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1 (The following was had in open court on September 23rd,  
2 2008, without the presence of the jury. For prior  
3 transcription, see Volumes I through IV of this transcript.)

4 THE COURT: This is Case No. CR-2008-41-L, United  
5 States of America versus Larry Douglas Friesen. Parties ready  
6 to proceed on the Daubert hearing as it relates to the  
7 Government's expert Sarah Walbridge?

8 MR. KUMIEGA: Yes. Good morning, your Honor. The  
9 United States is ready.

10 MR. MARTIN: Defendant is ready, your Honor.

11 THE COURT: You may proceed.

12 MR. KUMIEGA: Since there is a motion filed in this  
13 case, is there any particular -- I'm not exactly sure what  
14 parameters the Court would like to hear, but I'm going to try  
15 my best.

16 THE COURT: Mr. Martin, what is the objection to Ms.  
17 Walbridge?

18 MR. MARTIN: Your Honor, the Daubert case says before  
19 the Court hears any type of scientific evidence he has to make  
20 basically certain findings, that, number one, there's  
21 scientific knowledge to establish that there is some type of  
22 reliability to the opinion that she is to give; further, that  
23 the individual that is going to testify about that, i.e., in  
24 this case, Ms. walbridge, has the specific knowledge herself,  
25 and her testimony will assist the trier of the fact. The

1 government has burden at a Daubert hearing to establish that  
2 the methodology can be tested to show, you know, the error  
3 rates, the falsity versus the -- false positives and things  
4 like that. Further, that there is some type of peer review,  
5 that the testimony that she gives has been subject to peer  
6 review of other people that are in the field that are  
7 knowledgeable, the rates of error as to whether or not there  
8 are certain rates of error. And then I think finally, your  
9 Honor, that based upon that, you have to make a determination  
10 as to whether or not as a gate-keeping function under Kumo Tire  
11 v. Carmichael that this would be ultimately beneficial to the  
12 jury in reaching the issues of the case.

13 THE COURT: I'm aware of what the Court needs to find,  
14 but let me ask, we've had other experts in which there has been  
15 no request for a Daubert hearing. What specifically are you  
16 challenging the criteria as it relates to this particular  
17 witness?

18 MR. MARTIN: She's going to testify, your Honor, from  
19 what I understand from the report that I was provided about  
20 testing relating to the paint coating of this firearm, whether  
21 or not it has more than one coating, whether or not the --  
22 basically, whether or not there is presence of more than one  
23 paint coat on there, and also a little bit of testimony about  
24 the presence of paint coats within the actual serial numbers,  
25 that E683, your Honor. And I don't know if there's scientific

1 knowledge or skills available out there to make the kind of  
2 conclusion that she's drawn in this case. It's my  
3 understanding she's going to testify there's a single coat of  
4 paint on this gun, and I think she used -- I think her  
5 testimony will also relate to certain tests that she made  
6 relating to that to make that determination, and whether or  
7 not, whether or not an abrasive, and by that it can be either a  
8 solvent, certain solvents were used to remove paint off this  
9 gun to make those serial numbers more visible, your Honor.

10 THE COURT: So are you questioning both her  
11 qualifications and the experiments that she did?

12 MR. MARTIN: I have her resume, your Honor, but I  
13 don't know that her resume, and we'll find that out,  
14 specifically relate to the type of testimony she's going to  
15 give.

16 THE COURT: Okay.

17 MR. MARTIN: The only other concern I have, your  
18 Honor, her tests in this case, and this is more in limine than  
19 it is relating to the hearing outside the presence of the jury,  
20 her tests are based upon supposed statements that my client  
21 have made that have not been offered into evidence and I don't  
22 think will be offered into evidence that he removed paint from  
23 this gun. And I'm concerned about her attributing any  
24 statements to my client.

25 THE COURT: Mr. Kumi ega, you may present your

1 witnesses so the Court can make the proper determinations.

2 MR. KUMIEGA: Yes, your Honor. The United States  
3 would call Sarah Walbridge.

4 (Witness sworn)

5 SARAH WALBRIDGE,  
6 called as a witness, having been duly sworn, testifies as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. KUMIEGA:

10 Q. Ma'am, would you introduce yourself to the judge, please?

11 A. Yes. My name is Sarah, S-A-R-A-H, Walbridge,  
12 w-A-L-B-R-I-D-G-E.

13 Q. And, ma'am, how are you currently employed?

14 A. I'm a forensic chemist for the Bureau of Alcohol,  
15 Tobacco, Firearms & Explosives, forensic science laboratory in  
16 Walnut Creek, California.

17 Q. And what's the nature of your work, please?

18 A. My specialty is trace evidence. Examples of trace  
19 evidence include hairs, fibers, paint, and any other material  
20 that doesn't really fit into another section of our laboratory.

21 Q. And what other the sections of the laboratory are in your  
22 office, please?

23 A. We have an arson section, an explosives section, a latent  
24 print section, and a firearms and toolmark section.

25 Q. And prior to that what, was your work experience, please?

1 A. I worked for a company called Microtrace as a research  
2 microscopist dealing with trace evidence as well.

3 Q. And what is your formal educational background, please?

4 A. I have a bachelor in chemistry from Elby College in Elby,  
5 Michigan, and a master in forensic science from Michigan State  
6 University.

7 Q. Have you received any specialized training and/or  
8 experience in your scientific field?

9 A. I've received in-service training with ATF from qualified  
10 examiners. I've also taken many courses put on by forensic  
11 organizations or colleges such as forensic examination of  
12 paint, I've taken microscopy courses from the McCrone Research  
13 Institute, to name a few.

14 Q. And are you a member of any professional organizations?

15 A. I'm a member of the American Academy of Forensic  
16 Sciences, I'm also a member of the Midwestern Association of  
17 Forensic Scientists, as well as the California Association of  
18 Criminalists.

19 Q. And do you have any individual certifications, please?

20 A. Yes. I'm a fellow, trace analyst hairs and fibers fellow  
21 with the American Board of Criminalists.

22 Q. And what does that mean?

23 A. That means I'm certified to continue -- I passed an exam,  
24 and then I work for a laboratory doing full-time case work in  
25 my specialty, and to keep my certification I need to pass

1 proficiency tests, and my laboratory did do proficiency tests  
2 yearly.

3 Q. Now, you have prepared a report regarding certain  
4 analysis that you have for forensic testimony today; is that  
5 correct?

6 A. That's correct.

7 Q. And if you can give the Court the conclusions before we  
8 launch into the Daubert criteria of what you found during your  
9 testing procedures, please.

10 A. Okay. I was asked to look at the impressed markings on  
11 the receiver of the firearm, which is here, which was submitted  
12 as Exhibit 1 to our laboratory. During my examination of the  
13 markings, the E683, those were the markings in question, I  
14 found that this was a single layer of black paint surrounding  
15 those markings, and that that black paint was lodged into the  
16 impressed markings indicating that paint was present on the  
17 receiver prior to this stamping process. I sampled some of the  
18 paint within the impression as well as some of the paint  
19 adjacent to the impression and found that they shared the same  
20 elemental composition and chemical composition, which further  
21 indicated that that paint was placed on the receiver prior to  
22 the stamping process.

23 Q. Can you tell the Court about your analysis regarding some  
24 abrasive solutions, and I think you marked three types of  
25 solutions that you examined during the course of your forensic

1 technique?

2 A. A second question submitted from the agent was whether  
3 some sort of solution or solvent was used around those  
4 impressed markings. I didn't find any indication that a  
5 solution or solvent was used. I did some testing on another  
6 area of the firearm using some common solutions. It wasn't  
7 known what solution possibly was used, so I used ethyl alcohol  
8 and acetone, because they are readily available to the public,  
9 and also Fry's Reagent, which is a solution used by firearms  
10 examiners to restore serial numbers. And I did find that the  
11 paint was soluble in acetone, which is typical for paint  
12 because acetone is a component of paint. And it kind of gave  
13 the impression of it removed all the paint down to the metal,  
14 kind of gave an impression of coloring outside of the lines.  
15 There was nothing to indicate that that occurred over by the  
16 E683 markings.

17 Q. Now, you've generated reports regarding the analysis that  
18 you just articulated to the Court; is that correct?

19 A. That's correct.

20 Q. And all these reports have been basically peer reviewed;  
21 is that right?

22 A. Our laboratory requires that 100 percent of our case work  
23 is technically reviewed by another qualified examiner. So this  
24 case has been technically reviewed, as well as administratively  
25 reviewed.

1 Q. Let me ask you this, ma'am: The techniques that you used  
2 to make these findings, are they commonly accepted in your  
3 field of trace evidence?

4 A. Yes.

5 Q. All right. First of all, one of the Daubert criteria for  
6 forensic comparative analysis is -- well first of all, before I  
7 launch any further, you did a comparative analysis in this  
8 investigation; is that correct?

9 A. Yes. I was comparing material.

10 Q. All right. Is that what comparative analysis is,  
11 comparing materials?

12 A. Comparing -- looking for similarities and differences, we  
13 do it not only in forensics but in many fields, comparative  
14 anatomy. We do it as individuals when our headlight breaks in  
15 our car, we take it to Home Depot, we compare it to the other  
16 light bulbs to figure out which one we need to purchase. It's  
17 scientific methodology. It's been around for thousands of  
18 years in comparing things.

19 Q. And has this been tested or can it be tested?

20 A. Yeah. I think it's been talked about at meetings, it's  
21 been published in journals and books in many fields, not only  
22 forensics, but any science, it's been done in laboratories  
23 across the U.S.

24 Q. This is comparative analysis?

25 A. Comparative analysis, comparing two things.

1 Q. Has this technique, comparative analysis, comparing two  
2 things, has this been peer-reviewed, please?

3 A. For forensics, I know it has. The Journal of Forensics  
4 Science is a peer-reviewed publication that's devoted to  
5 publishing scientific observations, scholarly inquiries in all  
6 the fields of forensic. So, you know, my specialty is trace  
7 evidence, but comparisons go on in firearms and toolmarks, if  
8 we're just specifically talking about forensics.

9 Q. Specifically in the case that you're trying to present to  
10 the Court today, was your conclusions and your methodology on  
11 how you reached those conclusions, were they peer-reviewed,  
12 please?

13 A. Yes, they are peer-reviewed.

14 Q. By who and was it independent? Tell the Court about that  
15 procedure, please.

16 A. The peer reviewer for this case was another qualified  
17 examiner whose specialty is trace evidence as well. Do you  
18 need her name?

19 Q. Yes.

20 A. Lee Brun-Conti.

21 Q. Would you spell that?

22 A. L-E-E, Brun is B-R-U-N hyphen C-O-N-T-I.

23 Q. Are there standards that control the method or theory and  
24 are there error rates, please?

25 A. Our Laboratory has standards and methods for examining

1 forensic evidence. We also have methods and procedures for  
2 analyzing evidence and they are based on techniques that  
3 historically have been proven to be reliable and accurate in  
4 our field for that evidence. And there really isn't any error  
5 rate for those procedures.

6 Q. Can you explain -- can you give us in detail why there's  
7 no error rate, please? If you can elucidate that for the  
8 Court, please.

9 A. Well, all of our techniques, forensic techniques, whether  
10 it be instrumentation, how to handle evidence, how to log  
11 evidence, that's all been done in labs for years and proven to  
12 be accurate and reliable. We're also an accredited laboratory.  
13 We're accredited by the American Society of Crime Lab  
14 Directors, the acronym is ASCLD Lab, A-S-C-L-D Lab.

15 Q. And what does that mean in the field of comparative  
16 analysis or for forensic work, please?

17 A. Well, for a forensic laboratory to be accredited, ASCLD  
18 sets out criteria that each laboratory, requirements that each  
19 lab have to do. One of the requirements is we're proficiency  
20 tested. Other requirement is all of our casework is  
21 administratively reviewed. Our laboratory takes it a step  
22 further and has 100 percent of our casework peer-reviewed as  
23 well. We also have to have methods and procedures for  
24 chemicals that you use, and you have to have quality assurance  
25 and quality program. And our laboratory is reviewed every five

1 years from ASCLD Lab to keep our certification.

2 Q. Now, the techniques that you use, are they generally  
3 accepted in the community, forensic community?

4 A. Comparative analysis has been around for years. You  
5 know, the first known scientist doing comparative analysis was  
6 Edmond Picard in World War I. He was looking at things. I  
7 mean, fiction-wise, Sherlock Holmes was the first, and Edmond  
8 Picard was actually a criminalist doing comparative analysis to  
9 answer questions related to criminal activity.

10 MR. KUMIEGA: Your Honor, may I approach the witness  
11 with her resume?

12 THE COURT: Yes.

13 Q. (By Mr. Kumi ega) Ma'am, what I have here is Government's  
14 Exhibit 1 for purposes of this Daubert hearing. Is this your  
15 resume?

16 A. Yes, it is.

17 MR. KUMIEGA: Your Honor, the United States would move  
18 Government's Exhibit 1 for the limited purpose of this hearing.

