth requirement prior to
16 the 2002 rule you just testified about?

17 A. I do not know. I believe that it was a modification to
18 the rules, so there may have been some requirement to the
19 depth. It may not be the same as what it is now.

20 Q. So you're guessing. Anything you would say would be a
21 guess?

22 A. Correct.

23 Q. Okay. All right. It's okay if you don't know, just tell
24 me.

25 A. Okay.

1 Q. All right. Now, you were provided, I'm assuming, prior
2 to conducting any testing a little bit of history on this
3 firearm, were you not, sir?

4 A. Yes.

5 Q. You understand that the tube of the firearm was made in
6 1986?

7 A. 1986 or before.

8 Q. Or before?

9 A. It could be before, correct. My understanding is that it
10 was either -- well --

11 Q. How about registered in 1986?

12 MR. KUMIEGA: Objection, your Honor. Looks like --
13 I'm not sure what the question is and he's trying to proffer an
14 answer that he doesn't know what the question is or does not
15 know --

16 MR. MARTIN: I can restate the question, your Honor.

17 THE COURT: Restate the question.

18 Q. (By Mr. Martin) Were you provided with information prior
19 to your testing that this Sten had been registered in 1986?

20 MR. KUMIEGA: Objection, your Honor. That's not this
21 Sten, it's another Sten. It's a different subject matter
22 regarding the testimony of that machine gun.

23 MR. MARTIN: I'm not understanding the objection.
24 I'll try to restate it.

25 MR. KUMIEGA: That's not the registered Sten, your

1 Honor. That's the government's contention.

2 THE COURT: Okay.

3 Q. (By Mr. Martin) Let me rephrase my question. Were you
4 made aware prior to your examination of that firearm that it
5 had been purported to have been registered in May of 1986, sir?

6 A. Something to that effect, yes.

7 Q. Okay.

8 A. It may or may not be that firearm, but sure.

9 Q. But a firearm with serial number E683?

10 A. Yes.

11 Q. Okay. In your testing and examination of this firearm,
12 did you take the age of the weapon into consideration?

13 A. No, I did not.

14 Q. The purported age.

15 A. No, I did not.

16 Q. It had no importance in your examination?

17 A. No. It's not relevant to my examination.

18 Q. Okay. So 22 years of wear is of no importance. Is that
19 what you're telling us?

20 A. Okay. There are other markings on that gun that are very
21 much different from the markings that I was looking at. On the
22 magazine housing there are some --

23 MR. MARTIN: Your Honor, I don't think that's
24 responsive at all. My question was 22 years of wear is of no
25 consequence, and we took off on some other markings.

1 MR. KUMI EGA: To which we object, your Honor. That's
2 facts not entered into evidence regarding age of the firearm.
3 This is pure speculation.

4 THE COURT: I guess the question that I understood was
5 did he take into consideration a firearm which was purportedly
6 manufactured in 1986 into his consideration of these, his
7 conclusions. Is that basically what you were asking?

8 MR. MARTIN: That's what I'm asking, your Honor.

9 THE WITNESS: I did not take 22 years of wear into
10 consideration because I saw other markings on the firearm that
11 did not show the same kind of wear or, actually, that's your
12 word. I did not see the same kind of effect on the E -- I
13 forget the number -- 683 that I saw on the other markings on
14 the same firearm; so, therefore, I did not consider that.

15 Q. (By Mr. Martin) Did you consider, for example, 22 years
16 of use?

17 A. Use as in firing the weapon?

18 Q. Correct. Correct.

19 A. That would not affect the markings on the side of the
20 receiver.

21 Q. Are you --

22 A. The kind of effects that I'm seeing on this serial
23 number.

24 Q. Are you familiar with, sir, the fact that these, for
25 example the magazine of this gun is from World War II?

1 A. I am familiar with that. Yes.

2 Q. Okay. And let me ask you, sir: You say that you saw
3 markings on this gun that, I'll just ask you, that indicate
4 that there was some inconsistency in that. Would you tell me
5 what that is, sir?

6 A. Inconsistency with?

7 Q. Twenty-two years.

8 A. It's on the magazine housing, the D number and the LB
9 initials on the side of the magazine housing.

10 Q. The magazine housing?

11 A. Correct.

12 Q. You understand that this magazine was added to this at
13 some time?

14 A. It could have been.

15 Q. You understand that this magazine was manufactured during
16 World War II, right?

17 A. Yes.

18 Q. So are you thinking that this receiver is older than
19 that?

20 A. Well, if the magazine housing does not have the same kind
21 of effects, the markings on the magazine housing does not have
22 that kind of effect, then the receiver, which is only 22 years
23 as opposed to the number of years since World War II, and that
24 wouldn't have that much of an effect.

25 Q. You're drawing your conclusion because the magazine

1 housing is --

2 A. Older.

3 Q. -- older. And you don't know the wear or if that
4 magazine housing has ever been used before, but we know it was
5 made in World War II, right?

6 A. Uh-huh.

7 Q. And we don't know -- did you conduct any experiments or
8 any type of scientific tests on the magazine housing, sir?

9 A. I did not. That was -- no, I did not. What kind of
10 testing are you referring to?

11 Q. I believe I said any type of experiment or scientific
12 testing, sir.

13 A. I was not do any testings on the housing.

14 Q. Okay. So let me ask you this: This gun was seized on
15 June 10th, 2004. Were you advised of that?

16 A. I'm not sure if I was. That does not ring a bell, so,
17 therefore, I don't think I was aware of that.

18 Q. And the first time you ever saw this firearm was in
19 February of 2008; isn't that right?

20 A. Very close. It came into the laboratory in February. I
21 believe I may have -- well, that's very close. Either late
22 February or early March.

23 Q. How about February 15th, 2008?

24 A. May I check my notes?

25 MR. MARTIN: May I approach, your Honor? I've got

1 them right here.

2 THE COURT: Yes.

3 THE WITNESS: That's when the evidence came into the
4 laboratory. I may not have checked it out right away. It was
5 probably a week later after that or maybe two weeks at the most
6 later after that. So it was late February or early March.

7 Q. (By Mr. Martin) So you got the evidence --

8 A. In 2008.

9 Q. -- in the laboratory on the 15th of February of 2008?

10 A. Yes.

11 Q. Almost, well over three years after it had been seized,
12 the first time it was ever tested?

13 A. Okay.

14 Q. Is that right?

15 A. It don't ring a bell, I don't remember when it was
16 seized. I don't have -- I may or may not have the information.
17 It may be part of the information that came with the gun, but
18 it's not relevant to what I was doing.

19 Q. Okay. In your testing of this firearm, did you examine
20 it for any type of latent serial numbers?

21 A. Latent serial numbers?

22 Q. Yeah.

23 A. Like an obliterated serial number?

24 Q. Correct, sir.

25 A. I did not.

1 Q. Did you take the firearm apart to look for any obscured
2 serial number, sir?

3 A. I was not.

4 Q. Have you ever examined firearms that had more than one
5 serial number, the same number?

6 A. Yes, I have.

7 Q. One that was obscured and another one that wasn't?

8 A. Yes. More than one number on the gun. Yes.

9 Q. Okay, sir. Now, were you aware, sir, that there was --
10 you're familiar with Sten tubes, I'm assuming, because of your
11 work with the ATF.

12 A. Somewhat.

13 Q. Okay. You are aware that there was a period of time that
14 they could no longer be manufactured by civilians, were you
15 not, sir?

