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1 (The following was had in chambers on September 22nd,  
2 2008. For prior transcription, see Volumes I through III of  
3 this transcript.)

4 THE COURT: Well, I understand instead of solving  
5 problems we've got new ones.

6 MR. KUMIEGA: Yes, sir.

7 THE COURT: What are they?

8 MR. KUMIEGA: On Friday Mr. Savage, the expert witness  
9 for Mr. Friesen regarding the firearm, examined the gun as we  
10 all agreed at the ATF office in the interrogation room on  
11 Friday after the conclusion of trial, and we believe there's a  
12 problem in what he did with the firearm. These are before and  
13 after pictures of the firearm, Judge. Specifically, the serial  
14 number. That's the serial number in question. And then we  
15 have this long scratch across the face of the serial number.  
16 And I just want to bring it to the Court's attention as an  
17 officer of the Court that that in fact occurred, and --

18 THE COURT: How did it occur?

19 MR. KUMIEGA: My understanding it's on videotape.  
20 Apparently what Mr. Savage did was he took a caliper and  
21 scratched across the serial number.

22 MR. MARTIN: I think he was measuring. That's what it  
23 is, your Honor, that's the caliper. That's the, I guess he was  
24 measuring the firearm, Judge. But if I might respond, Judge,  
25 on that exhibit that you have, this scratch up here and this

1 scratch down here weren't on the gun when it was seized. In  
2 the testing process those got made. This scratch now has been  
3 made. I think it's appropriate for an instruction to the jury  
4 that in the testing and examination process the gun has been  
5 altered, but I don't think you can put blame on either side  
6 because they scratched things off of it too that weren't  
7 scratched off of it before from the original. I can get a copy  
8 of the original, Judge, that would show what it looked like  
9 when it was seized in June, and it doesn't look like the  
10 original copy either, but --

11 MR. KUMIEGA: In fairness, your Honor, the reason part  
12 of the paint is taken off is to show there is only one coat of  
13 paint on that firearm.

14 THE COURT: On the deep scratch to the lower left-hand  
15 side? Is that --

16 MR. MARTIN: Upper right, Judge.

17 MR. KUMIEGA: This and this (indicating). These are  
18 paint samples taken from the serial number. For the life of me  
19 I can't think of any scientific reason why anyone would scratch  
20 the E683 number, and that's ground zero of the case, why  
21 somebody would actually do that. And I guess Mr. Savage needs  
22 to tell the Court why, but I don't understand that.

23 THE COURT: Well, I would like to hear from him how  
24 this happened. The caliper, I don't understand how that would  
25 scratch it.

1 MR. MARTIN: All I know, and he's not -- he may be  
2 here now.

3 MR. KUMI EGA: He's here.

4 MR. MARTIN: Is he here?

5 MR. KUMI EGA: Yes.

6 MR. MARTIN: All I know, he was measuring. If you  
7 want I can bring him in here. I've not talked to him about it.

8 THE COURT: What else? What do you want to do?

9 MR. KUMI EGA: I don't know. I'm thinking maybe --  
10 since the guns are going to be displayed today maybe there  
11 should be some kind of instruction from the Court that there  
12 have been alterations.

13 THE COURT: From when they saw it last.

14 MR. KUMI EGA: Yes. And obviously the government did  
15 not cause them. I mean, that's my -- my problem is I don't  
16 want to say that the United States is altering the evidence.

17 THE COURT: What's the other problem?

18 MR. MARTIN: I'm sorry?

19 THE COURT: There was -- Jamie mentioned there was  
20 some other problem.

21 MR. KUMI EGA: As to the impeachment. When Mr. Erb  
22 takes the stand, your Honor, from all the documents that were  
23 turned over to Mr. Martin, my understanding is what Mr. Martin  
24 is going to be, is going to do vigorous cross-examination  
25 regarding some of the compliance requirements that Mr. Erb

1 failed to do. A couple of things. One, there's a deferred  
2 sentence that Mr. Erb had for possession of a stolen truck  
3 around that time and there is no judicial consequence of that.  
4 He lived down the deferred sentence just like Mr. Friesen.  
5 Also we've -- or he got it expunged, but I think it's over.  
6 Second deal is that there is notation of him being investigated  
7 for smuggling a machine gun from Canada to the United States.  
8 And that was purely investigation and there was no, what it was  
9 it was a mistake probably is the way Mr. Erb explained it to  
10 me. And there is no consequences of that. All the other  
11 licensing problems that Mr. -- that my understanding Mr. Martin  
12 may go into occurred ten years after the 1986 manufacture of  
13 the firearms. And that might be out of, out of a time limit  
14 and certainly might not be probative anymore regarding his  
15 activities vis-a-vis manufacturing the machine guns. I don't  
16 think it would be fair to go through the whole compliance  
17 administrative activity with ATF. I think hopefully the Court  
18 can think about limiting the relevant time frame to that.

19 THE COURT: How many of these violations were there?

20 MR. KUMIEGA: Excuse me?

21 THE COURT: How many violations were there?

22 MR. KUMIEGA: I don't think-- not many. I think  
23 there's a series of correspondence going back and forth, and I  
24 think Mr. Martin can explain it to the Court better than I can.

25 MR. MARTIN: Fifty, 60, 25 -- let me start out with

1 this: I told Ed last night I was not going to do the deferred,  
2 so that's off the table. I told Ed last night I wouldn't go  
3 into the Canadian smuggling, that's off the table. There's the  
4 compliance issues, Judge, intermingled in all of this are these  
5 guns that were manufactured in April and May of 1986. There's,  
6 you know, like the '95 inspection they find a tube that's E689,  
7 for example. That's on your chart as one of the birthing  
8 documents, my birthing documents and his birthing documents.  
9 They didn't find it until 1995, but he made it in '86, which is  
10 the whole crux of this. The records of his, Judge, are replete  
11 with duplicious serial numbers, which is what we've claimed  
12 all along, 15 or 20 unregistered firearms where he has tubes  
13 that are cut out that are just sitting there, firearms that  
14 are, you know, the tubes are too long which would make it look  
15 like an MKIII versus an MKII, but it's cut out like an MKII,  
16 like Mr. Friesen's gun is.

17 MS. SYKES: Improper placement of serial numbers.

18 MR. MARTIN: Right. I can't remember them, there are  
19 some.

20 THE COURT: It would seem to me that's all relevant.  
21 But the other is off the table?

22 MR. MARTIN: It's off the table.

23 THE COURT: As would be the deferred sentence and the  
24 investigation. But I think these other violations all sound  
25 somewhat relevant to the case at hand.

1           Why don't you get -- real quickly see if, what's your  
2 expert's name?

3           MR. MARTIN: Mr. Savage. Do you want me to go grab  
4 him and bring him back here, Judge?

5           THE COURT: Yes.

6           (Mr. Savage was brought into chambers.)

7           MR. MARTIN: Judge, this is Mr. Savage.

8           THE COURT: Raise your right hand and be sworn,  
9 please.

10          (Witness sworn)

11          THE COURT: Mr. Savage, it appears that the parties  
12 have presented me evidence that shows that in your inspection  
13 of this gun that's in issue in this case that somehow there's a  
14 scratch that in your examination had appeared across the serial  
15 number. Can you explain how that occurred?

16          THE WITNESS: I was measuring the outside diameter of  
17 the receiver, and the paint is so brittle it came off there.  
18 It came off when Agent Knopp was scratching off evidence tape  
19 on the rear of gun too. All I did is measure it, no impacting,  
20 just measuring with a micrometer like in that picture over  
21 there.

22          THE COURT: Any questions?

23          MR. KUMIEGA: Yes. Mr. Savage, you're telling the  
24 Court that you used a sharp pointed micrometer to measure the  
25 serial number?

1 THE WITNESS: Can I see the picture?

2 MR. KUMI EGA: Because this is the before, and this is  
3 the after, and here is, my understanding this is the scratch  
4 that you put on that serial number.

5 THE WITNESS: This line right here, I was measuring --  
6 I measured it here, here, here, here, and here (indicating). I  
7 didn't use the sharp pointy part because the diameter of the  
8 tube there, there's a flat anvil that goes through and it  
9 measures within a half of one-thousandth of an inch, it was  
10 just the placement and getting a reading. It's got a thumbnail  
11 right here and you close the anvil, just doing that was taking  
12 off paint.

13 MR. KUMI EGA: Well, the point is taking off paint, but  
14 you -- for what reason would you go across this?

15 THE WITNESS: I didn't. I did not scrape the gun, all  
16 I did was measure it.

17 MR. KUMI EGA: So you're saying you measured this?

18 THE WITNESS: From --

19 MR. KUMI EGA: But you did it with a long --

20 THE WITNESS: I measured it actually from one end of  
21 the tube to the other, but specifically I was measuring the  
22 tube here, and I measured this, just kept, just kept so I could  
23 see if there was any deviation in the measurement of the tube.

24 MR. KUMI EGA: But there is no scientific reason you  
25 went across this and you scraped off paint; is that what you're

1 telling the Court?

2 THE WITNESS: It was inadvertent. My reason as to why  
3 I would have to, that has to do between me and counsel.

4 MR. KUMIEGA: Well, I can believe, your Honor, but  
5 just seems very odd that you could go across the whole number  
6 with one of these calipers that have a sharp point.

7 THE WITNESS: I did not use --

8 MR. KUMIEGA: Tell the Court what you did.

9 THE WITNESS: This anvil here, it's not sharp here and  
10 here. I can show the Court the tool, that's no problem. But  
11 this is flat, there is no sharp edge on it.

12 THE COURT: You don't have the tool with you?

13 THE WITNESS: I can have it here after lunch.

14 THE COURT: Okay.

15 THE WITNESS: If he'll step out I'll explain  
16 specifically.

17 MR. MARTIN: Judge, I don't think, it occurred, we  
18 can't correct it, and it's un -- I think it's appropriate the  
19 jury get an instruction that the gun has been changed from what  
20 it looked like in June to before what it looked like at trial,  
21 and it's changed again due to examination and testing process.  
22 I don't know, we can explain our theory in camera to you if we  
23 need to. But --

24 THE COURT: Why don't you bring the tool this  
25 afternoon.

1 Who are your witnesses?

2 MR. KUMIEGA: Charles Erb, Grant Kemmerer, a person  
3 who received the gun from a person in Chicago, and then Michael  
4 Davenport who got it from Kemmerer.

5 THE COURT: But we're starting with Erb?

6 MR. KUMIEGA: Yes, sir.

7 THE COURT: Okay. Well, I think I'll give them some  
8 preliminary instructions, because -- I'll give them a  
9 preliminary instruction what's happened. If you can bring that  
10 instrument this afternoon, and you can call the jury.

11 MR. MARTIN: May I ask a question before you leave  
12 about Thursday, Friday scheduling?

13 THE COURT: I'm out of town.

14 MR. MARTIN: That's what I wanted to make sure. I got  
15 the impression from your comments Friday that we might be here  
16 Friday, so I --

17 THE COURT: We won't be here Thursday or Friday. So  
18 if we don't finish we're going over to next Monday.

19 MR. MARTIN: That helps me, at least I know what I've  
20 got to do with my other things.

21 THE COURT: Okay. Call the jury.

22 (The following was had in open court with the jury  
23 present:)

24 THE COURT: Case Number CR-2008-41-L, United States of  
25 America versus Larry Douglas Friesen. Are the parties ready to

1 proceed?

2 MR. KUMI EGA: Yes, your Honor. United States is  
3 ready.

4 MR. MARTIN: The defendant is ready, your Honor.

5 THE COURT: Good morning. Everybody enjoy the  
6 weekend?

7 Mr. Kumi ega, you may call your first witness.

8 MR. KUMI EGA: Yes, your Honor. The United States  
9 would like to call Charles Erb.

10 (Witness sworn)

11 CHARLES ERB,  
12 called as a witness, having been duly sworn to tell the truth,  
13 the whole truth and nothing but the truth, testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. KUMI EGA:

17 Q. Mr. Erb, can you introduce yourself to the jury, please?

18 A. My name is Charles Erb, and I've been a resident of  
19 Pennsylvania -- today is the 63rd year that the earth has made  
20 a trip around the sun. I'm 63 today. And in 1979, I started  
21 into the NFA firearms business.

22 THE COURT: Excuse me just a second, Mr. Erb. Could  
23 you move back from the microphone a little bit?

24 THE WITNESS: I can do that.

25 Q. (By Mr. Kumi ega) So happy birthday. You said that you

1 started in the NFA firearms business in 1979, is that what you  
2 said?

3 A. Yes, sir.

4 Q. What type of business were you in when you started being  
5 into it in 1979?

6 A. I was a design engineer, mechanical engineer and diemaker  
7 before that. I worked for a corporation.

8 Q. All right. And did you then start your own business in  
9 '79?

10 A. In '79 I was -- well, before '79 I was doing a lot of  
11 antique restoration on antique firearms for museums and other  
12 collectors. That's always been my hobby, interest, secondary  
13 income. In 1980, I secured a license from the federal  
14 government, and it's a federal manufacturer's license that  
15 allowed me to work on any firearm, firearm, not destructive  
16 devices, just firearms. And NFA firearms are firearms that are  
17 covered by the National Firearms Act, and I worked for museums  
18 and collectors mostly, is my business.

19 Q. So you initially started as restoring firearms, and then  
20 it migrated back to actually building firearms; is that  
21 correct?

22 A. Yes. I have worked with some restoration groups, built  
23 aircraft guns. They were restoring a lot of the World War II  
24 and World War I aircraft. So there was a need, there was a  
25 niche. So I wanted to do something, and it was fun, and was

1 enjoyable. Something I really liked doing. So if you enjoy  
2 doing something it's not work anymore. So I restored a lot of  
3 firearms for a lot of various people around the country.

4 Q. All right. Then started building them in '79; is that  
5 correct?

6 A. No. In 1980. My license took effect in 1980, I started  
7 building firearms, and most of them were NFA firearms.

8 Q. Can you tell the jury the type of firearms you started  
9 making in 1980, and particularly in 1986, what type of firearms  
10 did you manufacture, please?

11 A. Well, being an avid World War I fan, I liked the U.S. and  
12 German and French and Russian and Italian, all the arms that  
13 the axis and allied powers in the first world war used. And  
14 there were many of them in the country that were brought into  
15 the country by veterans. And the government, U.S. government  
16 would even bring them into the country and give them to people  
17 who would purchase war bonds. If you purchased war bonds you  
18 could get a German trench gun, and they would then give them to  
19 you, although they were all deactivated. Some of them were in  
20 pretty bad condition. And at the time collectors became very  
21 much interested in them. And there was a big trend to build  
22 museums and put a lot of this stuff in museums. And the  
23 museums wanted prime examples, so I restored the jackets on  
24 them and restored the guns and made them look presentable for a  
25 museum exhibition. And there were a lot of collectors,

1 shooters that enjoyed shooting.

2 Q. Well, let me ask you this: At a certain time then your  
3 business becomes quite lucrative; is that correct?

4 A. Up and to -- yes, it was paying the bills. I raised  
5 three children and --

6 Q. All right.

7 A. -- enjoyed doing it.

8 Q. Let me ask you this: You had a shop, is it in  
9 Fredricksburg?

10 A. Fredri cktown, Pennsylvani a.

11 Q. Fredri cktown, Pennsylvani a.

12 A. A small shop.

13 Q. And where is that located?

14 A. I'm about 50 miles south of the city of Pittsburg.

15 Q. All right. How long have you had that shop?

16 A. Since 1975.

17 Q. And is that the shop you were manufacturing these  
18 automatic weapons?

19 A. Yes, sir.

20 Q. What other type of weapons did you make, Mr. Erb, please?

21 A. As far as models? At the time there were a lot of  
22 surplus parts on the market, and a lot of parts are being  
23 brought in from Europe and even countries as far away as  
24 Australia. Switzerland disposed of all their firearms and, of  
25 course, the parts slowly filtered into the U.S. There were no

1 receivers, you couldn't bring a firearm receiver into the  
2 country.

3 Q. All right. Let me ask you this: Tell the jury what a  
4 receiver is and what's the importance of a receiver, please?

5 A. The receiver was the registered entity of the firearm.  
6 It was the part of the firearm that had the serial number on  
7 it. And the government determined that it housed the main  
8 operating components of the firearm. If it was an aircraft  
9 gun, if it was a Browning gun, it was just a box, it was a  
10 steel box that was riveted together. And it housed all the  
11 operating parts, all the mechanism.

12 Q. All right.

13 A. And that was the prohibited part that you could not  
14 import, you could not bring those into the country.

15 Q. All right. So the tube is in fact the firearm; is that  
16 correct?

17 A. Yes. In some cases it would be a cylindrical tube. The  
18 British and the German both used a tube. The Russians were a  
19 little more sophisticated, they stamped their receivers. But  
20 basically even the Italians utilized a round receiver. It was  
21 easy, ease of manufacture, tubing was readily available.

22 MR. KUMIEGA: Your Honor, may I approach the witness  
23 with Government's Exhibit No. 8?

24 THE COURT: Yes.

25 Q. (By Mr. Kumi ega) Mr. Erb, this is Government's Exhibit

1 No. 8. Can you identify this for the jury and tell us what it  
2 is, please?

3 A. This is one of my very basic World War II productions,  
4 and it is a Sten Mark II. Shepherd and Turpin in the late  
5 1930s designed this gun, could be very simple, easily  
6 manufactured for their soldiers, British soldiers. And they  
7 were manufactured at the Enfield Works. So the name was given  
8 to it S-T-E-N, so if you hear of the Sten -- excuse me -- it is  
9 a Shepherd and Turpin manufactured firearm in Enfield Works in  
10 England, in Birmingham.

11 Q. So it's a combination of the --

12 A. It's an acronym. Is acronym the correct term? So it  
13 became the Sten gun. The British made them at the time they  
14 were in the great struggle, and, of course, the battle of  
15 Britain was raging, the Germans had already been in  
16 Checkoslovakia and Poland and were looking to overrun the rest  
17 of Europe. The British made the Sten gun in great quantities  
18 and they were easily dismantled. It was a small submachine gun  
19 that shot a pistol cartridge, and they would airdrop these to  
20 various resistance forces in France, Checkoslovakia, in Poland,  
21 and the resistance forces would utilize these firearms because  
22 they could be easily assembled by practically anyone, and they  
23 were arming people.

24 So there were a lot of these parts available and were  
25 coming into the country, so why not make some.

1 Q. Let me ask you this: The parts that were coming into the  
2 United States were not the tubes, but --

3 A. Absolutely not. It was just the components, the barrels  
4 and the bolts and the operating mechanisms.

5 Q. So Exhibit No. 8 is not what came into the United States;  
6 is that correct?

7 A. Absolutely not.

8 Q. You manufactured that; is that correct?

9 A. Yes, sir.

10 Q. And did you put a serial number on that tube, that  
11 machine gun?

12 A. Yes, I did.

13 Q. All right. Can you show the jury where that serial  
14 number is, please?

15 A. Okay. The cocking slot is here (indicating), the serial  
16 number would be on the left side, the left rear side of the  
17 receiver tube.

18 Q. All right. Let me ask you this, Mr. Erb: Was there some  
19 type of template you used to manufacture that tube?

20 A. I used a vertical milling machine and I set parameters  
21 and stops on it, and I had a guide, a tube, a mandrel that  
22 actually fit into it, and a detent that would index the tube.  
23 So the operator would just utilize the machine and that would  
24 make all the various cuts that were required to make this an  
25 operating piece. You could readily assemble it from that

1 point.

2 Q. Let me ask you this: How many cuts are on that tube?

3 A. There's an ejection port, and entry port, there's a  
4 cocking slot, there's a seer slot, plus the two locking slots.  
5 It required one, two, three, four, five, six, plus the magazine  
6 radius cut, which would make it number seven on this particular  
7 piece.

8 Q. The size of the tube, is that also, is that important for  
9 a Sten?

10 A. Yes. The British made them, they were -- they used  
11 tubing that was 1.625 inches in diameter, and usually had a  
12 16-gage wall, and a 16-gage could vary from 58-thousandths to  
13 64 thousandths in wall thickness. This fit the parameters that  
14 were required for the parts to fit on here and function  
15 properly.

16 Q. All right. So the sides of that tube indicates to me,  
17 what type of gun are you manufacturing with Government's  
18 Exhibit No. 8?

19 A. It was the British Sten Mark II.

20 Q. Okay. Can you tell the jury the difference between the  
21 size of the tube or receiver versus a Sten Mark III?

22 A. Well, the British found that they could produce these  
23 little, they called them tin tommy guns at the onset of World  
24 War II. When the GIs saw what the British were using, they  
25 made fun of them. The British went ahead and would stamp the

1 receivers out of a flat piece of sheet metal. And they would  
2 -- it had all the cuts, in other words, the ports were already  
3 stamped, the cocking slot would be stamped in a Mark III, and  
4 they would roll this flat piece of sheet metal around a  
5 mandrel. So they would take it from being round, or from flat,  
6 excuse me, to a round tube. And it had a seam across the top  
7 of it, across the very top that served as an aiming device for  
8 the soldier, and it was resistance-welded all the way down its  
9 length. They are very unusual looking and they are very much  
10 longer than the Mark IIs.

11 Q. All right. So the tube for a Mark III is, like you said,  
12 much longer than the tube in a Mark II?

13 A. Yes, sir. Significantly longer.

14 Q. Okay. Now, this is definitely your handiwork; is that  
15 correct?

16 A. Yes, sir.

17 Q. And how many ways can you tell, sir, that you are sure  
18 that's your device?

19 A. Well, it's a piece of seamless mechanical tubing, even  
20 the heat numbers are still on it. And of course, this would  
21 get buffed off or blasted off if it were phosphated. There's a  
22 little mark on it that says "Erb" on it. I can tell these are  
23 my serial numbers. I made the dies. I'm an old toolmaker. I  
24 even brought some of the dies along, you can look at the dies  
25 and see the shape and the size and the style of the characters.

1 There were probably four or five different sets of numbers that  
2 I used with variations in them that I used over the years. I  
3 wore them out, threw them away, made new ones.

4 Q. Now, did you use the same size of dies during your career  
5 in making Sten Mark II machine guns?

6 A. They varied slightly in size. They went anywhere from  
7 95-thousandths to probably 240- 250-thousandths in height. So  
8 they were no longer than the largest set that I brought.

9 Q. Okay. Sir --

10 MR. KUMIEGA: Your Honor, if I may approach the  
11 witness and grab those dies, mark them and give them to defense  
12 counsel.

13 THE COURT: Yes.

14 Q. (By Mr. Kumi ega) Now, back in 1986, you were  
15 manufacturing a boatload of tubes; is that correct?

16 A. Yes, sir.

17 Q. Can you tell the jury why, please?

18 A. Well, we have a very left-wing liberal contingent of  
19 Congressmen in this country who are always looking out for the  
20 citizens -- excuse me -- and for a firearm that produced,  
21 registered NFA firearms, as the ATF will tell you, account for  
22 hardly any, if any crime. But Congressmen Rangel out of New  
23 York, Chucky Schumer out of New York, and Teddy Kennedy had put  
24 their heads together and they attached a rider on a firearm  
25 owner's protection act that would virtually eliminate any U. S.

1 manufacturer for producing an NFA firearm that could be sold to  
2 the civilians.

3 Q. My understanding is, if we could cut to the chase, is  
4 that May, excuse me, May of 1986, there was -- you couldn't  
5 make any more machine guns; is that correct?

6 A. Well, the bill, I think the bill hit the floor, went  
7 through the House, went through the Senate, and come January,  
8 February, we knew that President Reagan was going to be forced  
9 to sign the bill. The bill had so many good facets in it.

10 Q. But the bottom line is by a certain cutoff date you  
11 couldn't make any more machine guns domestically unless it was  
12 for law enforcement or military?

13 A. Yes, sir. We had no idea when the date would be.

14 Q. Right. But you found out later when the date would be;  
15 is that right?

16 A. I did not know when President Reagan would sign the bill.

17 Q. Right. But he did sign the bill?

18 A. May 19th of 1986 it was signed.

19 Q. And that was basically a time when you were going to  
20 produce something prior to the law being enacted; is that  
21 correct?

22 A. Yes, sir.

23 Q. Tell the jury about that.

24 A. Well, up until that time we worked day and night. I was  
25 basically going to be -- I was the automobile maker that the

1 government said you can't make any more of these automobiles,  
2 Charles, so you make as many automobiles as you possibly could  
3 in the time they were going to shut it down. So naturally, I  
4 employed a great number of people, spent a lot of my money that  
5 I had, and produced as many receivers for these NFA firearms  
6 that I possibly could. This would be my future. I wanted my  
7 kids to go to college and I wanted to keep my business going.

8 Q. As to Exhibit No. 8, the tube in front of you, can you  
9 tell the jury how much that tube was worth back in '86 and what  
10 it's worth today, please?

11 A. In '86 was a 75 to \$100 receiver, if that. And it may  
12 have brought \$50 then prior to '86.

13 Q. What's it worth now?

14 A. Today, completed, registered, Sten guns, transferable, in  
15 other words, they can be transferred on a \$200 transfer tax,  
16 this gun would bring 3,500 to \$5,000.

17 Q. All right. Now, you're telling the jury then there's a  
18 deadline, you're manufacturing tubes such as the tube in front  
19 you; is that correct?

20 A. Yes, sir.

21 Q. Now, would you tell the jury the process you would do to  
22 affix serial numbers to identify each of the tube, or receiver  
23 or machine gun, please?

24 A. Again, in any manufacturing process, you have people  
25 working, people doing the necessary mechanical things to the

1 piece of material we're using to make it useable. And then  
2 when it was completed, we had a serial number bench, and I had  
3 a fellow that was helping me. As a matter of fact, he was a  
4 dentist who saw what was happening and realized what was  
5 happening, and he sat, took time off his office, blew his  
6 patients off, didn't book any -- had his secretary not book any  
7 patients and came and helped me. He was my serial number man,  
8 and he would serial number each and every tube. And we did it  
9 in consecutive numbers. I stamped an E on the front of the  
10 tube because I could recognize it as being a Charles Erb  
11 receiver, and then we would put the number, and there was a  
12 small proof put on it, my last name and had an empirical crown,  
13 something unusual that I made. And then later before we would  
14 ship it out we would mark it a little bit, mark it with my  
15 address.

16 Q. Let me ask you this: Did you use the same type of dies  
17 for each of the firearms that you put into the stream of  
18 commerce?

19 A. The dies were similar. They varied somewhat because I  
20 went to the point where we were also numbering MP40 receivers,  
21 we were numbering Maxim receivers, Browning receivers, and the  
22 guys in the shop were utilizing several different sets. The  
23 sets got mixed up, moved around. We tried to keep the size  
24 consistent.

25 Q. All right. Let me ask you this, Mr. Erb: Was that gun

1 or were those tubes coated or painted when you shipped them  
2 out?

3 A. Most of them were in the raw, as you see them, unless the  
4 customer would have requested it to be either phosphated or  
5 manganese di oxide coated, which would protect it.

6 Q. The tube in front of you, is there a coat on it? Is  
7 there paint on that?

8 A. No, sir. It's an industrial mill finish.

9 Q. All right. How long does it take to make a tube like  
10 that?

11 A. Back then we didn't have CNC vertical milling machines.  
12 I had two just manual machines set up with a stop on them.  
13 Half an hour, 40 minutes.

14 Q. All right. And you used consistently the same template  
15 to make those tubes; is that correct?

16 A. Yes, sir. It was the same. It couldn't vary, the parts  
17 wouldn't fit. They wouldn't function.

18 Q. All right. Let me show you Government's Exhibit No. 6.0  
19 and 7.0.

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

21 THE COURT: Yes.

22 Q. (By Mr. Kumi ega) Mr. Erb, the first gun is Government's  
23 Exhibit No. 6, and the second is Government's Exhibit No. 7.  
24 Can you examine those weapons, please?

25 A. I don't know which exhibit is which. Let me see.

1 Q. That's number 6?

2 A. This would be number 6.

3 Q. Then look at number 7, please.

4 A. This is one of my receivers, and a gun that I built.

5 Q. Look at number 7 too, please.

6 A. Okay. This gun is a -- one of my receivers. I usually  
7 phosphated them before they went out. This one was painted.

8 This would have been assembled by a secondary manufacturer.

9 Q. Now, are you talking about Government's Exhibit No. 6 or  
10 No. 7?

11 A. The black gun, serial number E685.

12 Q. That's number 7?

13 A. Yes, sir.

14 Q. Let's talk about number 6 first. How many ways can you  
15 tell the jury that you know that gun is yours, the automatic  
16 weapon, Government's Exhibit No. 6?

17 A. Well, it has my serial number, has an E serial number,  
18 it's a very small case Roman E on it, serial number stamped up  
19 near the top. I suspect that my manufacturer's proof and my  
20 name was polished out. Usually they are on the left side here.  
21 The gun has been heavily polished. All the welds have been  
22 polished, they have polished welds. Someone saw fit to polish  
23 these welds.

24 Q. All right.

25 A. In so doing they polished the tube, took a lot of the

1 markings off of it, the markings are faint. But they -- at  
2 least they left the serial number intact on top, which it's  
3 small. These are 95-thousandths height numbers. The E  
4 character is perhaps an eighth of an inch maybe 125-thousandths  
5 in height, but these are my number dies.