19 MR. MARTIN: No objection.

20 THE COURT: Will be admitted.

21 MR. KUMIEGA: Your Honor, you've heard now the  
22 background, comparative analysis. Would you like to hear the  
23 specifics on how she reached conclusions that are --

24 THE COURT: Yes.

25 Q. (By Mr. Kumi ega) Ma'am, the first conclusion that you

1 reach was there is one layer of paint on the firearm. Can you  
2 tell the Court how you made that conclusion and finding,  
3 please, and what techniques you used?

4 A. I examined the firearm under a microscope, so I got a  
5 detailed view of this suspected markings at a high  
6 magnification. So I was able to see that there was only a  
7 single layer of paint present.

8 Q. All right. And anything interesting about the microscope  
9 you used or any technique regarding your peer review of that  
10 finding?

11 A. Of the microscope?

12 Q. Yes. Is it a microscope you use every day?

13 A. It's a microscope that's used every day. It's called a  
14 stereo microscope. It's just a series of lenses that helps  
15 magnify the object so you can see the fine detail.

16 Q. All right. So is this a subjective conclusion or  
17 objective conclusion that the paint layer, one paint layer was  
18 consistent?

19 A. That's subjective.

20 Q. Okay. And was that peer-reviewed?

21 A. That was.

22 Q. All right. You also made the conclusion that there was  
23 paint before the serial number was stamped on the firearm; is  
24 that correct?

25 A. That's correct.

1 Q. Can you tell the Court how you made that determination,  
2 please?

3 A. Under the microscope I could see that the paint was  
4 lodged within the impression. So that indicated to me that the  
5 paint must have been there before the stamping process  
6 occurred. What I also did was analyze some of the paint that  
7 was wedged within the impression and compared it to the paint  
8 adjacent to that, immediately adjacent to the impression, and  
9 they share the same chemical properties and elemental  
10 properties. So that further indicated to me that that paint  
11 was there prior to the stamping process.

12 Q. And what techniques did you use to determine that,  
13 please?

14 A. The chemical properties were determined by using an  
15 instrument that's called a Fourier Transform Infrared  
16 Spectrometer, which I'll spell. Fourier is F-O-U-R-I-E-R,  
17 Transform, T-R-A-N-S-F-O-R-M, Infrared, I-N-F-R-A-R-E-D,  
18 Spectrometry is S-P-E-C-T-R-O-M-E-T-R-Y.

19 Q. And is this a device or instrument that's commonly used  
20 throughout forensic labs throughout the world?

21 A. This instrument is commonly used in not only forensics  
22 labs but all forensic labs to look at the chemical composition  
23 of both organic and inorganic material.

24 Q. And reliable, if you can give the groundwork on how this  
25 thing works and the theory behind it, please.

1 A. Sure. Essentially, we're talking infrared light, and  
2 transmitting that under our sample. We're measuring how much  
3 of that light is absorbed by our sample. And that absorbance  
4 is characteristic of the chemical makeup of the sample.

5 Q. This has been around for how long?

6 A. The infrared spectrometry has been around for quite a  
7 while. Fourier Transform means that the computer applies a  
8 mathematical model to get the full -- let's see -- the  
9 mathematical model just helps with fully getting, collecting  
10 all of the data. And I know that Fourier Transfer Infrared  
11 Spectrometry has been around at least 20 years.

12 Q. All right. You also performed certain experiments to  
13 determine whether or not the firearm was stamped after it was  
14 painted; is that correct?

15 A. I did.

16 Q. Can you tell the Court about that, please?

17 A. Yes. During my examination under the microscope I could  
18 see that the paint seemed to have been physically altered by  
19 the force of the stamping process. So I wanted to see what  
20 that would look like, you know, wanted to prove what I was  
21 seeing was really true. So what I did was I took a piece of  
22 metal plate from our lab, and the firearms examiner gave me  
23 some die stamps because he had concluded that die stamps were  
24 used on the firearm. So I took a round piece of metal and just  
25 put a piece of tape down the middle of it. On one side of it I

1 stamped some numbers and letters and took some black spray  
2 paint and sprayed over it. On the other side of the metal I  
3 spray-painted the metal first, let the paint dry, and then  
4 stamped some numbers and letters into it, just to see, you  
5 know, I had felt that the paint was there first, and that the  
6 force of the stamp had caused that paint to be wedged into the  
7 impression. So essentially what I was trying to do was see  
8 what that would look like on the little experiment that I did,  
9 and I looked at that metal plate under the microscope and could  
10 see that spray-painting second, stamping first this, then  
11 spray-painting had a very smooth, stamps were completely  
12 covered by the black paint, didn't look anything like the  
13 exhibit. The other side, where I had painted the metal plate  
14 first and then stamped it, that looked very similar to the  
15 exhibit. The paint was wedged into the impression from the  
16 force of the stamping process.

17 Q. All right. You also did an experiment with three  
18 chemicals, you said a Fry's Reagent and some type of solvent;  
19 is that correct?

20 A. Correct.

21 Q. Can you tell the Court about that and was that also  
22 peer-reviewed like your -- let me back up.

23 Was your metal stamping technique, the paint then the  
24 stamp, and then the stamp and paint, was that also  
25 peer-reviewed and further refined by your supervisors?

1 A. Everything that I did was peer-reviewed. It also all was  
2 documented in my case notes, and my entire case notes, all the  
3 data that was generated from each of the instruments that I  
4 used, all the photographs that I took, as well as my laboratory  
5 report was peer-reviewed by another qualified examiner.

6 Q. Okay. Tell the Court with your abrasives, how you used  
7 that, please.

8 A. They were actually solvents. An abrasive seems to me  
9 like a scouring pad or something, so I was really looking at  
10 whether solutions or solvents were used. Ethyl alcohol and  
11 acetone, I mean, acetone is nail polish remover. I didn't  
12 really have an indication from the agent what solvent was used  
13 by the defendant, but the defendant had claimed that the  
14 solvent was used. So I figured ethyl alcohol and acetone,  
15 readily available to the public, I would use those, and then  
16 Fry's Reagent being a solution used to restore serial numbers,  
17 that would be another good choice on another aspect of the  
18 firearm. Away from the impressed markings, I did a solubility  
19 test. Solubility tests are basically looking to see if a  
20 solvent or -- if material is soluble, is it going to completely  
21 dissolve in something.

22 Q. All right. All these techniques you said that they have  
23 been not only peer-reviewed, but they have historical  
24 background, there is -- is there anything unusual that you did  
25 that reaches or pushes the envelope on any of the science that

1 you're explaining to the Court?

2 A. Before technology way back when, I mean, science started  
3 with a microscope and solubility tests, chemical testing. So  
4 no, this has been done for thousands of years.

5 Q. Is this basically, what you today, what you did in  
6 preparation of your testimony, your analysis, is this really  
7 basic science or almost Chemistry 101?

8 A. This is basic comparative analysis. Yes.

9 Q. All right. Now, Ms. Walbridge, you also did a series of  
10 photographs for your courtroom presentation today; is that  
11 correct?

12 A. Correct.

13 MR. KUMIEGA: Your Honor, it's going to be  
14 Government's Exhibit, I think, it's 10 regarding the series of  
15 photographs, and I would like to show that to Court if the  
16 Court would like to see that.

17 THE COURT: What are the series of photographs?

18 MR. KUMIEGA: It's 10, your Honor, series 10 in the  
19 tab.

20 THE COURT: Do I have it here in the book?

21 MR. KUMIEGA: Yes, sir.

22 THE COURT: Let me ask you, Mr. Kumiega, I would like  
23 to have the jury here at ten. Do you have witnesses lined up  
24 for this morning where we can take her, finish this hearing  
25 over the lunch hour and take her testimony first thing this

1 afternoon?

2 MR. KUMI EGA: Well, yes. I'll take it out of order.  
3 I was planning to put Ms. Walbridge on first and launch into  
4 it, your Honor.

5 THE COURT: You have other witnesses here, don't you?

6 MR. KUMI EGA: I think we do. Yes.

7 THE COURT: Go ahead.

8 Q. (By Mr. Kumi ega) Okay. Ma'am, in front of you, if you  
9 can --

10 THE COURT: I have the exhibit in front of me, Mr.  
11 Kumi ega.

12 MR. KUMI EGA: Yes, your Honor.

13 Q. (By Mr. Kumi ega) Ma'am, in front of you is going to be  
14 Government's Exhibit No. 10. Soon as the computer gets warmed  
15 up we'll try to flash it. Is that a picture of the firearm?

16 A. Yes, it is.

17 Q. All right. And that's Exhibit No. 1 and it's dated  
18 February 22nd, 2008; is that correct?

19 A. Yes.

20 Q. All right. Were you part of taking those pictures on  
21 page 1 and 2?

22 A. I am. My initials SW are on the photograph.

23 Q. And HA, whose initials is that?

24 A. Howard Kong.

25 Q. The next page is some letters, or 398. Would a metal

1 plate sprayed with black plate prior to die stamping and the  
2 bottom is metal paint die stamped and sprayed with black paint.  
3 Can you explain to the jury if that was part of your experiment  
4 that you explained a couple minutes ago?

5 A. It was. These are photographs taken under the  
6 microscope, so it's not the entire plate. It's a close-up of  
7 those numbers that I stamped.

8 Q. All right. And you stamped 398; is that correct?

9 A. That's what I photographed. I stamped a couple other  
10 numbers and letters, but, yeah.

11 Q. The next page is Howard Kong's work; is that correct?  
12 You also looked at that?

13 A. What page are you looking at?

14 Q. Next page after the --

15 A. These are out of order.

16 Q. All right.

17 A. If you could give me the batch. All of the photographs  
18 in this exhibit are from my case notes.

19 Q. Okay.

20 A. So they are all photographs that I took.

21 THE COURT: I have them here, Mr. Kumi ega, if you want  
22 to go ahead and ask your question.

23 MR. KUMI EGA: Excuse me, your Honor?

24 THE COURT: I have the exhibit here if you want to go  
25 ahead and ask questions.

1 MR. KUMIEGA: Okay. All right.

2 Q. (By Mr. Kumi ega) You said this photograph, do you see  
3 that?

4 A. Yes.

5 Q. This is part of your file. What does the first  
6 photograph suggest, please?

7 A. The first photograph is not taken under the microscope,  
8 so it's what we would call a macro photo of the evidence. So  
9 we're just documenting the evidence, and the second is, as  
10 well, a macro photo.

11 Q. All right. That's -- do you see that on the monitor now?

12 A. Yes, I do.

13 Q. Okay. Let's do the next page, please. What are -- what  
14 do these two photographs represent to the Court for you,  
15 please?

16 A. These are photographs I took underneath the microscope.  
17 The first is a close-up of the suspected markings, E683. And  
18 then the bottom half is a close-up of just the 6 showing the  
19 flaking of the paint on either side of the 6 and that the paint  
20 was wedged within the impression. And I used Adobe Photo Shop.  
21 The arrow is something I put in just to kind of have the person  
22 examining the photograph see that that paint is lodged within  
23 the impression.

24 Q. All right. Next photo, please. What is that, please?

25 A. This is a photograph not taken under the microscope,

1 again, a macro photograph. This is the area of exhibit that I  
2 chose away from the suspected markings to do the solubility  
3 testing on.

4 Q. All right. So it was three different layers, right?

5 A. There were three different solvents used. So the arrows  
6 point to the three areas I've just did the solubility tests on  
7 top of, not on top of one another, but horizontal to.

8 Q. And was there a certain technique that you used to apply  
9 the solvents?

10 A. I used a sterile cotton swab moistened with the solvent  
11 that I chose, and then just rubbed that across the painted  
12 material.

13 Q. And the solvents you chose, were they accurate or  
14 purported to be what the bottle said?

15 A. All of the solvents we purchase for the laboratory have  
16 to be under Materials that Matter, so they are certified by the  
17 company, and then we log in when we received those and when we  
18 opened them. So yes.

19 Q. All right. Next page, please. The first, these series  
20 of photographs, the top has ethyl alcohol, acetone, and the  
21 Fry's Reagent; is that correct?

22 A. Correct.

23 Q. Did you apply that to that part of the firearm?

24 A. I did.

25 Q. Okay. And next page, please. What is this? Is this a

1 separate test?

2 A. This is a separate test. This is not on the exhibit.  
3 This was the metal plate experiment, and these are photographs  
4 taken under the microscope of some of the impressions that were  
5 made.

6 Q. Next page.

7 A. This is additionally magnified, still taken under the  
8 microscope view to show that the paint was wedged into the  
9 impressions that I made when I painted that metal plate first  
10 and then die-stamped it.

11 Q. And the second photograph, is that the same?

12 A. Yes.

13 Q. Next photograph, please. What's that, please?

14 A. This is still that metal plate, this is not the exhibit.  
15 And this is for me testing what would the acetone look like,  
16 you know, was it possible for me just to dissolve the paint  
17 within the impression using acetone, since I knew that paint  
18 was soluble in acetone from my previous test, and it was  
19 impossible for me to do that with a Q-Tip even as I tried. It  
20 takes off the paint and gives that impression of coloring  
21 outside the lines. And that was nothing I could see on the  
22 evidence. So that, for me, helped conclude that there was no  
23 sign of any solution or solvent used on the marking E683.