16 A. I believe that is the case.

17 Q. Sometime in, like, May 19th of 1986, if you know.

18 A. I don't know that for sure.

19 Q. Okay. In your training with the ATF, were you aware that
20 during the period of time, whatever period of time that was,
21 that the manufacturers were pumping these out as quick as they
22 possibly could?

23 A. My understanding is that -- maybe if I could explain to
24 you what my understanding is.

25 Q. That's what I'm asking.

1 A. There was a law that was passed or enacted in 1986 that
2 concerns the machine guns. That's not my area in the
3 laboratory, so I don't know very much about that, but I do know
4 the law was enacted at that time. So if manufacturers were
5 trying to beat the deadline and pump them out, as he said, then
6 I would believe that. But I'm not familiar with that. I don't
7 deal with that particular law itself, or interpretation of the
8 law. So I -- that is why, when you are asking me questions
9 that I kind of know about it, but it's not really what I do.

10 Q. Okay. All right. Now, you were talking about some
11 scribe marks on the firearm that I've got up here.

12 A. Yes.

13 Q. And I believe you said it looked like somebody took a
14 sharp object and scribed E683 on the magazine; is that correct,
15 sir?

16 A. No, it's on the receiver. Yes.

17 Q. I'm sorry. On the receiver. Thank you for correcting
18 me.

19 A. Yes.

20 Q. And then sometime, and you don't know when, that receiver
21 was stamped; is that correct?

22 A. Correct.

23 Q. Stamped?

24 A. I do not know when it was stamped, it was stamped but I
25 do not know what the timing was.

1 Q. You can't tell us, can you, that it was scribed along
2 with many, many others and put in a pile, and days or weeks
3 later somebody comes along and stamps them. You can't tell us
4 that didn't occur, can you, sir?

5 A. I cannot tell you that. All I know is that it was
6 scribed before the stamping. That's all I can tell you.

7 Q. Okay. So if somebody wanted to make sure that they
8 didn't get the wrong serial number on there when they did get
9 around to putting the serial number on it, they would just
10 scribe it on there. Could that be a possible explanation, sir?

11 A. That could be a possible explanation.

12 Q. And if you had, like, hundreds of these just sitting in a
13 corner that you had just manufactured and you didn't have time
14 to stamp them when you got them all, you would just scratch the
15 numbers on there, right?

16 A. Yes.

17 Q. Now, you viewed, I believe Agent Knopp handed you
18 firearms E682 and E685. I'm just going to show them to you
19 from here, I'm not going to bring them up there, but do you
20 recall these exhibits?

21 A. Yes.

22 Q. Okay. And the first time you ever saw E682, was that
23 today --

24 A. Yes.

25 Q. -- in the courtroom?

1 A. Yes. Well, actually, I seen it before I walked into the
2 courtroom.

3 Q. Like at the U.S. Attorney's office or something?

4 A. In this building.

5 Q. Oh, in this building?

6 A. Yeah.

7 Q. Today?

8 A. Today.

9 Q. And did you have a microscope with you?

10 A. Nope.

11 Q. Magnifying glass with you?

12 A. I did not use one.

13 Q. So the -- let me get to E685. Same thing true to this
14 firearm, that the first time you saw it was today?

15 A. Yes, sir.

16 Q. In this building?

17 A. Yes.

18 Q. And you didn't examine it with a microscope?

19 A. No, I did not.

20 Q. And you didn't examine it with a magnifying glass?

21 A. I did not.

22 Q. And you don't have any photographs like you have of this
23 firearm that are 50 times magnification, do you, sir?

24 A. I do not.

25 Q. For example, Government's Exhibit No. 9, if we can go to

1 the photograph 6. That's photograph 6 of Government's Exhibit
2 9. Do you see that, sir?
3 A. Yes.
4 Q. And I'm assuming that 10X means that's ten times
5 magnification, right?
6 A. Yes. That's the microscope magnification.
7 Q. And you didn't do that with 682 or 685?
8 A. No, I did not.
9 Q. If we can go to photograph 7. And that 50X means you
10 took a 50 times magnification of that with a microscope, right?
11 A. Yes.
12 Q. And again, that didn't occur as to these guns and did not
13 occur as to that receiver that you have up there, is that true?
14 A. Yes.
15 Q. Okay. Thank you. And the receiver, if we go to the
16 receiver, when is the first time you saw it?
17 A. Earlier this morning in this chair.
18 Q. Okay. I'm going to borrow it from you for just a second.
19 So you did not even see this until you got in the chair today?
20 A. Right.
21 Q. And is that the serial number right there (indicating)?
22 Is that what you believe is the serial number, sir?
23 A. Yes.
24 Q. Now, did the ATF, or any ATF agents or any law
25 enforcement agents whatsoever provide you any dies for

1 comparison to any firearms, sir?

2 A. No, I did not receive any.

3 Q. So I'm going to show you what's been introduced and
4 marked for identification purposes as Defendant's Exhibit 50.
5 It will be on your screen there. These have been introduced
6 into evidence, this photograph, as the dies that Mr. Erb used
7 for the stamping of his Sten guns like the one, like the Sten
8 tube in front of you and the two here, back in '86, sir. I'll
9 make that representation to you. Okay?

10 A. Okay.

11 Q. Did you ever get these?

12 A. I did not.

13 Q. And I think there's another picture after that. There's
14 a second picture on there. Have you seen these pictures
15 before?

16 A. No, I have not.

17 Q. Okay.

18 MR. MARTIN: If we could back up to the full set. I'm
19 sorry. If we could zoom in just on the -- the numbers.

20 Q. (By Mr. Martin) Can you see those clearly on your
21 screen, sir?

22 A. Okay. I can see them.

23 Q. Okay. And do you see any problem with these being used
24 as the numbers and letters that would be used to stamp Stens
25 during 1986 on these two guns that you examined today and that

1 receiver up there, sir?

2 A. I don't know what you are asking when you say do I see
3 any problems. Problems? What kind of problems?

4 Q. Is there even an E in there?

5 A. I cannot see it clearly enough to tell you that. Looks
6 like --

7 Q. If you want we can go through them one by one.

8 MR. MARTIN: Can we zoom in on those individually,
9 Bonnie?

10 Q. (By Mr. Martin) Can you see the 5 in the corner? It's
11 upside down. Can you see the 5 in the corner, sir?

12 A. Lower right-hand corner?

13 Q. No. Actually, at the top left-hand corner. Can you tell
14 me what that is?

15 A. No, I cannot. It might be a 2. Is that a 5?

16 Q. Well --

17 A. I can't make it out. I cannot make it out on the screen
18 here.

19 Q. Let's go to the lower right-hand corner. What does that
20 look like?

21 A. That looks more like a 2.

22 Q. Next to it on the left?

23 A. Either a 6 or a 9.

24 Q. Next to it on the left?

25 A. Well, how about if I say that's not an E, because that's

1 what you're --

2 Q. Okay. Above that?

3 A. -- asking. Above that, that looks like a 7.

4 Q. Okay. Next to the 7 would be a zero?

5 A. Yeah.

6 Q. Eight?

7 A. Okay.

8 Q. Above that a 4?

9 A. Looks like a 4.

10 Q. Three and maybe a 5? Maybe?

11 A. The top middle, I cannot make that out.

12 Q. The top middle?

13 A. Yeah.

14 Q. That doesn't look like a 3 to you?

15 MR. MARTIN: Can we zoom in any more on that?

16 THE WITNESS: I can't make it.

17 Q. (By Mr. Martin) Right there on the top in the middle.

18 A. I'm sorry. But the far upper left-hand corner does look

19 like a 5 from here now.