6 Q. You're positive that's your number dies?

7 A. Yes, sir.

8 Q. Let me ask you this: The length of that tube, is that  
9 consistent with the raw tube in front you?

10 A. It's consistent. I'm butting this up here. In the front  
11 there's a collar that was attached, and the collar held the  
12 barrel threads. Both tubes are exactly the same length.

13 Q. Look at Government's Exhibit No. 7. If you can read that  
14 serial number into the record and tell the jury how do you know  
15 that's your firearm?

16 A. Number 7 is my firearm, and it is E685.

17 Q. Okay. How do you know, sir, that's your gun, your  
18 automatic weapon?

19 A. Again, it's seamless mechanical tubing. The length is  
20 correct, the length is correct between the original receiver  
21 and the assembled firearm. Again, this was assembled by  
22 someone else. All mine were phosphated when they went out. I  
23 never painted them.

24 Q. When you say assembled by someone else, you just  
25 manufactured the raw tubes?

1 A. Yes, sir.

2 Q. And then all the add-ons, the triggers, the barrel, the  
3 magazine housings were added on by somebody else?

4 A. This receiver was sold to someone else, and I'm noticing  
5 that it was never blasted, beadblasted or sandblasted. It's  
6 been polished a little. Welds are consistent, but I don't  
7 believe this is a firearm that I assembled, number one, because  
8 it's not phosphated. It would have a phosphate finish as  
9 Exhibit No. --

10 Q. Six?

11 A. I guess this is 6 here with the sticker on it. But  
12 again, both receivers are my receivers and they are consistent  
13 with the receiver that we have for an exhibit here, which was  
14 Exhibit 8.

15 Q. All right. Let me ask you this: The serial numbers on  
16 682 and 685, are they the same, used the same dies in the  
17 manufacturing process by looking at those numbers?

18 A. 682 is a Roman block, dies that I made as is the E, the E  
19 code. This one is a plain block and it is a plain E, but it is  
20 still my set of number dies.

21 Q. All right. Is there a size difference, sir, between 682  
22 and 685?

23 A. No, they are the same. They are consistent.

24 Q. Is that the type of size you used back in '86 when you  
25 were manufacturing the Sten II Mark II machine guns?

1 A. There was a size that was slightly larger than this, just  
2 a bit larger. These are 095. These are 95-thousandths in  
3 height. I have in the another number set that you have, they  
4 are a bit larger, slightly larger. They are probably 200- to  
5 240-thousandths in height. You have the set of dies.

6 Q. Yes, sir.

7 A. That's the other sets that I used.

8 Q. Okay. Now, you -- at one point, you manufactured these  
9 firearms and then you put it in the stream of commerce by doing  
10 a Form 2; is that correct?

11 A. They would be -- they were originally registered. The  
12 government requires a federal Form 2 from the manufacturer, all  
13 the major firearm manufacturers in the country, Colt, Smith and  
14 Wesson would file a federal Form 2. We're all under the same  
15 regulation, a Form 2 must be filed by the manufacturer and it  
16 notifies the government that a firearm has been manufactured,  
17 for that -- for that particular firearm. Whether it be a Title  
18 I or a Title II firearm. Title I would be a rifle, shotgun or  
19 a pistol or a revolver. A Title II covers NFA firearms,  
20 firearms that are regulated by the U.S. government and there's  
21 a \$200 transfer tax on the gun if it goes to an individual. In  
22 the free states of this country, an individual can own an NFA  
23 firearm.

24 Q. All right.

25 MR. KUMIEGA: Your Honor, may the case agent approach

1 to show Mr. Erb Government's Exhibit 3.16, please?

2 THE COURT: Yes.

3 Q. (By Mr. Kumi ega) What's been handed to you, Mr. Erb, is  
4 Government's Exhibit 3.16. What is that, please?

5 A. The firearm has been made to resemble a Sten Mark III,  
6 resemble a Sten Mark III.

7 Q. How can you tell that?

8 A. The original Sten Mark III was a sheet metal plate that  
9 was flat. It was a 16-gage stamping that was rolled about a  
10 mandrel and it was made round and there was a resistance-welded  
11 seam on top of the tube that the British used. This is made  
12 from a tube.

13 Q. All right. Can you find the serial number on that  
14 machine gun?

15 A. Well, I looked on top, there is no marking on top, there  
16 is nothing on the side. And there is a crooked number in front  
17 of the trigger guard. Very large case numbers, very plain,  
18 something you would buy in a hardware store. There's an E and  
19 a 6 and a 3.

20 Q. E683?

21 A. E683. It's very crudely stamped in front of the trigger  
22 guard on the lower side of the receiver.

23 Q. Is that your serial number?

24 A. That is not my serial number.

25 Q. And other than the serial number, the tube, is that the

1 tube you manufactured back in 1986?

2 A. This tube is not consistent with anything I manufactured.

3 Q. All right. Tell the jury why, please.

4 A. Well, if it was a Mark III, and to make a Mark III the  
5 tube is somewhat longer than the original Mark II. You can see  
6 the added length in the receiver, five inches. So to make a  
7 Mark II, which you can do, you can make a Mark II into a Mark  
8 III; however, you have to add a piece of seamless mechanical  
9 tubing the same diameter and has to be added with the aid of a  
10 mandrel and has to be welded. If this were welded I would like  
11 to hire the welder that's welded this together, but it doesn't  
12 appear to be welded or stretched.

13 Q. Let's look at the magazine well on that firearm.

14 A. Yes, sir.

15 Q. Is there something -- can you tell the jury about that,  
16 how that well is different from Government's Exhibits No. 6, 7,  
17 and 8, please.

18 A. All right. Well, you notice this exhibit, which is  
19 Exhibit 6.

20 Q. Yes. That's 682. Go ahead.

21 A. 682. The magazine was made larger, the housing of the  
22 magazine was made to fit over the exterior of the receiver, and  
23 that allowed the British to airdrop these. This could be  
24 turned and they turned them like that. They turned them 90  
25 degrees, they would unscrew the barrel, they would put in a

1 piece of wrapping paper, just looked like a piece of paper bag  
2 that you would get in a grocery store. The British would wrap  
3 them, the stock detaches readily, and they put the stock and  
4 the receiver with the magazine turned and the barrel in this  
5 position. This was the airdrop condition. And they would  
6 airdrop these to various allies and various resistance forces  
7 throughout Europe.

8 Q. But this is a replication of that?

9 A. Yes.

10 Q. That's not a World War II firearm?

11 A. That's correct, it is not. It's a World War II type.

12 Q. Right.

13 A. This is a new firearm. This is not a curio and relic.

14 This is not a bring-back, it wasn't a gun that a GI had brought  
15 back into the country as a war trophy.

16 Q. Right. Same as Government's No. 7, 685; is that correct?

17 A. That's correct.

18 Q. Okay. Now, what I have here are two demonstrative  
19 charts. Do you see these clearly?

20 A. Yes, sir.

21 Q. Is one a Sten Mark II and one a Sten Mark III?

22 A. The Mark II you're holding in your left hand.

23 Q. This one?

24 A. And your right hand has the Mark III. That is a Mark III  
25 British Sten gun. And you notice the welded seamed rib on top.

1 Point to that.

2 Q. That (indicating)?

3 A. Yes. That rib up on top. That was the resistance-welded  
4 seam that was indicative of a Mark II.

5 Q. Is that seam a rivet? Is that also on Government's  
6 Exhibit 3.16?

7 A. 3.16. It is not there. It doesn't appear to be there.  
8 This was a tube. This was a piece of seamless mechanical  
9 tubing or a piece of welding tubing, we can't tell yet, and it  
10 was made to resemble a Mark III.

11 Q. Mr. Erb, as to the welds. It appears that in your  
12 Government's Exhibit 8, the tube, looks like it's a cookie  
13 cutter pattern, is that correct, on your tube? If you look at  
14 tube, please, Government's Exhibit No. 8, it's going to be in  
15 front of you.

16 A. Eight. Okay. I don't want to dent up the furniture  
17 here. We have 8.

18 Q. Can you show the jury the port where the magazine well  
19 would be, please?

20 A. Magazine well would be on the left side of the firearm, I  
21 have my finger in it. The cocking slot would be on the right  
22 side, on the starboard side here. And if you turn it this  
23 would be facing forward, this would be the ejection port here.  
24 I'm sorry. Ejection port would be on the right, this is the  
25 magazine well port on my left.

1 Q. How does that well then compare to the E683, Government's  
2 Exhibit -- well, the Mark III machine gun? It appears to be  
3 substantially different, please.

4 A. Exhibit 6.

5 Q. The Mark III?

6 A. Exhibit 6.

7 Q. Is that yours?

8 A. This is one of mine.

9 Q. Okay.

10 A. Again, the magazine housing is made larger to slide over  
11 the exterior of the tubing. Exhibit 7, again, the magazine  
12 housing with a piece of tubing that would slide over the  
13 receiver. Exhibit 3.16, the magazine housing is welded, is  
14 marriage-welded to the side of the receiver.

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

16 THE COURT: Yes.

17 Q. (By Mr. Kumi ega) The question I have, Mr. Erb, is this  
18 part of the firearm here, the tube, it seems this part here and  
19 here (indicating) -- this would be better, I guess.

20 A. Yes. It was the attachment.

21 Q. It doesn't appear to be a cookie cutter, it appears to be  
22 pulled back; is that correct?

23 A. I see. It was --

24 Q. Can you explain that to the jury why, why that is  
25 important, please?

1 A. The welds are very crude, not consistent with the welds,  
2 with the tungsten gas welding that they do in my shop. These  
3 are very crude. It was a stick rod that would have a flux  
4 coating on it, and it looks like bird droppings on the side of  
5 the receiver, if you want to put it in very plain terms. The  
6 receiver was cut with a saw, and it was peeled open to accept  
7 this magazine well.

8 Q. Okay. Yours is not, yours is cookie cutter square or  
9 rectangle; is that right?

10 A. Yes, sir. And it was consistently cut and machined.

11 Q. Mr. Erb, as you were talking before, talking about  
12 manufacturing the guns and the laws being changed, I imagine  
13 there is a significant amount of paperwork associated with  
14 production of these automatic weapons; is that correct?

15 A. Yes, sir. There is a lot of paperwork involved.

16 Q. Okay. You talked to the jury about making a Form 2.

17 A. Yes.

18 Q. And that's the birthing document for the firearm; is that  
19 right?

20 A. That's the birth certificate of the firearm. Of any  
21 firearm that's produced in this country, it's the birth  
22 certificate, just like the hospital gives you that little  
23 certificate for your new baby that you bring home from the  
24 hospital. It's a very important document throughout the  
25 individual's life is a birth certificate.

1 Q. All right.

2 A. The --

3 Q. Let me ask you this: Did you do the paperwork associated  
4 with the production of these firearms?

5 A. Yes, I did.

6 Q. And before a firearm left your business, did you, did you  
7 have hands on to record the serial numbers?

8 A. Yes, I did. For the firearm to leave my hands, leave my  
9 business, I had to file either a federal Form 3 or a federal  
10 Form 4. The federal Form 3 allowed me to transfer it to  
11 another NFA firearms dealer in our country. The Form 4 would  
12 allow me sell it to anyone in this country who was not  
13 convicted of a crime, over 21 years of age, of sound mind, and  
14 required a federal law -- required a law enforcement signature  
15 on the back side, on the reverse side of the duplicate Form 4.  
16 And the law enforcement officer states that he has no reason to  
17 believe that this individual acquiring this firearm would have  
18 any reason to use it for an illegal or an unlawful purpose, and  
19 on the back you must state why you want it. And the most  
20 common reason that individuals would list it for recreational  
21 shooting, I'm a World War I or I'm a World War II collector of  
22 firearms, I'm a curio and relics collector and I'm acquiring  
23 this for my firearms collection. These are all valid reasons  
24 for having it.

25 Q. All right. Now, you said that you actually did the

1 inventory and the hands-on of every tube that I left your shop;  
2 is that correct?

3 A. Yes, sir, I did.

4 MR. KUMIEGA: Your Honor, may the case agent show the  
5 witness Government's Exhibit 1.4, one of the certificates --  
6 excuse me, 1.5?

7 THE COURT: Yes.

8 Q. (By Mr. Kumi ega) Mr. Erb, what is being shown in front  
9 of you is Government's Exhibit 1.5. Can you pull that out of  
10 the sleeve and take a look at that, please? Take your time and  
11 look over the document.

12 A. I'm looking at my federal Form 2.

13 Q. All right. And after that is some other documents and  
14 I'll to talk to you about that in a second.

15 A. Okay. I have a Form 3 going to R.J. Perry, another Form  
16 3 going to Grant Kemmerer, and another Form 3 going to the  
17 Birmingham Pistol Wholesale, John Guy Walker.

18 Q. And is there one more?

19 A. Then we have another Form 3, dealer-to-dealer transfer to  
20 a Larry Douglas Friesen, Oklahoma City.

21 Q. All right. The Form 2.

22 MR. KUMIEGA: If we can show Form 2 on the screen.

23 Q. (By Mr. Kumi ega) Mr. Erb, is that your handiwork?

24 A. Yes, it is.

25 Q. All right. Let's talk about some details on that. What

1 date did you birth E676 to E700, please?

2 A. That was -- April 14, 1986.

3 Q. May 14th, isn't it?

4 A. May? Oh, 5. Okay, we're at May 14th, 1986.

5 Q. Okay. Are these the guns that you manufactured on or  
6 about that day?

7 A. The guns were manufactured probably two weeks before  
8 this, because --

9 Q. Is that going to be the top left-hand corner, if you can  
10 see that?

11 A. I can't see that, the top left-hand corner.

12 MR. KUMIEGA: Go up, please. My mistake.

13 Q. (By Mr. Kumi ega) Is that the date of the manufacture?

14 A. 5/1/86.

15 MR. KUMIEGA: Let's go to the whole document.

16 Q. (By Mr. Kumi ega) And this -- what date is that, for the  
17 record, please?

18 A. 5/14/86.

19 Q. Why is there almost two-week lag between that and that,  
20 please?

21 A. Well, in my haste, and we all hurry to do things, I had  
22 the tubes probably 70 percent completed, not all the machine  
23 cuts were made to the receivers. We had NFA inspection. Of  
24 course, Washington, D.C. was flooded with federal Form 2s from  
25 all around the country, more paperwork than they had ever

1 experienced in their entire existence, all manufacturings --  
2 all manufacturers trying their best to produce firearms for a  
3 law that would close us down and put us out of business and  
4 curtail our business.

5 Q. All right. So what did you do, then? What's the  
6 mistake?

7 A. Well, the NFA branch called me up, said, Charles, we  
8 would like to come and inspect all these firearms that you are  
9 manufacturing. I said okay. So agents out of the Pittsburg  
10 office came to my shop and they asked to see the firearms that  
11 I had produced. So I showed it to them and they looked at it,  
12 and they knew exactly what they were looking for. Each  
13 receiver had to have an ejection port, had to have a mag well  
14 port on it, it had to have a seer slot, a cocking slot, all of  
15 which they deemed very necessary manufacturing processes to  
16 call this a receiver.

17 So they looked at them and they said, we can't accept  
18 these. You have not completed these receivers.

19 Q. All right. So it was rejected, your first batch was  
20 rejected?

21 A. They rejected this --

22 MR. MARTIN: Your Honor --

23 A. -- entire lot.

24 MR. MARTIN: -- I object to the leading.

25 THE COURT: It will be sustained.

1 MR. KUMIEGA: Can we show Mr. Erb Defendant's Exhibit  
2 100, please?

3 Q. (By Mr. Kumi ega) Mr. Erb, if you can maybe look -- is  
4 that screen to the right working?

5 A. It's a little fuzzy. I can see that one (indicating).

6 Q. Okay. This is Defendant's Exhibit No. 100, and there is  
7 a date on that, the top left that I'm flashing with the laser  
8 pointer. What date is that, please?

9 A. That's 4/20/86. That's April.

10 Q. Same thing on the bottom, bottom right; is that right?

11 A. Yes. That would be 4/20/86.

12 Q. And that's your signature?

13 A. My signature.

14 Q. All right. And again, this is Government's Exhibit 1.5.  
15 This is your signature with different days; is that correct?

16 A. My signature, different day.

17 Q. All right. What's the differences between Defendant's  
18 Exhibit 100 and Government's Exhibit 1.5, please?

19 A. Well, NFA, when they visited the shop and said, Charles,  
20 these receivers that you have in this block are not finished  
21 and we can't accept them; however, if you in the next few weeks  
22 can run them back through your process, run them back through  
23 the shop and finish machining them, we will accept them, but  
24 you must show them to us. So again, worked like little beavers  
25 and we worked day and night just working on this stuff getting

1 it all finished. I made the necessary cuts to satisfy the  
2 government inspectors. I called them and I said I think I have  
3 finished the machine work required on the receivers that I had  
4 initially manufactured in April, April 20th of '86, and they  
5 came out and they looked at them, and it went then on about  
6 5/14/86, approximately that date in May. So I let them look at  
7 all the receivers, and it was an inspector, it was Agent Peter  
8 Rubis and he looked at each and every one. He counted them, he  
9 checked the numbers, the serial numbers and went right down the  
10 line and looked at them and said, okay, you can file another  
11 Form 2 if you like. So on May 14th of '86, I filed this form  
12 and it went back to the U.S. government, who listed them on the  
13 National Firearms Act computer.

14 Q. All right. So let me ask you this: There were two  
15 inspections of the E series; is that correct?

16 A. Yes, sir.

17 Q. And is there a significance about the Xes next to the  
18 numbers?

19 A. That's Peter Rubis's inspection and he Xed them out  
20 saying these are no good, these are not consistent with what we  
21 inspect of a finished receiver.

22 Q. All right. And then this second form that's Government's  
23 Exhibit 1.5, he again inspected it?

24 A. Yes. Let me clarify something, if I may.

25 Q. Sure.

1 A. The X on there is not part of the serial number. It  
2 appears to be part of the serial number, it is not. I used the  
3 same numbers, I just had to file a new form. This is what the  
4 government had requested I do; I did it.

5 Q. Now, you said you brought some dies to the, for courtroom  
6 presentation today; is that right?

7 A. Yes, I did. Several sets of dies.

8 Q. How many dies did you use during the course of your  
9 manufacture of the machine guns or firearms?

10 A. Probably ten, 12 dozen different sets, different sizes,  
11 varying sizes. Again, none larger than the dies that you see  
12 in front of you.

13 Q. Okay. And those, were those the dies, sir, that stamped  
14 682, 685, and the real 683?

15 A. Those are the numbers that were entered on the receivers.  
16 Yes.

17 Q. Again, the question is: Are those similar type dies that  
18 you used to make 682, 683, and 685?

19 A. Yes, sir.

20 Q. Okay.

21 MR. KUMI EGA: Your Honor, at this time the United  
22 States would move for introduction of Government's Exhibit 12  
23 into evidence.

24 MR. MARTIN: May we approach, your Honor?

25 THE COURT: Yes.

1 (The following was had at the bench, out of the hearing of  
2 the jury:)

3 MR. MARTIN: My objection is, your Honor, number one,  
4 I didn't even see these until today and we were never told they  
5 were going to be exhibits. Number two, they are not the same  
6 ones. I know of at least one of them that's in there now that  
7 wasn't in the pictures that I was provided, and that is  
8 obviously the E stamp that I made a big deal about the other  
9 day. And your Honor, I object to the introduction of, to say  
10 the least, the E stamp because it wasn't in what I've been  
11 provided before, and now it's here suddenly today.

12 MR. KUMIEGA: Judge, these are just representations of  
13 the type of serial numbers that he was provided -- when he was  
14 stamping the guns. The pictures are just representations. I  
15 think Mr. Martin knew that we were going to bring in some dies  
16 regarding today's testimony. And all these are are basically  
17 physical evidence of the photograph. There is really no  
18 differences between the two.

19 MR. MARTIN: The E is hugely different. I made a huge  
20 thing about that because Agent Knopp testified this is every  
21 die he said he ever used.

22 MR. KUMIEGA: I think Mr. Knopp said that. I think  
23 that these are a representation of the dies and that's why  
24 there is problems with the foundation regarding the  
25 photographs.

1 THE COURT: Did he use these dies?

2 MR. KUMIEGA: He's saying he did, yes, sir.

3 THE COURT: He said they are representation.

4 MR. KUMIEGA: All we had was the photograph that Mr.  
5 Martin flashed to the jury. These are the actual dies that he  
6 brought, that he showed to -- displayed to Mr. Knopp, or some  
7 of the dies. The photographs are representations. We would  
8 have to search out for the actual dies, and here they are  
9 today --

10 THE COURT: I'll overrule the objection and you can  
11 show -- I don't recall what Agent Knopp said specifically, but  
12 it's in the transcript. You may have taken notes on it. I'll  
13 overrule the objection.

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

16 Q. (By Mr. Kumi ega) You brought the dies and your testimony  
17 is those dies are the type of dies you used to manufacture the  
18 682, 685, and 705 in front of you; is that correct?

19 A. I didn't bring the small set of dies, but I do have  
20 those. Those are my dies that I had manufactured. They are  
21 95-thousandths. I didn't think to bring those, the little  
22 small ones.

23 Q. So these dies are smaller, I mean the dies you used to  
24 manufacture the guns in front of you, 682 and 785, are they  
25 different from the ones --

1 A. They are smaller than the ones I brought. I did not  
2 think to bring them. I'm sorry.

3 Q. Are these the type of dies you exhibited to Mr. Knopp  
4 during the investigation?

5 A. Yes. And I showed him the small set also.

6 Q. All right. Mr. Erb, Government's Exhibit 3.16, the  
7 machine gun with E683, can you look at that, please?

8 A. Yes, sir.

9 Q. That's the Mark III. Let me ask you this: That's a, the  
10 gun that you're holding, is that a Sten Mark II?

11 A. Doesn't appear -- does not appear to be. Appears to be a  
12 Sten Mark III.

13 Q. And the barrel length, is that lower -- can you tell us  
14 the difference between the barrel length and your birthing  
15 document and the barrel length that you have in front of you?

16 A. The barrel is the same on a Mark III and a Mark II. They  
17 are the same length.

18 Q. What about the receiver?

19 A. The receiver overall would probably -- the overall length  
20 of this firearm would be consistent with the 31 inches;  
21 however, the receiver is much longer on this particular firearm  
22 than it is on the Mark II.

23 Q. The receiver that you're holding in your hand, the  
24 Government's Exhibit 3.16, is it consistent with all the guns  
25 that you made?

1 A. The very coarse number on it indicates that it's a, it's  
2 683.

3 Q. Okay. Is that consistent with what you made?

4 A. No.

5 Q. Is the gun that you're holding in your hand, is that the  
6 gun you manufactured as E683?

7 A. No, sir.

8 Q. Okay. Now, have you ever let a machine gun or any NFA  
9 weapon leave your shop without a serial number?

10 A. Absolutely not.

11 Q. Okay. There was some photographs of your shop that were  
12 being displayed during the course of the trial. Can you tell  
13 us about your physical -- your factory and where you  
14 manufactured the items, please, if there was problems?

15 A. I had a really nice shop once upon a time. I had an  
16 electrical fire that destroyed all the wiring, destroyed the  
17 ceiling tiles, took all the lights out, did a lot of damage.  
18 But it's still the same shop. And we refurbished some of the  
19 equipment, some of the equipment I scrapped.

20 Q. All right. Mr. Erb, let me ask you this: You were cited  
21 on more than several occasions of ATF inspectors,  
22 administrative inspectors for certain violations; is that  
23 correct?

24 A. Yes.

25 Q. And were these violation resolved?

1 A. Yes, sir.

2 Q. And what type of violations did they cite you for,  
3 please?

4 A. I got a violation for filing a federal Form 2, and not  
5 complying -- how do I word this -- again, we had spoken of the  
6 form that was filed in April of 4/20/86. In filing the form,  
7 it was my intent to build firearms, and when I manufactured the  
8 receiver, the receiver didn't have all the required machine  
9 cuts on it to make it a useable receiver. So I got a violation  
10 for that.

11 Q. All right. Are there any other violations that occurred  
12 subsequent to your manufacture back in May of 1986 that you  
13 were cited for?

14 A. There are several.

15 Q. Were those resolved?

16 A. Yes, sir.

17 Q. All right.

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

20 THE COURT: Yes.

21 (Brief pause)

22 MR. KUMIEGA: Your Honor, we have no other questions  
23 of this witness.

24 THE COURT: You may cross-examine.

25 MR. KUMIEGA: Your Honor, we move for introduction of

1 Government's Exhibit No. 12, into evidence, the dies.

2 THE COURT: The Court will note the objection and they  
3 will be admitted.

4 MR. MARTIN: Your Honor, I had already previously  
5 objected to that, I believe.

6 THE COURT: I said I noted the objections and they  
7 will be admitted.

8 CROSS-EXAMINATION

9 BY MR. MARTIN:

10 Q. Mr. Erb, do you know this gentleman right here?

11 A. I met him through the course of the investigation. Yes,  
12 I do.

13 Q. Mr. -- Agent Knopp, Mr. Knopp?

14 A. Yes, sir.

15 Q. As a matter of fact, you met him probably back in 2004,  
16 didn't you?

17 A. I believe it was about then I met Agent Knopp.

18 Q. And he came out and brought with him some other agents,  
19 did he not? I think that Mr. Rubis came out with him, didn't  
20 he?

21 A. Yes, sir.

22 Q. Pete Rubis, the firearm inspector up in, is it  
23 Philadelphia?

24 A. He was in the Pittsburg office.

25 Q. Pittsburg. I'm sorry. And you provided them a

1 interview, I guess, back in July of 2004. Do you recall that,  
2 the approximate date?

3 A. I don't recall the exact date, but they came -- made an  
4 appointment, they called, contacted me and I said yes. I  
5 couldn't turn them down.

6 Q. So you talked to them then?

7 A. Yes, sir.

8 Q. And you told them that when this law that you've  
9 testified about on direct examination went into effect that you  
10 made as many Sten II tubes as you possibly could, didn't you,  
11 sir?

12 A. Yes, sir.

13 Q. And that was because after May 19th, 1986, you could no  
14 longer make those tubes anymore?

15 A. Yes, sir.

16 Q. And you told them you employed a bunch of people to help  
17 you get them made?

18 A. Yes, I did.

19 Q. And that you were knocking them out just as quick as you  
20 possibly could; is that right?

21 A. Yes, sir.

22 Q. And you told them that you could locate -- let me  
23 rephrase that. You told them that every one of the tubes you  
24 made a serial number was put on it, didn't you?

25 A. Yes, sir.

1 Q. And you told them that the serial numbers were placed on  
2 the tubes by several different employees, didn't you, sir?

3 A. Yes, sir.

4 Q. You didn't tell them anything about a dentist friend of  
5 yours that quit and came and put these unique serial numbers  
6 on, did you, sir?

7 A. They didn't ask. That wasn't a part of the  
8 investigation.

9 Q. So how many different employees did you have working for  
10 you in let's say March, April, May of 1986?

11 A. I recall seven.

12 Q. Okay. So it would be a fair statement to say you have  
13 seven different employees that are hand-stamping serial numbers  
14 on these tubes; is that right?

15 A. It would be -- wouldn't have the entire crew. Probably  
16 two, would come to about two people that were actually doing  
17 the stamping.

18 Q. And that amounts to several then?

19 A. If you would to -- if you would like stretch two to  
20 several, meaning three, perhaps three.

21 Q. Well, I'm just using your wording, "several".

22 A. Several.

23 Q. Okay. And did that also include your dentist friend?  
24 Would he make four?

25 A. No. He would be included in that, sir.

1 Q. All right. And in that group when they came out they  
2 showed you, did they not, a Form 2? Do you recall them showing  
3 you a Form 2?

4 A. Yes, sir. I recall them showing me a Form 2.

5 Q. As a matter of fact, I'm going to show you the Form 2  
6 that they showed you. This has been identified and introduced  
7 into evidence as Defendant's Exhibit 100. Do you see that,  
8 sir?

9 A. Yes, I do.

10 Q. This is the Form 2 that Agent Knopp showed you, okay?  
11 Did you tell Agent Knopp that, wait a minute, that Form 2 is  
12 not right?

13 A. I explained to him that there were two Form 2s.

14 Q. Oh, you did?

15 A. Yes, I did.

16 Q. I guess he just left it out of his report then.

17 A. I told Agent Knopp that when they first came out and the  
18 inspector was there and verified it in front of Agent Knopp,  
19 and Peter Rubis told Agent Knopp that he made two trips out,  
20 because the first trip they disallowed the receivers that were  
21 filed on -- this form here, I can't see the bottom date, but I  
22 suspect it was April 20th.

23 Q. It is April 20th.

24 A. Okay, it's April 20 that they disallowed those, and he  
25 came about and reinspected them. And I spoke to Agent Knopp

1 about that.

2 Q. So you told Agent Knopp, and he'll get on the stand and  
3 truthfully testify that you told him that back in July of 2004?  
4 Is that your testimony?