24 Q. Next photograph, please. What do these photographs  
25 depict?

1 A. This is a photograph also taken under the microscope of  
2 where I sampled for the elemental and chemical test that I did,  
3 so the arrow within the 3, that's the paint within the  
4 impression. The arrow is on top of that 3, that's the paint  
5 adjacent to the impression.

6 Q. All right. Next photograph, please. What's that,  
7 please?

8 A. This is a photograph representing the same as the last.  
9 I needed to use a little more sample to get good results for my  
10 tests. So I just sampled some more, and again, this is just  
11 documenting where I was sampling, because I was altering the  
12 evidence so I documented that with a photograph.

13 Q. Can you tell the Court how you altered the evidence in  
14 this case and how you memorialized the markings you left behind  
15 during your analysis, please?

16 A. The top markings, those are taken with a clean razor  
17 blade.

18 Q. Is that this here (indicating)?

19 A. That is correct, and above.

20 Q. Okay.

21 A. Indicated by the arrows. There a couple of white arrows  
22 and two black arrows that point to the impressed markings.  
23 That paint was scraped out with a needle, a clean needle.

24 Q. Then you compared the paint taken from here and taken  
25 from there using that infrared spectrometer?

1 A. IRN, yes, SEM for the elemental analysis. Then I  
2 memorialized it by taking a photograph of it, so that is how it  
3 was when it was packaged back up.

4 MR. KUMIEGA: Agent, can you show Ms. Walbridge the  
5 actual firearm, and she can point to the Court where she  
6 actually took the sample from, please.

7 MR. MARTIN: Your Honor, I don't know that's necessary  
8 for this hearing we're doing here. Seems like we're getting  
9 into the other issue we addressed yesterday.

10 THE COURT: What other issue?

11 MR. MARTIN: Whether or not the gun has been altered  
12 or not. We agreed it's been altered. I don't think this  
13 testimony is necessary for the Daubert hearing.

14 MR. KUMIEGA: Only for the record, your Honor, that  
15 part of the evidence was consumed in testing, and I just wanted  
16 to make a record.

17 MR. MARTIN: I'll stipulate to that.

18 MR. KUMIEGA: I think it's part of the technique to  
19 show it was peer-reviewed, it was done properly, and we  
20 documented it.

21 THE COURT: Okay.

22 MR. KUMIEGA: Sir, if you can show her the machine  
23 gun.

24 THE WITNESS: Right here, that's where I sampled.

25 Q. (By Mr. Kumiega) That's where you took the sample from?

1 A. That's where I took the samples, and then knowing from my  
2 photograph, I can't point exactly since this is under a  
3 microscope where I sampled within the three, but I only used  
4 the 3. So there and in that 3 which is indicated by the arrow  
5 in my photograph.

6 Q. To do an actual sample from the evidence itself, did you  
7 have to get peer review or permission from another supervisor  
8 to do in fact what you did?

9 A. No.

10 Q. Was that approved later on in your analysis regarding the  
11 peer review?

12 A. The photographs as well as results were peer-reviewed.  
13 It's all part of my case jacket.

14 Q. Are there any -- I don't believe there's any photographs  
15 left.

16 MR. KUMIEGA: Your Honor, that concludes the United  
17 States' presentation.

18 THE COURT: Ms. Youngberg, do we have a jury yet?

19 THE CLERK: We have one missing.

20 THE COURT: We have one juror missing, so Mr. Martin,  
21 you may cross-examine.

22 CROSS-EXAMINATION

23 BY MR. MARTIN:

24 Q. Is it Wal bridge?

25 A. Wal bridge. Yes.

1 Q. Okay. Ms. Walbridge, if I might, I understand basically  
2 that your results, your conclusions relate to three separate  
3 areas, from what I can understand. One was a single layer of  
4 paint; is that right?

5 A. Correct.

6 Q. One was that the impressions, the serial numbers it's  
7 your opinion the paint was present prior to those being put in;  
8 is that correct?

9 A. That's correct.

10 Q. And that you found no use of any solvents for the removal  
11 of any of this substance you've identified as paint?

12 A. That's correct.

13 Q. Okay. Now, in that regard, ma'am, I believe you talked  
14 about that this was peer-reviewed by, basically, this -- your  
15 results were peer-reviewed by an individual named Lee  
16 Brun-Conti. I may have said that wrong.

17 A. Brun-Conti.

18 Q. Okay. And did Ms. -- Ms. or Mr. --

19 A. Ms.

20 Q. Ms. Brun-Conti peer review each of your results, ma'am?

21 A. She did. She gets it all, all after I'm done with it  
22 prior to the report going out, she gets copies of all of my  
23 case notes, all of the photographs, all of the test data and  
24 that all gets peer-reviewed at once.

25 Q. Who is Stephanie Klinjun (phonetic)?

1 A. Stephanie Klinjun is my supervisor. I'm part of the  
2 arson and explosives section in our laboratory, and she's the  
3 chief, or she's the -- yeah, chief of the arson and explosives  
4 section.

5 Q. All right. Now, I'm just -- from your report I notice it  
6 says, quote, reviewed by. Does that mean she reviewed your --  
7 or does that mean she reviewed the results?

8 A. She reviews the report, so that is the admin review part  
9 of our laboratory. We have the 100 technical review that was  
10 done by Ms. Lee Brun-Conti, and then we always have 100 percent  
11 administrative review, that was done by Stephanie Klinjun in  
12 this case.

13 Q. Okay. And the kind of testing that we're talking about  
14 then, first of all, you characterized it as comparative  
15 analysis?

16 A. Correct.

17 Q. Okay. And in this case, as far as the first item that I  
18 talked to you about, the single layer of black coating, the  
19 test you performed on that is a microscopic examination; is  
20 that correct?

21 A. That's correct.

22 Q. Which means you looked through a microscope and you saw  
23 what appeared to be paint and you saw nothing that indicated to  
24 you there was another coat?

25 A. Correct. Multiple layers. Yeah. No indication of

1 multiple layers.

2 Q. And you can do that microscopically, is that what your  
3 testimony is, just by looking at paint if it's paint over  
4 another coat of paint you can tell that microscopically?

5 A. Correct.

6 Q. All right, ma'am. And did you do that for the entire  
7 surface of the firearm, or did you limit that search to a  
8 particular area?

9 A. That search was limited to the surrounding areas of the  
10 impressed marking E683.

11 Q. And I believe your testimony was that the conclusions you  
12 reached were based upon a subjective evaluation on your part;  
13 is that correct?

14 A. Correct.

15 Q. And when Ms. Lee Brun-Conti came along, did she conduct  
16 the same tests, did she just look at your results, that's what  
17 I'm trying to find out, for this peer review process?

18 A. The peer review process is just looking at the results.  
19 She did not look at the evidence, so it wasn't a repeated exam.  
20 That would be really cumbersome. So under our policies and  
21 procedures we take detailed notes, photographs, collect all the  
22 data, all of that was reviewed by her.

23 Q. All right. And I've been given approximately 15 pages of  
24 handwritten notes, some graphs and some photographs also. Is  
25 that what she looked at?

1 A. Yes. I would have to check if it was 15 pages. I can't  
2 remember that.

3 Q. I won't hold you to the number.

4 A. That's correct. Yes.

5 Q. Okay.

6 A. So essentially what you looked at, that's what she looked  
7 at.

8 Q. So she checked your homework?

9 A. She did check my homework.

10 Q. And she has no way of knowing other than what you wrote  
11 down as to the accuracy of any of the information?

12 A. No. She also gets -- I also copy the ROI, and, which is  
13 report of investigation, as well as when an ATF evidence  
14 transmittal form comes in as part of our case jacket. She got  
15 a copy of that. So that is where the agent puts the request,  
16 what they are looking for, what the exhibit number was so she  
17 can also check that. Was I looking at Exhibit 1, she can look  
18 at the evidence transmittal form, yes, it coincided with the  
19 evidence transmittal form.

20 Q. Well, when you say I microscopically examined this  
21 firearm and saw one single coat of paint, she has to rely on  
22 your subjective analysis, she has nothing to look at to make  
23 that determination, does she?

24 A. She had the photographs to look at that I took under the  
25 microscope.

1 Q. Of the single layer coating of paint?

2 A. Right. The E683.

3 Q. Okay. And is that one of the photographs that we have  
4 here?

5 A. Correct.

6 Q. That clearly indicates that is one single layer of paint  
7 in that area?

8 A. Correct.

9 Q. All right, ma'am. And likewise, for example, you talked  
10 about, I think you said there is no error rate, or you  
11 characterized it as no error rate in your analysis; is that  
12 correct?

13 A. That's correct. There is no error rate in a comparative  
14 analysis.

15 Q. You talked about three solvents, right, right?

16 A. Yes.

17 Q. Okay. That was a guess, right?

18 A. I don't understand your question. A guess at what?

19 Q. Well, you don't know what three solvents were allegedly  
20 used on this firearm?

21 A. I don't know what solvent was used on the firearm, that  
22 is correct. So I took an educated guess to consider that the  
23 person was not a chemist, not someone that works in a  
24 laboratory, just an everyday person, what type of chemicals are  
25 available to everyday people, so I chose the ethyl alcohol and

1 acetone based on that. Then the Fry's Reagent was because this  
2 person was a firearms dealer and we know that you can restore  
3 serial numbers using the Fry's Reagent. That's why I chose  
4 that solution.

5 Q. My question was: That was a guess, right?

6 A. It was an educated guess. Yes.

7 Q. Okay. All right. I don't care how you call, how you  
8 want to define it, by it was a guess, and if you're wrong, then  
9 there's an error rate. Would you agree with that, ma'am?  
10 Could be 100 percent wrong on that, couldn't you?

11 A. I wouldn't say that was 100 percent wrong. I think  
12 regardless of what was used, if that paint was soluble in  
13 whatever solvent was used there would be some indication of  
14 that around that impressed markings E683. You would see part  
15 of that coating gone because of that.

16 Q. And you're making the assumption that the solvent,  
17 whatever it was, made the paint be soluble; is that right?

18 A. Yes. That would be the only way you could uncover  
19 something is that paint would have to dissolve.

20 Q. All right, ma'am. And let me ask you this: You also  
21 testified about a metal stamp process where I think you took  
22 two examples, one where you stamped it and painted it, one  
23 where you painted it and then stamped it. Do you recall that?

24 A. That is correct.

25 Q. All right. Did you do anything that would take into

1 account painting, stamping, and the aging process of  
2 approximately 22 years, ma'am?

3 A. Painting, stamping, and aging process. I didn't do any  
4 aging analysis. No.

5 Q. Okay. Would it not be important to know what could occur  
6 to the, any potential paint within a serial number if it had  
7 been handled, used, misused, or whatever, for approximately a  
8 22-year period of time?

9 A. I think from my knowledge of paint and weathering of  
10 paint, also aging, whatever you want to call it, that it would  
11 be cracked, maybe absent. But that really didn't affect what  
12 my conclusions were, that the paint was there prior to the  
13 stamping, because that stamping physically altered the paint  
14 and pushed it into the impressions.

15 Q. Well, if it's stamped and then painted, are you saying  
16 the paint is not going to go into the impressions, ma'am?

17 A. I'm sorry. Repeat that, please.

18 Q. If it's stamped and then painted, will the paint not go  
19 in the impressions?

20 A. The paint will go in the impression, but you won't see it  
21 being physically altered. It will be very smooth, similar to  
22 the photographs that I took for my experiment.

23 Q. Twenty-two years later, will it still be, that's my  
24 question, 22 years later, if it occurred in 1986, let's say,  
25 this is 2008, after aging, use, wear, whatever, probably not

1 going to look the same, is it, ma'am?

2 A. I don't know.

3 Q. You didn't take that into consideration?

4 A. I didn't do a 22-year age process thing. No.

5 Q. All right. And I believe you said that you tested the  
6 paint on the firearm, and the paint as you described it in the,  
7 inside the serial numbers, and you determined that they had  
8 similar chemical and similar qualities, right?

9 A. Correct.

10 Q. Paint is paint, isn't it, ma'am?

11 A. What do you mean by that?

12 Q. I mean, all paint for the most part has the same  
13 properties, does it not?

14 A. No.

15 Q. If I -- in other words, I can go to the hardware store  
16 and buy two cans of black paint and they can both have the same  
17 basic chemical properties, won't they, ma'am?

18 A. Possibly; possibly not. Depends on the manufacturer.

19 Q. All right. And you actually, I don't remember exactly  
20 what the name of the tests were, but I got a chart here where  
21 you actually tested these paints here, and I may have the wrong  
22 ones. Let me approach real quickly here. I've got three  
23 charts. Is that the example on the chart?

24 A. This is an overlay. In your photograph this is just the  
25 single spec. This is what we call spectra, this is the results

1 of the FTIR.