20 Q. Okay. If we can go to the other side. Can you see those

21 clearly?

22 A. Better than the last set.

23 Q. All right. Top left?

24 A. Yeah. It's a 2, 4, and I cannot make out the top right.

25 And then from the left to right, looks like a 6 or a 9, 7, 0,

1 and then the bottom row, 1, 6 or 9, and I cannot make out the
2 last one.

3 Q. Do you see an E in there, sir?

4 A. No, I do not.

5 MR. MARTIN: If we could go to Defendant's Exhibit No.
6 39, maybe the second picture first.

7 Q. (By Mr. Martin) I'll represent to you, sir, that this
8 has previously been introduced into evidence as a photograph of
9 a gun that was purported to be manufactured by Mr. Erb. Okay?

10 A. Okay.

11 Q. And by looking at that, can you tell me the location --
12 can you see the number?

13 A. I can make out a couple of those. Oh, better. Yes, I
14 can. Thank you.

15 Q. And can you tell from that photograph -- if we need to
16 back up -- where that is located on the firearm?

17 A. Well, on the upper left-hand corner of the photograph
18 there is a knot there that could possibly be the, the bolt
19 handle.

20 Q. Okay.

21 MR. MARTIN: If we could go to the next photograph.
22 The first one we had. I'm sorry. Can we zoom in on this area
23 right here (indicating)?

24 Q. (By Mr. Martin) Are you familiar with what area of the
25 firearm that is, sir?

1 A. I see the spring, there is some kind of spring on the
2 upper part of the photograph. That might be part of the
3 trigger mechanism.

4 Q. That would be in this area, under this cover?

5 A. Possibly, yes.

6 Q. Okay. And can you make out the 680 as best you can under
7 that?

8 A. Thank you. The character on the right could be a 0. The
9 middle one could be an 8, and the left could be a 6. It's not
10 a very good photograph. I'm sorry.

11 Q. I didn't take it.

12 A. Or maybe the screen is not that good. So --

13 Q. I understand.

14 A. I'm having trouble with that.

15 Q. But that serial number is, would be under normal
16 circumstances covered by the magazine, or not magazine.

17 A. Okay.

18 Q. Is this a trigger guard or trigger cover? What is this
19 called?

20 A. That's part of the trigger mechanism housing.

21 Q. Okay. So this housing cover under normal circumstances
22 would actually cover that serial number, right?

23 A. Okay. Yes.

24 Q. I'm not asking to you agree, I'm asking you if I'm right.

25 A. Well, if it's where you say it is, then yeah, that's

1 covering that.

2 Q. Okay.

3 MR. MARTIN: And if we could go to Exhibit 6.40. I'm
4 sorry. Exhibit 40. I'm sorry, I was looking at serial numbers
5 and trying to talk at the same time.

6 Q. (By Mr. Martin) I will represent to you again that this
7 purports to be a photograph of another firearm, a Sten that was
8 manufactured by Erb.

9 MR. MARTIN: And if we could go forward a couple of
10 pictures, Bonnie. Stop right there. Can we zoom in on that
11 area again as best, and focus as best we can. Back up as
12 best --

13 Q. (By Mr. Martin) Can you tell by looking at that, number
14 one, the location of the, the location -- what is this location
15 right here called on the firearm?

16 A. I don't know where that is. I cannot make it out in the
17 photograph.

18 Q. Okay. Is that not the trigger housing mechanism also,
19 sir? If you don't know, that's okay.

20 A. I don't know. I cannot tell from the photograph. I'm
21 sorry.

22 Q. Can you make an E681 on that?

23 A. There is some kind of marking there. I cannot make out
24 what it says.

25 Q. All right. Now, does that appear to be the same

1 photograph that I showed you, sir, or not the same photograph,
2 but --

3 A. Sure.

4 Q. -- the same area?

5 A. Sure.

6 Q. Does that picture in particular, that area right there
7 (indicating), can you identify what portion of the firearm that
8 would be in, sir?

9 A. It's hard to try to do that without -- just on the
10 photographs. I mean, on the left-hand side in the area that
11 kind of looks --

12 Q. That area?

13 A. To the left.

14 Q. Do you need a pointer?

15 A. What I'm talking about is this area here (indicating),
16 that could be the trigger guard, but again, if that's the
17 trigger guard this probably is the trigger mechanism housing
18 that you were referring to. But, again, off of the
19 photographs, I would be hesitant to give you an absolute yes on
20 that.

21 Q. Okay. Thank you.

22 If we could go to Exhibit 42, Defendant's Exhibit 42. Do
23 you see this exhibit, sir?

24 A. Yeah.

25 Q. I will represent to you that that is also what purports

1 to be another one of Mr. Erb's firearms --

2 A. Okay.

3 Q. -- with this 600 series here. Actually, that is actually
4 a copy of 685, which is this firearm you actually saw this
5 morning, right?

6 A. Okay. Yeah.

7 Q. Can you visualize that?

8 A. You know, I'm sorry, but I see a 5 on the right-hand
9 side. Could be an 8 next to that on the left. But those
10 numbers are just hard to see.

11 Q. Okay.

12 A. It's --

13 Q. The -- let me go to one last one then, or one more. I
14 think it's Exhibit 44. Again, this is another gun that
15 pictures were taken by the ATF of a gun purportedly made by Mr.
16 Erb. Okay?

17 MR. MARTIN: If we can go forward a couple, Bonnie.
18 Can we zoom in on this?

19 Q. (By Mr. Martin) Do you see this area here, sir, where
20 the serial number is?

21 A. Uh-huh.

22 Q. And can you see the serial number?

23 A. Better than last ones. Looks like the E. Looks like a 3
24 on the right.

25 Q. And, again, you were not provided any serial numbers and

1 you sure didn't see in the set an E?

2 A. I'm sorry?

3 Q. In the set that was held in the hand in Defendant's
4 Exhibit No. 50, there was no E present?

5 A. I did not see any die that looked like an E.

6 Q. Okay.

7 MR. MARTIN: And if we could back up one, Bonnie,
8 please. One more. Can we focus in on all this (indicating)?

9 Q. (By Mr. Martin) Can you read the writing that's on E693?

10 A. I can make out most of it. Would you like me to try to
11 read it so --

12 Q. I'm asking you, number one, can you read it?

13 A. I think I can.

14 Q. And you haven't seen anything like that on any of the
15 other E series of Erb guns, the Sten guns, have you, sir?

16 A. Off the photos that you've shown me?

17 Q. Yes, sir.

18 A. No, I do not see those markings there.

19 Q. It's on the screen. Can you see that, sir, clearly?

20 A. Much better than the other one.

21 Q. And those markings were not on any of the firearms that
22 you examined today, were they, sir?

23 A. I did not see -- correct. I did not see the markings on
24 the firearms that I looked at today.

25 Q. Okay.

1 MR. MARTIN: Thank you, Bonnie.

2 Q. (By Mr. Martin) Now, if you had been submitted dies,
3 could you have done a test to determine whether or not a
4 particular die was used on this firearm that the government has
5 introduced into evidence as 7.0?