5 A. I believe so. Yes. I -- I instructed them and told them  
6 of the --

7 Q. And the problem --

8 MR. MARTIN: May I approach?

9 THE WITNESS: May I know your name, sir?

10 Q. (By Mr. Martin) My name is Mr. Martin. What notes are  
11 you looking at there, Agent, I mean, excuse me, Mr. Erb?

12 A. Just my own notes, sir.

13 Q. Okay. Are those reports that you provided to the  
14 government or something?

15 A. No, sir.

16 Q. Okay. Has the government seen them? Has the government  
17 seen them?

18 A. Oh, yes.

19 MR. MARTIN: Do I have them?

20 MR. KUMIEGA: I don't know what reports he's referring  
21 to. Didn't he just write something down on a piece of paper?

22 MR. MARTIN: That's what I'm referring to.

23 THE WITNESS: I wrote this gentleman's name down. I  
24 like to know who I'm speaking to. Is that all right?

25 Q. (By Mr. Martin) That's fine. The problem with the tubes

1 that you say were rejected is because they weren't completed,  
2 right?

3 A. That's true.

4 Q. For example, some of the holes weren't cut out?

5 A. That's correct.

6 Q. And one of the holes that might not have been cut out --  
7 what is this hole right here where the magazine well is?

8 What's that hole called?

9 A. The magazine well cut.

10 Q. Okay. Some of them didn't have magazine well cuts, did  
11 they, sir?

12 A. That's true.

13 Q. Let me ask you: You said that -- in truth and fact,  
14 didn't you tell Agent Knopp this form is -- I'm sorry -- I'm  
15 holding it here. It was down here. Do you need -- this form  
16 here, the April 20th form, this form is the form you used to  
17 register E676 through E700. Isn't that what you told him?  
18 This form dated April 20, 1986.

19 A. That was the initial form that I had submitted to the  
20 government. The initial Form 2 was the form that I submitted  
21 to the government.

22 Q. Did you tell Agent Knopp this is the form that registered  
23 those 25 tubes, sir?

24 A. No, sir. That form did not register them.

25 Q. Now, sir, I believe you also testified that -- this is

1 Government's Exhibit 1.5, okay? Do you recognize that form,  
2 sir? Do you see 1.5? It might even be on your monitor.

3 A. That was the May 14th, '86 registration.

4 Q. And you believe you testified this actually occurred on  
5 May 1st. Do you recall that? Do you recall just testifying  
6 that these were probably manufactured on May 1st?

7 A. Some were May 1st, yes, somewhere around that date they  
8 were manufactured then.

9 Q. Okay. Do you have specific recollection of that, or is  
10 that a guess?

11 A. That was over 20 years ago.

12 Q. So you don't have -- as a matter of fact, that date is  
13 May 14th, isn't it, at the top?

14 A. No. The May 14th date is at the bottom lower right-hand  
15 side. The date up on top looks like 5/1/86. There is a crease  
16 in the form or a line, but it looks like 5/1/86.

17 Q. All right, sir. That's the point I'm getting at. You  
18 don't know that date because that crease covers up a large  
19 portion of that date, doesn't it, sir?

20 MR. MARTIN: Can we focus in on this side of the form,  
21 Bonnie?

22 Q. (By Mr. Martin) That says "date of manufacture"?

23 A. Manufacture.

24 Q. Well, it doesn't say manufacture because it's folded  
25 over, right? Can you see that form has been folded over? Do

1 you agree with me on that? That's says "date of manufacture,"  
2 doesn't it?

3 A. Yes, sir.

4 Q. The 4/20 form says "date of manufacture," and that one  
5 has been folded over up there. Would you agree with me?

6 A. That number should be 14. It probably is a 14. Looks  
7 like a 1.

8 Q. Now, you also told the agents that when you were going  
9 through this process of making all these tubes as fast as you  
10 possibly could, serial numbers were placed in all kind of  
11 different locations; isn't that true, sir?

12 A. There are two basic locations.

13 Q. You didn't tell the government that serial numbers were  
14 placed in different locations by several different people?

15 A. There was two basically positions that the serial numbers  
16 were placed.

17 Q. Okay. My question is: Did you tell the government,  
18 Agent Knopp, that the serial numbers were not located in the  
19 same place on every receiver? Did you tell him that?

20 A. Yes.

21 Q. Okay. Now, you say there are two basic locations. What  
22 are those two basic locations?

23 A. They were numbered up near the top of the cocking slot,  
24 and they were numbered on the left rear of the receiver.

25 Q. And let me ask you, sir: If they weren't there, would

1 that mean it isn't your firearm? If the serial number wasn't  
2 in one those two locations, does that mean it's not your  
3 firearm?

4 A. That's a hard question to answer.

5 Q. Well, the two firearms you have up there I think are  
6 Government's Exhibits 6 and 7.

7 A. Yes. I have 6 and 7.

8 Q. Yes. Those are -- where are the serial numbers on those  
9 two?

10 A. Up near the rear of the cocking slot up on top, and  
11 Exhibit 7 is right up on top.

12 Q. Okay. And are those the two locations?

13 A. That's -- well, these are both in the same place. The  
14 other location would have been on the left rear.

15 Q. Can you show me where that is, please?

16 A. Okay. Would have been on the left rear at this point  
17 (indicating).

18 Q. On the other side?

19 A. Yes, sir.

20 Q. All right. And you would agree with me, sir, that not  
21 all those numbers are the same size?

22 A. That's true.

23 Q. As a matter of fact, Government's Exhibit No. 8, the tube  
24 in front of you, has larger serial numbers, doesn't it? Do you  
25 have the tube?

1 A. Yes, these are larger. They are about a quarter-inch  
2 tall.

3 Q. And they are larger than the serial numbers on that same  
4 series of guns that was made -- excuse me -- that same series  
5 of receivers that was made about the same time?

6 A. This is another number block sets. It's out of this  
7 purview of Form 2. It's on a different form.

8 Q. Right. It was made approximately the same time?

9 A. Approximately. Yes, sir.

10 Q. Because after May 19th, you couldn't have made that?

11 A. No.

12 Q. And you dated this either April 20th or May 14th,  
13 whatever date you want to pick, so within a month of that,  
14 right?

15 A. Yes, sir.

16 Q. Okay. And those are obviously used with different serial  
17 numbers, I mean different die set?

18 A. Different die sets.

19 Q. All right. Now, besides the serial number, did you also  
20 tell the agents that every receiver you made would have a  
21 unique manufacturer mark on it?

22 A. I had several ways of marking my manufacturer.

23 Q. Did you tell the agents that every receiver you made  
24 would have a unique manufacturer's mark on it, sir?

25 A. It would have my manufacturers' mark on it. Did I use

1 the word "unique," I'm not sure I used that word.

2 Q. Okay. Did you tell that to Agent Knopp?

3 A. Yes.

4 Q. Okay. Would you point out to the jury where the  
5 manufacturer's mark is on Government's Exhibit No. 6?

6 A. This gun has been heavily buffed, phosphated, the  
7 manufacturer's mark is not there.

8 Q. All right. Would you show the ladies and gentlemen of  
9 the jury where the manufacturer's mark is on Government's  
10 Exhibit No. 7?

11 A. I'm an old guy.

12 Q. I got them too.

13 A. This one has been pretty heavily buffed. It's probably  
14 gone.

15 Q. I'm sorry. I didn't hear what you said.

16 A. This one has been buffed.

17 Q. When you say "this one," what number are you --

18 A. Exhibit, I guess it would be 6.

19 Q. You couldn't find it on 6?

20 A. I can't find it on there. And E685, this one has been  
21 scuffed and painted. I don't see my manufacturer's mark on it.

22 Q. So your manufacturer's mark you can't find on either of  
23 those?

24 A. No, sir.

25 Q. Okay. I'm going to show you what has been identified and

1 introduced, which are pictures of firearms that the government  
2 agents testify that have been introduced as being manufactured,  
3 your receivers. Okay, sir?

4 MR. MARTIN: If we could look at Exhibit No. 38.

5 Q. (By Mr. Martin) And I apologize for the quality of the  
6 photographs right up front, sir. Do you recognize that firearm  
7 at all, sir?

8 A. It's a Sten Mark V.

9 Q. Mark V?

10 A. Uh-huh.

11 Q. And what's the difference between a Sten Mark V and a  
12 Sten Mark II?

13 A. Sten Mark V had a same receiver as the Mark II, however,  
14 the trigger housing was somewhat varied than the Mark II. The  
15 trigger set was slightly forward so that they had a wooden  
16 pistol grip on the gun. The gun also had a wooden shoulder  
17 stock. They refined the Mark II.

18 MR. MARTIN: Could I move the microphone a little,  
19 your Honor?

20 THE COURT: Yes.

21 Q. (By Mr. Martin) Let me push that away from you.

22 A. Okay.

23 Q. Now, that's 38, right? Can you see, if we can focus in  
24 on that number there at all, can you read that number, sir?

25 A. E679.

1 Q. E679. And you call that a Sten Mark V; is that right?

2 A. Yes, sir.

3 Q. Can you register something as a Sten Mark II and make it  
4 a Sten Mark V?

5 A. Yes.

6 Q. Because you registered 689, did you not, right here, 68  
7 -- what's that number -- 679, I apologize -- 679 as Sten Mark  
8 II; did you not, sir?

9 A. Yes, sir.

10 Q. So is this birthing document incorrect?

11 A. The firearms were sold, manufactured with the intent,  
12 intent is very important as far as the government goes, intent  
13 to manufacture a Mark II.

14 Q. That wasn't a Mark II --

15 MR. KUMI EGA: Objection, your Honor. Let him answer.

16 MR. MARTIN: I apologize.

17 Q. (By Mr. Martin) Go ahead. I didn't mean to interrupt  
18 you.

19 A. Mr. Martin, when I sold the receivers on Form 3s to other  
20 manufacturers who never got to produce any firearms, they had a  
21 receiver listed as a Mark II. By notifying the NFA branch as a  
22 manufacturer, the NFA branch, the technical branch in DC  
23 allowed the use of Sten Mark II receivers to produce a Sten  
24 Mark V.

25 Q. All right, sir. That receiver, do you have No. 8 in

1 front of you, Exhibit, the receiver?

2 A. Yes.

3 Q. Can you hold that up for me just a second?

4 A. I can do that.

5 Q. Now, when you sold these, that's what you sold, right?

6 A. That's correct.

7 Q. That piece of tube that we call a receiver. So someone  
8 purchased that piece of tube that said it's a barrel length of  
9 eight and an overall length of 31. Would you agree with that,  
10 sir?

11 A. Yes, sir.

12 Q. And that wasn't an overall length of 31 at the time it  
13 was sold, was it?

14 A. Again, intent was very important, especially to the U.S.  
15 government and to the NFA branch. This would result in the  
16 production of a firearm that had an eight-inch barrel and an  
17 overall length of 31 inches. Sten Mark V has an eight-inch  
18 barrel and has an overall length of approximately 31 inches.  
19 So it is very consistent.

20 MR. MARTIN: Bonnie, if we could go to Defendant's  
21 Exhibit 39, please.

22 Q. (By Mr. Martin) Again, this is another gun, firearm,  
23 that purports to have been manufactured by you. I'm going to  
24 ask you, sir: Do you recognize, can you recognize what portion  
25 of the firearm might be depicted here, sir?

1 A. Looks like the mechanism of a Sten, I'm looking at the  
2 mechanism of a Sten.

3 Q. Is that possibly the trigger housing area, sir?

4 A. Yes, it would be the internals. There is a trigger  
5 spring and there's a seer bar I'm seeing and the safety, the  
6 crossbolt safety.

7 Q. Do you see serial number E680, sir?

8 A. I can't see it.

9 Q. You don't see a number at all? Let me ask you this: Let  
10 me direct your attention, do you see a number there, there, and  
11 there (indicating), three symbols?

12 A. It appears to be a number. Could be a subassembly  
13 number.

14 Q. All right, sir. You don't see a 680 on that?

15 A. I don't see it. I see what looks like to be some number  
16 characters on there. Maybe the top of the eight is middle  
17 character, perhaps the end is a zero. I can't tell.

18 Q. But the serial number should not be in the trigger  
19 housing area, should it, sir?

20 A. Of course not.

21 MR. MARTIN: Again, if we could go to Exhibit 40. The  
22 next photograph, please.

23 Q. (By Mr. Martin) Do you recognize what part of the  
24 firearm is in Exhibit 40, sir?

25 A. Appears to be the underside. I'm not quite sure. Looks

1 I like a trigger housing.

2 Q. Okay.

3 MR. MARTIN: Can we focus in on the numbers again?

4 Q. (By Mr. Martin) Can you make out the numbers that are  
5 there, sir?

6 A. No, sir.

7 Q. All right.

8 MR. MARTIN: If we can go then to two pictures down.  
9 Keep going. I'm sorry.

10 Q. (By Mr. Martin) Again, I'll help you. This is the same  
11 firearm. Can you see the numbers right there in that area?

12 A. There appears to be a number there, sir. I can't see it.

13 Q. And is that where a serial number is supposed to go, sir?

14 A. For the most part, serial numbers should be readily  
15 visible, discernable. This would have been perhaps covered --

16 Q. Is that --

17 A. -- by a trigger housing or trigger cover, the number  
18 appeared on the bottom.

19 Q. Does that sometimes appear when you put the serial number  
20 on before you put your cuts, make cuts, sir?

21 A. No.

22 Q. That won't happen if you put the serial number on first?

23 A. No. We numbered them after all the cuts were done.

24 Q. Well, if you numbered them after all the cuts were done,  
25 they would all be in the same place, wouldn't they, sir?

1 A. They should be. Understand something -- may I?

2 Q. I'm asking you questions, sir. If they are all in the  
3 same place and they are all cut, the numbers would all be in  
4 the same place, wouldn't they, sir?

5 A. Depending on who is numbering a particular receiver at  
6 that time of that day.

7 Q. Of the several employees?

8 A. It was difficult to control.

9 Q. All right. If we'll go to Exhibit 41, that one the  
10 serial number is right where you said it was supposed to be,  
11 right?

12 A. Right up on top.

13 Q. As a matter of fact, that's the gun sitting right there  
14 in front of you, 682, it's Government's Exhibit No. 6.

15 A. Yes. This is 6. Yeah, 682.

16 Q. And the next one we have is Defendant's Exhibit 42, 685,  
17 and it's also not numbered in the right place, isn't it?

18 A. Exhibit 7?

19 Q. Yes, sir.

20 A. It's upper top.

21 MR. MARTIN: If we could go to Exhibit 43.

22 Q. (By Mr. Martin) Can you tell me what type of firearm  
23 from the photograph that is, sir?

24 A. Appears to be a Sterling.

25 Q. And is that your receiver, or do you know?

1 A. I've built several Sterlings, some of my receivers have  
2 been built into Sterlings by other manufacturers.

3 MR. MARTIN: If we can go to the last photograph.

4 Q. (By Mr. Martin) Can you see an E688?

5 A. Yes, sir. It appears to be on the magazine housing.

6 Q. Do you see that, sir?

7 A. Yes, sir.

8 Q. And E688 is also contained in Government's Exhibit 1.5,  
9 is it not, sir?

10 A. I believe so. It's on that document.

11 Q. E688. Is that the --

12 A. 688. Yes.

13 Q. Is that the tube that goes with E688?

14 A. Notice on a Sterling, the magazine housing is welded  
15 directly to the receiver, it's not detachable, cannot be  
16 removed.

17 Q. I guess my question was: Is that the tube that you  
18 purported to be registered on this Form 2 as 688?

19 A. 688 was a Sten Mark II receiver that I manufactured.

20 Q. And my question again is, sir: Is that the tube?

21 A. Without having the firearm in front of me, I cannot make  
22 a definitive answer to your question.

23 Q. All right. Now, I'm going to show you Defendant's  
24 Exhibit No. 44, please. I will represent to you that this  
25 number should be E693. Can you tell by looking at that what

1 type of firearm this is, sir, or receiver maybe would be more  
2 appropriate?

3 A. Looks like a Mark II.

4 Q. Okay. Next one. Does that help you?

5 A. Appears to be a Mark II. Yes, sir.

6 Q. All right. Now, this one, this one has real unique  
7 manufacturer marks on it, doesn't it, sir?

8 A. Sure does.

9 Q. Does that look like C.N. Erb, Jr.?

10 A. Yes.

11 Q. Fredericktown, Pennsylvania; is that right?

12 A. Yes, sir.

13 Q. Did you put that on there?

14 A. No.

15 Q. One of your several employees do that, sir?

16 A. Probably not. We just don't mark them like that.

17 Q. I'm sorry?

18 A. It's not for me to mark them like that. Appears to be a  
19 billboard on the side of the gun.

20 Q. A billboard?

21 A. Yes. I mean, it's very large.

22 Q. So you're not responsible for any of these markings with  
23 your name and the type of firearm on 693?

24 A. That's not consistent with what we have turned out of our  
25 shop.

1 Q. So do you know whether or not it's one of your tubes?

2 A. What's the serial number, sir?

3 MR. MARTIN: Let's go to the next picture. One more,  
4 I'm sorry. Keep going. There.

5 Q. (By Mr. Martin) Can you see the serial number right  
6 here, sir?

7 A. Yes. E693. Okay. The numbers are consistent with my  
8 numbers, yes, sir, my E numbers. I'm the only manufacturer in  
9 the country that used the letter E.

10 Q. Well, that's not the law, sir, is it? Anybody can use an  
11 E?

12 A. That's true.

13 Q. Now, I believe you testified that you always sold firearm  
14 receivers that had, what did you say, seven cuts in them?

15 A. The rear locking latch slots were not required.

16 Q. Okay. So that's six cuts?

17 A. A seer slot, a cocking slot, a mag well cut, and the  
18 ejection port was required.

19 Q. So that's four or five?

20 A. It's four.

21 Q. Four?

22 A. Uh-huh.

23 MR. MARTIN: So let's go to Exhibit 45, please.

24 Q. (By Mr. Martin) And can you make out what that is there,  
25 sir? If you can't, just tell me.

1 A. Looks like a small case E.

2 Q. All right. Is that one of your tubes?

3 A. I can't tell from here. I mean, it's impossible for me  
4 to tell what it is. I see the serial number.

5 Q. All right.

6 MR. MARTIN: Let's go forward and I'll stop you.

7 Here's -- if we can focus in.

8 Q. (By Mr. Martin) Can you see this number here?

9 A. Yes. E694.

10 Q. That's E694. And do you see that one, sir, E694?

11 A. Yes, sir.

12 Q. That gun, E694, right?

13 A. Okay. 694.

14 Q. Can you see that picture, sir?

15 A. Yes, sir, I see it.

16 Q. There is a slot along the bottom there. Do you see that?

17 A. Appears to be a slot, cocking slot. Yes.

18 MR. MARTIN: May I approach the witness, your Honor?

19 I have the photograph of that.

20 THE COURT: Yes.

21 Q. (By Mr. Martin) This is E694. Does looking at the paper  
22 picture help?

23 A. No, it doesn't. I mean --

24 Q. I'm talking about this slot right here.

25 A. Yes. I see a slot in it.

1 Q. Okay. And as a matter of fact, the picture actually has  
2 the entire tube on it, doesn't it?

3 A. Okay.

4 Q. I want to ask you a question, sir. I want you to point  
5 out for the jury, I don't know the appropriate names, but I  
6 think one of them is a magazine slot. Not one in there, is  
7 there?

8 A. Doesn't appear to be.

9 Q. And there's -- as a matter of fact, there appears only to  
10 be one slot in E694, isn't there, sir?

11 A. Apparently. Yes.

12 Q. And that is this tube right here?

13 A. Yes.

14 Q. Somehow or another you were able to register and sell a  
15 tube with one slot in it; isn't that true?

16 A. That's not true. My tubes were -- had all the cuts in  
17 them. The feds looked at every one of them when they were out.

18 Q. Is that your tube, sir?

19 A. I can't tell.

20 Q. Are you saying that the government went out and  
21 photographed an E694 that wasn't your tube, sir?

22 A. When did they photograph it?

23 Q. We know it was after 2004.

24 A. Really?

25 Q. Really. That E look consistent with the dies that you

1 used?

2 A. It's that type of die.

3 Q. Is the 694 consistent with the size of dies that you used  
4 on the other weapons?

5 A. Without having it in front of me it's hard to tell. From  
6 the photograph it appears that could be it.

7 Q. Okay, sir.

8 MR. MARTIN: If we can go to Defendant's Exhibit 46,  
9 please. If we could focus in right up here.

10 Q. (By Mr. Martin) Can you see that, sir?

11 A. Yes.

12 Q. There's a monitor if it helps.

13 A. It's a little fuzzy. I can see it better up front.

14 Q. Does that appear to be one of your tubes?

15 A. Without having it in front of me, it's difficult. The  
16 serial number -- it's one of my serial numbers. Whether it's  
17 the style I can't tell looking at it from here.

18 Q. Well, it's one of the serial numbers, and I guess since  
19 you're the only one that can have an E, as you just testified,  
20 it's E689, right?

21 A. Okay. It's 689.

22 Q. And the location is on the left side now?

23 A. Left rear.

24 Q. And it appears that -- and I don't know what that is. Do  
25 you know what kind of coating that is? It appears there is

1 something there to make that more visible.

2 A. Chalk.

3 Q. I'm sorry?

4 A. Chalk.

5 Q. Chalk. Does that look like it was -- something was  
6 scraped off or something to make it more visible? Paint,  
7 phosphate, I don't know what --

8 A. Looks as though it's been buffed or scraped or sanded.

9 Q. Okay.

10 MR. MARTIN: Now, if we could go, Defendant's Exhibit  
11 47, please. One more.

12 Q. (By Mr. Martin) Can you see a serial number on that  
13 tube, sir?

14 A. E698. 698.

15 Q. And that would be one of the tubes you have registered to  
16 you, right?

17 A. Yes, sir.

18 Q. And again, where is that located?

19 A. Left rear.

20 Q. All right, sir.

21 MR. MARTIN: If we could go to Exhibit 48.

22 Q. (By Mr. Martin) Can you see a serial number under the  
23 sight, sir?

24 A. I can't see the sight number. No.

25 MR. MARTIN: Can we focus in any more on that?

1 Q. (By Mr. Martin) Can you see a 696 on that gun, sir?

2 A. There appears to be a number there. The crinkle paint  
3 seems to be distorting the number.

4 Q. Does that help? There is one right to you right there.

5 A. It's real fuzzy, this monitor.

6 Q. I'm sorry.

7 A. I agree there is a number there; I can't tell what it is  
8 from here.

9 Q. All right, sir. If I represent to you the number is,  
10 this is one of your guns that has been provided to us from the  
11 government, it shouldn't be under a sight, should it, sir?

12 A. Again, this is a Sterling gun.

13 Q. I'm sorry?

14 A. This is a Sterling. It's a Mark IV L182 Sterling. Sten  
15 gun receivers were used to make these.

16 Q. All right.

17 A. The technical department in DC has allowed the  
18 manufacturers to take the Mark II and turn them into Sterlings.  
19 Same tube dimensions.

20 Q. But you'll agree with me the serial number is under the  
21 sight?

22 A. Yes, sir. I will agree with you.

23 Q. All right.

24 MR. MARTIN: If we could go to Exhibit 49, please.

25 Q. (By Mr. Martin) What kind of firearm is this, sir?

1 A. Appears to be a Sten Mark II.

2 Q. All right. Can you see the number that's on this gun,  
3 sir?

4 A. Yes.

5 Q. And what do you see?

6 A. I don't know why 249 is on there, but I see E700 and  
7 there's a number in front of it.

8 Q. All right. Is that one of your tubes?

9 A. Without having it in front of me, I can't definitely  
10 say yes it is or isn't.

11 Q. All right, sir. Do you know what the 249 is, sir?

12 A. I don't have a clue. Why is 249 there?

13 Q. That's what I asked you. Do you know what it's doing on  
14 there?

15 A. No, sir.

16 Q. Now --

17 MR. MARTIN: Judge, I'm getting ready to go into  
18 another area; I'm going to be rather lengthy. If you want me  
19 to continue I will, or --

20 THE COURT: Yes.

21 MR. MARTIN: Very well.

22 Q. (By Mr. Martin) We were talking about the distinction  
23 between a Sten II and a Sten III a while ago.

24 A. Yes, sir.

25 Q. Sten II, my understanding is is a tube, correct?

1 A. Yes, sir.

2 Q. Sten III is a piece of flat metal that is put -- rolled  
3 around a mandrel and made into a tube, so to say, and welded at  
4 the top, correct?

5 A. Yes.

6 Q. And I believe you testified that the weld actually is  
7 part of the sight; is that right?

8 A. The welded seam on top of the tube is -- served as a  
9 sighting device. It still had a rear sight on it. And the rib  
10 served as a sighting device for the soldier. And the front  
11 sight on the Sten Mark III appeared to be just a little notch,  
12 an extra cut in the seam that when they folded it would make a  
13 front sight.

14 Q. You'll agree with me that Government's Exhibit 3.16 is  
15 not a Sten III, will you not, sir?

16 A. It appears to have been manufactured to look like a Sten  
17 Mark III.

18 Q. Okay. My question was: It's not a Sten III, is it, sir?

19 A. It's not a Mark II.

20 Q. Is it a Sten III? If you don't want to answer my  
21 question, just say I don't want to answer your question.

22 A. You want a yes or no, sir? Do you want a yes or a no?

23 Q. I asked is it a Sten III, yes or no?

24 A. Appears to be a Sten Mark III more than a Sten Mark II.

25 Q. And would you show the jury the roll and the weld on the

1 gun then?

2 A. The seam on -- I'm sorry. Your question is unclear.

3 Q. Okay. I'll try -- is Government's Exhibit 3.16 a Sten  
4 Mark III?

5 A. It is closer to appearing to be a Sten Mark III than a  
6 Mark II.

7 Q. Okay. Was my question not clear?

8 A. Perhaps. Yes.

9 Q. I'll try it one more time. Is Government's Exhibit 3.16  
10 a Sten Mark III?

11 MR. KUMIEGA: Objection. Asked and answered twice.

12 THE COURT: It's been asked twice but I haven't heard  
13 the answer yet.

14 THE WITNESS: I would classify it as Mark III if you  
15 showed it to me.

16 Q. (By Mr. Martin) You would agree with me, would you not,  
17 sir, that it doesn't have many of the unique characteristics  
18 that are unique to a Sten Mark III?

19 A. Yes. Yes, sir, Mr. Martin, I would agree with you.

20 Q. In particular, what we just described as a flat piece of  
21 metal being rolled together and welded?

22 A. Yes, sir.

23 Q. Okay. Now, in 1986, you made hundreds of Sten receivers  
24 in April and May; isn't that true, sir?

25 A. Yes, sir.

1 Q. How many hundreds?

2 A. Probably 500.

3 Q. 500 just Sten receivers?

4 A. Yes, sir.

5 Q. And you made not only Sten receivers, but other types of  
6 receivers, because you couldn't make any kind of receiver after  
7 that, could you?

8 A. No, sir.

9 Q. How many receivers do you think you made during the  
10 April/May period of time?

11 A. 1200, 1400 receivers total. Again, it's been 20 years.

12 Q. Now, you talked about Government's Exhibit No. 6, and I  
13 believe you indicated it had an usual type of coating on it.  
14 What is that?

15 A. It's a manganese dioxide phosphate finish.

16 Q. All right. And Government's Exhibit No. 7, you said it  
17 was, for lack of a better word, just painted?

18 A. It's painted, sir.

19 Q. All right. And both those guns were made around the same  
20 time, right?

21 A. The receivers were manufactured on or about, before May  
22 19th of 1986, the receivers.

23 Q. All right. And were you responsible for the finish on  
24 either of those, sir?

25 A. No, sir.

1 Q. As a matter of fact, you talked about one of those  
2 firearms appeared to have been polished; is that right?

3 A. Yes.

4 Q. And you talked about that the welds would be polished off  
5 or something like that?

6 A. Yes, sir.

7 Q. Which one is that?

8 A. Exhibit 6. Someone has polished the welds.

9 Q. And you weren't responsible for any of that manufacture  
10 of the gun other than the tube, right?

11 A. That's correct.

12 Q. And you believed you said Exhibit 7 is -- this might not  
13 be a technical term -- but more crudely welded, maybe it hasn't  
14 been polished or whatever?

15 A. It's more consistent with what the British would have  
16 manufactured.

17 Q. Number 7 is?

18 A. Yes, sir.

19 Q. Because it isn't all polished up?

20 A. It's not polished, it's not phosphated, it just has a  
21 black painted finish on it, as were many of the World War II  
22 curio and relic guns.

23 Q. And you sold a bunch of tubes, about 25 or 50 tubes to a  
24 Guy named R. J. Perry on a Form 3, did you not?

25 A. Yes, I did. Yes.

1 Q. As a matter of fact, we know that, or you know from  
2 looking at the record that E683 was one of the receivers that  
3 you sold to R.J. Perry?