2 Q. Is that those two -- is that these two put together?

3 A. Yes. It's just another presentation of those two.

4 Q. And this is, if I may, this is the chemical from the  
5 testing that you did, this is how you found that the chemical  
6 properties were consistent, right?

7 A. Yes. Uh-huh.

8 Q. Similar. And by similar, the only place they actually  
9 match exactly is where I circled there in red. Would you agree  
10 with that, ma'am. Go ahead.

11 A. When you're looking at IR data you're looking at the  
12 overall spectra. The -- you're considering that the numbers  
13 are the same, the peaks.

14 Q. Right.

15 A. Unless you're analyzing the exact same, the peaks are  
16 going to differ slightly based on the absorbance and the data.  
17 As long as they are not varying by plus or minus five, they are  
18 similar. So the properties, overall chemical properties for  
19 both of these are similar.

20 Q. My question was only, ma'am, the only place they were  
21 exact is where I circled them in red.

22 A. Those are the same chemicals.

23 Q. Your testimony is that they are similar at peak levels,  
24 but not the same numbers. Right?

25 A. Correct.

1 Q. Okay. Now, when you used the solution, I think you  
2 testified that you used a -- three different solutions to test  
3 the firearm in an attempt to remove a portion of the paint; is  
4 that right?

5 A. That's right.

6 Q. Okay. And I think you said you used a Q-Tip?

7 A. Sterile cotton swab. Similar to Q-Tips. Yes.

8 Q. I'm not trying to be funny. That's my terminology.

9 A. Yeah. Q-Tips.

10 Q. And depending upon the amount of pressure you would apply  
11 and the amount of solution in the cotton swab, would determine  
12 how much paint would or would not be removed. Would you agree  
13 with that, ma'am?

14 A. No. It's based on whether that paint is going to be  
15 soluble in that liquid being used.

16 Q. The amount of pressure and the amount of solution present  
17 has no impact on the amount of paint that is removed; is that  
18 your testimony?

19 A. It's all based on the solubility. No matter how much you  
20 stir oil and water, they are not soluble in one another.

21 Q. I understand that. So just to make sure I made my --  
22 understand, if you don't use enough solution, you're not going  
23 to remove the same amount of paint, are you, ma'am?

24 A. Are you asking if that solution is -- if that paint is  
25 soluble in that solution, it's based on solubility?

1 Q. Let me make it something that I understand because I'm  
2 married and my wife uses fingernail polish remover, and that's  
3 one of the solutions you used.

4 A. Correct.

5 Q. If you don't have enough fingernail polish on your cotton  
6 ball, you're not going to get all the paint off your  
7 fingernail, correct?

8 A. You're going to get some of the paint.

9 Q. And that's my question. Depending upon the amount of  
10 solvent you use determines how much of the paint you'll remove  
11 off of the object; would you agree with that?

12 A. I think that if the paint is soluble in the solution,  
13 some of it will come up. If you just use a little bit, a  
14 little bit will come up. If you use a lot, a whole bunch will  
15 come up.

16 Q. That's what my question, that's what I intended to ask  
17 you. I may not have done it very scientifically artful, but  
18 that's what my question was intended to be. So based upon the  
19 amount of solvent you used, and did you measure how much you  
20 used with each experiment we saw you -- by your photographs up  
21 there?

22 A. I saturated the sterile swabs with each of the solvents  
23 or solutions used.

24 Q. So you, like, dipped them in the bottles or something?

25 A. No. That would be contamination.

1 Q. Okay. You poured it into another something then dipped  
2 it in. In other words, the swab was completely saturated. I'm  
3 not trying to say you contaminated it.

4 A. The swab was completely saturated. Yes.

5 Q. On each of the three, on each of the three experiments  
6 you did?

7 A. Yes.

8 Q. And you have no clue based upon the information that was  
9 provided to you as to whether or not cotton swabs were used, do  
10 you, ma'am?

11 A. I do not.

12 Q. Nor whether or not whatever item, if any, were used it  
13 was completely saturated?

14 A. I do not have that information. No.

15 THE COURT: Excuse me, Mr. Martin.

16 Ms. Youngberg, do you want to bring the jury up?

17 You can continue for another couple minutes until the jury  
18 gets here.

19 MR. MARTIN: Okay, your Honor.

20 THE COURT: We'll continue the hearing at lunch, over  
21 the lunch hour.

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

23 THE COURT: Yes.

24 (Brief pause)

25 Q. (By Mr. Martin) If a solvent was used on this firearm

1 prior to your examination of it, and one of the layers of  
2 coating were removed, would you be able to see that through a  
3 microscope?

4 A. If there was a coating on top of the impressed markings?

5 Q. Correct.

6 A. I didn't see any indication that there was another  
7 coating. But if some of it was left, for instance, if not all  
8 of it was taken up, depending on the saturation of whatever is  
9 used, I would be able to see under the microscope another layer  
10 on top of it, and I didn't see another layer.

11 Q. And if it had all been removed?

12 A. I wouldn't be able to see it.

13 Q. Okay. Now, other than the microscope, is there some  
14 other scientific instrument that's available to tell you  
15 whether or not there is more than one coating of paint on the  
16 firearm, ma'am?

17 A. A scanning electron microscope, which this couldn't fit  
18 into, but if it was a smaller instrument. But that's a  
19 microscope scope too, you're just magnifying your image, being  
20 able to see the fine detail of it.

21 THE COURT: Mr. Martin, why don't we take our recess  
22 as far as this hearing is concerned because the jury is on  
23 their way up.

24 You may retake your seat.

25 MR. MARTIN: Your Honor, I have two concerns, I don't

1 know if you want to take them up now about this testimony that  
2 don't necessarily relate to the Daubert should you make that  
3 finding, but I would like to put them in the record.

4 THE COURT: We can do that over the lunch hour, can't  
5 we?

6 MR. MARTIN: Yes, sir.

7 THE COURT: She's not going to testify until after  
8 lunch if the Court rules that she can testify.

9 MR. MARTIN: I'm just afraid I'm going to forget.

10 THE COURT: Don't count on me to remember it, though.

11 MR. MARTIN: I made a note.

12 THE COURT: You may be excused.

13 (The jury was brought into court.)

14 THE COURT: Case CR-2008-41-L, United States of  
15 America versus Larry Douglas Friesen. Are the parties ready to  
16 proceed with trial?

17 MR. KUMIEGA: Yes, your Honor.

18 MR. MARTIN: Yes, sir.

19 THE COURT: Government may call their next witness.

20 MR. KUMIEGA: Yes, your Honor. The United States  
21 would like to call Joseph Newell.

22 (Witness sworn)

23

24

25

1 JOSEPH NEWELL,  
2 called as a witness, having been duly sworn, testifies as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. KUMIEGA:

6 Q. Mr. Newell, would you introduce yourself to the jury,  
7 please?

8 A. My name is Joseph Newell. I'm associated with Doug  
9 Friesen from a few years back.

10 Q. Excuse me. I couldn't hear you.

11 A. I'm an associate from Doug Friesen from a few years back.  
12 He's my attorney on some legal issues that I had taken care of.

13 Q. All right. Can you pull that microphone closer to you.  
14 I'm having a hard time hearing you.

15 A. How is that?

16 Q. Good. Now, first of all, what do you do for a living,  
17 please?

18 A. Right now I'm a police officer for the State of Oklahoma.

19 Q. And for what agency, please?

20 A. The Oklahoma Military Department.

21 Q. And what is that?

22 A. Basically, that's the National Guard.

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

24 A. About five and a half years.

25 Q. And what do you do for the military?

1 A. Like I said, I'm a police officer, I'm assigned to the  
2 Air National Guard Base at Will Rogers.

3 Q. All right. And what did you do before that, please?

4 A. Before that I worked at H&H Gun Range as one of their  
5 managers.

6 Q. All right. And are you originally from Oklahoma?

7 A. I was raised here; I was actually born overseas.

8 Q. Okay. Did you go to high school here in Oklahoma City?

9 A. Del City. Yes.

10 Q. Okay. Now, you said that you retained, you retained Mr.  
11 Friesen for a proceeding; is that correct?

12 A. Yes. My divorce.

13 Q. All right. And when did that occur, please?

14 A. That was finalized almost six years ago.

15 Q. All right. When did you first hire Mr. Friesen regarding  
16 that proceeding?

17 A. That probably went on for 18 months to two years.

18 Q. All right. What -- can you give the jury a date and time  
19 that you basically hired Mr. Friesen?

20 A. I would say late in 2001.

21 Q. All right.

22 A. That sounds about right.

23 Q. And during the course of your retention, or retaining Mr.  
24 Friesen, did you discuss fees and how you were going to pay  
25 Mr. Friesen?

1 A. Yes. We discuss the that up front. Originally, I gave  
2 him an initial fee, I believe it was \$2,000. And then it was  
3 \$100 a month after that.

4 Q. Let me ask you this: During any course of time did you  
5 give Mr. Friesen any firearms that you owned or possessed?

6 A. Yes. Mr. Friesen decided that I was too slow in paying  
7 at \$100 a month, and because of the divorce proceeding he had  
8 an inventory of my firearms. And he decided that if he could  
9 look through my list of firearms he would take some of those  
10 and we would call it good.

11 Q. All right. And how big was your list of firearms?

12 A. At that time I believe it was 12 or 14.

13 Q. All right. And did Mr. Friesen and you agree on how many  
14 firearms to give him in lieu of, I guess, paying cash for the  
15 divorce proceedings?

16 A. After he looked through the inventory, yes, we did.

17 Q. And how many firearms did you give him, sir?

18 A. I believe it was five or six.

19 Q. And do you remember the type of firearms you gave him?

20 A. For the most part, yes, I do.

21 Q. Can you tell the jury what firearms you gave Mr. Friesen,  
22 and when, about what time period did you give Mr. Friesen those  
23 firearms?

24 A. That was probably February or March of, I want to say  
25 2003.

1 Q. All right.

2 A. There was a Para Ordnance pistol, I want to say there was  
3 a Ruger pistol, a Ruger .22 rifle, a Remington shotgun, a Ruger  
4 revolver. Off the top of my head that's all I remember.

5 MR. KUMIEGA: Your Honor, may I approach the witnesses  
6 regarding his list?

7 THE COURT: Yes.

8 Q. (By Mr. Kumiega) Mr. Newell, what I'm handing you is a  
9 report that you gave to ATF. Can you read that silently and  
10 let me ask you if that refreshes your recollection after you  
11 read it, please.

12 A. Yes, it does.

13 Q. Okay. And let me ask you: What guns -- are -- does that  
14 report accurately portray the firearms you gave to Mr. Friesen?

15 A. I believe so.

16 Q. Can you read that for the record?

17 A. "A Para Ordnance Model 745 .45 caliber pistol, a Ruger  
18 Model Blackhawk .357 caliber pistol revolver, a Ruger  
19 Model P95 nine millimeter pistol, a Ruger Model 1022  
20 .22 caliber semi-automatic rifle, and a Remington  
21 Model 870 .12 gauge shotgun."

22 Q. All right. Now, did agents of ATF contact you about  
23 certain firearms that were found in possession of Mr. Friesen  
24 in June of 2004?

25 A. Yes, they did.

1 Q. All right. Now, when -- when did you finish your divorce  
2 proceedings, and your attorney/client relationship with Mr.  
3 Friesen concluded about when, please?

4 A. That was January, January or February, I want to say,  
5 about 2003.

6 Q. All right. That's when everything concluded?

7 A. Right. And I gave him these firearms and that was the  
8 end of it.

9 Q. Let's back up. You said, again, I think you might have  
10 misspoke. When did you retain Mr. Friesen, if you remember,  
11 and gave him the firearms?

12 A. Okay. I gave him the firearms towards the end.

13 Q. Okay.

14 A. And I retained him 18 months, two years prior to that.

15 Q. All right. When you say "towards the end," about what --  
16 what time period did you give him the guns?

17 A. It was after the divorce was finalized and it was, I want  
18 to say one or two months after that.

19 Q. And that would be when, please?

20 A. I want to say that was February or March, 2003.

21 Q. Okay. So February/March 2003; is that when you gave him  
22 the firearms?

23 A. I believe so. Yes.

24 Q. Okay. And then, as I said before, ATF agents showed you  
25 some guns that purport to be yours, or purport that you give

1 him for your divorce custody, or your divorce case; is that  
2 correct?

3 A. Yes, sir.

4 Q. Can you look at Government's Exhibit 2.10, please. Does  
5 that appear to be one of your firearms?

6 A. Yes, it does.

7 Q. All right. And let's look at Government's Exhibit 2.14,  
8 please. Does that appear to be one of your firearms?

9 A. Yes, it does.

10 Q. All right. Now, the February/March date, could you be  
11 mistaken. Can that be March or April, if you remember?

12 A. Yes, it could be.

13 Q. Okay. I just want to make sure the testimony is correct.

14 Mr. Newell, did you also retain the services of Mr.  
15 Friesen after your divorce proceedings concluded?

16 A. After they concluded?

17 Q. Yes.

18 A. No, I didn't.

19 Q. Did you retain him regarding a bankruptcy case?

20 A. Yes, I did.

21 Q. Was that about -- can you tell the jury the time frame of  
22 that, please?

23 A. That was after the divorce had started, but that wrapped  
24 up before the divorce did. So it was sometime inside that  
25 period.