6 A. Which is my Exhibit 1?

7 Q. No. No. No. These are the ones you were just shown
8 today.

9 A. Oh, okay.

10 Q. If you were given -- if you were given dies --

11 A. Uh-huh.

12 Q. -- those that were in that gentleman's hand there --

13 A. Yes.

14 Q. -- could you have done a comparison to say those dies
15 were or were not used to make this serial number?

16 A. Yes. That's possible.

17 Q. Okay. And the same would apply to Government's Exhibit
18 6.0. You could have done an examination of those dies in that
19 gentleman's hands and said whether or not those dies were used
20 to make this serial number. Right?

21 A. Yes. Yes. That's right.

22 Q. Except for the E?

23 A. Because there was no E. I don't understand.

24 Q. There's no E in the set?

25 A. Right. Yes.

1 Q. And you would have either said, yes, those numbers that
2 were in that photograph were, or no, they weren't, right?

3 A. Oh, maybe they did not make the marks that is
4 reproduceable enough for me to say a yeh or nay. That's an
5 option.

6 Q. Kind of inconclusive?

7 A. Right. It could be a yes-or-no inconclusive because it
8 just didn't reproduce the kind of marks that I would expect to
9 see.

10 Q. All right, sir. And likewise, this is your Exhibit 1,
11 this is Government's Exhibit 3.16.

12 A. Okay.

13 Q. If someone had produced dies to you, you could have
14 examined those dies and determined whether or not they could
15 have been used to make the marks on this firearm?

16 A. Yes. It's possible.

17 Q. I'm going to hand you what's been introduced into
18 evidence as Government's Exhibit 3.8, and ask you, number one,
19 if you've ever seen them before, and number two, if you
20 recognize -- if you haven't, if you know what they are.

21 A. Okay. No, I have not seen them before.

22 Q. Do you know what they are?

23 A. I recognize what they are. They are die stamps.

24 Q. Okay.

25 A. That are used to make impressions.

1 Q. And can you tell me, sir, just by visual examination,
2 based upon your expertise and background, those were seized in
3 a search warrant from my client's house, can you tell me, sir,
4 whether or not those could have possibly been used based on
5 size or whatever to have made these (indicating)?

6 A. Based on the size alone, those could not have made the
7 E683 that's on this receiver.

8 Q. Okay. So you can completely --

9 A. Because --

10 Q. I'm sorry.

11 A. Because -- yeah. Yeah. Now, that is, that is assuming
12 that -- if I take the E stamp and I stamp on there and I get
13 the whole impression of the E. Again, I'm not sure what was
14 used to make those, because it could have been a combination of
15 dies to make that letter E. So --

16 Q. These dies are smaller than the numbers on this firearm;
17 is that correct?

18 A. Right.

19 Q. And it's immediately apparent to your eyes?

20 A. Right.

21 Q. As a trained expert?

22 A. Right.

23 Q. Now, as I understand, in your testing process, you began
24 with, or somewhere along the examination you said you made a
25 silicon cast; is that right?

1 A. Yes.

2 Q. And you said you apply a, is it some type of a gel and a
3 solid, something makes it solid?

4 A. Well, it's basically, it's -- it's if anybody has ever
5 done epoxy before, where you have a two-part mix, where you mix
6 them together and you have so much time before it sets, that's
7 basically the same thing except it's a silicon material. The
8 silicon material itself is soft and liquidy and you have to add
9 a hardener to it. And when you add the hardener to it, then it
10 causes the soft stuff to solidify.

11 Q. And when you -- is it kind of like when you go to the
12 dentist and he sticks that thing in your mouth that we all hate
13 and he pulls it out and has an impression of your teeth?

14 A. Pretty much.

15 Q. Okay. And I believe you said that when you do that, you
16 apply that to the surface, it creates a cast of what's in
17 there, right?

18 A. Yes.

19 Q. Okay. And when you do that and you pull it out, does it
20 also remove anything that sticks to it?

21 A. Sometimes it does, sometimes it doesn't.

22 Q. Okay. Could remove some paint?

23 A. It's possible.

24 Q. Could remove dirt?

25 A. Yes, it's possible. I just say sometimes you could

1 remove stuff that's in the impression, and sometimes you don't.

2 Q. Okay. I'm not asking what --

3 A. It's possible.

4 Q. Paint could be in there, right?

5 A. Yes.

6 Q. Rust could be in there, right?

7 A. Rust particles, yeah. Sure.

8 Q. Okay. Anything that can get in that impression, whatever

9 it be, be it lint or whatever, it could possibly remove. Would

10 you agree with that, sir?

11 A. Yes. It's possible.

12 Q. Now, when you use a manual stamp to stamp an unsmooth

13 surface, do you sometimes -- I'm assuming you've done

14 experiments like this. An unsmooth surface, for example, a

15 round surface.

16 A. Not a flat surface. Okay. Sure.

17 Q. Exactly. Thank you. A flat surface, do you sometimes

18 get imperfections and doubles when you try to stamp that?

19 A. It's certainly possible, yes.

20 Q. And so the E683 stamp that looks like it has multiple

21 stamps could have been stamped one time or more times and got

22 replications because it's an uneven surface; is that true, sir?

23 A. Yes. Sure.

24 Q. And also when you hit that unflat surface, or rounded

25 surface, whichever you want to call it --

1 A. Okay.

2 Q. -- with a hammer or some heavy object onto the die, you
3 get that, what I would call a bounce effect. Is that what
4 causes that, sir?

5 A. It could. Yeah. I know what you're talking about.

6 Q. Okay.

7 A. Sometimes you hit it and it kind of bounces. Yeah.

8 Q. And it will cause you to have a -- and this is just a --
9 I'm trying to do an example. It will cause you to have
10 something like this where you have a duplication of a stamp,
11 let's say. And that's a very poor -- that's just my
12 handwriting, okay. That what we're talking about?

13 A. Yes.

14 Q. So it wouldn't be uncommon for somebody to hit this right
15 here, a stamp with a hammer on a nonflat surface to have that
16 type of an impression?

17 A. It can happen. Yes.

18 Q. And it could happen not only to an E, but to a 6 and to
19 an 8 and to a 3, right?

20 A. Yes.

21 Q. All right, sir. Now, I believe you testified that the
22 stamping when it was done creates because of, I guess the
23 impression, creates grooves coming out where the metal is kind
24 of distorted on the rim or on the edges. Would that be fair?

25 A. Very close to it. Yeah.

1 Q. And when that occurs, you said sometimes that knocks the
2 paint loose from that edge, right?

3 A. Well, it creates more of a probability that the bulge-out
4 rim that you're talking about would contact the die itself and
5 that would rub against it. And if there were a coating on
6 there, like paint, then that would be removed. That's a likely
7 scenario.

8 Q. And likewise, because the rim sticks out farther than the
9 rest of the gun, does it not, sir?

10 A. Yes. Of the receiver, yes.

11 Q. The receiver.

12 A. The surface that we're talking about.

13 Q. Then that surface is going to have more -- you'll come in
14 contact with that bump or that ridge before you'll come in
15 contact with the receiver; is that right?

16 A. If you're implying that -- if you're saying that that rim
17 is so high that, that if you scratch, say, a fingernail over
18 it, you'll feel that, it's certainly possible, but we're still
19 talking about something that's magnified when we're looking at
20 that. But even if you try to run your finger over it you might
21 be able to feel that.

22 Q. Okay. And if I held it for 22 years with this hand and
23 rubbed my hand over it every day, that might also rub some of
24 the paint off of that, off of that rim or that, or that bump as
25 you called it?