4 A. Yes, sir.

5 Q. Okay. What about E682 and E685, do you know that?

6 A. I don't know that for sure, but perhaps these firearms  
7 did go to R.J. Perry in Illinois.

8 Q. And how many receivers did you sell him in bulk, do you  
9 believe?

10 A. I think it was a hundred receivers.

11 Q. So a hundred just like that?

12 A. Yes.

13 Q. And did you sell him anything besides Sten tubes? Did  
14 you sell him other types of tubes?

15 A. I think perhaps there may have been a few MP40  
16 receivers.

17 Q. I'm sorry?

18 A. I may have sold him some MP40 receivers. I don't  
19 recollect now. I would have to go really do some digging.

20 Q. I'm going to ask you about the MP40s here in a minute.

21 A. Okay.

22 Q. Tell us what the difference between an MP40 and a Sten II  
23 is.

24 A. An MP40 was a World War II gun that was manufactured by  
25 the Germans, and it was a very successful firearm that the

1 warmark used and it was encountered by our GIs and our entire  
2 allies as they entered Europe, the European theater. The  
3 British, the French, and the U.S., the Canadians, the  
4 Australians all encountered MP40s at some point or another on  
5 the African Continent and all of Western and Eastern Europe.  
6 The Russians encountered them. It was a very successful gun  
7 that the warmark used, and it was built by Germany. It was a  
8 highly sophisticated sheet metal stamped firearm, and very  
9 highly sought after by collectors.

10 Q. Okay. I think my question was: What's the difference  
11 between the two receivers?

12 A. The receiver utilized a tube that was stamped, it was a  
13 flat tube. It was flat sheet of steel, and when they stamped  
14 it it had all the ejection ports, the magazine ports, the seer  
15 slots already stamped in it. They stamped longitudinal ribs on  
16 the exterior so when it was folded about a mandrel it appeared  
17 to have flutes milled on the outside, and actually proved to be  
18 a way for dirt and dust and debris to be collected inside the  
19 receiver, so the gun would not jam easy. Looking at the  
20 outside of the receiver it had ribs on it, had a folding stock,  
21 a decent set of sights, a big light forearm, a separate  
22 magazine well that was attached. It was a very finely made  
23 sophisticated sheet metal stamped firearm that was developed in  
24 the late '30s by the Germans, and it differed greatly from a  
25 Sten. A much more sophisticated firearm, more costly to

1 manufacture.

2 Q. The receiver of the MP40.

3 A. Yes.

4 Q. How long was it?

5 A. It was probably somewhere in the neighborhood of, I  
6 think, 14, 15 inches. I don't recall what it is. I have a  
7 drawing on it.

8 Q. Well, you manufactured and sold them, right?

9 A. Yes, I did.

10 Q. Okay. And did you -- was that a tube or was it a flat  
11 piece of metal that was folded?

12 A. The tooling to replicate the MP40 would have been  
13 extremely expensive. So the next best thing was to utilize a  
14 piece of seamless mechanical tubing and use a concave cutter on  
15 a horizontal milling machine and mill the cuts in that receiver  
16 tube and polish it, and it would appear to have been a sheet  
17 metal stamping.

18 Q. Is that what you did in those the tubes you sold?

19 A. And I ground the cutters and made quite a few MP40s, MP40  
20 receivers.

21 Q. Out of tubes?

22 A. And built quite a few -- yes, utilizing tubing.

23 Q. All right. Now, the individual you were telling us about  
24 earlier, Mr., is it Peter -- the ATF agent that you're familiar  
25 with, that's his name?

1 A. He was Peter Rubis out of Pittsburg.

2 Q. Mr. Kumi ega was asking you earlier about if you had any  
3 violations with the ATF over your manufacturing process. Do  
4 you recall that, sir?

5 A. Yes, sir.

6 Q. Okay. And isn't it true, sir, that you have been cited  
7 by the ATF on multiple occasions for creating tubes, Sten II  
8 tubes, with duplicate serial numbers?

9 A. We all make mistakes, and I do not pose to be a perfect  
10 manufacturer and there was -- I believe I duplicated a serial  
11 number.

12 Q. Well, more than one time?

13 A. Yes, sir.

14 Q. As a matter of fact, you would have sold a tube and they  
15 would, for example --

16 MR. MARTIN: If I may approach, your Honor.

17 Q. (By Mr. Martin) I want to borrow an Exhibit 8 here.

18 A. Okay.

19 Q. If during the inspection process the ATF would come out  
20 and find a tube, and I'll use this just for hypothetical  
21 purposes, much like Government's Exhibit 8 with a serial  
22 number, this one happens to be E705 on it, and they could  
23 inspect their record and find a firearm with E705 serial  
24 number, your stamp was in possession of a lawfully licensed  
25 Class 3 or tax-paying individual; isn't that true, sir?

1 A. It happened. Yes, sir.

2 Q. And it happened on many of the E600 series that were  
3 manufactured during this April/May 1986 period; isn't that  
4 true, sir?

5 A. There were mistakes in the manufacturing process before  
6 May 19th. The old tube that was mismanufactured had the cuts  
7 in the wrong place, was discarded. We stored these tubes in a  
8 large shelving unit and they were stacked like scrolls, looked  
9 like the ancient library of Alexandria if you look at them. It  
10 looked like scrolls and tubing on the shelf. Somehow, the  
11 discarded tubes, the damaged tubes were set out to be  
12 destroyed, usually just cut up or squashed them, cut them with  
13 an abrasive cut off saw and take them to the trash. Some got  
14 set aside and ended up back on my shelf or back in the shop.  
15 So when the inspectors came out they say, hey, look at this,  
16 you got this tube. I say, no, I sold that. Well, you have one  
17 right here. I say, oh, I'm sorry, I said, that was one my  
18 damaged tubes or my secondary tubes, tubes that weren't any  
19 good that wouldn't make spec.

20 Q. Well, the ATF actually claimed that those tubes were  
21 machine guns and made you abandon them, didn't they, sir?

22 A. Yes, sir. And abandoned them, I willfully abandoned  
23 them. I even cut a few of them up while they were there.

24 Q. The ones that they found you abandoned, correct?

25 A. Yes, sir.

1 Q. Now, when you talk about scrolls, you're talking about  
2 shelves and shelves or racks and racks of tubes that had serial  
3 numbers on them that had already been sold to someone else in  
4 your shop?

5 A. Not shelves and shelves, it was only a handful that they  
6 picked up. I admit to making a mistake.

7 Q. Well, I didn't ask you if you made a mistake, sir, I  
8 asked you if you had duplicate serial numbers.

9 A. And I said yes to your -- yes. I'll answer yes. There  
10 were duplicate serial numbers.

11 Q. And as we've seen, you sold, at least one example we saw,  
12 I think it was 694, E694 with just one cut in it. Do you  
13 recall that? Do you need me to pull the exhibit back up?

14 A. I remember the tube that you put up. Yes.

15 Q. And --

16 A. It could have had an oversized slot, I don't know why it  
17 didn't make --

18 Q. Let me ask you a question, sir, I didn't ask you why you  
19 sold it.

20 A. Okay.

21 Q. As a matter of fact, the ATF would call you up because  
22 they knew you so well and they would schedule an inspection,  
23 wouldn't they?

24 A. Sometimes they would. Yes.

25 Q. So you knew when they were coming out, it isn't like they

1 would show up unannounced?

2 A. No. They would show up unannounced.

3 Q. But there were times where they would call you up and  
4 say, hey, we're coming out, be ready.

5 A. They wanted to make sure I was there.

6 Q. Well, did -- that's what you would call scheduling,  
7 right?

8 A. It was scheduling. Yes.

9 Q. All right. And one of those duplicate tubes that they  
10 took, would you agree, sir, was serial number E699,  
11 manufactured around this period of time?

12 A. I don't recall the number, sir.

13 Q. Let me ask you, sir: Do you recall whether or not you  
14 had duplicate tubes for E777?

15 A. It's been 20 years. I don't recall, sir.

16 Q. E780?

17 A. I do not recall any numbers.

18 Q. E736?

19 A. Again, I don't recall the numbers, the serial numbers.

20 Q. So if I read off 20 or 30 more numbers it won't help your  
21 memory at all?

22 A. No, sir.

23 Q. And you don't dispute that you had duplicate serial  
24 numbers for at least that many, if not more?

25 A. How do you want me to answer that?

1 Q. Truthfully, sir.

2 A. It's not a yes or no.

3 Q. I want you to answer it truthfully, please.

4 A. I manufactured a lot of receivers. It is true that some  
5 did not make the dimensional measurement, they were discarded.  
6 A new receiver was made in its place and put on the shelf  
7 before May 19th of 1986.

8 Q. Well, let me ask you --

9 A. The discarded tube was my mistake. I should have  
10 immediately destroyed them. I had nothing to hide from the  
11 federal government, they came in, they found them. I admit,  
12 jeez, I made a mistake, guys. This is why, this is why it's  
13 still here.

14 Q. Have you ever made an MK -- let me rephrase it because I  
15 don't know the proper terminology. Have you ever made a Sten  
16 that was too long, the receiver tube was too long, sir?

17 A. I made a couple of long ones with the intent of building  
18 the Sten Mark II S model.

19 Q. Well, Exhibit 3.16 has a longer tube, does it not, sir,  
20 than the other two up there?

21 A. Yes, it does.

22 Q. As a matter of fact, you were cited for having tubes in  
23 your possession that were too long?

24 A. And I explained to them why I had them.

25 Q. I said were you cited or not, sir, for having tubes --

1 A. I do not recall if I was cited or not for those.

2 Q. Do you recall two E777s, sir?

3 A. No, sir.

4 Q. Nor E755 or E736? You don't recall those tubes, sir?

5 A. I don't recall the numbers.

6 Q. As a matter of fact, the tubes that -- during one of the  
7 compliance inspections about these serial-numbered tubes, the  
8 ATF just got a great big box and put all the tubes and all the  
9 items that were in question in a box, didn't they, sir?

10 A. I remember them assembling a -- they went around the shop  
11 picking here and picking there and picking stuff up off the  
12 weld bench, off the manufacturing shop, off some of the  
13 workbenches.

14 Q. They put them in a box?

15 A. They put them in a box.

16 Q. Sealed the box, right?

17 A. I remember them putting them in a box.

18 Q. And later an ATF agent came and took the box for  
19 examination; isn't that true, sir?

20 A. I remember them taking the box away.

21 Q. And everything that was seized and in the box was  
22 ultimately abandoned by you; isn't that true, sir?

23 A. I said -- I told them they were scrap tubes, they can  
24 take them, yes. I cooperated with them and I surrendered them.

25 Q. They were abandoned by you?

1 A. Abandoned. Yes, sir.

2 Q. I think that's terminology that was used.

3 A. Okay.

4 Q. And many of the tubes that they seized were appropriate  
5 for just completion into a machine gun; isn't that true, sir?

6 MR. KUMIEGA: To which we object, your Honor, unless  
7 Mr. Martin specifies the date and time these violations  
8 occurred. It might be outside the framework of the E series,  
9 it might be something that's not --

10 THE COURT: Objection will be sustained.

11 Q. (By Mr. Martin) Let me ask you something, sir: Are you  
12 -- E601, that would have been about the right time frame,  
13 wouldn't it?

14 A. 601. Yes, sir.

15 Q. And you had sold that receiver and it turned into a  
16 machine gun that somebody possessed, right?

17 A. I have no idea what I -- did I sell it as a -- did it go  
18 as a receiver or did it go as a completed firearm. I can't  
19 answer that right now.

20 Q. Well, in truth and fact, the ATF seized the tube E601,  
21 said it was a machine gun waiting to be completed, didn't they,  
22 sir?

23 MR. KUMIEGA: Same objection, your Honor, unless he  
24 can specify the time and place and date.

25 THE COURT: Will be overruled.

1 Q. (By Mr. Martin) Didn't they seize 601 from you, sir?

2 A. I don't recall.

3 Q. You don't know how many or what numbers they seized, do  
4 you, sir?

5 A. I do not have those records in front of me, sir. It's  
6 probably a matter of public information. Perhaps you have  
7 them.

8 THE COURT: Mr. Martin, I think we're going to take  
9 our break for lunch.

10 MR. MARTIN: Okay, your Honor. I'm ready to quit  
11 then.

12 THE COURT: I mean, are you going to go -- I have a  
13 12:30 matter I have to take care of. Are you going to go five  
14 minutes or 25 minutes?

15 MR. MARTIN: Let me say this: If we recess I might go  
16 a lot quicker than we go on. I might can cull some of this  
17 down.

18 THE COURT: Ladies and gentlemen, we'll take our  
19 luncheon recess and we'll reconvene at 1:30. I would again  
20 advise you to not discuss the case among yourselves or with  
21 others or reach any conclusions until you've heard all the  
22 evidence and I've instructed you on the law.

23 We'll be recess until 1:30.

24 (A recess was had, after which the following was had in  
25 chambers:)

1 THE COURT: Raise your right hand to be sworn.

2 (Witness sworn)

3 LENNIS SAVAGE,

4 called as a witness, having been duly sworn to tell the truth,  
5 the whole truth and nothing but the truth, testified as  
6 follows:

7 THE COURT: Let's see what is scratched. Let me see  
8 the bottom.

9 THE WITNESS: It would be three-quarter of an inch  
10 from this surface done on an anvil. That's the only place it  
11 can contact. So when you measure a tube, you want to do it  
12 accurately, you do a three-point contact like that.

13 THE COURT: So you had it like this?

14 THE WITNESS: And you do rock it slightly.

15 THE COURT: You weren't doing this with it?

16 THE WITNESS: No, sir. I was doing this and working  
17 down the tube, and you do rock it slightly with a little bit of  
18 thumb pressure on it so you get an accurate measurement.

19 THE COURT: How would that scratch it?

20 THE WITNESS: It rubbed on this anvil right here, this  
21 raised polished surface.

22 THE COURT: Looks like it's a broader mark.

23 THE WITNESS: Like I said, your Honor, I measured it  
24 and I would move it over a little bit, measure it a little,  
25 move it over and I kept working on across the tube specifically

1 starting right here all the way across it.

2 THE COURT: I don't see any marks this way.

3 THE WITNESS: This is just from a slight rocking, just  
4 a placement of the anvil. And you notice, I'll show you, if it  
5 was done with the edges it would be a real fine scratch. And  
6 it's not, it's broad. And it was done -- basically it has to  
7 be three-quarter of an inch from this surface down because the  
8 way the circle is from the diameter.

9 THE COURT: Any questions?

10 MR. KUMIEGA: First of all, I would like to have the  
11 record reflect that Mr. Savage has a caliper micrometer. I  
12 have a Dixie cup and I'm going to have him take the calipers of  
13 the micrometer to show the, I guess the --

14 THE WITNESS: Position of it?

15 MR. KUMIEGA: Would you call this the --

16 THE WITNESS: Diameter.

17 MR. KUMIEGA: My understanding is what you're telling  
18 the Court is you rocked back and forth.

19 THE WITNESS: Not that far.

20 MR. KUMIEGA: Hang on for a second, sir. The number  
21 is 683, and you're rocking back and forth -- let me finish.  
22 You're rocking back and forth, how do you make the line go  
23 lengthwise instead of this way?

24 THE WITNESS: Easy.

25 MR. KUMIEGA: Show us.

1 THE WITNESS: This is not a perfect tube. As you've  
2 got it placed on there, and I was on my knees doing it at the  
3 table, I'm watching the readout of the micrometer. And I'm  
4 moving it over about a half a jaw width, move it a little bit  
5 to make sure it's settled and a true measurement, moving it  
6 over, settle, moving it over, settled, and went all the way  
7 across.

8 MR. KUMI EGA: Let me ask you, Mr. Savage, as you're  
9 moving it across do you notice the lines being left on the  
10 number?

11 THE WITNESS: No, I did not. I was paying attention  
12 to the readout. That's the important part for me. This has  
13 got a 90-degree edge, but I'm assuming that's what happened.  
14 This edge right here.

15 MR. KUMI EGA: This is flat.

16 THE WITNESS: That's flat.

17 MR. KUMI EGA: How can you leave a mark if it's flat?

18 THE WITNESS: Put your finger out. If I go -- did you  
19 feel the edge starting to dig in?

20 MR. KUMI EGA: No.

21 THE WITNESS: Now?

22 MR. KUMI EGA: No.

23 THE WITNESS: You're kidding me. You can't feel that?  
24 I can't take it off your finger, it's not digging in?

25 MR. MARTIN: I think we've had --

1 MR. KUMI EGA: Can I have the witness testify?

2 MR. MARTIN: May I have a timeout for a second? It's  
3 been explained, Judge. I think there needs to be an  
4 instruction. We have a half day, their agent, we had a witness  
5 there, we've got a video. I don't believe that's necessary. I  
6 think there needs to be an instruction given to the jury  
7 appropriately. But --

8 MR. KUMI EGA: Judge, we do have a videotape, but I  
9 think the agent can tell the Court what he observed and there  
10 was Tim Kelley, the agent --

11 MR. MARTIN: Are they not here?

12 MR. KUMI EGA: Yes, they are. Outside.

13 THE COURT: Just one of them, Ed.

14 MR. KUMI EGA: Yes, sir.

15 (Agent Knopp brought into chambers)

16 THE COURT: Raise your right hand and be sworn.

17 (Witness sworn)

18 MR. COURT: State your name, please.

19 THE WITNESS: Delbert Knopp.

20 THE COURT: You observed the inspection by the  
21 defendant's expert witness on the gun in question; is that  
22 correct?

23 THE WITNESS: Yes, I was standing next to him.

24 THE COURT: What was your observation, and my main  
25 concern is this mark, what was your observation?

1 THE WITNESS: He took that tool and was measuring the  
2 exterior diameter of the tube, and he had, he had placed it  
3 right over the start of the serial number towards the end of  
4 the barrel, and then drug it along the serial number.

5 THE COURT: So, Agent, can you explain using this as  
6 the barrel and the --

7 THE WITNESS: Okay. If I can figure out how to  
8 operate this. There you go. This would be the end of the  
9 barrel, he had it like this, and drug it along like that. And  
10 I think it was more like that with the sharp edge, when it was  
11 over I saw some black paint on the sharp edge.

12 THE COURT: Okay. Any questions?

13 MR. MARTIN: No.

14 THE COURT: Any other questions?

15 MR. KUMIEGA: No, your Honor.

16 Your Honor, one question for the Agent.

17 Did you hear any noises coming from that experiment while  
18 he was doing that?

19 THE WITNESS: I was watching him do it. Agent Kelley  
20 was here to the doorway and he heard a scratching, and that's  
21 when he was the first one to speak up and we told him not to do  
22 it again.

23 THE COURT: Okay. Thank you, Agent.

24 (The following was had in open court, with the jury  
25 present:)

1 THE COURT: Is Mr. Erb in the courtroom? Mr. Erb, if  
2 you'll come forward and retake your seat, and the Court would  
3 remind you you're under the same oath you gave as you began  
4 your testimony.

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Martin, you may continue your  
7 cross-examination.

8 Q. (By Mr. Martin) Mr. Erb, when you first took the stand  
9 earlier, you were looking at some firearms and I don't believe  
10 you found on either Government's Exhibit No. 7 or Government's  
11 Exhibit No. 6 your manufacturer's mark, did you, sir? Do you  
12 recall that?

13 A. I don't see them on here.

14 Q. I think you indicated, and I know it was an assumption,  
15 but you thought they had been polished off or some reason they  
16 weren't visible. Do you recall that?

17 A. Yes.

18 Q. Okay. Have you ever known that to occur with a serial  
19 number?

20 A. Would you like a definitive answer?

21 Q. I would like a definitive answer to every question I ask,  
22 sir.

23 A. Understand, these firearms are to represent a gun that  
24 was made by a government to defend their country. And for a  
25 GI, these guns only came into the country by our returning

1 troops. There were a few importers after the second world war  
2 that brought them into the country. There were desirable  
3 because you had a piece of history. When they ran out and  
4 became scarce, the value of them increased. It was very  
5 advantageous for manufacturers in this country to build them.  
6 Again, they were not classed as curios and relics. These were  
7 new firearms that represented an older gun. If a dealer had an  
8 original World War II bring-back, the gun would be definitely  
9 more valuable than one that Charles Erb would have  
10 manufactured.

11 So you make the gun look as though it's a World War II  
12 gun. These guns are 20 years old now, plus. They've got  
13 polished, they've got sandblasted, my markings have gotten thin  
14 or eliminated. And yes, I would concur it would be possible to  
15 lose a serial number. It may be very faint or gone altogether.

16 Q. What do you do when you have a gun that the serial number  
17 is no longer visible?

18 A. If the owner is intelligent enough, he would either send  
19 it back to the manufacturer, say can you refurbish the marks on  
20 this, which I have done. I've had firearms sent to me on Form  
21 5s and said can you please refurbish this firearm for me, and  
22 I've done that. I've sharpened the markings, I've rephosphated  
23 them, make them look as new.

24 Q. And have you ever known anyone to just restamp them?

25 A. I don't know anyone -- no one would admit that to me.

1 Q. All right. Now, the birth document of this shows that  
2 from you, between you and Mr. Friesen, E683 went through,  
3 including the two of you, apparently four or five different  
4 owners. Did you see that, sir?

5 A. Yes, sir. The government -- the bureau and the  
6 prosecuting attorney showed me the documents that all the hands  
7 that have passed through. And I have the documents in front of  
8 me.

9 Q. It would be fair to say, would it not, sir, that these  
10 firearms are not inspected, or the receiver, whatever stage  
11 it's in when it's transferred, is not inspected by the ATF from  
12 transferor to transferee?

13 A. That's correct, sir.

14 Q. So when you transferred it to, I think it was R.J. Perry.

15 A. Yes, sir.

16 Q. ATF didn't come out and look at it, did they, sir?

17 A. No, sir.

18 Q. And when J.R. Perry got it ATF didn't come out and look  
19 at it?

20 MR. KUMIEGA: Objection, your Honor. That's  
21 speculation. I don't think Mr. Erb would know what happened as  
22 the machine gun went down the line.

23 THE COURT: If he knows, he can testify to it; if he  
24 doesn't, he can say I don't know.

25 Q. (By Mr. Martin) That's not common occurrence, is it,

1 sir?

2 A. For the government to inspect the firearm as it is being  
3 transferred from dealer to dealer or from dealer to individual,  
4 no, it's not a common occurrence.

5 Q. As a matter of fact, have you ever known it to happen?

6 A. Yes, I have. Several occasions they've inspected the  
7 firearm, for what reason, I don't know.

8 Q. All right, sir. But you don't know that to have happened  
9 in this case for sure?

10 A. No, sir.

11 Q. Now, I believe you indicated that back in May of 1986 you  
12 were trying to make as many of these as possible; is that  
13 correct?

14 A. That's correct.

15 Q. And you've characterized it you made some mistakes,  
16 right?

17 A. Yes, sir.

18 Q. And as a matter of fact, ATF came out and did an  
19 inspection on the 7th, 8th, and 9th of May of 1986, of your  
20 location, did they not, sir?

21 A. Yes, they did.

22 Q. And they were looking at in the neighborhood of 800 to a  
23 thousand tubes during that inspection process?

24 A. That's correct.

25 Q. And of those tubes, 250 of them were series E501 through

1 E760, weren't they, sir?

2 A. In that serial number range. Yes.

3 Q. Okay.

4 A. There were some in that range.

5 Q. And after they left on the 9th, you were told that you  
6 had many, many tubes that you had already registered, as a  
7 matter of fact, all 250 of those Sten tubes had to be redone,  
8 didn't they, sir?

9 A. They had -- they had to have additional work performed on  
10 them to meet with their standards.

11 Q. All --

12 A. That's what they told me.

13 Q. All 250 of them?

14 A. That's approximate. I don't know the exact number, but  
15 it was a sizable block.

16 Q. Actually, I think I said it wrong. Okay. And the ATF  
17 then came back at a later date and did a spot inspection of  
18 some of your guns; isn't that true, sir?

19 A. The ATF came back and they looked at them all. Peter  
20 Rubis came back and looked at them, sir.

21 Q. Well --

22 MR. MARTIN: May I have a moment, your Honor? I'm  
23 having a difficult time reading the document.

24 THE COURT: Yes.

25 (Brief pause)

1 Q. (By Mr. Martin) In truth and fact, sir, on May 16th when  
2 Peter Rubis came out, he found that there were 250 MK II tubes  
3 that were not completely manufactured, that's on May 16th,  
4 didn't he, sir? Do you recall that?

5 MR. MARTIN: May I approach?

6 THE COURT: Yes.

7 THE WITNESS: Okay.

8 Q. (By Mr. Martin) Do you recall that?

9 A. I don't recall that. I remember him coming out, but I  
10 don't recall the exact date, sir.

11 Q. Let me ask you this: If you need a magnifying glass  
12 because this is a very bad document -- do you recognize that  
13 signature right there, sir? Here's a magnifying glass if you  
14 need it. I've highlighted it for you.

15 A. Okay. Yes. There's Charles Erb, owner, and then  
16 underneath that is, there's a signature, Peter Rubis.

17 Q. Do you see the date on it right there?

18 A. Yes, it's 5/16.

19 MR. KUMIEGA: Your Honor, may the United States  
20 inquire what document it is, or Bates stamp?

21 MR. MARTIN: Let me borrow the document and show it to  
22 him.

23 Q. (By Mr. Martin) What I'm referring to, sir, is that on  
24 May 16th, you and Mr. Rubis, I'm looking at what it says,  
25 registered 250 Sten Mark II tubes, nine millimeter serial

1 number 501 through 750 on ATF Form 2s dated 4/20/86, were not  
2 completely manufactured NFA firearms; is that right?

3 A. That's true. I see that.

4 Q. And the date is May 16th, 1986.

5 A. Yes, sir.

6 Q. That was two days after you had already told us these  
7 forms, these firearms had been inspected on May 14th, right?

8 A. That was the date, May 14th was the date that I had  
9 submitted my amended Form 2s.

10 Q. Right. Two days prior to the report by Mr. Rubis, to the  
11 ATF agent?

12 A. Okay.

13 Q. And you were not inspected again until 1988; isn't that  
14 true, sir?

15 A. I don't recall the dates. I recall Peter Rubis's words  
16 which were --

17 Q. Do you recall him inspecting you in May of '86?

18 A. Yes. He said to me, sir, he said, Charles, finish the  
19 work.

20 Q. Okay. Do you recall him inspecting you in May of '86?

21 A. Yes.

22 Q. And would you dispute the ATF records if they said your  
23 next inspection wasn't until '88?

24 A. He was back again, it wasn't an official inspection.  
25 They came back and did an inventory, complete inventory in '88.

1 Q. That's what I said. Would you dispute the records if you  
2 weren't inspected again, according to the records, until 1988?

3 A. For a full inspection, I believe it was 1988.

4 Q. Now, this series of firearms, E501 through 750, which  
5 includes the serial number of Exhibit 3.1, has caused you, it's  
6 caused you a difficulty ever since these tubes have been made;  
7 isn't that true, sir?

8 A. I'm sorry. It's caused me difficulty?

9 Q. You've had numerous violations over these same tubes over  
10 and over and over again; isn't that true?

11 A. That's not true.

12 Q. In truth and fact, sir, in 1996, these same tubes, these  
13 same numbered tubes, 501 through 760, you were cited for  
14 because the firearms and serial numbers were not legible; isn't  
15 that true, sir? Do you know that? I've got something to  
16 refresh your memory if you need it.

17 MR. KUMIEGA: Your Honor, can counsel show the  
18 government the document they're referring to?

19 THE COURT: Mr. Martin, if you would show Mr. Kumi ega  
20 before you approach the witness it would be helpful.

21 MR. MARTIN: I've got 800 pages of report they've  
22 provided me, your Honor.

23 THE COURT: We don't need comments, but before you  
24 approach the witness as a professional courtesy show the  
25 government what document you're questioning him about.

1 Q. (By Mr. Martin) Again, Mr. Erb, do you recognize that  
2 signature right there?

3 A. Of course. That's yours truly's signature.

4 Q. And you recognize this as being a Department of Treasury  
5 ATF report of violation, do you not, sir?

6 A. Yes.

7 Q. And can you read the date, May 6, 1986?

8 A. 1996.

9 Q. '96. I apologize. Thank you.

10 A. Yes.

11 Q. And one of the violations is failure to properly mark NFA  
12 firearms on machine guns Sten Mark II E555 or 565, serial  
13 number not legible, model designation missing on serial number  
14 E777, E780, E736, E765, E578, E555-565, E576, and I believe  
15 that's all the Stens; is that right?

16 A. If you noticed under the corrective action, if I may,  
17 said (reading) each manufacturer shall identify firearm  
18 manufactured by a serial number which may or not readily be  
19 removed, obliterated, or altered, the name of the manufacturer,  
20 caliber are required, the markings be placed so they are  
21 conspicuous regardless of the stage of completion.

22 The markings on the firearms that are in question here  
23 were faint. They asked that I deepen the markings and make  
24 them clearly legible. I agreed to that.

25 Q. At first I though you didn't even remember this event,

1 and suddenly you remember it clearly?

2 A. It's just that they asked me to correct that, and under  
3 Freedom of Information Act, anyone has access to these  
4 documents.