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

3 THE COURT: Yes.

4 (Brief pause)

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

6 THE COURT: You may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. MARTIN:

9 Q. During the course of the time that Doug Friesen  
10 represented you, Mr. Newell, did you or him ever discuss an  
11 entity known as Lobo Arms?

12 A. No.

13 Q. All right, sir. And it's my understanding, Mr. Kumi ega  
14 showed you a piece of paper, and it's my understanding --

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

16 Q. (By Mr. Martin) -- you identified, looks like five  
17 firearms on this document here as firearms you gave to him; is  
18 that right?

19 A. Yes. That's correct.

20 Q. And that was for services for, basically to finalize your  
21 attorney fees on that divorce case; is that right, sir?

22 A. Yes.

23 Q. Okay. And did you see this form? Have you read this  
24 before you testified today, sir?

25 A. Yes, I have.

1 Q. Okay. I'm going to ask you, sir, right under that list  
2 of firearms, item number 7, can you see that?

3 A. Yes, I can.

4 Q. All right.

5 A. Do you want me read it?

6 Q. I'm going to ask you to read it to yourself, then I'll  
7 ask you a question about it.

8 A. Okay.

9 Q. Okay. Did you tell the agents when you were interviewed  
10 back in, I can't remember the date of the interview, but  
11 sometime ago that you provided the firearms to Mr. Friesen in  
12 March or April of 2003, sir?

13 A. Yes, sir.

14 Q. Okay. And that's on the same report that shows the  
15 firearms that you received; is that correct, sir?

16 A. Yes, it is.

17 Q. All right. And these were your personal firearms, were  
18 they not, sir?

19 A. Yes, they are.

20 Q. All right. And you --

21 MR. MARTIN: Let me have just one moment, your Honor.

22 (Brief pause)

23 MR. MARTIN: Nothing further.

24 THE COURT: Anything further, Mr. Kumi ega?

25 MR. KUMI EGA: Yes, just one question or two follow-up

1 questions, your Honor.

2 RERECT EXAMI NATION

3 BY MR. KUMI EGA:

4 Q. Mr. Newell, can you tell the jury how you delivered the  
5 guns to Mr. Friesen?

6 A. I took them to his office, we went -- well, we went  
7 upstairs so his actual office, and I laid them out on his  
8 conference table in his office. He checked them, decided which  
9 ones he wanted, and then I took the rest of them back home.

10 Q. All right. So you took your whole collection; is that  
11 correct?

12 A. I think I may have left one or two, but for the most  
13 part, yes.

14 Q. All right. And he then -- how did he determine which  
15 ones he wanted?

16 A. He looked them over, and I don't know what criteria he  
17 was using, but he decided which ones he wanted, and let me keep  
18 the rest of them.

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

20 RECROSS-EXAMI NATION

21 BY MR. MARTIN:

22 Q. And that cleaned your bill with him, right?

23 A. Yes.

24 MR. MARTIN: Nothing further.

25 THE COURT: Mr. Newell, you may be excused. The Court

1 would advise you not to discuss your testimony you've given  
2 here today with other persons who may be a witness in this  
3 matter. You may be excused.

4 Call your next witness.

5 MR. KUMIEGA: Yes, your Honor. The United States  
6 would like to call Catherine Long.

7 CATHERINE LONG,

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

10 DIRECT EXAMINATION

11 BY MR. KUMIEGA:

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

13 A. My name is Catherine Ann Long.

14 Q. And Ms. Long, can you pull the microphone closer to you?

15 A. I'll just scoot up.

16 Q. Okay. And how are you employed currently, please?

17 A. I'm an administrative assistant for AirMark Aviation  
18 Services.

19 Q. Where is that located?

20 A. Will Rogers World Airport.

21 Q. What do you do for that company, please?

22 A. I do some of the hiring and firing, I'm also a trainer  
23 for the -- we handle the ramp operations for Delta.

24 Q. All right. And how big is your company?

25 A. It's fairly large. It's about a \$13 billion corporation.

1 Q. And do you know how many employees you have here in  
2 Oklahoma City?

3 A. Locally, I have 30.

4 Q. Now, can you tell us something about your educational  
5 background, please?

6 A. I'm sorry. I'm a bit nervous here. I've got an  
7 associate's degree as a legal assistant, I was an air traffic  
8 controller in the Air Force, I was trained through Dow Global  
9 Services, which is a subsidiary of Delta, also through Airmark  
10 as a ramp services trainer.

11 Q. All right. Now, you said you have an associate's degree,  
12 is it paralegal studies? Is that what you said?

13 A. Legal assistance through Rose State College. Yes.

14 Q. What year did you receive your associate's, please?

15 A. I believe it was 1999.

16 Q. All right. Now, at one time, ma'am, were you employed by  
17 Mr. Friesen?

18 A. Yes.

19 Q. From what time periods, please?

20 A. From approximately May 2000 through August of 2003.

21 Q. And in what capacity and how did you work, what did you  
22 do for Mr. Friesen, please?

23 A. I was initially hired as his personal assistant, and  
24 approximately two to three weeks after I accepted a position  
25 with him, the receptionist didn't show up for work, so I

1 assumed her responsibilities, which included opening, closing  
2 case files, answering phones, managing the docket. From there  
3 I was, I guess, reclassified as an administrative assistant,  
4 which involved also ordering office supplies, still continued  
5 to handle some of his personal aspects. And towards the last  
6 three months of my employment I actually worked as a legal  
7 assistant on the domestic side of the house.

8 Q. How big was -- how many employees were in that law firm  
9 at the time you worked there, please? If you can give a  
10 rough --

11 A. Anywhere from three to six.

12 Q. All right. Now, during this period of time, did you  
13 notice if Mr. Friesen maintained a federal firearm license to  
14 sell firearms?

15 A. Yes.

16 Q. How did you know that?

17 A. I had to submit some sort of documentation to the  
18 Oklahoma Tax Commission stating whether or not he had bought or  
19 sold any guns.

20 Q. All right. And were you part of that paperwork?

21 A. Yes. I had to figure out how to do it, so I had someone  
22 from the Tax Commission walk me through it.

23 Q. All right. And let me ask you this: During the course  
24 of your working for Mr. Friesen during I guess from May 2000 to  
25 August 2003, did you see people bring firearms to Mr. Friesen's

1 office?

2 A. Yes.

3 Q. Under what circumstances, please?

4 A. There was one instance where a woman had brought a  
5 handgun in. I believe the circumstances were she was fearful  
6 of her -- not of her husband but something that he might do  
7 with the gun, so she brought it in.

8 Q. All right. What else, please?

9 A. Another instance where a gentleman, I believe he had lost  
10 his job and in order to pay his attorney fees surrendered a  
11 gun.

12 Q. Were there any other instances besides the two that you  
13 mentioned?

14 A. I had a little bit of time to think. I believe that  
15 there was a couple that had brought in several larger guns, and  
16 it was basically used as collateral until they could come up  
17 with the money to pay him, and they were given back to them.  
18 So --

19 Q. During the period of time you were working for Mr.  
20 Friesen, did you know about an interesting compartment on the  
21 first floor of the business?

22 A. Yes.

23 Q. All right. Can you tell the jury about that, please?

24 A. It was a, I guess, a secret room behind the bookshelves  
25 in the library of the office.

1 Q. All right. And were you privy to that?

2 A. Yes.

3 Q. How would a person gain access to the secret room,  
4 please?

5 A. It was a remote control access where you actually pushed  
6 a button to open, I guess unlock it and have to push on a  
7 certain set of books, or actually the shelves and it would open  
8 up.

9 Q. And did you ever utilize that device?

10 A. Yes.

11 Q. All right. And how often would you be in that secret  
12 room, so to speak?

13 A. Oh, probably half a dozen times a year. Wasn't really  
14 that often.

15 Q. All right. And let me show you Government's Exhibit  
16 2.01.

17 MR. KUMIEGA: Can we dim the lights a little bit, your  
18 Honor, if that's possible?

19 THE COURT: Okay.

20 Q. (By Mr. Kumi ega) Is that the office?

21 A. Yes. It's the front entrance.

22 Q. What is that, please?

23 A. The bookshelves in the library and the opening to, I  
24 guess, the secret room. To the left is a safe, and behind the  
25 actual door to the right are personal paintings and pictures.

1 There's the safe. Those are the pictures.

2 Q. You said --

3 A. That's Mr. Friesen's office.

4 Q. Okay. Let me ask you this: Do you know if there was a  
5 safe in Mr. Friesen's office on the second floor?

6 A. I don't recall.

7 Q. Okay. Now, who was privy to the secret room?

8 A. Mr. Friesen -- when you mean "privy," do you mean who  
9 knew about it, or --

10 Q. Who knew about it and who went there? Both.

11 A. Mostly Mr. Friesen or anybody that he asked to go in  
12 there.

13 Q. All right. And can you tell the jury the names of some  
14 of the people that he invited back into the secret room,  
15 please?

16 A. It was Jim Foster --

17 Q. Who is Jim Foster?

18 A. He's a private investigator that did some work for Mr.  
19 Friesen.

20 Q. Who else?

21 A. John Nelson, who I believe constructed it, sometimes we  
22 would have problems with the lock, he would have to come fix  
23 it. There were a couple other legal assistants through the  
24 time.

25 Q. Let me ask you this: Does some of the attorneys that

1 worked for him, were they also privy or knew about it?

2 A. The only other attorney that I was aware of that worked  
3 for him was Sherry Gray at the time, and to be honest with you,  
4 I don't recall her ever going down there.

5 Q. Okay. Now, what I have here, I'm going to show you  
6 Government's Exhibit 2.1. That's the Armor vault. Is that  
7 what we're talking about?

8 A. Yes.

9 Q. Let's look at 2.2, 2.3, and 2.4. Ma'am, let's go back to  
10 2.2, please. Have you ever seen the safe opened up?

11 A. Yes.

12 Q. All right. And what did you see when, during the course  
13 of your employment, what was contained in the safe, please?

14 A. Guns.

15 Q. Guns?

16 A. Yeah. Kind of like rifles and shotguns, handguns.

17 Q. And can you give the jury the sense during the course of  
18 your employment how many guns or how full that gun safe was,  
19 please?

20 A. Anywhere from -- best guess, honestly, probably about  
21 eight to ten guns.

22 Q. All right. And during the course of your employment, was  
23 it always like that?

24 A. Any time I had to open it. Yeah.

25 Q. All right. The same type amount of firearms?

1 A. Yeah. I would -- to be honest with you, I'm not really  
2 familiar with guns, but they didn't look any different from any  
3 other time I had opened it up.

4 Q. All right. Let me ask you this: Besides firearms in the  
5 secret room, were there other valuables stored there, please?

6 A. Personal valuables. Trinkets, gifts that were given to  
7 him over the years. He's got a logo with wolves, and a lot of  
8 people thought he was a collector of them, which I guess, in  
9 fact, he was, and paintings.

10 Q. All right. So, again, you saw the gun safe with firearms  
11 between the time of your employment from May 2000 to August  
12 2003?

13 A. Yes.

14 Q. Okay. Do you know a Lana Cohlmi a?

15 A. Yes.

16 Q. And what was her -- the nature of her relationship with  
17 Mr. Friesen?

18 A. Her and Doug Friesen hosted a radio talk show on KTOK,  
19 Saturday Night Law.

20 Q. All right.

21 A. And I was -- one of my responsibilities was co-producer,  
22 soliciting persons to get on the show, or sometimes they would,  
23 Mr. Friesen or Ms. Cohlmi a would ask me to try and get somebody  
24 on the show, and I did my best to do that.

25 Q. And did Ms. Cohlmi a office in that building?

1 A. No.

2 Q. Where did she office at, please?

3 A. She had officed up on North Classen, and then later on  
4 moved to the office next door. They were both joined in a  
5 large class action, excuse me, can't talk, class action lawsuit  
6 on FenPhen. They were collaborating on that.

7 MR. KUMIEGA: Your Honor, if I may have a moment with  
8 the case agent.

9 THE COURT: Yes.

10 (Brief pause)

11 Q. (By Mr. Kumi ega) Ma' am, you said during the course of  
12 your employment you saw people bring firearms to the -- to  
13 where, please?

14 A. To the office. They would bring them to Mr. Friesen.

15 Q. All right. And do you know what would happen to the  
16 firearms?

17 A. In the instance with the woman that had brought one in  
18 that was fearful of here husband using the gun in some manner,  
19 she had given it to him, and after she left he asked me to lock  
20 it up in the safe. And when I went down to the safe it was  
21 full.

22 Q. Full --

23 A. So I just put it on the floor so he could put it up later  
24 and adjust his storage of whatever was in there.

25 Q. Okay.

1 MR. KUMI EGA: No other questions of this witness, your  
2 Honor.

3 THE COURT: You may cross-examine.

4 CROSS-EXAMINATION

5 BY MR. MARTIN:

6 Q. Ms. Long, through your period of employment at Doug  
7 Friesen's law firm, you were familiar with his background in  
8 firearms, were you not, ma'am?