1 A. I don't know the answer to that.

2 Q. Well, you know paint --

3 A. I know paint, sometimes you rub it -- I just don't have
4 enough information to answer that yes or no. It's a -- yeah.

5 Q. So you just don't feel qualified to answer it?

6 A. That if you could rub on something like that over 22
7 years and rub the paint off.

8 Q. You would agree with me that over time, I don't know how
9 long, but over time this paint is either going to get rubbed
10 off or deteriorate or somehow or another it's going to distort
11 some?

12 A. Yes.

13 Q. As a matter of fact, it appears to have some -- well, let
14 me ask you: Does it appear to have some distortion on it, for
15 example, right now in this area (indicating)?

16 A. May I?

17 Q. Yes, sir.

18 A. Yeah. Some of it is coming off.

19 Q. Back up here, the tip up here.

20 A. Uh-huh.

21 Q. Okay, sir. And might that also be an explanation for the
22 absence of paint along the rim or the bump that you talked
23 about, sir?

24 A. I don't believe that would be an explanation.

25 Q. That's totally not plausible whatsoever?

1 A. Not according to what I was seeing. What I was seeing
2 was along that little bump that I was referring to, or the
3 little bulge, there are little marks in there that, that
4 indicated it contacted something, and something hard, like a
5 die or something like that. So that's why. And then if you go
6 a little bit farther away from that little bump, the coating or
7 the paint is still in really good condition, not like what we
8 were just looking at a minute ago.

9 Q. Right.

10 A. That's kind of like a uniform, you know, deterioration of
11 that area. But right in that area where that serial number is,
12 the coating is still in relatively good condition. So that's
13 why I wouldn't say that that's -- that would not be the case.

14 Q. So with wear and tear over 22 years of a weapon that's
15 been stamped, will not have any impact on the paint around the
16 serial number. Is that your testimony?

17 A. I did not -- that's not wear and tear, is what my
18 testimony is.

19 Q. Okay. I guess my question is: Can wear and tear over 22
20 years of a firearm, hand-rubbing or holding by the serial
21 number cause the paint to deteriorate, sir?

22 A. It can cause -- it's possible that the paint could
23 deteriorate, but not in the way that I was seeing around that
24 serial number.

25 Q. Okay. And, now, I believe you testified that different

1 manufacturers place the serial number on at different stages of
2 the manufacture process; is that right?

3 A. They can.

4 Q. Okay. Sometimes they put it on before it's painted,
5 sometimes they put it on after it's painted?

6 A. No. It's usually, it's usually placed onto the gun
7 before the final finish is put on, and the finish can be
8 anything - plating, painting, that kind of thing. What I was
9 referring to is that sometimes, sometimes the finish surface,
10 does not get a paint, so they would go ahead and put a serial
11 number on before some of the other parts are done. That's a
12 possibility. That's what I meant by different stages.

13 Q. And you -

14 A. But --

15 Q. Go ahead. I'm sorry.

16 A. They do not paint it first and then apply the serial
17 number.

18 Q. Well, you don't know what Erb does, is that fair to say?
19 Do you know what Erb does?

20 A. I don't know what Erb does. I would not expect -- okay.

21 Q. Now, have you seen firearms that have been -- the serial
22 number has been painted over?

23 A. Yeah.

24 Q. I'll show you Government's Exhibit 6.0. Can you tell by
25 looking at that gun without a magnifying glass and without a

1 microscope whether or not that firearm has been painted since
2 the serial number was put on?

3 A. Well, usually when you ask me to express an opinion like
4 that I would like certainly to see it under laboratory
5 conditions. But if that's not available to me, and you want me
6 to give you a yes-or-no answer, I could do that. It looks
7 like, looks like it was painted after the impression was
8 stamped. But if you were --

9 Q. I'm sorry, I didn't -- repeat your answer. I apologize.

10 A. Okay. If -- if I had to give you a yes-or-no answer I
11 would say that, yes, it's been painted over after the serial
12 number was put in.

13 Q. And --

14 A. But, of course, something like that I would definitely
15 like to see in a laboratory with better lighting and
16 magnification in order to make that determination.

17 Q. Based on what you have right now, though, this gun has
18 been painted after the application of the serial number?

19 A. Coated. Could I use "coating"?

20 Q. Sure.

21 A. It's coated, because I don't know if that's paint.

22 Q. Okay. And I didn't mean to imply that.

23 A. No, it's just a clarification on that. Yeah.

24 Q. Do you know, can you -- if I -- without further
25 examination scientifically, can you tell how many, if any,

1 coats have been applied to this firearm, sir?

2 A. I would not express that opinion without testing it
3 first.

4 Q. And likewise, Government's Exhibit 7.0, can you tell the
5 same?

6 A. Yeah. My answers will be the same.

7 Q. And can you tell, sir, and again, to the same one,
8 whether or not there is more than one coating on this?

9 A. I cannot tell without testing it.

10 Q. All right. It's possible that both of those firearms
11 have been coated since -- recoated, let me say that?

12 A. Is it possible that those firearms have been recoated?

13 Q. Yes.

14 A. Yes, it's possible.

15 Q. Now, the firearm that you examined, this firearm here,
16 you have characterized it as a Sten, I believe Mark III,
17 correct?

18 A. Yes.

19 Q. And have you seen, for lack of a better word, the
20 pedigree behind this firearm, sir, the blue ribbon records or
21 whatever?

22 A. I've not seen any records regarding to that gun.

23 Q. Are you familiar with how they are made, the process, ATF
24 Form 2?

25 A. No, I'm not familiar with that process.

1 Q. Are you familiar with the fact that the person that
2 manufactured the receiver creates a form and sends it into the
3 ATF, sir, for registration?

4 A. I believe that they need to. But again, it's not my
5 area. I don't do regulation.

6 Q. So you don't know whether or not whoever created the form
7 for this book, you don't know whether they were accurate,
8 inaccurate in the creation of that form?

9 A. That is correct. I don't know anything about that.

10 Q. Are you familiar with, sir, whether or not anyone from
11 the ATF inspects tubes like the tube up there or this tube
12 prior to them being registered?

13 A. I don't know if they do or not.

14 Q. Okay, sir.

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

16 THE COURT: Yes.

17 (Brief pause)

18 MR. MARTIN: Your Honor, may I step to the back for
19 just a moment?

20 THE COURT: Yes.

21 MR. MARTIN: One moment, your Honor. I apologize.

22 (Brief pause)

23 Q. (By Mr. Martin) This is Government's Exhibit No. 8, sir.
24 I want to draw your attention to that serial number, sir. I'm
25 going to ask you to compare that. What's that serial number?

1 A. Looks like it's E705.

2 Q. Okay. And this is Government's Exhibit No. 6. Ask you
3 what that serial number is, sir.

4 A. E682.

5 Q. Is there anything that's immediately apparent about these
6 serial numbers?

7 A. The size.

8 Q. And what is unique about the size?

9 A. What is the differences between the two?

10 Q. Yes, sir.

11 A. One is bigger than the other, the --

12 Q. Do you need a microscope to see that, sir?

13 A. Well, it's hard to see this one. I'm sorry. What are
14 you asking?

15 Q. I'm saying do you need a microscope to see that one is
16 bigger than the other?

17 A. Oh, okay. No, you don't.

18 Q. Okay. So it's immediately apparent to you that the 705
19 is bigger than the 682, correct?

20 A. Yeah.

21 Q. I'm going to also show you Government's Exhibit No. 7 and
22 ask you to do the same comparison to Government's Exhibit No.
23 7, to the E705.