5 Q. Do you recall this event in 1996?

6 A. Yes. They asked me to clarify some of the markings. I  
7 agreed to it.

8 Q. And, well, they cited you for a violation, they didn't  
9 ask you to clarify, they gave you a violation report; would you  
10 agree with that, sir?

11 A. A violation report. Yes, sir.

12 Q. All right.

13 A. And with that they said would you please comply with it,  
14 I agreed to it, that I would comply with their wishes.

15 Q. Do you know the consequence of failure to comply with  
16 their wishes, sir?

17 A. Yes, I do. I'm fully aware of it.

18 Q. Okay. You would lose your license and you may be  
19 indicted; isn't that true?

20 A. That's true.

21 Q. And if you make a mistake or made a mistakes on one of  
22 these guns and ATF didn't catch it, like they caught so many of  
23 them, somebody else might get indicted, mightnt they, sir?

24 MR. KUMIEGA: Objection, your Honor. Speculation, and  
25 it's not a proper statement as to the law.

1 THE COURT: Be overruled.

2 Q. (By Mr. Martin) If you made a mistake, sir, on one of  
3 these guns and the ATF didn't catch it, somebody else might get  
4 indicted for your mistake; isn't that true, sir?

5 A. I think you're being pretty hard on the Bureau of  
6 Alcohol, Tobacco, and Firearms. They have a lot of leeway,  
7 sir.

8 Q. I'm asking you, sir: If you made a mistake and the ATF  
9 didn't catch it, like they caught so many of yours, somebody  
10 might get indicted; isn't that true?

11 MR. KUMIEGA: Objection, your Honor. Misstatement of  
12 the law.

13 THE COURT: I don't know that he's qualified to answer  
14 that. There's no foundation that he's qualified, Mr. Martin.

15 Q. (By Mr. Martin) Now --

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

17 THE COURT: Yes.

18 (Brief pause)

19 Q. (By Mr. Martin) Mr. Erb, I think you testified that, I  
20 want to make sure I understood it, that unless your  
21 recollection is better now, after the May 7th, 8th, and 9th  
22 inspection, the ATF came back and inspected this entire 250  
23 series of Sten receivers?

24 A. Yes, sir. Peter Rubis came out and looked at them, and  
25 it was on or before the 19th.

1 Q. And they approved every one of them?

2 A. He said, you did a lot of work here, I can tell. And he  
3 looked at them.

4 Q. And he -- my question was: He approved every one of  
5 them?

6 A. Again, it's been 20 years. It's hard remembering exact  
7 dates and figures and what transpired.

8 Q. Well, you said Peter Rubis said you did real good work.  
9 You remember that part?

10 A. I came to know Peter Rubis because he was always the  
11 agent that was inspecting me and head of the inspection  
12 department. It wasn't just Peter Rubis, there was several  
13 people that he brought with him.

14 Q. If that occurred, I'm going to ask you how on earth did  
15 this pipe with one cut in it get approved by the ATF when they  
16 have to have a minimum of four? E694. Can you see the number?

17 A. Yes. I can see the number. Again, I've been to, just  
18 came back two weeks ago, I was in Europe. I toured the valley,  
19 I toured the Gardone Valley Trompia, Beretta facility. When  
20 Beretta makes a mistake on a receiver, if it's not correctable  
21 they scrap it. It goes in a big bin. I've been to Ruger, I've  
22 been to Marlin. When I was at Ruger I went through there  
23 armorer's school and I saw receivers stacked up in a scrap bin,  
24 had numbers on them, and the guy conducting the tour, I said  
25 what are these? He said ones that didn't make the grade. I

1 said what will you do? We'll make a replacement receiver and  
2 we'll reapply that number to that firearm. It's funny you  
3 should ask that, he said, because we keep our numbers  
4 consistent and we'll destroy these.

5 Same thing happened to me. I made guns that didn't make  
6 the grade that possibly had a cocking slot that was too wide,  
7 could never possibly work. I cast it aside.

8 Q. Is it your testimony that Peter Rubis approved that pipe  
9 with one cut in it as a Sten, sir?

10 A. No. Peter Rubis wouldn't do that. He wouldn't approve  
11 that as a cut, as an approved gun. No, it's not my testimony,  
12 sir. The ATF went through my shop and picked up numerous  
13 receivers that were damaged.

14 Q. Would you look at the monitor?

15 A. Sure.

16 Q. You registered that?

17 A. Okay.

18 Q. That piece of pipe with one cut in it right there?

19 A. There's probably another one just like it in the good  
20 rack. That was in the bone pile. Could possibly have been in  
21 the bone pile.

22 Q. Let me ask you a question, sir.

23 A. I don't recall, sir. But I scrapped a lot of tubes that  
24 were, just wouldn't make the grade.

25 Q. This is the only 694 we've been provided in this case,

1 all right?

2 A. Okay.

3 Q. I believe your testimony on direct examination was we  
4 never put the serial numbers on a tube until it's complete.

5 That's not a complete tube, is it, sir?

6 A. Doesn't appear to be.

7 Q. You understand, you may think that's scrap, but that  
8 picture is somebody's lawfully registered Sten today, sir.

9 A. I can't argue, I can't put up an argument for that, sir.

10 MR. MARTIN: One moment, your Honor.

11 (Brief pause)

12 MR. MARTIN: Nothing further.

13 THE COURT: Any redirect, Mr. Kumi ega?

14 MR. KUMI EGA: Yes, your Honor.

15 REDI RECT EXAMI NATION

16 BY MR. KUMI EGA:

17 Q. This exhibi t has your serial number on it; is that right,  
18 Mr. Erb?

19 A. Yes.

20 MR. KUMI EGA: Focus on that serial number, please.

21 Q. (By Mr. Kumi ega) E694; is that correct?

22 A. Yes.

23 MR. KUMI EGA: And pull back a little bit.

24 Q. (By Mr. Kumi ega) Let me ask you this: If that's the  
25 only cut on that tube, is this a functioni ng machi ne gun?

- 1 A. Absolutely not. No. It's not a functioning machine gun.
- 2 Q. So this thing doesn't even work, it's not even a machine
- 3 gun; is that right?
- 4 A. It's a receiver that's part way there.
- 5 Q. All right. Why would somebody have that then?
- 6 A. I have no idea.
- 7 Q. Okay. Now, let me ask you this: When you manufactured
- 8 your guns in '86 and went down the stream of commerce, you
- 9 don't know what happened to the firearms, do you?
- 10 A. I had no control over them.
- 11 Q. For instance, let's look at Defendant's Exhibit 43,
- 12 please. Now, you characterize that firearm as a particular
- 13 brand of something; is that correct?
- 14 A. It's a Sterling gun.
- 15 MR. KUMIEGA: Next page, please.
- 16 Q. (By Mr. Kumi ega) It's got a serial number; is that
- 17 correct?
- 18 A. It's on the mag housing.
- 19 MR. KUMIEGA: And go to the next one, please. Go to
- 20 the next one. Let's look at Defendant's Exhibit 44, please.
- 21 The next photograph, the next photograph. Stop right there.
- 22 Could you blow that up, Bonnie, please?
- 23 Q. (By Mr. Kumi ega) Is that your handiwork?
- 24 A. No, sir.
- 25 Q. Did you put that on the machine gun back in '86, in May

1 of '86?

2 A. No. Again, I addressed Mr. Martin, looks like a  
3 billboard on the side of the gun. It's just not consistent  
4 with my work. But it's obvious that someone wanted to clearly  
5 define the markings and the manufacturer.

6 Q. Okay.

7 MR. KUMI EGA: Let's look at Defendant's Exhibit 43,  
8 please.

9 Q. (By Mr. Kumi ega) Mr. Erb, this is marked as Defendant's  
10 Exhibit 43 and the Bates stamp is FRI760. Mr. Erb, if you  
11 could look at the R number, there's an R and some serial  
12 numbers to the right.

13 MR. KUMI EGA: Your Honor, the screen is not doing the  
14 photograph justice. May I approach the witness, please?

15 THE COURT: Yes.

16 MR. MARTIN: What's the Bates number?

17 MR. KUMI EGA: 0670.

18 Q. (By Mr. Kumi ega) Remember --

19 A. Yes, we spoke of this.

20 Q. -- you spoke about that. And you were going over some of  
21 the exhibits that defense was going to proffer for the case,  
22 and you noticed something that had the number DLO on it; is  
23 that correct?

24 A. Yes.

25 Q. Can you tell us about that?

1 A. That's another manufacturer, and he is up in Connecticut,  
2 and I know this gentleman, I've met him. He's an old-timer as  
3 I am. And "DLO" stands for Douglas Lawrence Offenger. He's in  
4 Stamford, Connecticut. He's built numerous Sten guns, Browning  
5 guns over the years. And he did mark the receivers. He put  
6 his markings on the trigger assembly.

7 Q. All right. The point is, is that your handiwork then in  
8 that government's exhibit?

9 A. On this?

10 Q. Yes.

11 A. No. This belongs to Douglas Lawrence Offenger.

12 Q. But somehow it's registered under you or is there some  
13 type of confusion?

14 A. I don't believe this was my gun. It's not my firearm. I  
15 know it's not my firearm.

16 Q. All right. And you said that the photograph in  
17 Defendant's Exhibit 44, where it looked like a billboard,  
18 that's not your handiwork; is that correct?

19 A. No, sir.

20 Q. Okay. Now, Mr. Martin said that you were inspected in  
21 1986, and the subsequent inspection was in 1988; is that  
22 correct?

23 A. Yes.

24 Q. So there's a two-year lag time; is that correct?

25 A. Yes. They came-- they made an inspection just to ensure

1 that the fi rearms had been completed. I don' t think they made  
2 a report, they didn' t give me a report, but they came out and  
3 looked through the stacks of tubes.

4 Q. Okay. When Mr. Martin cross-exami ned you about fail ure  
5 to properly mark NFA fi rearms on numbers and mentioned the Sten  
6 machi ne guns, the Sten Mark E55 or 6 -- I mean 565.

7 A. The markings were faint, and they considered them too  
8 light, they should be deeper.

9 Q. All right. Let me ask you this: These were fi rearms in  
10 your shop; is that right?

11 A. Yes, si r.

12 Q. These are not fi rearms that went out in the stream of  
13 commerce?

14 A. No, they did not enter commerce.

15 Q. During the course of your being i nspected by ATF, has  
16 there ever been a fi rearm that was bought by someone and the  
17 serial number was improperly placed or improper?

18 A. No. I made sure they were in there quite deep.

19 Q. All right. So my point then, Mr. Erb, is that the  
20 fi rearms that you submit ted that went in the stream of  
21 commerce --

22 A. May I return this to you, si r?

23 Q. Yes. Give me a mi nute.

24 The numbers that you were flagged for were numbers that  
25 never left your shop; is that correct?

1 A. That's correct. If you notice on the document there were  
2 other firearms, other models besides Sten Mark IIs. There's an  
3 M60 on there, I tell from the serial number.

4 Q. This is some ten years later on after you manufactured  
5 the E series; is that correct?

6 A. They were still sitting in my racks, still sitting in the  
7 shop. And they inspected them and said the serial numbers are  
8 very light on these and not legible.

9 Q. All right.

10 MR. KUMIEGA: Your Honor, may I approach the witness?

11 THE COURT: You may approach.

12 Q. (By Mr. Kumi ega) For the rest of the story, Mr. Erb, can  
13 you read the regulation that you're supposed to fulfill on that  
14 document that you were cross-examined with?

15 A. Okay. How about to the left here also?

16 Q. Start with the right first.

17 A. All right.

18 "Each manufacturer shall identify a firearm  
19 manufactured by a serial number which may not be  
20 readily removed, obliterated or altered by the name of  
21 the manufacturer, caliber and model. Required  
22 markings must be placed so they are conspicuous  
23 regardless of the stage of completion."

24 Q. All right. That's the rule; is that correct?

25 A. That's correct, sir.

1 Q. And out of the hundreds, or the many hundreds, almost  
2 thousands of firearms you manufactured, are they citing you for  
3 these, for maybe ten violations?

4 A. There's 25-odd firearms on there, various models.

5 Q. Why don't you read the whole statement into the record.

6 A. "Failure to properly mark the NFA firearms on Sten  
7 Mark II," and a number "555, or not legible 565, not  
8 legible, serial number not legible, Sten Mark II E705  
9 or 706."

10 They couldn't distinguish which one it was.

11 (Reading) model designation, missing serial numbers E777,  
12 E780, E736, E765, E576, E555, E565, E576, 356E, and 356 was an  
13 MP40, 331E, an MP40, 470E is an MP40, 383 also is an MP40.  
14 232E, 14886, I believe. That's a Browning gun. C92270 is M60.  
15 s2200332 is an M250, and caliber information not visible on the  
16 C92270, 148876 and 4936.

17 Q. Let me ask you this: One of your numbers was E705; is  
18 that correct?

19 A. Yes.

20 Q. Which is Government's Exhibit No. 8; is that right?

21 A. 705, sir.

22 Q. They are citing you for Government's Exhibit No. 8  
23 because the serial number is too faint; is that correct?

24 A. It's faint on there.

25 Q. And that's why you -- you, in fact, gave this to Agent

1 Knopp as an example of your work; is that correct?

2 A. Yes, sir.

3 Q. So, in fact, in truth and fact, this serial number has to  
4 be like 682 and 685?

5 A. Has to be deepened before it goes out the door.

6 Q. They rejected this because of the faintness; is that  
7 correct?

8 A. Yes. Until I chalked it for them. When I chalked it, it  
9 became visible, sir. Sir, your documents.

10 Q. How would you make Government's Exhibit No. 8 better?  
11 What would you do?

12 A. I would use this set of dies that I have here and I would  
13 deepen the numbers.

14 Q. Let me ask you this: You never sent out any duplicate  
15 serial numbers in the stream of commerce; is that correct?

16 A. Absolutely not.

17 Q. Did you ever send out a machine without a serial number  
18 at all?

19 A. No.

20 Q. How come they waited two years to inspect you, from 1986  
21 to 1988, if you know?

22 A. When I spoke to them, and Terry Cates, I went to visit  
23 Terry Cates in DC, and he said, Charles, you're good to go.

24 MR. MARTIN: I'll object to anything Terry Cates had  
25 to say, Judge.

1 THE COURT: That will be sustained. The jury will  
2 disregard.

3 THE WITNESS: I was instructed by the ATF --

4 Q. (By Mr. Kumi ega) Mr. Erb, please.

5 MR. KUMI EGA: Now, going back to Form No. 2 in Exhibit  
6 1.5, please.

7 Q. (By Mr. Kumi ega) 683 is going to be the gun you  
8 manufactured; is that correct?

9 A. Yes, sir. There's a listing on it.

10 Q. All right. And you manufactured it as Mark II Sten or  
11 Sten Mark II according to the column?

12 A. Yes.

13 Q. Government's Exhibit 3.16, the thing that looks somewhat  
14 like a Mark III.

15 MR. KUMI EGA: Can you pull that up again, please.

16 Q. (By Mr. Kumi ega) Is there any doubt in your mind that  
17 you did not manufacture that gun?

18 A. Number one, the serial numbers are not my serial numbers.  
19 I would not use a large serial number that size. They are  
20 applied extremely cockeyed, crooked, by an amateur who didn't  
21 know how to use a hand stamp. The mag housing is not the mag  
22 housing that I would have attached. It's a --

23 MR. MARTIN: Your Honor, I object to that. He didn't  
24 make the gun, he made the Sten, now he's talking about the  
25 manufacture of the firearm.

1 MR. KUMI EGA: He's a fact witness. He can decide  
2 whether or not that's his handiwork.

3 THE COURT: That's overruled.

4 MR. MARTIN: He's talking about the receiver.

5 THE COURT: Objection will be overruled.

6 Q. (By Mr. Kumi ega) Continue, Mr. Erb.

7 A. The mag well opening was done with a saw, we never cut  
8 mag wells with a saw. The welds are extremely crude, which if  
9 I sold a receiver it was up to the secondary manufacturer, he  
10 could weld it any way he would like, so that's not an issue.  
11 But it is the fact that this mag well was cut with a hacksaw or  
12 power saw. Not consistent with any receiver that I've ever  
13 manufactured.

14 Q. Let me ask you this, sir: Regarding a transfer of a  
15 firearm, there's been testimony almost replete that the  
16 government will collect data and keep each NFA weapon separate  
17 by themselves, each serial number is like the DNA for each  
18 firearm; is that correct?

19 A. And it's -- it is unique to that particular firearm.

20 Q. Have you ever been called by ATF, by, I guess the  
21 licensing people in Washington or wherever and say there is two  
22 E numbers or any duplicate Erb firearms out there in the stream  
23 of commerce?

24 A. No, sir.

25 MR. KUMI EGA: If I may have a moment.

1 THE COURT: Yes.

2 (Brief pause)

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

4 THE COURT: Yes.

5 THE WITNESS: Sir --

6 Q. (By Mr. Kumi ega) Just a minute, sir. E682 and E685.

7 MR. KUMIEGA: If we can put that back up.

8 Q. (By Mr. Kumi ega) E682 and E685 is your handiwork; is  
9 that correct?

10 A. Yes.

11 Q. And E705, part of the department's notice or report of  
12 violation, again, is your handiwork; is that correct?  
13 Government's Exhibit No. 8.

14 A. This is my receiver. This is Exhibit 8. Yes. This is  
15 my receiver.

16 Q. All right. The point is, Mr. Erb, you made all these and  
17 these were approved by inspectors from Pittsburg; is that  
18 correct?

19 A. Yes, sir.

20 Q. Is there any doubt in your mind that E683 is your gun?

21 MR. MARTIN: He's already testified to that once, your  
22 Honor.

23 MR. KUMIEGA: I have nothing further, your Honor.

24 THE COURT: All right. Any recross?

25 MR. MARTIN: Yes, sir.

1 RECCROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. Were you aware that the ATF in many reports wrote that  
4 the presence of duplicate firearms and a number of firearms  
5 sold by Mr. Erb then transferred back to him make them wonder  
6 whether or not he's making more than one firearm with the same  
7 serial number. Are you aware of that, sir?

8 A. No.

9 Q. We were talking about the fact that --

10 MR. MARTIN: If I may approach. May I see Exhibit 8.

11 Q. (By Mr. Martin) Is that your tube, sir, this one here?

12 A. Yes.

13 Q. What's the serial number on Government's Exhibit No. 8?

14 A. It's faint. I chalked it so I could read it. E705.

15 Q. Okay. The report Mr. Kumiaga just had you read a while  
16 ago led me to believe that this was the tube that was referred  
17 to in that report. Is that what it led you to believe?

18 A. May I?

19 Q. Is that what it led you to believe, sir?

20 A. I don't have the report in front of me to refer to, sir.

21 Q. All right. Well, let me show you. The report that you  
22 read a while ago says that, "failure to properly work NFA --  
23 mark NFA firearms on numerous occasions, Sten MK E555 or E565,  
24 serial number not legible, Sten MK II, E705," but it goes on,  
25 or 706. "Serial number not legible."

1 We don't have an E706 up here, do we, sir?

2 A. Not to the best of my knowledge we don't have one here.  
3 The 5 on there has a flat top on it.

4 Q. This talks about 705 or 706. We don't know which one?

5 A. They were confused, sir, when they looked at it.

6 Q. I'm asking you about the report.

7 A. Okay.

8 Q. You signed this report?

9 A. Yes.

10 Q. All right. It also talks about a 706, right?

11 A. Yes, sir.

12 Q. Now, we don't know which one that is, do we, sir?

13 A. I know.

14 Q. You know?

15 A. Yes.

16 Q. I see. Let me ask you, sir --

17 MR. MARTIN: If we can put up Defendant's Exhibit  
18 No. 43.

19 Q. (By Mr. Martin) I think it's still in front of you, the  
20 one Mr. Kumi ega showed you. Exhibit No. 43.

21 Do you remember Mr. Kumi ega showed you a picture of that  
22 firearm, and in particular, in particular I showed you a  
23 three-page document I think you have in front of you. Do you  
24 see that, sir? Do you see a document that looks like this, a  
25 picture, a black and white picture?

1 A. Yes. I have that.

2 Q. Mr. Kumi ega showed that to you and you gave a little  
3 speech about how this DLO stood for a particular manufacturer  
4 who was a friend of yours that put the serial number on the  
5 trigger guard or trigger cover, right? Do you recall that?

6 A. Yes, I did. Yes.

7 Q. You know that you cannot put a serial number on a trigger  
8 guard, it has to be on the receiver, don't you, sir?

9 A. According to regulations, should be on the receiver.

10 Q. And that wouldn't be appropriate, would it, sir? That  
11 wouldn't be appropriate, would it, sir?

12 A. It would be more appropriate to be on the receiver.

13 Q. By law you had to put it on the receiver?

14 A. I'm not seeing a number, if this is, in fact, the serial  
15 number underneath the selector button. Is that the serial --  
16 we don't know. We haven't established that.

17 Q. You testified about a DLO, that's the only number on it.

18 A. Yes, sir. We're talking about the DLO markings on the  
19 side of the trigger housing, not on the receiver.

20 Q. Right.

21 MR. MARTIN: Now, if we could put 43 back up.

22 Q. (By Mr. Martin) You said that's not your gun. Do you  
23 recall that?

24 A. The DLO, Stamford, Connecticut. It doesn't appear to be  
25 my gun. I cannot identify it from the picture that I've been

1 shown.

2 Q. You know that the ATF went all over the United States  
3 taking pictures of your E series --

4 MR. KUMI EGA: Objection, your Honor.

5 THE COURT: What's the objection?

6 MR. KUMI EGA: The objection is, your Honor, that  
7 government went around the country as for investigative  
8 reports.

9 THE COURT: Excuse me. Go ahead.

10 MR. KUMI EGA: Not for the purpose of forensic  
11 testimony. That's the same objection we had before, your  
12 Honor.

13 THE COURT: Objection will be overruled.

14 Q. (By Mr. Martin) Do you know that the ATF went all over  
15 the country finding all the E number guns, sir?

16 A. That's their prerogative, I believe.

17 Q. And do you know that --

18 MR. MARTIN: If we can go to the next picture.

19 Q. (By Mr. Martin) -- that this is a picture of the same  
20 gun and the right --

21 MR. MARTIN: If we can zoom in on the E688.

22 Q. (By Mr. Martin) Do you see the E688?

23 A. Yes, sir, I do.

24 Q. And as a matter of fact, that's one of the guns that you  
25 registered on May 14, 1986, isn't it, sir?

1 A. Could very well be.

2 Q. And that would make it your gun, wouldn't it, sir?

3 A. Would be a receiver that I had manufactured, sir, to  
4 correct your statement.

5 Q. Well, let me correct it then. That would be your  
6 receiver then, wouldn't it, sir?

7 A. Without having it in my hand to identify it, it would  
8 appear to be my receiver.

9 Q. Well, didn't you tell the jury that you're the only  
10 person that can use those E688 or E numbers?

11 A. No. I said I utilized that E number to identify my  
12 firearms.

13 Q. Now, the E705 that we talked about earlier, or 607,  
14 whatever the number is, you testified that that -- you  
15 testified that there were at least 25 violations of guns that  
16 were inappropriately marked or something on that form in 1996;  
17 is that right, sir?

18 A. I've recounted. It was probably 22, 23. We're close.  
19 We're in that particular ball park. The markings were faint.

20 Q. And of those guns, sir, those were just guns you had in  
21 your possession, that's not the guns you had sold, right?

22 A. These were receivers, unfinished firearms. These were  
23 receivers that they had picked out and instructed me to mark  
24 them deeper and more legibly.

25 Q. Those were just the receivers you had in your possession,

1 not those that you had -- not those that you had already sold,  
2 the hundreds had hundreds you had already sold?

3 A. These were receivers that were in my possession.

4 Q. And was it your testimony on direct examination that  
5 today your receivers are worth 3,500 to \$5,000?

6 A. No, I did not say that.

7 Q. How much are your receivers worth today, sir?

8 A. I said the completed firearms, completed firearms were  
9 worth between 3,500 to \$5,000. Completed firearm.

10 Q. My question is --

11 A. How much is a receiver --

12 Q. -- how much is a receiver worth today, sir?

13 A. A receiver would be worth somewhat less than that.

14 Q. Well, how much would you sell me one today for, sir,  
15 right now?

16 A. A Mark II receiver, you would spend 2,500, \$3,000 for a  
17 receiver.

18 Q. 2,500 to 3,000?

19 A. Yes.

20 Q. Okay, sir. And you said the unique thing that tells you  
21 why 6 -- excuse me -- Exhibit 3.16 is not yours, one of the  
22 unique factors is the mag well cut, right? Is that right, sir?

23 A. That's correct.

24 Q. That's because, sir --

25 MR. MARTIN: Could we see that 45 exhibit I had you

1 put up earlier?

2 Q. (By Mr. Martin) That's because, sir, E694 that I can  
3 purchase for 2,500 to \$3,000, you didn't even cut a mag well in  
4 that one, did you, sir?

5 A. How did you come by this? You didn't tell me.

6 Q. Sir, I believe the ATF went all over the United States  
7 looking for all your E series, and that is a photograph they  
8 provided me.

9 MR. KUMIEGA: Same objection, your Honor. No proper  
10 foundation.

11 THE COURT: Overruled.

12 Q. (By Mr. Martin) And somebody has that registered to them  
13 as one of your receivers and it doesn't have a mag well cut in  
14 it, does it, sir?

15 A. From here I can't tell that it has a mag well cut.

16 MR. MARTIN: Are there any other pictures of that?

17 MR. KUMIEGA: No.

18 MR. MARTIN: That's just the serial number.

19 Q. (By Mr. Martin) Those are the only pictures that have  
20 been provided to me, those two. But it's pretty obvious a mag  
21 well cut, this is the cut we see, isn't it, right here  
22 (indicating)? Is that the mag well right there?

23 A. Yes, it is. The left side.

24 Q. Pretty obvious?

25 A. The right side is the ejection port.

1 Q. This is the mag well?

2 A. Mag well is on the left.

3 Q. All right. Doesn't have an ejection port on it either,  
4 does it?

5 A. That's true.

6 Q. Doesn't have a --

7 A. That's just the safety notch.

8 Q. The safety. If I own that tube and I want to make it or  
9 manufacture it into a complete firearm, I can cut a magazine  
10 well out with a hacksaw and weld it on there as crudely as I  
11 want, and it's still E694 just like that one, and it's your  
12 tube, isn't it?

13 A. How could you account for the overall length of the tube?

14 Q. It's your tube, isn't it, sir?

15 MR. KUMIEGA: Objection, your Honor.

16 THE WITNESS: It's not my tube, sir.

17 Q. (By Mr. Martin) That one right there, if I cut a mag  
18 well out with a hacksaw and weld a magazine on there, that is  
19 still your tube, isn't it?

20 A. Without having that in my hand, I cannot identify that as  
21 my tube.

22 Q. If that is your tube and I want to manufacture it into a  
23 Sten II, I can take the hacksaw and cut it and weld it just  
24 like 3.16, can't I, sir?

25 A. How would you explain the length, sir?

1 Q. I asked you if I can do something. Could you just answer  
2 my question?

3 A. Are you a manufacturer?

4 Q. Do you want to assume I am?

5 A. If I were to assume you are.

6 Q. Sure.

7 A. You can be a manufacturer, and you would have the  
8 prerogative to do that.

9 Q. And would it just like 3.16?

10 A. You could do that, but how do you explain the length?

11 Q. When you become a lawyer you can ask questions, when I  
12 become a manufacturer, I'll make guns.

13 MR. KUMIEGA: Objection, your Honor. Argumentative.

14 THE COURT: The witness needs to answer the questions  
15 and not ask questions.

16 THE WITNESS: Yes, sir.

17 MR. MARTIN: Could we see E694 again?

18 Q. (By Mr. Martin) Sir, is a Sten tube 11 1/2 inches long?

19 A. We're getting close to it. I don't know. I don't have  
20 my measuring stick with me. I'm not privy to my original  
21 prints and drawings that I worked off of.

22 Q. And you've had tubes, Sten tubes seized by the ATF that  
23 were too long; isn't that true, sir?

24 A. That were too long?

25 Q. Yes, sir.

1 A. I don't recall.

2 Q. Are you familiar with Sten tube E777 and given to the ATF  
3 because it was too long, longer than all the others?

4 A. To the best of my recollection, I don't remember the  
5 exact serial number and why it was seized.

6 Q. But it would be fair to say you've had so many seized and  
7 abandoned so many you don't know all the violations you  
8 committed?

9 MR. KUMIEGA: Objection, your Honor. I would like to  
10 have the Bates stamp number.

11 THE COURT: Will be sustained.

12 MR. MARTIN: 3002. Nothing further.

13 THE COURT: Sir, you may be excused, and I would  
14 advise you you're not to discuss the testimony you've given  
15 here today with other persons who may be a witnesses in this  
16 matter.