9 A. Yes.

10 Q. And you were familiar with the fact that he was teaching  
11 self-defense classes and concealed classes at H&H Gun Range,  
12 were you not, ma'am?

13 A. Yes, I was.

14 Q. And that he had gone to numerous different types of  
15 firearm classes himself personally?

16 A. Yes.

17 Q. And that he taught many firearm training classes?

18 A. Yes.

19 Q. And that he taught self-defense classes?

20 A. As far as self-defense, I don't know that was going on  
21 while I was there.

22 Q. Okay.

23 A. I don't really recall that.

24 Q. And you were also familiar with the fact that he had a, I  
25 think you said a radio talk show they called Saturday Night

1 Law?

2 A. Yes.

3 Q. And he did that program, I believe you said, with Lana  
4 Cohlmi a?

5 A. Yes.

6 Q. And they would have judges and lawyers and police  
7 officers and people come on and talk on Saturday night, right?

8 A. Yes.

9 Q. Okay. And part of your duty, I think you said, was to  
10 help co-produce that show, right?

11 A. Yes.

12 Q. Okay. And I believe you testified, at least by my notes,  
13 of three instances that you recall where firearms were brought  
14 to the office?

15 A. Yes.

16 Q. Okay. One I think you said was where a woman brought a  
17 firearm to the office because she is afraid of her husband, or  
18 afraid what her husband might do with the firearm; is that  
19 right?

20 A. Yes.

21 Q. Okay. And so it was just, hang onto this for me, right?

22 A. Yes.

23 Q. Okay. The other one, I believe you testified, was that  
24 an individual had lost his job and surrendered his firearms to  
25 pay attorney fees; is that right?

1 A. That was my understanding.

2 Q. Okay. And then one, I think the last one you told us  
3 about was where I think a couple came in and wanted to hire him  
4 and apparently didn't have the funds to immediately hire him,  
5 and they put the firearms up as collateral until they got those  
6 funds, correct?

7 A. Yes.

8 Q. And I'm assuming that they eventually got those firearms  
9 back.

10 A. Yes, they did.

11 Q. Okay. Now, you've talked about what Mr. Kumi ega has  
12 characterized as a secret room where the safe was. Did you  
13 have access to that safe?

14 A. Yes.

15 Q. Okay. So you knew how to get in the safe and how to get  
16 into the room?

17 A. I had access to the room. In order to get into the safe  
18 I had to have a key, because there were actually two locks on  
19 it, and Mr. Friesen had that. So --

20 Q. So for example, when you --

21 A. I would always ask him for the key.

22 Q. He would give you the key?

23 A. He would tell me to go in it. I just didn't arbitrarily  
24 go in there for any reason. So it was at his direction.

25 Q. So he would hand you the key?

1 A. Yeah.

2 Q. And you would go down there and unlock it and get it in?

3 A. Uh-huh.

4 Q. And if you had an item to place in there, you would place  
5 it in there, lock it, and bring him the key back?

6 A. Yeah.

7 Q. Okay. Not like he was trying to keep you from knowing  
8 what the contents of that safe was, was it, ma'am?

9 A. No.

10 Q. All right. I believe you testified that you saw anywhere  
11 from eight to ten firearms in that safe at any time you may  
12 have opened it; do you recall that?

13 A. Yeah.

14 Q. And during the period of time that you worked for Mr.  
15 Friesen, how many times do you think you were in that safe,  
16 your best guess?

17 A. Probably a dozen.

18 Q. A dozen times?

19 A. Yeah. A dozen, 15 times maybe.

20 Q. Okay. And I think you testified you were aware that he  
21 had a -- he was a federal firearms dealer, correct?

22 A. Yes.

23 Q. All right. And I think you said you had to learn how to  
24 fill out some forms or tax forms for the Oklahoma Tax  
25 Commission relating to that; is that right?

1 A. Yes. Just the tax forms.

2 Q. Okay. You weren't involved in any way in any filling out  
3 of any other forms relating to the purchase or sale of the  
4 firearms, were you?

5 A. No.

6 Q. And you don't even know, do you, ma'am, if even -- if  
7 that company even sold or bought any firearms during that  
8 period of time that you worked there, do you?

9 A. I know what I was told, that whenever I had to file the  
10 paperwork with the Tax Commission that none were bought, none  
11 were sold.

12 Q. Okay. So from 2000, May of 2000 through August of 2003,  
13 at least with the Tax Commission, you put down that none were  
14 bought and none were sold?

15 A. Correct.

16 Q. Okay. And, ma'am, you were asked about Lana Cohlmi a, and  
17 I think that was the co-host of that Saturday Night Live,  
18 Saturday Night Talk?

19 A. Yes.

20 Q. She and Mr. Friesen worked on cases together, didn't  
21 they?

22 A. Occasionally.

23 Q. And it would not be uncommon, would it, for her to be at  
24 the office?

25 A. No, not uncommon.

1 Q. Because you said they were working on some, quote, class  
2 action, was it FenPhen?

3 A. Yeah. FenPhen.

4 Q. Okay. And that was -- you were kind of familiar with  
5 that, were you not, ma'am?

6 A. Yes.

7 Q. And the object behind that was to get as many clients as  
8 you possibly could because your percentage of whatever recovery  
9 there would be would be based upon the number of clients you  
10 could obtain. Would you agree with that?

11 A. It's my understanding. Yes.

12 Q. And so Mr. Friesen or Ms. Cohlmi a would interview and try  
13 to sign up, so to say, as many as FenPhen clients as possible?

14 A. Yes.

15 Q. And Ms. Cohlmi a then would be at the office or he would  
16 be at her office for the purpose of trying to encourage people  
17 who may have been involved in FenPhen to sign up for that  
18 litigation, would you agree with that?

19 A. Yes.

20 Q. Now, you were present or saw Mr. Friesen on February  
21 19th, 2003, the day of the compliance inspection, did you not,  
22 ma'am?

23 A. I believe so. Yeah.

24 Q. Okay. And the government has provided us a chart here.  
25 I don't even -- February 19, 2003. Do you see that date?

1 A. Yes.

2 Q. Okay. And when you were interviewed by the government,  
3 you told them that on that day Doug was upset because he was  
4 unable to find his firearms records?

5 A. Correct.

6 Q. As a matter of fact, he had everybody searching the  
7 office to help him find those records so he could show the  
8 agents, provide those to the inspectors, didn't he?

9 A. He had several of us, not everybody, because he still had  
10 a business to run.

11 Q. Right.

12 A. But there were at least three or four of us looking.

13 Q. You were one of them?

14 A. Yes.

15 Q. Jim Foster was one of them?

16 A. Yes.

17 Q. And there were other people also looking?

18 A. I believe John Nelson was because he was doing some work  
19 at Mr. Friesen's house.

20 Q. And we didn't find them that day, or they weren't found  
21 that day, right?

22 A. No.

23 Q. And he was pretty upset about that?

24 A. Yes. He remembered seeing them, but because of the  
25 construction at his home couldn't remember exactly where he had

1 placed them. We thought we had put them in the office.

2 Q. And he eventually found them, did he not?

3 A. Yes, he did. It was located behind the safe at his  
4 personal residence.

5 Q. Okay.

6 A. Or close to it.

7 Q. All right. And you know shortly after that that he  
8 provided those -- well, almost immediately after that, he  
9 provided those to the inspectors that were out there on the  
10 19th?

11 A. From my understanding. Yes.

12 Q. Okay.

13 MR. MARTIN: One moment, your Honor.

14 (Brief pause)

15 MR. MARTIN: Nothing further.

16 THE COURT: Redirect.

17 MR. KUMIEGA: Thank you, your Honor.

18 REDI RECT EXAMI NATION

19 BY MR. KUMIEGA:

20 Q. Ms. Long, regarding the records, how do you know that he  
21 found them behind the safe?

22 A. Because that's what he told me.

23 Q. Okay.

24 A. And I saw the book.

25 Q. All right. Other than what he told you where he found

1 i t, you have no personal knowledge of where he found it; is  
2 that correct?

3 A. Correct.

4 Q. Okay. And you also said that you had -- you would tell  
5 the Oklahoma Tax Commission about his purchasing firearms and  
6 selling firearms, or make a report regarding that; is that  
7 correct?

8 A. Yes.

9 Q. Did you, in fact, help him create his firearms documents,  
10 his A&D books?

11 A. I didn't actually write in them. He just ran out of  
12 pages at one point and asked me to recreate using an Excel  
13 spreadsheet.

14 Q. Did you do that?

15 A. Yes.

16 Q. Okay. Did you ever help him enter anything into  
17 documents in the A&D books?

18 A. No.

19 Q. Do you know if anybody did?

20 A. No.

21 Q. Okay. Do you know where the firearms records were  
22 supposed to be stored?

23 A. No, not really.

24 Q. Okay. So other than the inspection that occurred on  
25 February 19th, that's the only time, that's the only time that

1 there was a concern regarding the fi rearms documents; is that  
2 correct?

3 A. Correct.

4 Q. Okay. And then you said you worked, again, from May 2000  
5 to August 2003?

6 A. Yes.

7 Q. And you've been in the secret room you said 12 to 15  
8 times?

9 A. Yeah.

10 Q. And you said every time when the safe was opened it was  
11 always full of guns?

12 A. Pretty much, yeah. Any time that I was in there.

13 Q. Okay.

14 A. I was actually in the room more than I was in the safe.

15 Q. Okay.

16 MR. KUMI EGA: I have nothing further, your Honor.

17 MR. MARTIN: No questi ons.

18 THE COURT: Ms. Long, you may be excused, and I would  
19 advise you you're not to discuss the testimony given here today  
20 with other persons who may be a witness in this matter. You  
21 may be excused.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. KUMI EGA: Yes, your Honor. The Uni ted States  
25 would call Annette Johnson.

1 ANNETTE JOHNSON,  
2 called as a witness, having been duly sworn, testifies as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. KUMIEGA:

6 Q. Ma'am, if you can pull that microphone forward or move  
7 your chair. Would you introduce yourself to the jury, please?

8 A. Annette Johnson.

9 Q. And, ma'am, what do you do for a living?

10 A. I'm an office manager at Northwestern Mutual.

11 Q. All right. And where is that located?

12 A. At the Waterford, 6301 Waterford Boulevard.

13 Q. And how long have you been working for, you said  
14 Northwestern Mutual?

15 A. Since January 1st.

16 Q. All right. Of this year?

17 A. Yes, sir.

18 Q. And can you tell the Court and the jury what you did  
19 before, please?

20 A. My husband had a business.

21 Q. What type of business?

22 A. It was a printing business.

23 Q. And how long did you work with your husband before you  
24 went to Northwestern?

25 A. He had it for 16 years before he sold it.

1 Q. All right. And is your husband now employed also?

2 A. Yes, sir.

3 Q. What does he do?

4 A. He works for Pennsylvania Life as an associate rep.

5 Q. All right. Northwestern Mutual, how big is your office,  
6 please? How many employees are there?

7 A. We have about 30 people.

8 Q. Okay. Was there a time in your life, ma'am, that you  
9 tried to retain the services of Mr. Douglas Friesen?

10 A. Yes.

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

12 A. I retained him for a divorce, because my husband and I  
13 were having some problems.

14 Q. All right. And have you subsequently reconciled?

15 A. Yes.

16 Q. Okay. Now, was there -- when did you first meet Mr.  
17 Friesen, please? When did you retain his services, please?

18 A. It was in 2002.

19 Q. All right. About when?

20 A. November, December.

21 Q. All right.

22 A. Late November or early December.

23 Q. And he was going to represent you in what capacity,  
24 please?

25 A. In a divorce.

1 Q. All right. Okay. During this point in time did you have  
2 an opportunity to discuss a fee arrangement; is that correct?

3 A. Yes. I retained him and I gave him -- gave his office a  
4 check.

5 Q. All right. And let me ask you this: Were you also  
6 concerned about a certain safety issue regarding, in case the  
7 divorce became volatile?

8 A. Yes.

9 Q. Tell us about that, please.

10 A. My husband had some guns, and I had -- we have children  
11 and I didn't want them in the house. And so I told his office  
12 about them, and he said that -- not he, but his office said  
13 there was a safe that they can keep them in.

14 Q. All right. And was there a chance or a time when you  
15 brought that -- these firearms to Mr. Friesen's office?

16 A. Yes.

17 Q. All right. And about what time period did you bring the  
18 guns to Mr. Friesen's office, please?

19 A. I believe it was sometime in early December.

20 Q. Of what year, please?

21 A. Of 2002.

22 Q. Early December of 2002?

23 A. Yes, sir.

24 Q. Okay. Now, was there a time, ma'am -- first of all, how  
25 many guns did you bring to the office, if you remember?

1 A. Two.

2 Q. All right. Was there a time, ma'am, that ATF interviewed  
3 you about some guns that were found in Mr. Friesen's office?