24 A. Thank you. Yeah. It's -- the number E685 is closer to
25 E682, which are smaller than the E705.

1 Q. So this tube's serial numbers right here are larger than
2 the serial numbers on -- I'm going to put these up -- than the
3 serial numbers on these two firearms, Government's Exhibits 6
4 and 7; is that right?

5 A. Yes, they are larger.

6 Q. And you're familiar that all of those guns, and when I
7 say "guns" I'm referring to the tube up there also, were
8 manufactured by Erb, sir?

9 A. I don't know that, but that's what I believe you are
10 saying.

11 Q. Okay. That's already been submitted to the Court that
12 they were manufactured by Mr. Erb at the same approximate time.
13 Did you know that, sir?

14 A. I don't know that, but -- I don't know that.

15 Q. All right, sir. Based on all the testing you did, you
16 cannot tell this jury, can you, sir, that on February 19th,
17 2003, this serial number was not on this gun?

18 A. Based on my -- could you repeat that? Based on my
19 testing --

20 Q. And examination --

21 A. Okay.

22 Q. -- you cannot tell this jury that the serial number that
23 is on this gun, E685, was not on that gun on February 19, 2003?

24 MR. KUMIEGA: Objection, your Honor. That's not in
25 the province of this expert. He's asking a question that's a

1 jury question.

2 MR. MARTIN: I'm asking if he has the expertise to
3 answer that question.

4 THE COURT: Objection will be overruled.

5 THE WITNESS: I cannot tell you when that impression
6 was put on there; therefore, I cannot tell you whether that
7 impression was on there on the date or not.

8 MR. MARTIN: Nothing further.

9 THE COURT: Any redirect?

10 MR. KUMI EGA: Yes, your Honor.

11 REDI RECT EXAMI NATION

12 BY MR. KUMI EGA:

13 Q. Mr. Kong, you've looked at some defense exhibits, some
14 photographs; is that right?

15 A. Yes.

16 Q. And they are photographs that the government has
17 stipulated regarding certain serial numbers of different Sten
18 machine guns purportedly manufactured by Mr. Erb; is that
19 right?

20 A. Yes.

21 Q. All right. Do those photographs appear to be made in
22 laboratory conditions?

23 A. Meaning that do those photographs look like something
24 that -- could you -- I don't think I understand that.

25 Q. What's the quality of the photographs versus the

1 quality -- let me finish -- with the quality of the photographs
2 you introduced in front of the jury today?

3 A. It's not very good. I cannot make out most of what's on
4 there.

5 Q. Can you tell much details from the defendant's exhibits
6 that we showed you today?

7 A. Regarding to the photographs?

8 Q. Yes.

9 A. No. I cannot tell that much detail.

10 Q. Is it better, can you make a better determination when
11 the firearms are brought in to you such as 682 and 685 to make
12 a determination?

13 A. Yes.

14 Q. Even with the tube, E705?

15 A. Yes.

16 Q. Is it better -- physical evidence is better than the
17 photograph?

18 A. Correct.

19 Q. And you did different magnifications on the photographs
20 that you presented in front of the jury today; is that right?

21 A. Yes.

22 Q. Ranging from ten up to 50; is that right?

23 A. Yes.

24 Q. Regarding the stamps. How long does it take to wear out
25 a stamp?

1 A. Probably a long time unless you misuse it. Under proper
2 conditions, you could use it for a long time.

3 Q. Okay. Well, how long?

4 A. Years.

5 Q. Okay. Would -- does it also depend on the metal that
6 makes the stamp?

7 A. There's a lot of factors. It depends on the metal that
8 makes the stamp, depends on the metal that you stamp into, and
9 again, use, proper usage.

10 Q. So for instance, the stamps that you saw in the
11 government's exhibit where the man was holding the stamps, you
12 don't know how long ago they've been used?

13 A. How much use there's been?

14 Q. Yes.

15 A. I cannot tell how much use they were. How much use they
16 were -- how many times they were used.

17 Q. Okay. Would that affect your determination on matching
18 the stamps with a known impression that you want to determine
19 if they make some kind of pattern match or fracture match?

20 A. I think the question to me before was whether I can match
21 the impressions on a gun from the stamps, and it definitely
22 depends on usage. And that's part of the reason that when I
23 was talking about can I say yes, no, but there's an
24 inconclusive, can you make it reproduceable. The surfaces on a
25 die stamp can change with use, and if it's changed, then you

1 can no longer match it back to the impression that was made
2 previously. So there is always that possibility, so we leave
3 ourself the opportunity to say it's inconclusive, we cannot
4 tell whether it's a yes or no.

5 Q. So again, the photographs of the stamps give you -- you
6 see -- it gives you an indication of the size of the stamps; is
7 that correct?

8 A. Yeah.

9 Q. Would it be better to have the stamps physically in front
10 of you to make a comparison?

11 A. Oh, yeah.

12 Q. So physical evidence is always better than the photograph
13 in that situation?

14 A. Yes.

15 Q. There's not much you really can glean from the
16 photograph; is that correct?

17 A. No.

18 Q. You couldn't even really tell the size of those stamps,
19 can you?

20 A. Some of those it was hard for me to figure out what the
21 impression was supposed to make.

22 Q. And you're not even sure that's the full set other than
23 the photograph that you were seeing; is that correct?

24 A. That's right. It's whatever is on the photograph. I
25 cannot -- I cannot, like I said, from the photograph itself it

1 was difficult for me to see what number is represented on
2 there, so whether it's a full set or not.

3 Q. For instance, you were looking for E, counsel was making
4 you -- searching for an E, is that correct, in the stamps?

5 A. Yes.

6 Q. And you couldn't find an E; is that right?

7 A. It's a set of -- no, I did not find an E.

8 Q. Okay. So it's probably -- there's probably an E
9 somewhere that was probably not photographed; is that correct?

10 MR. MARTIN: Well, I guess we can assume facts that
11 aren't in issue, and I would object.

12 THE COURT: That will be sustained.

13 Q. (By Mr. Kumi ega) Did you see an E in those stamps?

14 A. I did not see anything that resembled an E. Those were
15 number stamps to begin with, and you're asking me to look for a
16 letter in a set of number stamps.

17 Q. There was some discussion of the wear and tear of the
18 serial number here; is that correct?

19 A. Yes.

20 MR. KUMI EGA: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. (By Mr. Kumi ega) Can you show the jury, please, where
23 the most, I guess, wear and tear on the firearm or on the
24 coating is on Government's Exhibit 3.16?

25 A. It was where I was showing earlier. It's along this

1 area. There's some up here, there's some near the ejection
2 port and there might be some back here too (indicating). But
3 basically those are the worst areas of the deterioration of the
4 coating.

5 Q. All right. And where the purported serial number is,
6 E683, how would you characterize that to the rest of the
7 firearm?

8 A. Yeah. That is in this area, and like I said before, the
9 coating surrounding it appears to be pretty good condition as
10 relative to where the number is. So that's why I thought that
11 it was not wear and tear that I was seeing on the edges of the
12 grooves of the impressions.