17 THE WITNESS: Thank you, sir.

18 THE COURT: You may be excused.

19 Call your next witness.

20 MR. KUMIEGA: The United States would like to call  
21 Grant Kemmerer.

22

23

24

25

1 GRANT KEMMERER,  
2 called as a witness, having been duly sworn, testifies as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. KUMIEGA:

6 Q. Sir, can you introduce yourself to the jury and spell  
7 your last name for the record, please?

8 A. My name is Grant L. Kemmerer, Jr., K-E-M-M-E-R-E-R.

9 Q. Sir, how are you employed?

10 A. I'm employed by a construction company in Miami.

11 Q. And is that currently -- what type of construction  
12 company are you employed by, please?

13 A. Swimming pools.

14 Q. How long have you been in that business, please?

15 A. I've been in that business with this company ten years,  
16 and the construction industry probably thirty-five years.

17 Q. Is there some point in your professional business you  
18 were a licensed firearms dealer?

19 A. Yes, sir.

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

21 A. For approximately ten years I was a licenses Class 3  
22 dealer. I dealt in firearms like the ones in front of me. I  
23 bought and sold, we had a license through Alcohol, Tobacco &  
24 Firearms. At one point in time I lost interest in it, so to  
25 speak, and I dropped my license.

1 Q. What time frame, sir, did you sell machine guns?

2 A. Probably mid-'80s to late '90s.

3 Q. All right. And let me -- where was your office located?

4 Did you have a shop or something?

5 A. No. It was in the house.

6 Q. All right. And what did you do with the guns that you  
7 brokered, please?

8 A. I'm sorry. I missed part of it.

9 Q. Did you manufacture firearms?

10 A. No, sir. I just bought and sold.

11 Q. You were a broker; is that correct?

12 A. Yes.

13 Q. And were you -- what level of firearms transactions did  
14 you engage in?

15 A. Volume level was, you know, low level. I wasn't, you  
16 know, I -- I probably in all the years I was in the business  
17 maybe 450 transfers.

18 Q. All right.

19 A. Maybe like 30, 40 a year.

20 Q. Okay. And you said you officed out of your house; is  
21 that correct?

22 A. Yes.

23 Q. Did you -- once you got a machine gun, did you ever add  
24 or subtract anything from the machine gun?

25 A. No, sir.

1 Q. What would you basically do then, please?

2 A. Basically, I ran an ad in a trade paper called Shotgun  
3 News. People would call me up and say this is what I have, I  
4 had a business, so I looked at, you know, whether I would make  
5 money or not. I was wasn't going to buy something for a  
6 thousand and sell it for 800, but if the gun seemed okay, you  
7 know, which is just verbal over the phone because you don't get  
8 to see the pieces, I would go ahead and we would start the  
9 paperwork and I would buy the piece. Sometimes I had, you  
10 know, I had someone to sell it to right away; other times it  
11 would go in inventory and maybe be is there a week, a month,  
12 six months.

13 MR. KUMIEGA: Your Honor, may I approach the witness  
14 with Government's Exhibit 45?

15 THE COURT: You may approach.

16 Q. (By Mr. Kumi ega) Sir, do you know what this is, please?

17 A. It's documentation on a particular subgun, submachine  
18 gun.

19 Q. All right. And if you flip through that document, is  
20 your name on any of the pages in that document, please?

21 A. Yes. Yes. Yes, it is.

22 Q. And what is that document detail, please?

23 A. The document details that I purchased a particular gun,  
24 which is a submachine gun nine millimeter, serial number 683,  
25 from a gentleman named R. J. Perry & Associates in Parkridge,

1 Illinois. I think Mr. Perry is now deceased. It came, it was  
2 transferred into my inventory, and from my inventory -- came  
3 into my inventory in October of '92, and it went out of my  
4 inventory in November of '92 to John Guy Walker, which really  
5 was Birmingham Pistol Wholesale.

6 Q. All right. I want you also to also look at Government's  
7 Exhibit 1.4 and 1.6.

8 MR. KUMIEGA: Your Honor, may I approach and find  
9 those documents for him?

10 THE COURT: Yes.

11 Q. (By Mr. Kumi ega) I'm handing you, sir, Government's  
12 Exhibits 1.6 and 1.4. Can you see if your name appears on both  
13 of those government's exhibits, please.

14 A. Yes, it does. It appears in two places: One when I  
15 acquired the particular piece, and one when the piece was  
16 removed from my inventory.

17 Q. That's in both Exhibits 1.4 and 1.6; is that correct?

18 A. Let me look in the second one.

19 Q. Yes, sir.

20 A. Yes. My name appears twice: Once when it came to me,  
21 and once when it left.

22 Q. All right. At one time you purchased three, more than  
23 three machine guns from a Mr. Perry from Chicago; is that  
24 correct?

25 A. Yes, sir.

1 Q. Do you remember those transactions?

2 A. Yes.

3 Q. And the E numbers that are in front of you, just to  
4 verify it, is that E683, E682, and E685?

5 A. Yes, sir, it is.

6 Q. Mr. Kemmerer, did you buy these firearms in lots?

7 A. Yes.

8 Q. About how many machine guns did you purchase, please?

9 A. These particular guns I bought in a lot, but there were  
10 times I did, you know, single purchases. There was probably 50  
11 or 60 pieces in the lot, sir.

12 Q. Did you buy 682, 685, and 683 from Mr. Perry on the same  
13 date?

14 A. Yes.

15 Q. And did you in turn sell those same firearms, E682, E685,  
16 and E683 to a shop in, I think, Birmingham, Alabama?

17 A. Yes.

18 Q. All right. Now, you testified you didn't do anything to  
19 the firearms; is that correct?

20 A. No.

21 THE COURT: Excuse me, Counsel.

22 MR. KUMIEGA: Yes, your Honor.

23 THE COURT: I don't know when he says no, no, that's  
24 not correct or no, he didn't do anything to them.

25 THE WITNESS: No, I didn't do anything to them. Now,

1 the only thing I did was to move it from one, from my inventory  
2 to Birmingham Pistol Parlor there has to be the appropriate  
3 paperwork. I can't just send them off. There has -- the  
4 paperwork has to go to Washington, it has to be approved and has  
5 to come back. Once that's done, then the gun moves from myself  
6 to the next person, which would be Birmingham.

7 Q. (By Mr. Kumi ega) The lot that you bought from Mr. Perry,  
8 were they associated with a particular manufacturer of machine  
9 gun?

10 A. Yes. Everything was through a gentleman named Charles  
11 Erb.

12 Q. And have you dealt with Erb firearms in the past?

13 A. Yes. Oh, yes.

14 Q. All right. Is -- is Mr. Erb known in the industry?

15 A. Yes. He's, you know, he's a, sort of a legend in the  
16 industry. Everybody knows Charlie Erb, he's a manufacturer.  
17 If you have a question about a particular gun or something like  
18 that you can speak to him. He's quite prominent in the  
19 community.

20 Q. Are you familiar with Mr. Erb's work?

21 A. Yes.

22 Q. Can you look at Government's Exhibit No. 6. I think it's  
23 tagged.

24 MR. KUMI EGA: Your Honor, may the agent help Mr.  
25 Kemmerer?

1 THE COURT: Yes.

2 THE WITNESS: Okay. I'm looking at 6.

3 Q. (By Mr. Kumi ega) And will you also look at Government's  
4 Exhibit No. 7?

5 A. Got it right in front of me.

6 Q. Do you recognize those type of automatic weapons?

7 A. Yes. Those are the weapons, they are Sten Mark IIs that  
8 came from Charlie Erb to R.J. Perry to myself, and then on to  
9 Birmingham Pistol Parlor.

10 Q. How do you know that, sir?

11 A. Well, it's not that I know the particular piece, but I  
12 know the sequence of numbers. The E means Erb, I would assume,  
13 and then they were a 600 series. There were a number of them.  
14 They all came through in the same configuration, which is, you  
15 know, these first two. They were Mark IIs, the magazine goes  
16 in the side, there's a little button that releases it, rolls it  
17 around as a dust-hider. Mr. Erb usually has his name somewhere  
18 on the back with the serial number. I mean, the guns kind of  
19 all look alike, but they were all the same thing, they are Sten  
20 Mark IIs.

21 Q. Did you receive the guns from Mr. Perry in what  
22 configuration, please, if you remember?

23 A. They were -- some were assembled and some were what they  
24 refer to as a tube gun, which is just the receiver.

25 Q. All right. And that would be that tube in front of you,

1 Government's Exhibit No. 8?

2 A. Yes.

3 Q. That's the type -- some of those you received would look  
4 in that configuration; is that correct?

5 A. Right. Some of them came in this configuration, and then  
6 some of them came assembled, it was about a 60-40 mix, 60 being  
7 approximate number -- 60 percent being the number of tubes, 40  
8 percent being the number of finished pieces.

9 Q. Okay.

10 MR. KUMIEGA: Can you hand Mr. Kemmerer Government's  
11 Exhibit 3.16, please.

12 THE WITNESS: Thank you, sir.

13 Q. (By Mr. Kumiega) Sir, can you take your time and take a  
14 look at that firearm, please.

15 A. I've looked at it.

16 Q. How would you describe Government's Exhibit 3.16, please?

17 A. Well, this is a Sten, but there's different models of  
18 Sten. The two that I have in front of me here are Mark IIs.  
19 This is a Mark III. The receiver on the Mark III is  
20 appreciably longer than the ones on the Mark II by, probably,  
21 about five inches.

22 Q. All right. And do you notice anything about the serial  
23 number on Government's Exhibit 3.16, the Mark III?

24 A. Yes. It's -- it's larger, it's sort of amateurish. I  
25 can't -- I can't really -- yes. Okay. It says 683. The 3 is

1 spread apart from the other -- the other numbers.

2 Q. How would you compare that to an Erb machine gun, please?

3 A. Well, first of all, it's not the same gun, because as you  
4 can see, this is the receiver of this gun, and the receiver for  
5 this gun is appreciably longer. So it wouldn't be the same  
6 gun. Now, the workmanship on it is not that great. I mean,  
7 it's, excuse the expression, it's rough-looking.

8 Q. All right. Is that typical of Mr. Erb's work?

9 A. No.

10 Q. Did you pass that gun through to Alabama, to Birmingham,  
11 Alabama, when you received it from Chicago?

12 A. Are you talking about this?

13 Q. Yes.

14 A. No. It's not a Mark II.

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

16 THE COURT: Yes.

17 (Brief pause)

18 Q. (By Mr. Kumi ega) Mr. Kemmerer, when you passed on the  
19 firearms, did you actually do a physical inventory of each gun  
20 that you sent, that you received from Perry and shipped to  
21 Alabama?

22 A. Yes. When a gun comes to you, even if it's one gun, you  
23 have to make sure that the paperwork matches the particular  
24 firearm.

25 Q. All right.

1 A. If the number would be different, there are, you know, as  
2 you know, there are severe penalties having one number and  
3 another on a piece of paper. When these particular items came  
4 in they came in in boxes, I had to physically sit down on the  
5 floor and go match the paper with the tube. And I mean,  
6 literally the paper on the floor, the tube on top of the paper.

7 Q. Would you have passed Government's Exhibit 3.16 to  
8 Alabama?

9 A. No. And the other thing is, when these go back out it's  
10 the same thing. When you have multiple pieces you can't just  
11 reach in and grab one and put a piece of paper with it. You've  
12 got to make sure A matches B.

13 Q. Have you ever seen a gun quite like that in your  
14 experience?

15 A. No. I would have never bought a gun like this, because  
16 in this -- in the Class 3 community, we deal a lot with other  
17 dealers, we also deal with individuals, and you can't take  
18 something like this and you can't resell it. To me, it's  
19 misrepresentation, and in the business, you won't last very  
20 long because people will say, you know, he handles shoddy  
21 material. So if anything like this would come it would have to  
22 be reworked.

23 Q. How long were you in the machine gun business then?

24 A. Probably -- it easy over ten years.

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

1 THE COURT: You may cross-examine.

2 CROSS-EXAMINATION

3 BY MR. MARTIN:

4 Q. Mr. Kemmerer, I believe you testified that you got 50 or  
5 60 receivers and/or guns from R.J. Perry; is that right?

6 A. Yes, sir.

7 Q. And the distinction I'm trying to draw is, a receiver --

8 MR. MARTIN: If I might approach, your Honor.

9 Q. (By Mr. Martin) -- is Government's Exhibit No. 8; is  
10 that right?

11 A. Yes, sir.

12 Q. And when you refer to a gun, you're referring to  
13 something like one of these, correct?

14 A. Yes.

15 Q. All right. And so 60 percent of what you got were items  
16 like Government's Exhibit No. 8, the receiver, and the other 40  
17 percent, if there were, say, whatever -- however many guns that  
18 is, were they completely finished, partially finished?

19 A. Some were -- most of them -- there were some that were  
20 completely finished, which is the 40 percent, there were some  
21 that had parts kits with them that had never been, you know,  
22 finished the assembly. But it was about a 60-40 mix, and when  
23 I say one was a tube, the 60 percent was tubes, the 40 percent  
24 were finished pieces. In other words, you could actually take  
25 them out and fire them.

1 Q. All right. And you don't know which was what, do you?

2 A. No, sir. I'm not intent on sitting here and say I  
3 remember exactly which gun was which.

4 Q. You don't know if, for example, Government's Exhibit No.  
5 7 was like this or was just a tube like this, do you, sir?

6 A. Correct.

7 Q. And the same with Government's Exhibit No. 8?

8 A. Yes, sir.

9 Q. So you don't know if you got a firearm that was in a  
10 partially completed state more than a tube, you don't know who  
11 did that work, do you, sir?

12 A. Well, when the tube comes to me -- I think I'm  
13 misunderstanding the question. Can you give it to me again?

14 Q. I'll try to. When you get a partially completed tube,  
15 something more like this, when it gets here you don't know who  
16 has done the work to put it in this condition from the  
17 condition of a tube, is my question?

18 A. That's not true, sir. What has to happen is if you get,  
19 if you buy -- if you bought the tube personally you cannot put  
20 it together. I mean, I guess you could try, but you know, you  
21 would probably wind up with what you have here as the other  
22 exhibit. But normally this would have to go off to a  
23 manufacturer who is someone who is licensed to complete the  
24 piece. Now, you can't just send it to them, you have to notify  
25 ATF that you want to take piece number XYZ and send it to, you

1 know, gun -- a machine gun manufacturer, you know. Then  
2 they'll come back and say, okay, you can move the piece to this  
3 particular person, he'll do whatever work you want, and there's  
4 paperwork that has to come back.

5 So to answer your question, when you have a gun, you can  
6 paper-trail it back and see who physically did the work. But  
7 if it was done in a garage, then you can't find it anywhere.

8 Q. Okay. You've got the paper in front of you. Tell me,  
9 who -- the ones that you have, who completed them, Mr. Erb?

10 R. J. Perry? Who completed those that you received?

11 A. They could have -- on any of these it could have been  
12 R. J. Perry, and if someone else completed them after they went  
13 to Birmingham Pistol Parlor, that it would be a paper trail  
14 record there. Now, that, I couldn't answer.

15 Q. Okay. You don't know -- my question is: When you got  
16 those firearms, you don't know who had done the work, if any  
17 had been done, on any of the tubes?

18 A. The answer to that is no, but the tubes came out of  
19 Charlie Erb as just tube only and they went to R. J. Perry,  
20 I believe was a manufacturer. So when they came to me I  
21 assumed that he had finished them.

22 Q. So your assumption is anything that was finished, R. J.  
23 Perry had done?

24 A. Yes.

25 Q. Anything that wasn't finished, just came as a wholesale

1 lot to you then?

2 A. Right. In other words, I didn't do anything to those.

3 Q. And you bought, I think you said, 682, 685, I think part  
4 of that you said you think you had 683, correct?

5 A. Yes. I believe so.

6 Q. All right. Do you know whether or not you had 694 out of  
7 that E series, E694?

8 A. No, sir. I would have to check my paperwork.

9 Q. All right.

10 A. I do know the serial numbers of all the pieces I got in  
11 that lot.

12 Q. Do you have that paperwork with you?

13 A. No. Not with me, sir.

14 MR. MARTIN: May I have just a moment?

15 THE COURT: Yes.

16 (Brief pause)

17 Q. (By Mr. Martin) Let me ask you this, sir: I'm going to  
18 show you what's been introduced, I think this is Government's  
19 Exhibit 1, or 1.01, or 1.1. I'm sorry. 1.5. I'm sorry. 1.5.  
20 Are you familiar with that document, sir?

21 A. Not really, sir. That would be the document that I  
22 believe Charles Erb would send to ATF. I would not be privy to  
23 that type of document.

24 Q. Well, it's contained in the paperwork that you looked at  
25 that shows that you actually were one of the owners in the

1 chain of custody of the firearm, right?

2 A. Right. But this is the beginning of the chain; I'm in  
3 the middle.

4 Q. You don't see the documents before you, sir?

5 A. Oh, I'm sorry.

6 Q. I think you've got Exhibit 1.6 and 1.4 in front of you  
7 that show that you're in that chain.

8 A. Yes. Yes.

9 Q. And if you look at that, does it appear that by looking  
10 at these 25 series of guns that these are completed firearms,  
11 sir? Barrel length eight inches?

12 A. That would imply -- to me, that would imply, I'm not the  
13 ATF, but to me, that would imply that the gun was completed.

14 Q. In other words, if I might borrow this, if the only thing  
15 we have is this tube, it has no barrel, does it, sir?

16 A. No, it doesn't.

17 Q. And it doesn't have an overall length, does it, sir?

18 A. No.

19 Q. And the representation is that this is a Sten Mark II  
20 with a barrel length of eight inches and an overall length of  
21 31 inches, which would imply that these are completed firearms;  
22 would you not agree, sir?

23 A. I would agree.

24 Q. You said, sir, that you were familiar with the work of  
25 Mr. Erb, and seen his product in the past, sir?

1 A. Yes.

2 Q. However, you don't remember whether or not you've  
3 purchased E694; is that right?

4 A. Yes. I always assumed the E meant Erb.

5 Q. Okay.

6 MR. MARTIN: If we could see Exhibit 45, please.

7 Q. (By Mr. Martin) You can see it on the monitor in front  
8 of you too.

9 A. Yes, sir.

10 Q. Could you see -- can you make out the serial number E694  
11 on that, sir?

12 A. Yeah. Barely, but I can see it.

13 Q. Okay. The next picture I think is -- does that help you?

14 A. Yes.

15 Q. Okay. Now, if we'll go back out. I'll represent to you,  
16 sir, that this is Erb gun E694 that's registered on this piece  
17 of paper here that I just showed you.

18 MR. KUMIEGA: Objection, your Honor. I think Mr. Erb  
19 -- objection. Mr. Erb could not positively identify, I  
20 believe, the photograph. So there is some problems with that.

21 THE COURT: Objection will be sustained.

22 Q. (By Mr. Martin) Let me ask you, sir: Does that tube,  
23 based on the photograph, have all the appropriate cutouts for a  
24 Sten II?

25 A. I couldn't tell you, sir. I can see the picture, but

1 there's a number of cutouts on the tube. As to whether they  
2 are in the correct positions or not, I don't know.

3 Q. What is that -- can you see the one slot in the picture  
4 right here? Do you see the one slot?

5 A. Yes.

6 Q. Okay. Do you know what a magazine well is?

7 A. Yes.

8 Q. Does it appear that it's got the appropriate -- I've  
9 probably got it turned around backwards. Does it appear it's  
10 got all the appropriate cuts in that tube, sir? I'm talking  
11 about the one in picture --

12 A. Yes. I would say so.

13 Q. Is there a cut right there?

14 A. Yes.

15 Q. On this picture. I'm talking about the picture.

16 A. Oh, the picture? I don't know. It's -- it doesn't  
17 appear to have the cut.

18 Q. Okay, sir. I wasn't referring -- all my questions were  
19 referring to the picture.

20 A. Sorry.

21 Q. I apologize.

22 A. That's all right.

23 Q. I think your testimony was, I wrote down at least, and if  
24 I wrote it down wrong I want you to correct me, that you don't  
25 specifically recall the particular pieces that you received,

1 but you know the sequence of numbers that you received; is that  
2 right?

3 A. I don't know the sequence of numbers. It's written down  
4 on the piece of paper. There's probably -- there's between 50  
5 and 60 numbers. Do I know those numbers by heart? No, sir, I  
6 don't. But --

7 Q. Are they sequential, one right after the other or  
8 something?

9 A. As I remember, yes and no. I think there were numbers  
10 missing in there, but I'm not sure.

11 Q. All right, sir. And I'm going to show you, this has been  
12 introduced as Government's Exhibit's 3.16. Do you see that,  
13 sir?

14 A. Yes.

15 Q. I'm going to ask you to visualize something a little  
16 different than what I have in my hand here, just the tube.  
17 Okay. Not any of the magazine, not the stock, not the trigger  
18 mounting, just the tube, which appears to be I guess from here  
19 to here (indicating). Do you see that, sir?

20 A. Yes, sir.

21 Q. Okay. That, sir, is what I'm asking you. Is there  
22 anything about that tube that makes it different or not part of  
23 the potential lot you got, sir?

24 A. It's considerably -- it's longer, sir.

25 Q. Okay. Other than the length?

1 A. Other than the length? Can I pick it up?

2 Q. Sure.

3 A. Two things I can -- well, two things I can see, but there  
4 again, I think I'm getting away from your question. This is  
5 welded on, whereas on these particular guns --

6 Q. I'm limiting it to the tube, sir.

7 A. Okay. I would say, with the exception of the length,  
8 it's the same.

9 Q. All right. And that's not how you would have received a  
10 firearm, in that configuration, from R.J. Perry, is it, sir?

11 A. No. Because they were all the same -- they were Mark  
12 IIs.

13 Q. All right. I'm talking about a gun, excuse me, a  
14 completed gun you would not have got from R.J. Perry in that  
15 condition; is that correct?

16 A. In that condition?

17 Q. With welds.

18 A. No. No. This piece is, you now, completely different  
19 than the lot. I mean, the welds, I mean, the weld just holds  
20 it together, but the weld also has to look good aesthetically  
21 and, you know, these welds are not. I'm not sure if I'm  
22 exactly following you.

23 Q. Well, my question is: The firearm in the configuration  
24 it would have --

25 A. Would have stood out.

1 Q. Would have stood out. Thank you.

2 A. Yes.

3 Q. The tube was longer, or appears to be longer than the  
4 other tubes; is that correct?

5 A. Yes. Considerably.

6 Q. And let me ask you: During your ten years, approximately  
7 ten-year period of time that you were involved in, as a  
8 licensed firearms dealer, did the ATF ever come out and inspect  
9 your receipts?

10 A. Yes, sir.

11 Q. Did they inspect this receipt, sir?

12 A. No. Because they would have had to -- I had this in my  
13 inventory, if you'll notice the dates, maybe a month to month  
14 and a half. It would have been a real coincidence they did an  
15 inspection at that particular time. But if they did, yes, they  
16 would have look at it.

17 Q. As a matter of fact, you got this gun on looks like  
18 October 8th, and you got rid of it November 25th. You had it a  
19 little less than 50 days.

20 A. Right.

21 Q. Did you sell the whole lot then?

22 A. Probably 90 percent of the lot went to Birmingham.

23 Q. So if there was 60 guns, you would have sold maybe --  
24 well, 90 percent of 60 guns, whatever that is?

25 A. Fifty-something.

1 Q. Okay. All right. And this process that took a little  
2 less than 50 days, the ATF didn't come out and inspect it  
3 before it left you either, did they?

4 A. No. They do a yearly inspection but you don't know when  
5 they are going to come. That's the whole idea behind the  
6 inspection.

7 Q. You at least never got notice when they were going to  
8 come?

9 A. Well, they'll call up and say we want to come look at  
10 your inventory. They want to -- I mean, usually what they'll  
11 do is come knock on the door. But if I was at work and I  
12 couldn't do it, then I would call the person back and we would  
13 arrange, and what I would do is I would have all the pieces out  
14 with the appropriate paperwork.

15 Q. All right, sir.

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

17 THE COURT: Yes.

18 (Brief pause)

19 MR. MARTIN: Nothing further.

20 THE COURT: Any redirect?

21 MR. KUMI EGA: Briefly, your Honor.

22 REDI RECT EXAMI NATION

23 BY MR. KUMI EGA:

24 Q. Mr. Kemmerer, looking at Government's Exhibit 3.16, does  
25 the welds on 3.16 stand out?

1 A. Yes, sir, they do.

2 Q. Does the serial number stand out similarly?

3 A. Yeah. The serial number sort of jumps right out at you.  
4 There again, it just sort of goes along with the gun. It's  
5 kind of amateurish.

6 Q. All right. If that serial number was on the tube, would  
7 that be considered Erb's work from your experience?

8 A. To be honest with you, if these came through with all the  
9 rest of them and all being the same, I would have had to ask  
10 the particular question, you know, why is this one different.  
11 I mean, if he did 50 or 60 at the same time why is this one --  
12 I would have been smart enough to just raise my hand and say,  
13 hold on a second, can we take a second look at this.

14 Q. All right. And you're saying that the guns you received  
15 from Perry were all Sten Mark IIs?

16 A. Yes.

17 Q. And this -- the tube is considerably longer; is that  
18 correct?

19 A. Yes. It's considerably longer, and by the way the rest  
20 of the gun is welded together, if somebody would have attached  
21 a piece onto it, it would have been extremely visible, and it's  
22 not.

23 MR. KUMIEGA: I have nothing further, your Honor.

24 THE COURT: Anything further?

25 MR. MARTIN: One minute.

1 (Brief pause)

2 MR. MARTIN: No questions, your Honor.

3 THE COURT: Okay. Mr. Kemmerer, you may be excused,  
4 and I would advise you you're not to discuss the testimony  
5 you've given here today with other person who may be a witness  
6 in this matter.

7 THE WITNESS: Yes, sir, your Honor.

8 THE COURT: You may be excused.

9 Ladies and gentlemen of the jury, we'll take our recess  
10 for this afternoon. I would anticipate that we're going to  
11 work a little later tonight. Anybody have a problem with  
12 working until about six? Anybody have a parking problem where  
13 they have to be out of their lot at six? Mr. Swanson, Ms.  
14 Davis.

15 JUROR DAVIS: If we park in that garage across the way  
16 are we okay after 5:30?

17 THE COURT: I have no idea. Ms. Youngberg, do you  
18 know?

19 THE CLERK: Cathy might know.

20 THE COURT: Why don't you ask Ms. Moy downstairs when  
21 you take your break and see if there is -- which lots create --  
22 have a parking problem or not. I don't think so, but I'm not  
23 sure. But ask her, she'll know, she knows everything.

24 We'll take our recess for about 20 minutes. All rise  
25 while the jury exits.

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

3 THE COURT: Mr. Kumi ega, how many more witnesses do  
4 you have?

5 MR. KUMI EGA: Judge, I think we have about five more.  
6 We have Mr. Mark -- Michael Davenport is the next witness.  
7 He's the person who received the firearms from Mr. Kemmerer,  
8 and then sold it to Mr. Friesen. And then we have a series of  
9 witnesses, employees regarding possession of machine guns in  
10 the Armor vault.

11 THE COURT: So can we finish all those this evening?

12 MR. KUMI EGA: I believe so. Yes, sir. I think we  
13 might run out of witnesses around five o'clock.

14 MR. MARTIN: Judge, the elderly gentleman in the  
15 front, the black gentleman raised his hand. I don't know if he  
16 had a conflict.

17 THE COURT: Mr. Swanson?

18 MR. MARTIN: Yes, sir. I don't know, but he raised  
19 his hand.

20 THE COURT: About a parking problem.

21 MR. MARTIN: Okay.

22 THE COURT: He's going to ask Ms. Moy. And so then  
23 your only witness left would be --

24 MR. KUMI EGA: Judge, I think, one of the things we can  
25 do if the Court wants to recess, we have Sarah Walbridge here

1 regarding the Daubert hearing. We're ready to do that if we  
2 can have a recess I can talk to her and prepare for that.  
3 She's in the victim/witness room. I think we're getting pretty  
4 close to ending the government's presentation.

5 THE COURT: So would Ms. Walbridge be your last  
6 witness?

7 MR. KUMI EGA: She's not going to be a witness, your  
8 Honor.

9 THE COURT: She's not going to be a witness?

10 MR. KUMI EGA: Not today. Well, we couldn't make it  
11 today, your Honor. My understanding is Mr. Martin wants a  
12 hearing regarding her expertise in paint, but she's here and  
13 ready to go.

14 THE COURT: So if we got her on you can be through  
15 today, right?

16 MR. KUMI EGA: Yes, sir. The witnesses I have left are  
17 Michael Davenport, Joseph Newell, Annette Johnson, Catherine  
18 Long, Julie White. If the Court wants, I can do Debra  
19 Davenport, your Honor.

20 MR. MARTIN: But you're not going to rest today?

21 MR. KUMI EGA: Oh, no.

22 MR. MARTIN: He's not ready to rest, Judge.

23 MR. KUMI EGA: I'm not going to rest, your Honor.  
24 Maybe tomorrow.

25 THE COURT: So are these all the witnesses you have

1 left?

2 MR. KUMI EGA: No, sir. No. I have Terri LeMaster, I  
3 have Donald Ladd, I have Elizabeth Gillis.

4 THE COURT: That's what I asked is how many witnesses  
5 do you have left.

6 MR. KUMI EGA: Oh, I thought for today. I did not know  
7 for the whole trial, your Honor. I'm sorry. I misunderstood.

8 MR. MARTIN: Judge, we indicated Friday that they  
9 would put on their expert on Tuesday to give me more time to  
10 review this stuff. I'm not complaining too much, but I just  
11 wanted to remind the Court.