4 A. Yes.

5 Q. Okay. Now, when you said you brought them to Mr.  
6 Friesen's office, who did you bring them to, if you remember?

7 A. I don't recall the gentleman's name, but he had a  
8 ponytail.

9 Q. Okay. Now, ATF interviewed you, I guess a couple years  
10 ago regarding some firearms that were recovered from Mr.  
11 Friesen's office; is that correct?

12 A. Correct.

13 Q. All right.

14 MR. KUMIEGA: If you can show 2.8, please.

15 Q. (By Mr. Kumi ega) Ma'am, what we're showing you for  
16 identification purposes is a piece of evidence that has already  
17 been admitted, Government's Exhibit 2.9. Are you familiar with  
18 that?

19 A. I remember it being a box.

20 Q. Okay. Is that the type of box you gave to Mr. Friesen?

21 A. Yes.

22 Q. Or his office?

23 A. His office.

24 Q. All right. And if you can open that box up. Is this the  
25 type of box that you gave Mr. Friesen and did it contain

1 something?

2 A. I gave his office a box, but I don't know, I don't know  
3 that this is what was in it. I knew there was a gun in it.

4 Q. All right. And how many guns did you give him?

5 A. Two.

6 Q. Let's look at Government's Exhibit 2.8. Let me ask you  
7 before we go any further, is there a note inside that box?

8 A. Yes.

9 Q. Is that your name?

10 A. Yes. It says "Annette Johnson."

11 Q. Excuse me?

12 A. It says "Annette Johnson."

13 Q. Okay. Is that your signature on that?

14 A. No. That's not my writing.

15 Q. Okay. Now, in front of you is Government's Exhibit 2.8.  
16 Are you familiar with that? If you'll look at the screen.

17 A. No, I'm not.

18 Q. Okay. And 2.7. Are you familiar with that?

19 A. No, I'm not.

20 Q. Okay. Would your husband -- whose guns were these,  
21 please?

22 A. My husband's.

23 Q. Would your husband be able to identify those firearms?

24 A. I believe so.

25 Q. Okay.

1 MR. KUMI EGA: Nothing further from this witness, your  
2 Honor.

3 THE COURT: You may cross-examine.

4 MR. MARTIN: May I approach, your Honor?

5 THE COURT: Yes.

6 CROSS-EXAMINATION

7 BY MR. MARTIN:

8 Q. That's not your handwriting?

9 A. No, sir.

10 Q. And there's a date on there, 12/19/02. Do you see that?

11 A. Yes.

12 Q. Do you know whose handwriting that is?

13 A. I don't.

14 Q. Okay. Ms. Johnson, there's an individual that has worked  
15 with Mr. Friesen in the past named Jim Foster who has a  
16 ponytail. Does that ring a bell to you?

17 A. The name Jim possibly. I don't recall his last name.

18 Q. Okay. Do you recall, ma'am, when this was going on,  
19 calling and talking to the office about your concern over the  
20 safety that there might be -- these firearms might be used  
21 during some type of a domestic assault or something, ma'am?

22 A. I don't know -- I do. I don't know if it was over the  
23 phone or if it was when I was in his office.

24 Q. Okay. Let me ask you this, ma'am: Do you recall Mr.  
25 Foster coming to your residence with some officers to pick up

1 these firearms from you?

2 A. No. I recall taking them to the office.

3 Q. You don't remember anyone coming to your house from that  
4 office to pick up these firearms?

5 A. No, I don't.

6 Q. All right. Do you have -- let me ask you this: This was  
7 in approximately December of 2002, right?

8 A. Yes.

9 Q. Okay. And the first time that you even thought about  
10 that again, I'm assuming, was when you were interviewed by the  
11 ATF some years later; is that right?

12 A. Yes.

13 Q. Okay. And you've not testified before a grand jury or  
14 anything, have you, ma'am?

15 A. No.

16 Q. Okay. And let me ask you this: You never gave these  
17 firearms to Mr. Friesen?

18 A. No.

19 Q. And you don't know what happened to those firearms, where  
20 they were located, or where they were after you gave them to  
21 someone in the office?

22 A. They told me they would be put into a safe, in a safe  
23 spot.

24 Q. Is that the man with the ponytail?

25 A. Yes, sir.

1 Q. Okay. All right. And those fi rearms that the government  
2 has already introduced, you don' t have any independent  
3 recollection of them or know if these are even those fi rearms;  
4 is that right?

5 A. No, I don' t.

6 Q. Okay. I' m assuming that at that point in 2002, you  
7 weren' t really concerned about the fi rearms or what they looked  
8 like, you were just concerned about the safety of you and your  
9 children. Would that be safe, ma' am?

10 A. Yes.

11 Q. And whatever it took to protect you and your children you  
12 were going to do; is that right?

13 A. I wanted -- I didn' t want the fi rearms in my home.

14 Q. All right.

15 A. I wanted them in a safe pl ace.

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

17 THE COURT: Yes.

18 (Bri ef pause)

19 MR. MARTIN: Nothi ng further.

20 REDI RECT EXAMI NATION

21 BY MR. KUMI EGA:

22 Q. Ma' am, di d you ever get the guns back?

23 A. No, si r, I di dn' t.

24 MR. KUMI EGA: Nothi ng further.

25 THE COURT: Ms. Johnson, you may be excused, and I

1 would advise you you're not to discuss the testimony you've  
2 given here today with other persons who may be a witness. You  
3 may be excused.

4 THE WITNESS: Thank you.

5 THE COURT: Call your next witness.

6 MR. KUMIEGA: Yes, your Honor. The United States  
7 would like to call Dr. Bugg.

8 THE COURT: Who?

9 MR. KUMIEGA: Dr. Bugg, your Honor. B-U-G-G.

10 JAMES BUGG,

11 called as a witness, having been duly sworn, testifies as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. KUMIEGA:

15 Q. Sir, for the record, could you state your name, please?

16 A. James H. Bugg.

17 Q. Sir, what do you do for a living?

18 A. I'm a chiropractic physician.

19 Q. Where do you office out of, please?

20 A. At 2821 Northwest 57th in Oklahoma City.

21 Q. And how long have you been at that office?

22 A. I've been at that office for approximately six years.

23 Q. And how long have you been a chiropractor?

24 A. Approximately 20 years.

25 Q. And do you know Mr. Friesen?

1 A. Yes, I do.

2 Q. And can you tell the jury how you know him, please?

3 A. I first met him through a patient that had hired him, an  
4 automobile accident patient, who had hired him and came to me  
5 for treatment.

6 Q. All right. And how long ago was that?

7 A. Around '94, '96.

8 Q. All right. And then was there a period of time that you  
9 and Mr. Friesen conversed about firearms?

10 A. Yes, sir. Just off and on visited about firearms. Is  
11 that what you're asking me?

12 Q. Excuse me?

13 A. I'm sorry. What were you asking?

14 Q. Was there a time you and Mr. Friesen became acquainted  
15 about -- regarding firearms?

16 A. Yes, sir. As a mutual interest.

17 Q. You are both enthusiasts regarding firearms?

18 A. I'm sorry, what?

19 Q. You are both enthusiasts regarding firearms?

20 A. Yes, sir.

21 Q. And how did this relationship begin, please, about the  
22 guns?

23 A. Either he or I mentioned firearms. I commented on his  
24 address being a 357, in his old office. I said that's a .357,  
25 common ammo used by police, and he said yes. And I think

1 that's how it started. And we just visited about firearms.

2 Q. Dr. Bugg, was there ever a time that you tried to  
3 purchase a machine gun from Mr. Friesen?

4 A. Yes.

5 Q. Have you had multiple purchases of guns from him?

6 A. Not multiple. Two or three times.

7 Q. What type of guns did you purchase?

8 A. Okay. I purchased first a National Firearms Act Ingram  
9 -- excuse me -- Cobray Mac 11 automatic weapon from him.

10 Q. Okay. And how long ago was that?

11 A. Around 1996.

12 Q. Okay. And what other type of firearms did you buy?

13 A. I tried -- I tried to purchase some firearms from him a  
14 few years ago that just went to crap. It didn't work out.

15 Q. Okay. The first -- you said the first gun, you said you  
16 bought one machine gun from him prior to 2000; is that correct?

17 A. Yes, sir.

18 Q. All right. And then subsequently, you engaged in  
19 conversation with Mr. Friesen about purchasing another machine  
20 gun; is that correct?

21 A. Yes, I did.

22 Q. What type of machine gun did you want to buy from him,  
23 please?

24 A. I called him to ask what he might still have for sale,  
25 because I had sold mine, I had had major surgery and had to

1 sell it. I sold it to a gentleman who is in law enforcement.  
2 And he said he had what's called a mini Uzi, micro Uzi pistol,  
3 and he said he had a suppressor for it, a silencer. And he  
4 said that he had a gun that's called a Sten machine gun.

5 Q. All right. And --

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

7 THE COURT: Yes.

8 Q. (By Mr. Kumi ega) This has been marked, Mr. Bugg, as  
9 Government's Exhibit 3.16. Have you seen this before?

10 A. Yes, I have.

11 Q. When did you first see that firearm, please?

12 A. In his office. It's one of the weapons he told me about.

13 Q. All right. And is that the type of firearm you wanted to  
14 purchase?

15 A. I believed it was at the time. He told me that it was a  
16 World War II relic-type machine gun made very cheaply to be  
17 dropped behind the French lines in World War II. It was made  
18 for less than \$4.

19 Q. All right. Did he describe the type of firearm it was?  
20 Did he say what brand it was?

21 A. Yes. He said it was Bren machine gun.

22 Q. Excuse me?

23 A. A Bren machine gun, a Sten that was manufactured by the  
24 British dropped behind the lines at World War II, it's an  
25 antique firearm.

1 Q. Did he say to you -- let me ask you this: Did he say  
2 this was an authentic Sten machine gun from World War II?

3 A. Yes, sir, he did.

4 MR. MARTIN: Your Honor, could we just ask Mr. Kumi ega  
5 not to lead. I object.

6 THE COURT: Will be sustained.

7 Q. (By Mr. Kumi ega) Describe the gun again for the jury,  
8 how he tried to portray the gun for you, Mr. Bugg.

9 A. He said that it's very cheaply made, so, therefore, very  
10 cheap-looking, and it's a collector item, and I remember seeing  
11 in magazines or read an article years ago about these weapons.  
12 And -- and -- pardon me -- he said that this is one of the  
13 weapons, it's an official one of the guns that was dropped  
14 behind the lines.

15 Q. All right. Now, you were going to buy that Sten, and you  
16 were going to buy another machine gun; is that correct?

17 A. Yes.

18 Q. Micro Uzi. Was there another firearm you were going to  
19 purchase?

20 A. No, sir. I'm sorry.

21 Q. Let me ask you: Was there another NFA weapon you were  
22 going to purchase?

23 A. No. There was a suppressor.

24 Q. Okay. What's a suppressor?

25 A. A silencer.

1 Q. Okay. That's a weapon; is that correct?

2 A. Yes, sir. I'm sorry. It is.

3 Q. Okay. And you were going to buy that also; is that  
4 correct?

5 A. Yes, sir.

6 Q. So how many guns were you going to buy from Mr. Friesen?

7 A. That would have been three.

8 Q. Three guns. And what was going to be the total price?

9 A. It was around 3800. I don't remember exactly. Probably  
10 right now I'm having some problems with sinuses, I've taken  
11 some medicine, so I'm having trouble speaking.

12 Q. You were going to buy three firearms. How much again?

13 A. Around 3800.

14 Q. And was there a way the firearm was broken down how much  
15 each one was worth individually?

16 A. No.

17 Q. Okay. Now, about what time, sir, did you consummate  
18 this, or did you reach a meeting of minds when you were going  
19 to purchase the gun, please?

20 A. It was November or December of -- I believe it's in the  
21 paperwork. I don't have it in front of me.

22 Q. December -- November, December, what year?

23 A. Three years ago, four years ago.

24 Q. Okay. Is this around here, February of 2004?

25 A. Yes, sir. Yes.

1 Q. Okay. And did you apply or did Mr. -- was there  
2 something about transfer paperwork that you were going to work  
3 on, please?

4 A. Yes, sir. First, I filled out the paperwork for the ATF,  
5 and I paid and I bought three \$200 cashier's checks.

6 Q. Okay. That's for each of the firearms?

7 A. Yes, sir. For each tax stamp out in the open. And I  
8 gave him a check for the weapons, and the three -- and the  
9 three \$200 separate cashier's checks to be mailed to the ATF  
10 along with the fingerprint card and all the paperwork that I'm  
11 supposed to fill out for a Class 3 firearm.