13 Q. Now, you looked at 682 and 685, those numbers; is that
14 right?

15 A. Yes.

16 Q. Do 682 and 685, do they appear to be similar in
17 characteristics and in makeup?

18 A. 682 and 685?

19 Q. Yes.

20 A. They do.

21 Q. All right. And the number that you looked at, 683, how
22 different are they from 682 and 682?

23 A. Dramatically different.

24 Q. All right. You say dramatically different?

25 A. Right.

1 Q. Can you explain each and every way how they are different
2 from 682 and 685?

3 A. Yes. The quality of the stamping is much better. It
4 appears to be one hit on the die and made that one single
5 impression. This one, there are multiple impressions. The
6 sizes are different, the alignment is different. 682 and 685
7 are really close in a line, evenly spaced. This one is really
8 all over the place. You have some that are higher and some
9 that are lower, and the 3 is kind of off to the right, much
10 farther away than the rest of the other digits.

11 Q. And what is more consistent out of those three serial
12 numbers, 682, 685, and 705? How does 705 compare to 683, 682,
13 and 685? And that's the tube.

14 A. How does 705 compare to the three --

15 Q. Yes.

16 A. -- that we're talking about?

17 Q. Yes. Explain how --

18 A. 705 is closer to 682 and 685, and it's not as close to
19 683. The numbers are, again, looks like it's one strike, they
20 are in a line, they are evenly spaced, and this one is not.

21 Q. Your conclusion that you presented to the jury is that
22 683 was stamped and it captured or pushed in the paint on, or
23 the coating on the firearm and pushed it in; is that correct?

24 A. Yes.

25 Q. And is that consistent and 682 and 685 from what you

1 looked at, or is that radically different?

2 A. I don't think I can answer that because it appears to me
3 that in this firearm the coating was there first and then you
4 have to stamp it.

5 Q. You're talking about the firearm you examined for
6 forensic purposes today?

7 A. Right. The 683.

8 Q. Yes.

9 A. That appears to have this coating applied first before
10 the number and impressions applied. The other two that I
11 looked at it appears to be the number was applied first before
12 the coating was put on. So it's really different and it
13 wouldn't be appropriate for me to answer that question.

14 Q. Now, 705 is the tube; is that correct?

15 A. Yes. It's the unfinished receiver, is what it looks
16 like.

17 Q. Is there coating on 705?

18 A. No, there's no coating. It still needs some processing
19 before you could finish it.

20 Q. But there's a serial number on that; is that correct?

21 A. Yes.

22 Q. Let me ask you this: A stamp or a die has to be a
23 certain size to be consistent with a -- if you're going to
24 stamp a round cylinder; is that correct?

25 A. You would like to, yes.

1 Q. So if you used a die that is too big or a stamp that is
2 too big, it would rock the serial numbers?

3 A. Right. And you wouldn't want to do that.

4 Q. All right. Does it appear in 683 that a serial number
5 that was knocked in there was too big for that tube?

6 A. Yes. It does appear that.

7 Q. Okay. So would a conclusion be then, if you're going to
8 stamp 682 and 685, those stamps would obviously have to be
9 smaller than the stamps in 683?

10 A. Yes.

11 Q. Okay. And if you're a manufacturer, you're going to use
12 basically the same stamps all the time to put in your serial
13 numbers?

14 A. Yes. If they work want to continue using them, you don't
15 want to alter. You don't want to sell a product that looks --
16 with markings that, like something that's on there. That was
17 all of it.

18 Q. Now, you can't tell on the exhibit that was submitted to
19 you on 683, E683, Government's Exhibit 3.16, when this serial
20 number were placed?

21 A. No, I cannot tell.

22 Q. Is there any science that could do that?

23 A. No. I don't think so. Unless, unless -- well, I'm being
24 extreme here. Unless there was something that was captured in
25 there, something that was in the impression that was pressed on

1 there and you could sample that and determine the date on to
2 that. But that's -- that would not be the kind of science that
3 we will be practicing anyways.

4 Q. It's something that's not been -- it's not in our realm
5 yet?

6 A. It wouldn't be something that would be -- yeah, that's
7 not something that you would want to do.

8 Q. So you're telling the jury that the magazine well, the
9 D95843, whatever that number is, dates back to World War II?

10 A. Yes. The markings on the magazine housing, yes, dates
11 back to World War II.

12 Q. But the tube, you don't know when the tube was
13 manufactured?

14 A. I do not know that.

15 Q. Could have been manufactured ten years ago; is that
16 right?

17 A. It could have been.

18 Q. Or even maybe 15 years ago?

19 A. Yes.

20 Q. Or even five years ago?

21 A. Yes.

22 Q. We don't know?

23 A. Or 45 years ago -- actually, I'm sorry -- 60 years ago
24 back in World War II.

25 Q. Right. So you can't tell when the tube was manufactured,

1 you can't tell when the serial number was placed; is that
2 correct?

3 A. That's correct.

4 Q. But it appears to you when you had conversation or
5 dialogue with the defense attorney that there was no wear and
6 tear in that part of the machine gun; is that correct?

7 A. The part where the serial number is impressed?

8 Q. Yes.

9 A. That's correct.

10 Q. And the wear and tear is on -- above it; is that correct?

11 A. Yes.

12 Q. The silicon impressions that you made.

13 A. Yes.

14 Q. Again, what does that do, please?

15 A. That replicates the surface that I'm bringing the cast
16 on. That allows me to go under a microscope to examine the
17 surface further, and also it turns everything that are
18 impressions into hills. It turns valleys into hills so it's
19 easier for me to shine a light on it and to look at it.

20 Q. And what information did you glean from the use of your
21 silicon impression -- let me finish.

22 A. I'm sorry.

23 Q. -- to aid you in your analysis about either someone using
24 scribing or stamps in the making of E683?

25 A. I used the silicon casts to look under and use it under a

1 microscope to look in the areas that's outside of the groove
2 where there is some horizontal marks that was in my photograph,
3 and I was able to see there was -- were toolmarks there that is
4 made from a -- some kind of hard surface rather than wear and
5 tear.

6 Q. Is there any doubt in your mind that the placing of 683
7 was done when there was coating on the tube?

8 A. No, there is no doubt in my mind that the impression came
9 -- that there was a coating on the receiver prior to the
10 impressions being made.

11 Q. Okay. Now, did the silicon gel alter the physical
12 evidence in any way?

13 A. It -- that's not -- there is a possibility, as I
14 discussed earlier, that if there is some material in the
15 grooves it may lift it out. Sometimes it does, sometimes it
16 doesn't.

17 MR. KUMIEGA: Your Honor, may I have just a moment?

18 THE COURT: Yes.

19 (Brief pause)

20 Q. (By Mr. Kumi ega) And Mr. Kong, your expertise then, from
21 my understanding, is serial number restoration; is that
22 correct?

23 A. Yes.

24 Q. And this is basically what you, is a subset of what you
25 do; is that right?

1 A. That' right.

2 MR. KUMI EGA: Nothing further.

3 THE COURT: Any further cross, Mr. Martin?

4 MR. MARTIN: Very bri efl y.

5 RECCROSS-EXAMI NATI ON

6 BY MR. MARTIN:

7 Q. You di dn' t conduct any tests or determi ne how many
8 coatings there might have been on 683, di d you, si r?

9 A. I di d not.

10 Q. All right, si r. And woul d it -- just as you tol d Mr.
11 Kumi ega, you can' t say when on 682 and 685, the other two
12 fi rearms -- they' ve been coated over, have they not, si r?