12 THE COURT: So do we still need a Daubert hearing on  
13 her? Is that who you wanted to have the Daubert hearing on,  
14 Ms. Walbridge?

15 MR. MARTIN: That would be their expert, yes.

16 THE COURT: So we can do that this afternoon?

17 MR. MARTIN: Yes, sir.

18 THE COURT: She's here?

19 MR. KUMI EGA: Yes, sir.

20 THE COURT: Okay. How long do you anticipate those  
21 other witnesses?

22 MR. KUMI EGA: Judge, I think they are going to be  
23 maybe ten or 15 minutes. They are going to be relatively  
24 brief.

25 THE COURT: So you could rest by noon tomorrow?

1 MR. KUMI EGA: I'm not sure about that, your Honor. We  
2 do have Terri LeMaster, or Terri Dennis, and you have to  
3 address the use immunity.

4 THE COURT: I don't have anything to address yet; I  
5 have no motion.

6 MR. KUMI EGA: Okay. I will file one at the end of the  
7 day, your Honor.

8 THE COURT: So what -- Mr. Martin, how long do you  
9 anticipate --

10 MR. MARTIN: Our case? Your Honor, day and a half. I  
11 would try to keep it as brief as possible, but there is a lot  
12 of issues to address here.

13 THE COURT: Sounds to me like we're going to go into  
14 Monday then. By the time we have instructions and figure that  
15 out, closing and all that. So we're not going to finish  
16 Wednesday, doesn't sound like, does it to you, Mr. Kumi ega?

17 MR. KUMI EGA: No, sir. I thought the government's  
18 presentation would be about five to seven days.

19 THE COURT: Okay. We'll be in recess for about  
20 another 15 minutes.

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

23 THE COURT: Call your next witness.

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

1 MIKE DAVENPORT,  
2 called as a witness, having been duly sworn, testifies as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. KUMIEGA:

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

7 A. I'm Mike Davenport.

8 Q. And where do you live at, please?

9 A. Birmingham, Alabama.

10 Q. What do you do for a living?

11 A. I own a retail gun shop.

12 Q. Are you in, I guess you're in the gun business?

13 A. Yes.

14 Q. For how long, please?

15 A. Over 20 years now.

16 Q. And what type of guns have you sold in the past, please?

17 A. I've sold -- if it shoots, we've sold it. Machine guns,  
18 suppressors, mostly nowadays just modern handguns and shotguns.

19 Q. All right. Are you currently licensed to sell automatic  
20 weapons?

21 A. Yes.

22 Q. How long have you had that license, sir?

23 A. The same, over 20 years.

24 Q. Now, your place of business, you said is in where,  
25 please?

1 A. Bi rmi ngham, Al abama.

2 Q. Did you ever work for a person named Guy Wal ker?

3 A. Yes.

4 Q. And can you tell the jury the nature of the relationship  
5 with Mr. Guy Wal ker, please?

6 A. I was buyer and seller mostly on the Class 3 weapons. I  
7 bought and sold, pretty much manager in that.

8 Q. Excuse me?

9 A. Pretty much manager on that, as far as buying and selling  
10 the Class 3 items. We sold a lot of other products, but Class  
11 3 was my corner, what I done.

12 Q. All right. And where did you -- where was your place of  
13 business when you were selling those fi rearms for Mr. Wal ker,  
14 please?

15 A. Worked for Bi rmi ngham Pi stol Whol esal e, which is in  
16 Trussvi lle.

17 Q. Trussvi lle, Al abama?

18 A. Correct.

19 Q. How long did you work for Mr. Wal ker?

20 A. Three years, four years.

21 Q. And did your wi fe also work for Mr. Wal ker?

22 A. Yes, she did too, same time frame.

23 Q. What was her duties regarding the --

24 A. She was secretary. She answered the phone, she done a  
25 lot of the transfer paperwork, and whatever duties needed to be

1 done.

2 Q. Are you familiar with Erb machine guns?

3 A. Yes.

4 Q. And what -- how are you familiar with that, please?

5 A. That I bought a quantity of them, mostly from Grant  
6 Kemmerer, that we bought and sold, you know, machine guns,  
7 tubes, partial tubes, full guns. Several pieces from Grant.

8 Q. All right. And let me ask you this: Can you look at  
9 Government's Exhibits 1.4, 1.5, and 1.6.

10 MR. KUMIEGA: And, Agent, if you can assist Mr.  
11 Davenport with those documents, please.

12 Q. (By Mr. Kumi ega) Sir, what exhibit do you have in front  
13 of you?

14 A. I have a transfer from -- you're talking about government  
15 document 1.4?

16 Q. 1.4.

17 A. Uh-huh.

18 Q. And what serial number is registered to 1.4, please?

19 A. E682.

20 Q. And during the course of that document, does your name  
21 appear in it, please?

22 A. No. This is John Guy Walker.

23 Q. Yes. But you are his employee, or one of his agents?

24 A. That's correct. At the time I was his employee.

25 Q. All right. Are you familiar with E682 in that document?

- 1 A. Pretty much. Yes.
- 2 Q. All right. And let's look at Government's Exhibit 1.6.
- 3 A. Okay.
- 4 Q. Again, does your name appear in that, please?
- 5 A. No.
- 6 Q. Does Mr. Walker's name appear in that?
- 7 A. No. This is from Perry to Grant Kemmerer.
- 8 Q. Let's look at the next page.
- 9 A. Okay. I'm sorry. Yes. This is from Grant Kemmerer to  
10 John Guy Walker.
- 11 Q. All right.
- 12 A. Serial number E685.
- 13 Q. It's from Grant Kemmerer to John Guy Walker?
- 14 A. Uh-huh. Correct.
- 15 Q. Is there certain names that are -- that validate the  
16 transfer?
- 17 A. I'm sorry.
- 18 Q. Are there any names on that document that validate the  
19 transfer?
- 20 A. That -- are you talking about the Walker to Bedford?
- 21 Q. Yes. Hang on. Let's see here. We've got Erb to Perry?
- 22 A. Right.
- 23 Q. Then we have Perry to Kemmerer?
- 24 A. Correct.
- 25 Q. Then we have Kemmerer to Walker?

- 1 A. Right.
- 2 Q. And you're John Guy Walker's representative?
- 3 A. I represent him, correct.
- 4 Q. Is that correct?
- 5 A. Correct.
- 6 Q. Let's go down on the document. Whose picture, excuse me,  
7 whose name appears there, please?
- 8 A. That's Debbie Davenport. That's my wife.
- 9 Q. Okay. And was she involved in some of these transfers?
- 10 A. She done the paperwork on them. She actually done the  
11 secretary work on them.
- 12 Q. All right. So she's Debbie Davenport, secretary?
- 13 A. That's correct.
- 14 Q. And there's a date on that; is that correct?
- 15 A. Correct. 12/7/92.
- 16 Q. And this is for a gun E685; is that correct?
- 17 A. Gun E685.
- 18 Q. Let's go back to Government's Exhibit 1.4. Same here.  
19 Goes from Erb to Perry; is that correct?
- 20 A. That's correct.
- 21 Q. Then Perry to Kemmerer?
- 22 A. Correct.
- 23 Q. And Kemmerer to John Guy Walker?
- 24 A. That's correct.
- 25 Q. And you're working at Birmingham Pistol; is that correct?

1 A. That's correct.

2 Q. And this is Walker to a person named --

3 A. To James Dukes. That's correct.

4 Q. Okay. And Debbie Davenport's signature appears on that?

5 A. Right.

6 Q. Let's go to Government's Exhibit 1.5, please. What  
7 serial number are talking about there, please?

8 A. 1.5 will be serial number E683.

9 Q. All right.

10 A. From Perry to Erb.

11 Q. Erb to Perry?

12 A. Correct.

13 Q. From Perry to Kemmerer?

14 A. Correct.

15 Q. And Kemmerer to John Guy Walker, doing business as  
16 Birmingham Pistol Wholesale?

17 A. Correct.

18 MR. KUMIEGA: Flash the whole thing.

19 Q. (By Mr. Kumiega) And then from John Guy Walker to Larry  
20 Douglas Friesen, Lobo Arms, here in Oklahoma City; is that  
21 correct?

22 A. Correct.

23 Q. And, again, transfer is done by Debbie Davenport; is that  
24 right?

25 A. Right. She sent it out on the 1st the 18th of '96.

1 Q. Is this transfer, is the firearm going to Mr. Friesen  
2 back in February 22, 1996?

3 A. That's correct.

4 Q. Let me get the chart here. I have a date on the chart as  
5 February 26, 1996. Is there a date when Mr. Friesen, when you  
6 sent Mr. Friesen the documents, please, Government's Exhibit  
7 1.5?

8 A. Okay. I was just kind of -- yeah, that's correct.  
9 Showed a transfer February 22nd of '96.

10 Q. To who, please?

11 A. I'm sorry?

12 Q. From who to who, please?

13 A. Shows from John Guy Walker to Larry Douglas Friesen.

14 Q. And the date again, please?

15 A. February 22nd, '96, is when the ATF would have approved  
16 it.

17 Q. Okay. Let's go back to the first part. You receive,  
18 John Guy Walker doing business as Birmingham Pistol, received  
19 machine gun 683 from Mr. Kemmerer on what date, please?

20 A. Received it from who? I'm sorry.

21 Q. From Mr. Kemmerer. When did you receive the machine gun?

22 A. It came from Kemmerer, John Guy Walker to Grant Kemmerer,  
23 would have been approved to ship to us November 25, '92, so I  
24 presume a couple days after that.

25 Q. Okay. And that's -- what number are you looking at now?

1 A. Am I looking at the wrong number? I'm looking at 683,  
2 Exhibit 1.5.

3 Q. Let's look at Exhibit 1.4. When did you get the machine  
4 guns from Kemmerer for E682, please?

5 A. You say Exhibit 1.4?

6 Q. Yes, sir.

7 A. All right. They would have come from Grant Kemmerer to  
8 John Guy Walker November 25th, 1992.

9 Q. Okay. And let's look at 1.6. When did you receive E685  
10 from Mr. Kemmerer, please?

11 A. From Grant Kemmerer to John Guy Walker, the date was  
12 November 25th, 1992.

13 Q. So are all the guns sent basically from Kemmerer to you  
14 on or about the same day?

15 A. I believe so. Yes.

16 Q. So you got them in a lot; is that right?

17 A. Yes.

18 Q. Do you're buying Erb machine guns from Mr. Kemmerer?

19 A. Yes.

20 Q. Okay. When you get -- what do you do in your business  
21 when you're working for Mr. Walker? What did you do when you  
22 got the lot from Mr. Kemmerer, please?

23 A. I would, of course, unbox them, put them in the safe, log  
24 them into the books, you know, and at that point we would put  
25 them in a storage safe. Of course, when I sold them I would

1 put them into a separate safe as sold merchandise with the  
2 invoice, and then when the transfer came through I would pull  
3 them and verify the serial number and make sure it matched the  
4 invoice, make sure it matched the paperwork, and at that point  
5 we shipped them.

6 Q. All right. Mr. Davenport, how would somebody know that  
7 you're in the business to sell automatic weapons?

8 A. We ran an ad in the Machine Gun News, buy and sell.

9 Q. What's the name of it?

10 A. Machine Gun News. I'm sorry, I'm telling you wrong on  
11 that. Shotgun News.

12 Q. You would advertise in that?

13 A. Shotgun News. Yeah. We ran an ad every ten days, and we  
14 list a -- we ran machine guns in it. And we had a lot of other  
15 guns that we sold.

16 Q. When you got the firearms from Mr. Kemmerer, did you add  
17 or subtract anything from the machine gun itself?

18 A. No. We don't do any -- no repairs, no manufacturing, no  
19 warranty, no -- just buy them, bring them in and resell them.

20 Q. All right. So you just pass it through; is that correct?

21 A. Just pass through. Yeah.

22 Q. Okay. Do you remember the Erb shipment that you bought  
23 from Mr. Kemmerer back in November of -- I guess was it 1992;  
24 is that correct?

25 A. I do vaguely remember the shipment. Yes.

1 Q. Okay. And are you familiar somewhat with Erb's work?

2 A. Yes.

3 Q. All right. What is his work like, please, from your  
4 experience in this business?

5 A. Erb does good work. He's -- he's been around a long  
6 time, so he's a -- he does good work. As good as anybody out  
7 there.

8 Q. All right. Are you telling the jury that -- let me ask  
9 you this then: When you received the firearms from Mr.  
10 Kemmerer and it was in, according to Government's Exhibit 1.5,  
11 it was sold to Mr. Friesen, did you alter the firearm in any  
12 way?

13 A. No.

14 Q. Okay.

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

16 THE COURT: Yes.

17 (Brief pause)

18 MR. KUMIEGA: I have no further questions of this  
19 witness.

20 THE COURT: You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. I understand, Mr. Davenport, that during this period of  
24 time you were selling approximately a thousand machine guns or  
25 Class 3 weapons a month; is that right?

1 A. No, that's not correct. A thousand a year.

2 Q. A thousand a year?

3 A. I know discovery says that or whatever, I saw that. But  
4 I explained to these guys, that's not --

5 Q. So this report that I've got is mistaken?

6 A. Well, on that incident, that's correct. We sold  
7 approximately a thousand machine guns on a good year.

8 Q. Okay. So you saw where it said a month?

9 A. I did see that.

10 Q. Okay. Kind of jumped out at me too.

11 A. Yeah.

12 Q. Okay. And this is back in -- you got this approximately  
13 in 1992; is that right?

14 A. Correct.

15 Q. And you were shown, you were interviewed by some ATF  
16 agents early on, were you not, sir, a couple of times?

17 A. Yes.

18 Q. And you were shown some tubes, were you not, that you  
19 were told were Erb's tubes, right?

20 A. Actually, to my knowledge, I was showed this gun here.

21 Q. Okay. Do you not recall them showing you a tube, this  
22 tube right here?

23 A. Nope. I do not recall them showing me this tube here.  
24 Now, I was showed this tube a couple of days ago. I was not  
25 showed this tube early on.

1 Q. When you say a couple of days ago, would you say as far  
2 as back as February 13th, 2007, about 18 months ago?

3 A. Nope. I wasn't showed that tube.

4 Q. They gave you all your reports to read, didn't they, sir?

5 A. No.

6 Q. Well, you knew you didn't sell a thousand a month. May I  
7 ask, let me ask if this refreshes your memory. I've actually  
8 underlined it for you there.

9 A. I don't ever remember seeing that tube gun.

10 Q. Okay. So you don't remember being shown that tube?

11 A. I don't remember being shown that tube.

12 Q. And telling them that that tube had smaller lettering  
13 than the gun that you just talked about?

14 A. You know, I do remember telling them they had smaller  
15 lettering than this gun here.

16 Q. Right.

17 A. But that's off of Erb receivers that I've sold, not, not  
18 this one, you know. Just off Erb receivers that I had out of  
19 that collection.

20 Q. Okay. And you -- let me ask you: You have looked at  
21 State's [sic] Exhibit Nos. 6 and 7, which are the two other  
22 firearms up there, right, sir?

23 A. Yes.

24 Q. And you don't know when you received them in what  
25 condition they were in, do you, sir?

1 A. I do not.

2 Q. You don't know if they were tubes, if they were  
3 completely put-together firearms or what?

4 A. That's right. I don't know if they were tubes or  
5 complete guns.

6 Q. I didn't hear the last.

7 A. I don't know if they were tubes or complete guns.

8 Q. Okay. Sir, now, do you know a guy named R.J. Perry?

9 A. I'm not sure if I have done business with R.J. Perry.  
10 Somewhere down the line pretty much everybody in the machine  
11 gun business at one time I actually done business with.

12 Q. With him?

13 A. With pretty much everybody. I don't know on R.J. Perry,  
14 I actually don't know.

15 Q. Okay.

16 A. Only way I could, you know, have to go through all the  
17 records of all the guns I sold and see if R.J. Perry's name was  
18 on there somewhere.

19 Q. Well, I'll represent to you that his name is on the  
20 paperwork for Government's Exhibit 6, Government's Exhibit 7,  
21 serial number E683, and at least those three receivers, sir.

22 A. Right. That's correct.

23 Q. So would you have done business with him in this sense if  
24 he were involved in the transfer of those firearms?

25 A. Huh-uh. I done business with Grant Kemmerer, not Perry.

1 I had no idea who he was getting them from. I have no access to  
2 that.

3 Q. Well, does Perry, to your knowledge, manufacture  
4 firearms?

5 A. I don't know.

6 Q. Okay. You just don't know?

7 A. No. I don't know Perry.

8 Q. Okay.

9 A. What I was trying to say is I might have done business  
10 with him, I might have sold or bought a gun from him somewhere  
11 through the whole time I was selling guns, but not -- didn't  
12 have anything to do with this. I had no idea -- Grant was  
13 apparently buying them and making a profit on them, that's the  
14 whole idea.

15 Q. All right, sir.

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

17 THE COURT: Yes.

18 (Brief pause)

19 Q. (By Mr. Martin) Now, do you know a Guy name John  
20 Brannum?

21 A. I don't think so.

22 Q. I'm going to show you what I have marked for  
23 identification purposes as Defendant's Exhibit 105, and ask  
24 you, sir, without -- do you know what kind of form that is?

25 A. Sure.

1 Q. What is that?

2 A. That's a -- that's a Class 3 transfer.

3 Q. Form 2 or Form 3. Down at the bottom, I think?

4 A. ATF Form 3.

5 Q. Okay. And can you tell us by looking at that form what  
6 firearm that form relates to?

7 A. It's gun number E683, it's a Sten or tube, whether it's a  
8 Sten tube or gun, I can't tell.

9 Q. All right, sir. And is there a signature on there that  
10 you recognize?

11 A. Yeah. Debbie Davenport.

12 Q. That's your wife, correct?

13 A. That's true.

14 Q. And she sought the approval of the sale of that firearm  
15 to a particular person; is that right?

16 A. That's correct. She filled out the paperwork.

17 Q. Who was that sold to, sir?

18 A. That's sold to John Brannum, but it doesn't mean I know  
19 him. It means he could have mailed in an order.

20 Q. All right.

21 A. Or made a phone order.

22 Q. All right. And was that approved?

23 A. It was approved.

24 Q. And when would that have been?

25 A. February 2nd, '93.

1 Q. Okay. And that's the same firearm that I believe you  
2 testified you also sold to Mr. Friesen?

3 A. I'm sorry. The numbers kind of --

4 Q. Do you want me to bring the number back up there?

5 A. Let me see. 683?

6 Q. Yes, sir.

7 A. That's correct.

8 Q. And this document, for whatever reason, is not in the  
9 pedigree of that firearm; would you agree, sir?

10 A. Yes, sir.

11 Q. Did you all manufacture, make any changes to firearms, or  
12 were you just pass-through on everything?

13 A. We were pass-through on everything.

14 Q. So however you got it is how you sold it?

15 A. That's correct.

16 Q. If you got it fully assembled, that's how you sold it;  
17 partially assembled, that's how you sold it; if it was just a  
18 tube, that's how you sold it?

19 A. That's correct.

20 MR. MARTIN: May I have just a minute, your Honor?

21 THE COURT: Sure.

22 MR. MARTIN: I need to look at one exhibit. Let me  
23 borrow an exhibit here.

24 (Brief pause)

25 MR. MARTIN: Nothing further.

1 THE COURT: Any redi rect?

2 MR. KUMI EGA: Yes, your Honor. Your Honor, may I  
3 approach the wi tness?

4 THE COURT: Yes.

5 REDI RECT EXAMI NATION

6 BY MR. KUMI EGA:

7 Q. Mr. Davenport, here's Government's Exhi bi t No. 13 and  
8 13.1. Let's start wi th 13. Thi s is a document -- can you  
9 i denti fy that, please?

10 A. Yeah. Of course, thi s is the one from John Guy Walker to  
11 John Brannum.

12 Q. That's basi cally you to Mr. Brannum; is that correct?

13 A. That's correct.

14 Q. Are you fami liar wi th that document?

15 A. I am now.

16 Q. Okay.

17 MR. KUMI EGA: Your Honor, at thi s time the United  
18 States would move for i ntroduction of Government's Exhi bi t 13  
19 i nto evi dence.

20 MR. MARTI N: No obje cti on.

21 THE COURT: Wi ll be admi tted.

22 Q. (By Mr. Kumi ega) Okay. Now, that says that you people  
23 sold E683 to Mr. Brannum; is that correct?

24 A. That's how we transferred it to him.

25 Q. And 1.5, the certi fi cate copy, does not i nclude that

1 transaction; is that correct?

2 A. In 1.5.

3 Q. Yes.

4 A. Let me look at that.

5 Q. If you can look at that, please.

6 A. This shows it going from Grant Kemmerer -- from Perry to  
7 Kemmerer, from Kemmerer to Walker, and Walker to Larry Douglas  
8 Friesen.

9 Q. What date, please?

10 A. To Friesen?

11 Q. Yes.

12 A. February 22nd, '96.

13 Q. And the date on Government's Exhibit No. 13, the  
14 purported transaction --

15 A. February 2nd, '93.

16 Q. Okay. Let's look at Government's Exhibit 13.1. Are you  
17 familiar with that document?

18 A. I'm familiar -- not this particular one. I mean, just --  
19 but I'm familiar with what it says.

20 Q. All right. Take a look at it, take your time. Here is  
21 the serial number, and there's an explanation. What is that  
22 document, please?

23 A. This is a void. This is where -- a void transfer, when  
24 you transfer a gun out and the guy changes his mind or doesn't  
25 pay for it, or whatever you, void it and then transfer to

1 whoever does buy it.

2 Q. And are you familiar with that signature?

3 A. It's Debbie Davenport.

4 MR. KUMI EGA: Your Honor, at this time the United  
5 States would move for introduction of Exhibit 13.1.

6 MR. MARTIN: No objection.

7 THE COURT: Will be admitted.

8 Q. (By Mr. Kumi ega) So my question then is: Mr. Brannum  
9 never received E683, did he?

10 A. Apparently not.

11 Q. So this Government's Exhibit No. 13 is voided, right?

12 A. It's voided.

13 Q. And this is a copy of why it was voided?

14 A. That's why it was voided. That's a request to void it  
15 and why it's voided.

16 Q. Because, what's the notation?

17 A. Said he changed his mind.

18 Q. So Mr. Friesen is the person you sold the gun to, not Mr.  
19 Brannum; is that right?

20 A. That's correct.

21 Q. Now, you stated that you don't remember the tube E705 if  
22 you ever saw it until just the other day; is that correct?

23 A. Which one? This one?

24 Q. Yes. Uh-huh.

25 A. I don't remember.

1 MR. KUMIEGA: Your Honor, may I approach the witness?

2 THE COURT: You may approach.

3 Q. (By Mr. Kumi ega) Mr. Davenport, what I have here is  
4 report of interview that you did with the ATF back in 2007.  
5 And if you can silently read 6, 7, 8, and 9, please.

6 A. Okay.

7 Q. Does that refresh your recollection?

8 A. You know, I remember -- I remember everything on there  
9 except I don't -- I may have seen it, I just don't remember it.

10 Q. But let me ask you this: Does that refresh your  
11 recollection when you met with ATF back in 2007?

12 A. I remember making a comment about the screws and the  
13 price range and things on it.

14 Q. Okay.

15 A. But did I remember everything in detail? No. I mean --

16 Q. I understand. But Government's Exhibit 3.16, you  
17 remember being shown that firearm?

18 A. I remember looking at this gun and noting some things I  
19 had never seen. This was all new to me.

20 Q. Can you show the jury what was new to you?

21 A. I had never seen one actually assembled without welding  
22 it, you know, with doing set screws. That's kind of -- this is  
23 what I'm used to looking at, and I had never seen anybody split  
24 a mag well and just kind of force it in there and weld it like  
25 that. I'm sure it's been done, but I hadn't seen that before.

1 Q. This is in your years of selling firearms; is that  
2 correct?

3 A. Yeah. I've never seen that done, and I've never seen one  
4 screwed together. I didn't know you could do that.

5 Q. And you said, according to this report, you were familiar  
6 with Erb's work and his serial numbers; is that correct?

7 A. Pretty much. Yes.

8 Q. And when you flip this firearm over it has a serial  
9 number, can you read that into the record, please?

10 A. That's E683.

11 Q. All right. And, in fact, you suggested to the government  
12 about using bookend serial numbers to prove the case; is that  
13 correct?

14 A. That's correct.

15 Q. From your familiarity -- you being familiar with Mr.  
16 Friesen -- excuse me -- Mr. Erb's work, does that serial number  
17 appear to be his work, his handiwork?

18 A. It does not.

19 MR. KUMI EGA: No other questions.

20 RE-CROSS-EXAMINATION

21 BY MR. MARTIN:

22 Q. Bookend machine guns would be 682 and 684, wouldn't they?  
23 We don't have a 684 up there, do we, sir?

24 MR. KUMI EGA: Objection, your Honor. I would like to  
25 approach the bench.

1 (The following was had at the bench, out of the hearing of  
2 the jury:)

3 THE COURT: What was your question again?

4 MR. MARTIN: I said a bookend serial number would be  
5 682 and 684. And we don't have a 684 up there, and Ed  
6 objected.

7 MR. KUMIEGA: The reason I objected, your Honor, Mr.  
8 Martin was informed Government's Exhibit 684 was either  
9 destroyed or lost by a gentleman in Kentucky. So I just don't  
10 want to have an inference out there. We tried to get 684, it's  
11 gone, it's destroyed or whatever. The next bookend gun was  
12 685. I don't want to have the jury be misled about that.

13 MR. MARTIN: I just asked him, I asked him what the  
14 next number was and it isn't there. I don't think there's  
15 anything inappropriate about that. If he wants to put somebody  
16 on to explain that, that's fine. But he brought up the  
17 bookends, not me. I didn't bring up bookends.

18 THE COURT: Have you got somebody you can put on and  
19 explain that?

20 MR. KUMIEGA: Through hearsay. I don't have the  
21 documents here, but that's exactly what happened. Mr. Martin  
22 was informed of that.

23 THE COURT: I don't see where it's applicable, Mr.  
24 Martin. You don't question that's --

25 MR. MARTIN: I don't question it, but he brought up

1 bookends, and I was going to cross-examine him about it.

2 MR. KUMIEGA: It isn't a bookend of the other because  
3 it's missing. To have that out there --

4 THE COURT: I'll sustain the objection.

5 (The following was had in open court:)

6 Q. (By Mr. Martin) Mr. Davenport, my review of the records  
7 on E682, I think that's Government's Exhibit 1.4, reflects that  
8 you got that gun in November of '92, or it was approved for you  
9 all to sell in November of '92, and you all sold it in August  
10 of '93. Do you see that, sir?

11 A. Grant Kemmerer, John Guy Walker, and John Guy Walker to  
12 James Dukes, E682 on August of '93.

13 Q. Okay. And you got it in November of '92, approximately?

14 A. Yes, that's true.

15 Q. Okay. And the same thing kind of like on E685, which is  
16 Government's Exhibit 1.6. You got that in November of '92 and  
17 you sold it in December of '92, right?

18 A. To Beckford.

19 Q. Yes, sir.

20 A. That's correct.

21 Q. And as a matter of fact, you obtained 682, 683, and 685  
22 all on the same date in November 1992. Wouldn't that be  
23 correct?

24 A. Yeah. That's correct.

25 Q. But you were unable to sell E683 until February of 1996,

1 were you, sir, 3 1/2 years later?

2 A. I presume. That's what the paper says. That's correct.

3 Q. All right, sir. When you received these three items, and  
4 I assume you received more than three from Mr. Kemmerer, you  
5 received quite a few, as I understand?

6 A. Yes.

7 Q. Were they all boxed up individually, together, or how did  
8 they come in normally?

9 A. They came in -- they came in in different batches, and  
10 they would come in one box all together.

11 Q. And would you be the person that would inventory those  
12 when they came in, or would various people inventory them?

13 A. I inventoried them.

14 Q. Okay. Just you, never anyone else?

15 A. Not normally, just normally me. It's possible somebody  
16 else could, but no. Actually, it was not possible because  
17 Class 3 stuff would come to me to put it in a certain -- we  
18 kept all the Class 3 stuff in safes. Everything else was  
19 stored in the warehouse except Class 3 items, and they were put  
20 in safes.

21 Q. So you would have been the individual that inspected or  
22 at least taken the boxes and put them in the safe?

23 A. That's correct.

24 MR. MARTIN: Nothing further.

25 MR. KUMIEGA: Nothing further, your Honor.

1 THE COURT: Mr. Davenport, you may be excused, and I  
2 would advise you you're not to discuss the testimony given here  
3 today with other person who may be a witness in this matter.