13 A. Yes. They appear to have a coating over the impressi ons.

14 Q. Okay. But we don' t know what was under the current
15 coating?

16 A. I do not know.

17 Q. If there' s another coating, we don' t know?

18 A. I do not know.

19 Q. Okay. Now, I guess what you' re sayi ng from your redi rect
20 exami nati on is that it woul d have been very helpf ul to you i f
21 the government had trotted i n all those Sten tubes for you to
22 exami ne versus the photographs they provi ded me; i s that ri ght?

23 A. Ask that questi on agai n.

24 Q. Mr. Kumi ega was making l i ght of, I guess, my exhi bi ts
25 that I was provi ded, those pi ctures, okay?

1 A. Uh-huh.

2 Q. And my question is: You're saying it would have been
3 much more helpful to you if somebody that took those pictures
4 and had custody of those had brought them for you to examine?

5 A. If you -- I would prefer to see the physical evidence
6 rather than to look at the examples and answer your questions.
7 Sure.

8 Q. Okay. All right. And I guess if we want to assume
9 there's an E out there we can also assume there's some dies
10 that perfectly match this 683 in Erb's possession too, can't
11 we, sir?

12 A. The one on this gun?

13 Q. Yes, sir.

14 A. Well, like I said, there might be a die out there that
15 might match the E that's on here. Again, the die that was used
16 to make the E on here may not make the same marks as what was
17 on here now, because the surface could have changed. That's a
18 possibility.

19 Q. The surface of the die?

20 A. I'm sorry?

21 Q. The surface of the die. I didn't mean to interrupt you.

22 A. Yes. So even so it's the same die that made this
23 impression, if there's changes, then I cannot say positively
24 that that was the die that made this impression.

25 Q. Is it possible, sir, that, let's say there's four or five

1 employees sitting around stamping serial numbers into these
2 receivers as quick as they can, that they can be using
3 different size dies?

4 A. It's possible.

5 Q. Okay. Because I showed you some photographs, did I not,
6 sir, that appear to be different in size than the 682 and the
7 685, didn't I?

8 A. Yeah. I would say yes.

9 Q. Okay.

10 MR. MARTIN: Nothing further, your Honor.

11 THE COURT: Any further, Mr. Kumi ega?

12 MR. KUMI EGA: No, your Honor.

13 THE COURT: Mr. Kong, you may be excused.

14 THE WITNESS: Thank you.

15 THE COURT: Ladies and gentlemen of the jury, as I
16 told you, we're going to have to quit a little early today,
17 means you'll probably work a little later Monday or Tuesday.
18 So as you go home for the weekend, again, I just remind you to
19 not talk to anybody or let anybody talk to you about the
20 subject matter of this case. Don't reach any conclusions until
21 you've heard all the evidence and I've instructed you on the
22 law. And it's supposed to be a beautiful weekend, so go out
23 and enjoy it. We'll see you Monday morning at ten o'clock.
24 Ten a.m.

25 All rise while the jury exits.

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

3 THE COURT: Mr. Martin, based upon all of the
4 representations presented to the Court and based upon Ms.
5 Walbridge not being called today by the government, the Court
6 is going to deny and overrule the motion to exclude her
7 testimony. It's my understanding that -- will she be
8 testifying Monday, do you think?

9 MR. KUMIEGA: It will be Tuesday, your Honor, my
10 understandi ng.

11 THE COURT: Tuesday morning, or --

12 MR. KUMIEGA: At the Court's convenience. And we'll
13 be ready for a Daubert hearing if the Court determines it's
14 needed.

15 THE COURT: So we'll be continued anyway, her
16 testimony would not begin until Tuesday sometime, right?

17 MR. KUMIEGA: That's right.

18 THE COURT: And if we need a Daubert hearing we could
19 have that Monday at the close of trial day.

20 MR. KUMIEGA: She'll be here Monday night, your Honor.

21 THE COURT: Okay. Well, we can do it --

22 MR. KUMIEGA: Tuesday morning, your Honor. She'll be
23 avai l abl e Tuesday.

24 THE COURT: Okay. We can do it early Tuesday morning.

25 MR. KUMIEGA: Yes, your Honor.

1 THE COURT: She'll be coming in Monday night?

2 MR. KUMIEGA: Yes, sir.

3 THE COURT: Okay. So based upon that additional time
4 to review the materials submitted, the Court would overrule the
5 motion to strike her testimony.

6 We'll begin Monday morning at 10 a.m. Are we going to be
7 able to finish this case Thursday?

8 MR. MARTIN: Wednesday night or Thursday, your Honor.

9 THE COURT: Okay.

10 MR. MARTIN: I understood you had a deadline of
11 Wednesday night. Is that right?

12 THE COURT: Yes.

13 MR. MARTIN: We're going to do everything we can. You
14 are pretty much through, aren't you, Ed?

15 MR. KUMIEGA: Yes, sir. I think the last, well, the
16 last lengthy witnesses will be Mr. Erb, the manufacturer of the
17 machine gun; Ms. Walbridge, depending on how that testimony
18 goes; and I believe, your Honor, there is going to be one
19 unique issue regarding use immunity letter that we're going to
20 have to deal with in chambers before we sponsor Terri Dennis.

21 THE COURT: How many other witnesses do you
22 anticipate?

23 MR. KUMIEGA: I think there's about eight left, your
24 Honor, but they are going to be rapid, rapid witnesses.

25 THE COURT: Okay. And when do you anticipate Terri

1 Dennis or Terri LeMaster --

2 MR. KUMI EGA: That's the new name, your Honor.

3 THE COURT: It's one and the same person?

4 MR. KUMI EGA: Yes, sir, your Honor. Yes, sir.

5 THE COURT: And when do you anticipate calling her?

6 MR. KUMI EGA: Probably Tuesday. I was going to wrap
7 up with her and Mr. Donald Ladd.

8 THE COURT: Mr. who?

9 MR. KUMI EGA: Donald Ladd.

10 THE COURT: Okay. So would you know anytime Monday
11 whether there's going to be an issue on that?

12 MR. KUMI EGA: I can advise Mr. Martin and the Court,
13 your Honor, my proposed series of last witnesses.

14 THE COURT: I mean on -- if there is going to be any
15 issue with Ms. LeMaster on the immunity issue.

16 MR. KUMI EGA: I think there is going to be, your
17 Honor.

18 THE COURT: Okay.

19 MR. MARTIN: Ed, do you expect Erb Monday?

20 MR. KUMI EGA: Yes.

21 THE COURT: Did you say Monday or Tuesday?

22 MR. KUMI EGA: Erb for Monday, your Honor.

23 THE COURT: Oh, Erb for Monday.

24 MR. MARTIN: And then a bunch of employees,
25 ex-employees?

1 MR. KUMI EGA: Yes.

2 THE COURT: All right. You're going to start with
3 employees?

4 MR. KUMI EGA: I was going to start with employees and
5 then go to -- the employees will go rapidly, your Honor.

6 THE COURT: So we can take care of all those witnesses
7 where they are not sitting around all day.

8 MR. KUMI EGA: Yes, sir.

9 THE COURT: We'll reconvene at 10 a.m. on Monday
10 morning.

11 (Court stood in recess until September 22nd, 2008. For
12 further transcription, see Volumes IV through VII of this
13 transcript.)

14 * * * * *

15 REPORTER'S CERTIFICATE

16

17 I hereby certify that the foregoing is a correct
18 transcript from the record of the proceedings in the
19 above-entitled matter.

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