4 Call your next witness.

5 MR. KUMIEGA: Yes, your Honor. The United States  
6 would like to call Julie White.

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

10 DIRECT EXAMINATION

11 BY MR. KUMIEGA:

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

13 A. My name is Julie White.

14 Q. And how are you employed, please?

15 A. Currently I work for the Health Research Institute in  
16 Oklahoma City. I'm the director of clinical research.

17 Q. Can you pull that microphone closer to you, ma'am. Okay.  
18 And can you tell the -- first of all, you said you're director  
19 of clinical research; is that correct?

20 A. That's correct.

21 Q. And what does that entail, please?

22 A. I run clinical trials for pharmaceutical companies who  
23 are testing new drugs.

24 Q. And where do you office out of?

25 A. 1044 Southwest 44th in Oklahoma City.

1 Q. And how long have you been working there, please?

2 A. Since May of this year.

3 Q. May of 2008?

4 A. Yes, that is correct.

5 Q. And can you tell the jury something about your  
6 educational background, please?

7 A. Sure. I have an associate's degree in psychology, I have  
8 a bachelor's degree in marketing with a minor in psychology,  
9 and I have a master's of business, MBA.

10 Q. From what universities, please?

11 A. University of Central Oklahoma.

12 Q. Okay. And at one time -- at a time in your life, ma'am,  
13 were you employed by Mr. Friesen?

14 A. I was.

15 Q. And can you tell the jury the dates of your employment,  
16 please?

17 A. It was November of 2002 until the -- it was, like, end of  
18 January, beginning of February of 2004.

19 Q. All right. So you said November of 2002 to January of  
20 2004; is that correct?

21 A. I'm sorry. I can't see. Yes.

22 Q. Yes. Okay. And what duties did you have with the  
23 Friesen law firm?

24 A. I was the director of operations.

25 Q. Excuse me.

1 A. I was the director of operations.

2 Q. What did that entail, please?

3 A. Pretty much just running the office.

4 Q. All right.

5 A. Just like a glorified office manager, pretty well.

6 Q. How many employees did he have, please?

7 A. I think seven.

8 Q. Seven employees?

9 A. Around six or seven. I can go ahead and -- that is  
10 correct.

11 Q. Seven employees?

12 A. Yes.

13 Q. And you said that you kind of were like the Girl Friday  
14 then for the office?

15 A. Well, yeah, glorified -- yeah. Office, glorified office  
16 manager, if you will.

17 Q. Okay. Were you aware, ma'am, of a -- of the law library  
18 on the first floor?

19 A. Yes, I was.

20 Q. And was there anything peculiar about that law library,  
21 please?

22 A. The -- just the room that was behind the law library.  
23 That was the only --

24 Q. Tell us about the room behind it.

25 A. There was a room, there was the law library and a

1 conference room. And in between those two walls there were, it  
2 was just a pretty small room that had a safe and some artwork  
3 in it.

4 Q. Excuse me?

5 A. Had a safe and some artwork in it.

6 Q. All right. And were you familiar -- first of all, how  
7 would someone gain access to that area, please?

8 A. I never entered the location, I never opened it myself,  
9 but there was, like, a remote control device that opened it.

10 Q. All right. You were never in that room itself?

11 A. I was in the room, but I never opened it myself.

12 Q. Okay. Never opened what, please?

13 A. The entry to the secret room.

14 Q. Okay. Are you familiar with what type of things were  
15 inside that room?

16 A. Yes.

17 Q. All right. Let's look at Government's Exhibit 2.1,  
18 please. Are you familiar with that?

19 A. Yes.

20 Q. Okay. Can you look at Government's Exhibit 2.2. Are you  
21 familiar with the interior of that exhibit?

22 A. Yes.

23 Q. Would you look at Government's Exhibit 2.3. Are you  
24 familiar with that?

25 A. Yes.

- 1 Q. And Government's Exhibit 2.4, are you familiar with that?
- 2 A. I -- I don't remember seeing that or paying attention to  
3 it, walking in there.
- 4 Q. We're going to play a video clip for you, 2.0.1. What is  
5 that, please?
- 6 A. That's the law offices of Doug Friesen.
- 7 Q. Okay.
- 8 A. The exterior.
- 9 Q. That's the exterior. Okay. This is a clip, right?  
10 What's that, please?
- 11 A. That's the law library, and that's the entry to what I  
12 will call the secret room.
- 13 Q. Okay. Are you familiar yourself now with the exhibit  
14 that you couldn't identify, 2.4?
- 15 A. I'm sorry. Could you repeat that?
- 16 MR. KUMIEGA: If we can go back and start on the  
17 second part. Stop right there. Go back.
- 18 Q. (By Mr. Kumiega) Does that look familiar?
- 19 A. I mean, the entire room is familiar. I don't  
20 specifically remember what was on top of the --
- 21 Q. Okay.
- 22 A. -- the safe.
- 23 Q. Now, you were employed on February 19, 2003 as the office  
24 manager for Mr. Friesen; is that correct?
- 25 A. It was November of 2002.

1 Q. When, please?

2 A. November of 2002.

3 Q. When you did what?

4 A. When I was employed as the director of operations for  
5 Doug Friesen.

6 Q. And when did you leave his employment?

7 A. It was end of January, beginning of February, 2004.

8 Q. Okay. 2004. So you were working there in February of  
9 2003?

10 A. Yes.

11 Q. Okay.

12 A. Oh, I'm sorry.

13 Q. You were working there in 2003. And do you know what was  
14 stored in that vault?

15 A. Sure. Guns.

16 Q. How do you know that?

17 A. Well, I saw them there.

18 Q. All right. And did Mr. Friesen make any comments about  
19 the guns stored in that vault?

20 A. He just showed them to me one day.

21 Q. All right. And was there much traffic inside that secret  
22 room?

23 A. Occasionally he would have, maybe once a week he would  
24 have someone visit the office and would show them -- I'm not  
25 sure what he was showing them, but they would go into the room,

1 and I just assumed he was showing them a new gun or something,  
2 because he was very proud of them.

3 Q. Proud of his guns?

4 A. Uh-huh.

5 Q. Okay.

6 MR. KUMIEGA: Nothing further from this witness, your  
7 Honor.

8 THE COURT: You may cross-examine.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q. You were familiar with the fact, were you not, Ms. White,  
12 that Mr. Friesen was involved in teaching firearms classes,  
13 were you not?

14 A. Yes, I was aware of that.

15 Q. Concealed carry and other types of classes involving the  
16 use of firearms?

17 A. Correct.

18 Q. Okay. And I believe you actually worked, as I recall, in  
19 a house that would be just south of the office that you  
20 identified a while ago; is that right?

21 A. Correct. During the, like, first year that I was there  
22 it was in the main house, and then we moved over into the house  
23 next door after about a year.

24 Q. Okay. So if you started in November of 2002, you're  
25 saying in, like, November of 2003, approximately that time

1 frame, you left the office and went into another building that  
2 would be immediately south?

3 A. Correct.

4 Q. All right.

5 A. Of course, I'm not sure of the dates.

6 Q. Okay. And I'm not trying to pin you down.

7 A. Okay.

8 Q. I just added a year to November, okay?

9 A. Okay.

10 Q. And you were there up until February of 2004, correct?

11 A. Yes.

12 Q. And Mr. Kumi ega showed you photographs of a safe and some  
13 photographs of the inside of the safe. Do you recall that?

14 A. Yes.

15 Q. Okay. Are you yourself personally familiar with  
16 firearms, ma'am?

17 A. I am not.

18 Q. Okay. It would be fair to say then, would it not, that  
19 you don't remember any particular firearm in that safe, do you,  
20 ma'am?

21 A. That would be correct.

22 Q. Okay. You remember seeing what you've classified as  
23 firearms, but you can't say what type, model, make or anything  
24 like that?

25 A. Correct.

1 Q. Okay. And --

2 MR. MARTIN: Nothing further.

3 THE COURT: Anything further?

4 MR. KUMIEGA: Nothing further from this witness, your  
5 Honor.

6 THE COURT: Ms. White, you may be excused, and I would  
7 advise you you're not to discuss your testimony with other  
8 persons who may be a witness in this case.

9 Call your next witness.

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

11 THE COURT: Yes.

12 (The following was had at the bench, out of the hearing of  
13 the jury:)

14 MR. KUMIEGA: Judge, I apologize. I've run out of  
15 bodies, no one else here.

16 THE COURT: Is anybody trying to come in?

17 MR. KUMIEGA: One woman, her baby is sick. We had the  
18 woman sitting here a long, long time trying to accommodate the  
19 out-of-state witnesses. Then we have a witness who is --

20 THE COURT: What was the purpose of the last witness?

21 MR. MARTIN: We don't have any more witnesses?

22 MR. KUMIEGA: We have a series -- we can make that  
23 real, real quick for two --

24 THE COURT: What was the purpose of that witness?

25 MR. KUMIEGA: To show for Count 2, that he stored guns

1 constantly in the safe during that period of time.

2 THE COURT: So we don't have any more witnesses, Mr.  
3 Kumi ega?

4 MR. KUMI EGA: No.

5 THE COURT: Do we have your expert here so we can have  
6 the hearing?

7 MR. KUMI EGA: I was mistaken, Sarah Walbridge is not  
8 here. She'll be here at five o'clock.

9 THE COURT: She'll be here in the courthouse at five?

10 MR. KUMI EGA: No. She'll be landing tonight at five  
11 o'clock.

12 THE COURT: And you can't -- you've got four or five  
13 of these other witnesses and you can't get any of them here?

14 MR. KUMI EGA: I can find Ms. Gillis, who is an expert,  
15 but I haven't talked to her regarding her testimony. She flew  
16 in this morning.

17 THE COURT: Where is she?

18 MR. KUMI EGA: She's downstairs in the witness room.  
19 She got here a little while ago.

20 THE COURT: Let's put her on.

21 MR. KUMI EGA: Can I have a five-minute break to talk  
22 to her about her testimony before I put her on?

23 THE COURT: There is no challenge.

24 MR. MARTIN: I'll stipulate to her testimony. She's  
25 going to say it's a machine gun.

1 THE COURT: So we'll just stand at ease for five  
2 minutes while you go get her.

3 MR. KUMIEGA: Yes, your Honor.

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

6 THE COURT: Ladies and gentlemen, we're going to stand  
7 at ease for about five minutes while we go get another witness  
8 who is in the basement. So if you want to stand and stretch  
9 and visit quietly among yourselves, you may do, as long as you  
10 don't talk about the case. We'll just be at ease.

11 (Brief pause)

12 THE COURT: Come up here and be sworn by the clerk,  
13 please.

14 (Witness sworn)

15 ELIZABETH ANN GILLIS,  
16 called as a witness, having been duly sworn, testifies as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. KUMIEGA:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Can you introduce yourself to the jury?

23 A. Good afternoon. My name is Elizabeth Ann Gillis.

24 Q. And how are you employed?

25 A. Pardon?

1 Q. How are you employed, please?

2 A. I'm employed with the Bureau of Alcohol, Tobacco,  
3 Firearms & Explosives.

4 Q. And currently in what capacity?

5 A. Currently, I'm an industry operations specialist.

6 Q. What does that mean?

7 A. I write regulations both in firearms and explosives.

8 Q. Prior to -- well, when did you start doing that line of  
9 work, please?

10 A. Approximately three years ago.

11 Q. Prior to doing that, you also had a job with ATF?

12 A. Yes.

13 Q. What was that, please?

14 A. I worked as a firearms enforcement officer in the  
15 firearms technology branch.

16 Q. And how long did you do that?

17 A. A little under four years.

18 Q. What did that entail, please?

19 A. That entailed examining firearms that were submitted by  
20 special agents as well as manufacturers and importers of  
21 firearms to determine classification, origin, and  
22 identification of the firearms and/or ammunition. Also  
23 testifying in court and maintaining a firearms reference  
24 collection of over 6,000 firearms.

25 Q. All right. Were you in charge of maintaining that

1 collection?

2 A. I was one of, yes, one of many people.

3 Q. All right. During the course of your experience, have  
4 you testified as an expert witness around the country?

5 A. Yes, I have.

6 Q. Specifically, in what capacity?

7 A. As a firearms enforcement officer, and also prior to that  
8 job I spent 11 1/2 years in the ATF Laboratory as a firearms  
9 and toolmark examiner examining bullets and cartridge cases to  
10 determine if they were fired from a particular firearm to the  
11 exclusion of all others, restoring serial numbers on firearms,  
12 as well as doing crime scene reconstruction and gunshot, gun  
13 powder residue testing on victims' clothing.

14 Q. Did you get a specialized line of training for that type  
15 of work?

16 A. Yes, I did.

17 Q. Tell the jury about, please.

18 A. My training at Laboratory consisted of a 2 1/2 year  
19 on-the-job training program where I worked under senior  
20 firearms and toolmark examiners and learning the discipline, as  
21 well as traveling to different firearms manufacturers to see  
22 how the firearms are made. I also spent time in, when I was at  
23 the Laboratory in the firearms technology branch just to learn  
24 about machine guns, how they functioned, silencers, things of  
25 that nature.

1 Q. In the course of this investigation, did you have the  
2 opportunity to look at Government's Exhibit 3.16, that's going  
3 to be the farthest gun from you, I think. Yes.

4 A. Yes, I did.

5 Q. All right. And first of all, can you tell the jury what  
6 the federal definition of a machine gun is, please.

7 A. Well, it's a weapon that will shoot in -- it's a weapon  
8 that will shoot full automatic basically with the single --  
9 sorry -- with a single function of the trigger, it will fire  
10 more than one round. It also consists of the frame or receiver  
11 of a machine gun.

12 Q. All right. And let me ask you this: What's in front of  
13 you as -- to the right of government's exhibit, to the right by  
14 the water, yes, is a tube, Government's Exhibit No. 8. What  
15 would you consider that? I know I haven't had time to show you  
16 that today, but what is that, please?

17 A. It appears to be a tube that's been -- that's been cut in  
18 a configuration, basically, I guess considered a -- I'm sorry,  
19 a machine gun according to federal law, because it's a tube  
20 that's been cut in certain locations in order to accept machine  
21 gun parts.

22 Q. All right. The government's exhibit that you looked at,  
23 3.16, the one with the tag, is this a machine gun?

24 A. Yes, it is.

25 Q. And did you do certain testing to validate that, please?

1 A. I did. I test-fired it in our range and determined not  
2 only would it fire in the semi-automatic mode, but when the  
3 selector is pushed to the automatic mode it would fire more  
4 than one round with a single function of a trigger.

5 Q. And the definition of a machine gun is found in Title 18  
6 of United States Code; is that correct?

7 A. That's correct.

8 Q. Okay. Now, in particular, did you make an analysis of  
9 what type of machine gun you examined?

10 A. I had called it a Sten type machine gun.

11 Q. All right. And did you get more -- did you get a more  
12 narrow definition of what type of Sten type machine gun?

13 A. Not within my report, I just called it a Sten type.

14 Q. Okay. So are you saying that -- what type of weapon is  
15 it, do you know?

16 A. It is a -- it actually is a Sten type Mark III.

17 Q. All right.

18 A. But I did not put that in my report. I just listed it as  
19 Sten type submachine gun.

20 Q. And why do you make -- why do you couch it in the Sten  
21 type Mark frame? Tell the jury about that, please.

22 A. Well, when they made the Sten they basically made several  
23 different types. They were typically cosmetic changes. It  
24 might have been because of the stock itself, it might have been  
25 because of the barrel, the -- just cosmetic designs of the

1 different weapons.

2 Q. All right. Is the tube of the firearm important to make  
3 a determination between a Sten II and Sten III, the receiver?

4 A. Yes.

5 Q. All right. Tell us about that, please?

6 A. Well, the tube on the Sten III is going to be, it's  
7 typically sheet metal that's welded together along with the  
8 barrel, so basically the barrel cannot be removed. And it's  
9 typically welded or -- typically welded or riveted together as  
10 one complete unit, basically it's integral, both the barrel and  
11 the jacket itself, or the tube.

12 Q. All right. Do machine guns, according to your  
13 understanding, or any firearm here in the United States, do  
14 they need serial numbers?

15 A. Yes, they do.

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

17 A. For identification purposes, inventory, when inspectors  
18 go out and inventory them to identify them to a particular  
19 weapon.

20 Q. All right. And you looked at the serial number on, the  
21 purported serial number on Government's Exhibit 3.16; is that  
22 correct?

23 A. There were multiple numbers when I had examined it. I  
24 had identified it by a number that I found on the magazine  
25 housing.

1 Q. Okay. And then is there a number below that, please?

2 A. Yes. There's a number that's on the bottom side of the  
3 bottom portion of the tube.

4 Q. All right. From your understanding of federal law, do  
5 the serial numbers always need to be displayed?

6 A. Yes.

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

8 THE COURT: Yes.

9 (Brief pause)

10 Q. (By Mr. Kumi ega) So the serial number has to be where,  
11 please, on that -- on all machine guns?

12 A. It has to be on the frame or receiver of the machine gun.

13 Q. And is someone allowed to remove a serial number from a  
14 firearm?

15 A. No.

16 MR. KUMIEGA: Nothing further, your Honor.

17 THE COURT: You may cross-examine.

18 CROSS-EXAMINATION

19 BY MR. MARTIN:

20 Q. The purpose of your examination, was it not, ma'am, or  
21 Agent Gillis, was to determine whether or not this was a  
22 firearm -- excuse me -- a machine gun, right?

23 A. Correct.

24 Q. Did you perform any other tests other than that on it?

25 A. No, I did not. Just a physical examination as well as a

1 test firing.

2 Q. Okay. Now, you were talking about the serial numbers a  
3 minute, Mr. Kumi ega asked you some questions about the serial  
4 numbers. The serial number has to be on the tube; isn't that  
5 correct?

6 A. On the frame or the receiver, which is part of, yes, part  
7 of the tube.

8 Q. Okay.

9 A. It's considered.

10 Q. And there is a number on the tube, is there not, ma'am?

11 A. Yes, there is.

12 Q. The E683?

13 A. Yes, there is.

14 Q. Okay. And I believe you said now you're writing  
15 regulations; is that right?

16 A. That's correct.

17 Q. Okay. And you're familiar with the regulation that came  
18 into effect in 2002 about the size and the depth of the serial  
19 numbers, are you not?

20 A. Yes, I am.

21 Q. And you knew that was because serial numbers before that,  
22 they didn't have any depth or size and they could rub off or be  
23 -- virtually become invisible?

24 A. I would not say they would just rub off. Typically, the  
25 manufacturers when they stamp, stamp engrave cast the serial

1 numbers. We found, actually, I was part of the testing when we  
2 were trying to determine the depth of the characters and the  
3 size that it should be for the regulations, I worked in the  
4 laboratory at that time. And we found that the majority of the  
5 manufacturers went beyond that three-thousandths depth, and  
6 typically serial numbers you can't just rub them off.

7 Q. Prior to 2002, there was no depth requirement; isn't that  
8 true?

9 A. That's correct.

10 Q. I could take a paperclip and etch serial numbers in the  
11 side of a tube, and that would meet the requirements of the  
12 rules at that time prior to 2002?

13 A. It would have to be engraved, stamped, impressed.

14 Q. Well, if I can engrave with a paper clip, let's say.

15 A. I'm not sure that that would be considered under the  
16 regulations as being correct.

17 Q. Okay. But there was no depth requirement?

18 A. That's correct.

19 Q. All right. Now, you talked about this being a Sten III.  
20 You actually called it a Sten type, right?

21 A. That's correct.

22 Q. All right. And then today for the first time you've  
23 mentioned you kind of got a Sten III type, I guess. You're  
24 familiar with that a Sten III was a flat piece of metal that  
25 was rolled around I believe it's called a mandrel, are you not,

1 ma' am?

2 A. Yes.

3 Q. And that is not what Government's Exhibit 3.16 is, is it,  
4 ma' am?

5 A. It has been. It's a piece of metal that has been formed  
6 together with a barrel.

7 Q. Okay. But it's not -- it wasn't a flat piece of metal,  
8 it's a tube, isn't it?

9 A. Well, it's -- when you bring it together it forms a tube.

10 Q. Right. Well, and it's welded. Is that one welded at the  
11 top where they bring it together?

12 A. It can be. There is also -- it can be riveted as well,  
13 which this one does contain rivets.

14 Q. This is a flat piece of metal, a mandrel is a long round  
15 piece. A piece of metal is bent around the mandrel. Do you  
16 agree with that?

17 A. It can be.

18 Q. That's what Sten III, that's how they are made, isn't it,  
19 ma' am?

20 A. Some of them might have been made that way.

21 Q. Are you familiar with how Sten IIIs are made, ma' am?

22 A. I know that some of them -- I know that they are made  
23 with the barrel and the barrel jacket or shroud all as one  
24 piece together, and the barrel is not removable. It's  
25 integral.

1 Q. I'm talking about the tube portion. It's welded at the  
2 top, is it not, ma'am? Are you familiar with that?

3 A. Yes.

4 Q. Is it welded at the top, a typical class -- Sten III?

5 A. Yes.

6 Q. That gun, 3.1, is not welded at the top, it is a tube, is  
7 it not, ma'am?

8 A. Yes. It's a tube.

9 Q. Okay. So the classic Sten III characteristic of it being  
10 a flat piece of metal rolled and welded at the top is missing  
11 from that firearm; wouldn't you agree?

12 A. It is not welded at the top, that's correct.

13 Q. And prior to 2002, there were no depth requirements on  
14 serial numbers; is that right, ma'am?

15 A. That's correct.

16 Q. So if we have a tube manufactured in 1986, there is no  
17 depth requirements on the serial number on that tube at that  
18 time, right?

19 A. That's correct.

20 MR. MARTIN: Nothing further.

21 MR. KUMI EGA: Just follow-up, your Honor.

22 REDI RECT EXAMI NATION

23 BY MR. KUMI EGA:

24 Q. Ma'am, you said this is a Sten type gun; is that right?

25 A. That's correct.

1 Q. So would you say it's a hybrid something?

2 A. I'm not sure I understand your question.

3 Q. It's got characteristics of Stens, but it's not really a  
4 Sten III?

5 A. It's characteristics of a Sten. It's typical of a Sten  
6 III in the sense of its physical characteristics.

7 Q. But it's lacking something; is that correct?

8 A. It's lacking the weld at the top along the top of the  
9 tube.

10 Q. Correct. And in your experience, what does that tell  
11 you?

12 A. That it's -- it's an after -- it's, I would think, like  
13 an after-market type, if you will.

14 Q. What do you mean by that?

15 A. That it's not -- it wasn't manufactured, it wasn't  
16 manufactured in World War II, and it wasn't remanufactured in  
17 the sense of having been originally a Sten III.

18 Q. Okay.

19 A. So it's like a copy of, if you will, or something very  
20 similar to a Sten type III.

21 Q. This is not a replication of anything then?

22 A. Correct.

23 Q. Okay.

24 MR. KUMIEGA: Nothing further, your Honor.

25

1 RECCROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. I believe you told Mr. KumiEGA that a machine gun was  
4 defined in Title 18. Do you recall that, ma'am?

5 A. Defined in Title 18?

6 Q. Right. The definition of a machine gun.

7 A. I --

8 Q. If you don't know, you can just --

9 A. I don't know. I mean, I don't know if -- he had asked me  
10 if it was in Title 18.

11 Q. All right. Are you familiar with Title 26 and the  
12 definition found in Section 5845?

13 A. Yes.

14 Q. And that's where a machine gun is defined, is it not,  
15 ma'am?

16 A. That's correct.

17 MR. MARTIN: Nothing further.

18 MR. KUMIEGA: Just follow-up.

19 REDIRECT EXAMINATION

20 BY MR. KUMIEGA:

21 Q. It's still a machine gun either under Title 18 or Title  
22 26; is that right?

23 A. It is a machine gun under Title 26 and a machine gun is  
24 named under I believe Title 18. It's not defined but --

25 MR. KUMIEGA: Nothing further, your Honor.

1 THE COURT: Ms. Gillis, you may be excused.

2 THE WITNESS: Thank you.

3 Government may call their next witness.

4 MR. KUMIEGA: Your Honor, at this time we have no  
5 other witnesses to call for today.

6 THE COURT: Counsel approach.

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

9 THE COURT: I know what Judge Daugherty would do, you  
10 would be resting right now.

11 MR. KUMIEGA: Don't do that, your Honor. I apologize.  
12 I ran out of witnesses.

13 THE COURT: I hoped to work late these days and finish  
14 this before Wednesday for the jury's sake. How long do you  
15 anticipate that the Daubert hearing is tomorrow?

16 MR. MARTIN: Well, as I understand, Mr. Kumi ega has  
17 the burden of establishing there is scientific basis for his  
18 witness's testimony, your Honor. I think -- I'm assuming he  
19 can do it within 20 or 30 minutes.

20 THE COURT: What's she an expert on?

21 MR. KUMIEGA: She's an expert on paint. She's going  
22 to say when she analyzed Government's Exhibit 3.16 there is  
23 only one layer of paint.

24 THE COURT: Shouldn't take -- her testimony won't take  
25 very long.

1 MR. KUMI EGA: I don't believe it would. I believe  
2 that's the crux of her testimony.

3 THE COURT: Okay. I'm going to have the jury come in  
4 at 10:00, and we're going to have that hearing at 9:30. We'll  
5 be finished by 10:00 with the hearing.

6 MR. MARTIN: You have her, LeMaster, Ladd, and are you  
7 going to have some more employees?

8 MR. KUMI EGA: I've got three more employees. Nelson  
9 is the first one, Nelson; Annette Johnson sold him some guns,  
10 or he had some guns in the vault; Ms. Long, who is another  
11 employee. So I've got some work to do because I want to  
12 interview Ladd in the morning and file a motion for LeMaster.  
13 I'm getting really close to wrapping it up. I just need a  
14 little time because of the -- Mr. Ladd is in the transfer  
15 station. We need to bring him here so we can put him on the  
16 stand. And Ms. LeMaster is represented by Mr. Byers, so we  
17 need to get ahold of them, but we're close to finishing.

18 MR. MARTIN: My concern is he might finish at four, he  
19 might finish at six, and I don't want to get in trouble with  
20 you, Judge. If he finishes at four, I need to know if you need  
21 me to be ready to jump and run, or if we're going to start  
22 early maybe Wednesday morning, or how you want to --

23 THE COURT: Jump and run.

24 MR. MARTIN: Okay. So we should have some idea by  
25 noon.

1 MR. KUMI EGA: Yes, sir.

2 THE COURT: Okay.

3 MR. MARTIN: Out of an abundance of caution, Judge,  
4 should we advise the jury if it goes we may not be here  
5 Thursday, so they can make plans?

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

8 THE COURT: Ladies and gentlemen of the jury, it  
9 appears we're not going to work until six today; we have no  
10 more witnesses available. It had been my goal, and I told you  
11 that we would be finished I thought by the end of last week or  
12 certainly no later than a day or two this week. It appears  
13 that because of the delay that we had unforeseen by myself when  
14 I told you that, and the complications with the, some of the  
15 evidentiary matters that we had that we certainly went into  
16 this week, and I had hoped we would be through this week. But  
17 it looks like we may be back Monday of next week in that I have  
18 something that we cannot have court on Thursday and Friday that  
19 I cannot change, another matter.

20 And I apologize to all of you, but I would just let you  
21 know that we will not be meeting Thursday and Friday. I'm  
22 hoping that we will have almost all of the evidence, if not all  
23 the evidence, completed by Wednesday. And it would be my  
24 intention, and I will instruct the parties to not run out of  
25 witnesses the next two days, because it will be my intention to

1 work as long as we can, and I had hoped we could tonight. But  
2 Ms. Grayson, I see that you're disappointed that we got the air  
3 conditioner working, and I think you share that with Ms.  
4 Youngberg. But it was a little warm for the rest of us, so  
5 bring your jacket tomorrow.

6 I hope that doesn't work any undue hardship on anybody,  
7 but you will have Thursday and Friday off, and we will have to  
8 come back next Monday, and I do have a trial starting next  
9 Tuesday, another trial. So I would just tell counsel that  
10 we're going to do whatever it takes to finish up by Monday, and  
11 we will work this week to see that we can achieve that goal.

12 With that, I again would advise you do not discuss the  
13 case with anyone or allow anyone to discuss it with you. Do  
14 not do any research or anything on your own regarding the  
15 matters involved in this case or persons involved. Also if  
16 you'll leave your notebooks.

17 Now, we do have one matter to take up with counsel at 9:30  
18 in the morning, the jury -- on an evidentiary issues that we've  
19 got to work before -- so the jury will need to be here at 10:00  
20 and we'll start promptly at 10 a.m.

21 Leave your notebooks in your chair, and with that, we'll  
22 be in recess until 10 a.m. in the morning.

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

25 THE COURT: I would tell counsel that I do intend on

1 starting at 10:00, so make your -- be ready for that hearing  
2 promptly at 9:30.

3 MR. KUMIEGA: Yes, sir.

4 THE COURT: We'll be in recess until then.

5 (Court stood in recess until September 23rd, 2008. For  
6 further transcription, see Volumes V through VII of this  
7 transcript.)

8 \* \* \* \* \*

9 REPORTER'S CERTIFICATE

10

11 I hereby certify that the foregoing is a correct  
12 transcript from the record of the proceedings in the  
13 above-entitled matter.

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B. Jeanne Ring, RDR

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