12 Q. And how soon after -- how soon after February 2004 did  
13 you give the -- pay for the transfer fees?

14 A. I don't remember, sir. I'm sorry.

15 Q. All right. Did you ever get the guns?

16 A. No, sir, I did not.

17 Q. All right. Tell the jury the story behind not getting  
18 the firearms, please.

19 A. I called -- I called Mr. Friesen a little while later, a  
20 month or two later, month and a half, two months later, and he  
21 said that -- he said something to the effect that I'm going to  
22 have to come back down, that when -- on his computer when he  
23 pulled up these firearm papers that it was not correct, in  
24 other words, it was not filled out on both sides as they are  
25 supposed to be. So I had to go through and fill out, and do

1 new paperwork, go back down to the sheriff's office like I had  
2 done before, get my background investigation, get it okayed by  
3 the sheriff's department, and signed by Mr. Whetsel, and then  
4 bring it back to him and we would try it again.

5 Q. All right. Do you, in fact, do that?

6 A. Yes, sir, I did.

7 Q. And how long did that take before you floated the new  
8 application?

9 A. Two or three months, something like that.

10 Q. All right. And what happens next? What's the next --

11 A. Okay. Again, contacted him, he said something to the  
12 effect, well, it's taking a while because of this, you know,  
13 September 11th thing, they are real slow about doing these  
14 transactions, mountains of paperwork, terrorist activities.  
15 That was the excuse or reason he gave me for it taking a while  
16 again.

17 Q. All right. When is the next time you heard from Mr.  
18 Friesen about the machine gun you tried to purchase?

19 A. I don't remember exactly when.

20 Q. All right. What did he say about it then?

21 A. He said it was going to take a while. That's when I  
22 decided to put a trace on these firearms through the national  
23 ATF phone number that I -- and I called myself.

24 Q. All right. And based on the information you received,  
25 what did you do next, Dr. Bugg, please?

1 A. I just -- I waited for something to happen, and then I  
2 was contacted by the ATF to come down and have a meeting with  
3 them.

4 Q. All right. Did you ever receive a letter from Mr.  
5 Friesen regarding why you're not getting the Sten machine gun?

6 A. Yes, I did. I'm sorry. My wife, who is an attorney,  
7 made a demand on him, or it's called a demand, just asking him  
8 that we would like our money back if we're not going to get the  
9 weapons. And he wrote a letter back, and I believe I kept it  
10 and gave it to the ATF, stating something to the effect that,  
11 he made it try to look like I was trying to force his hand  
12 about getting the weapon when the paperwork has not come back,  
13 and that's not what I was asking him. I was asking either give  
14 me the weapons or give me back my money. He said the ATF had  
15 seized one of the guns, the Sten, and that he said it was due  
16 to a foul-up on the serial number, or something like that, he  
17 said.

18 Q. All right. Did he give you another, any deeper  
19 explanation regarding the foul-up on the serial number?

20 A. No, sir, he did not.

21 Q. All right. As you're sitting here today, Dr. Bugg, did  
22 you ever receive the gun, the machine gun?

23 A. No, sir.

24 Q. Did you ever receive your money back?

25 A. No, sir.

1 Q. Okay. During your conversations about the Sten machine  
2 gun that you were going to purchase, did you tell him why you  
3 wanted a Sten machine gun?

4 A. Yes.

5 Q. What did you say to him, please?

6 A. Well, my father-in-law is 96 and he's a World War II vet,  
7 he was actually kind of old to be in World War II. But as a  
8 bonding thing with him, he lives three blocks away, I'm very  
9 close to him, I wanted -- I was excited to get to show him  
10 something that I thought was a relic from World War II and  
11 share it with him. And I don't have a gun collection anymore,  
12 I sold it after two surgeries, I sold my guns that I had. And  
13 I was just wanting a collection, just something of an  
14 investment.

15 Q. All right. Did you tell Mr. Friesen that?

16 A. Yes, I did.

17 Q. Okay.

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

20 THE COURT: Yes.

21 (Brief pause)

22 Q. (By Mr. Kumi ega) You said, Dr. Bugg, that you signed  
23 paperwork to get the gun transferred to you; is that correct?

24 A. Yes.

25 Q. Who did you give that paperwork to?

1 A. To Doug Friesen.

2 Q. Do you know, did he ever say to you why the paperwork was  
3 not completed?

4 A. No.

5 Q. Okay. Can you look at Government's Exhibit 1.9.

6 MR. KUMIEGA: And, Agent, if you can show --

7 THE COURT: One-point what?

8 MR. KUMIEGA: 1.9, your Honor.

9 Q. (By Mr. Kumi ega) Dr. Bugg, are you familiar with that  
10 document?

11 A. No, sir.

12 Q. Okay. Can you slip open the page, please? Do you  
13 remember the serial number of the firearm that you were going  
14 to purchase, the Sten machine gun?

15 A. 6 -- E683.

16 Q. E683?

17 A. I believe so. I wrote it -- I've written it down on some  
18 other paperwork. This is not my writing, but I'm reading it  
19 off here.

20 Q. Let's look at Government's Exhibit No. 5, some documents  
21 that you provided to us, please.

22 MR. KUMIEGA: Agent, if you can show him that, please.

23 Q. (By Mr. Kumi ega) Doctor, are you familiar with  
24 Government's Exhibit 5.0?

25 A. Yes, sir, I am.

1 Q. What are those, please?

2 A. They are applications for tax transfer for registration  
3 of the National Firearms Act.

4 Q. All right. And for what firearm, please?

5 A. This particular one is for the Sten Mark II machine gun.

6 Q. All right. And the serial number, please?

7 A. Is E683.

8 Q. All right. Did you make a mistake writing it down,  
9 please?

10 A. I sure did.

11 Q. Tell the jury about that.

12 A. Okay. His office was dark, and as a matter of pride, I  
13 finally started wearing magnifying glasses, and I wrote one  
14 number different on my check. It was just an accident.

15 Q. And did you subsequently write the check for the right  
16 number?

17 A. Yes.

18 Q. Or did you correct that at a later date?

19 A. I corrected it at a later date. Yes, sir.

20 Q. What is Government's Exhibit 5.0? Summarize that for the  
21 jury. What is that, please?

22 A. This is an application that you make in order to buy a  
23 National Firearms Act weapon. It's one of the most, I suppose,  
24 one of the most open things you can do in this world under the  
25 full auspices and eyes of any government agency to purchase a

1 National Firearms Act weapon. As long as you have a clean  
2 background record, which I do, and this is a legal matter, this  
3 allows you to buy, to purchase that weapon. It was an  
4 application that the ATF then can either turn you down or  
5 approve of you buying this weapon, is my understanding.

6 Q. All right. Did you sign that document?

7 A. Yes, I did.

8 Q. And who did you give that document to, please?

9 A. To Larry Douglas Friesen.

10 Q. Okay. Did the ATF ever approve or reject your document?

11 A. I neither received an approval or a rejection.

12 Q. All right. If you would look at Government's Exhibit  
13 5.1.

14 A. Okay.

15 Q. What is that, please?

16 A. That's the letter that I was talk -- telling you about  
17 earlier --

18 Q. All right.

19 A. -- in our conversation.

20 MR. KUMIEGA: Your Honor, at this time the United  
21 States would move for the introduction of Government's Exhibit  
22 5.0 and 5.1.

23 MR. MARTIN: Your Honor, may we approach? I have an  
24 objection.

25 THE COURT: To 5.1?

1 MR. MARTIN: To 5.1.

2 THE COURT: The stickies on the bottom?

3 MR. MARTIN: Yes, sir.

4 THE COURT: The Court will sustain the objection as to  
5 that and admit 5.0 and 5.1 with the stickies that Mr. Bugg put  
6 on, that Dr. Bugg put on the bottom, if you'll delete those  
7 before you show them on the --

8 MR. KUMIEGA: Yes, sir.

9 MR. MARTIN: Your Honor, if I might say, there is also  
10 a copy of that in 5.0, the very same letter with, like, the  
11 next to the last page of 5.0.

12 THE COURT: It's not in my copy of 5.0.

13 MR. MARTIN: It's in mine, your Honor. I just want to  
14 make sure it's not in there.

15 MR. KUMIEGA: If Mr. Martin could show me which  
16 exhibit he has a problem with I'll obviously redact it.

17 THE COURT: Do you have 5.1? Will you hand it to me?

18 MR. KUMIEGA: Yes.

19 THE COURT: Hand it to the clerk here.

20 Mr. Kumiega, there's copy of that letter in 5.0 also.

21 MR. KUMIEGA: I'm getting ready to check it out, your  
22 Honor.

23 THE COURT: Here. Mr. Martin.

24 MR. MARTIN: I've seen that, your Honor.

25 THE COURT: We'll stand at ease just a minute, ladies

1 and gentlemen of the jury. You can stand and stretch just a  
2 minute while we get our exhibits straightened out here.

3 MR. MARTIN: It was just in my copy, Judge, I guess.

4 THE COURT: Ready?

5 MR. KUMI EGA: Yes, your Honor.

6 Q. (By Mr. Kumi ega) Dr. Bugg --

7 MR. KUMI EGA: Again, your Honor, the United States  
8 would move for introduction of Government's Exhibit 5.1 into  
9 evidence.

10 THE COURT: They are admitted with the objection  
11 sustained in relation to the stickies that were on the letter.

12 MR. KUMI EGA: I can proffer to the Court, your Honor,  
13 those stickies have been removed.

14 THE COURT: They've been removed?

15 MR. KUMI EGA: Yes, sir.

16 THE COURT: 5.0 and 5.1 is now admitted.

17 MR. KUMI EGA: Can you show Exhibit 5.1, please?

18 Q. (By Mr. Kumi ega) Is that the letter that you received?

19 A. Yes.

20 MR. KUMI EGA: Will you highlight the first paragraph,  
21 please?

22 Q. (By Mr. Kumi ega) Can you read that into the record,  
23 please, the first paragraph?

24 A. "Ms. Fortune: Of the three items your husband  
25 purchased, two of them, the Uzi and the silencer, are

1 at my home waiting for the transfer papers. The third  
2 item, a Sten machine gun, is in the possession of the  
3 ATF as a result of some confusion with another Sten  
4 gun, which I have never had."

5 Q. Now, did you take any further action after you, after you  
6 received that letter, sir?

7 A. No, sir.

8 Q. All right. So at this point, you don't have a machine  
9 gun or any machine gun?

10 A. No, sir.

11 Q. And how much money are you out?

12 A. 3800.

13 Q. All right.

14 MR. KUMIEGA: No other questions, your Honor.

15 THE COURT: Mr. Martin, I think we're going to take  
16 our break for lunch, if this is the appropriate time.

17 MR. MARTIN: I'll not argue, Judge.

18 THE COURT: Ladies and gentlemen of the jury, we're  
19 going to recess for lunch, and we'll reconvene at one o'clock.  
20 I do have another matter to take up with the attorneys over the  
21 lunch hour, so hopefully, we'll be finished with that before  
22 one. But again, I would admonish you, give you the same  
23 admonishment I gave you before to not discuss the testimony or  
24 the evidence among yourselves or reach any conclusion until  
25 I've instructed you on the law at the conclusion of the

1 evidence.

2 With that, we'll be in recess until one p.m. All rise  
3 while the jury exits.

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

6 THE COURT: Dr. Bugg, you'll be excused until 1 p.m,  
7 we'll resume your testimony. I'll advise you during the recess  
8 you're not to discuss your testimony with other persons who may  
9 be a witness in this matter.

10 THE WITNESS: Yes, sir.

11 THE COURT: You may be excused.

12 Ready to resume our Daubert hearing, Mr. Kumi ega?

13 MR. KUMI EGA: I think Mr. Martin was doing  
14 cross-exami nati on.

15 THE COURT: Do we have our witnesses?

16 MR. KUMI EGA: Your Honor, after this hearing I'm going  
17 to need to go downstairs to talk to a witness or two. I think  
18 this case is flying; I'm getting ready to rest. I was  
19 wondering if you can indulge the government, it will make the  
20 presentation a little quicker if I can talk with Mr. Ladd and  
21 his attorney before he takes the stand to admonish him not to  
22 talk about some of concerns that Mr. Martin raised in one of  
23 his motions regarding statements that should not be admitted.  
24 And I would like to have a couple of minutes, if possible, to  
25 visit with that.

1           Also, your Honor, we have another collateral hearing  
2 regarding Ms. LeMaster or Ms. Dennis. The United States filed  
3 a motion late last night regarding a use immunity hearing. So  
4 I think there is going to be a couple of things we have to  
5 address before the United States continues.

6           THE COURT: Okay. Other witnesses besides Ms.  
7 LeMaster and --

8           MR. MARTIN: LeMaster, Ladd, Walbridge, your Honor.

9           MR. KUMIEGA: There's a possibility, your Honor, the  
10 government might call Mr. Bobby Hunter, your Honor. And I'll  
11 visit with that. And I would like to address the Court about  
12 putting Mr. Knopp on the stand to, for housekeeping measures  
13 regarding part of the testimony. And I think we're going to  
14 rest in the next three or four hours, if possible. It's going  
15 to be quick, I think. But I would need time to make sure that  
16 Mr. Ladd does not pop off and we have a mistrial. That's why I  
17 would like to have a couple of minutes to visit with him, your  
18 Honor.

19           THE COURT: Well, if we get this cross-examination  
20 concluded on Mrs. Walbridge, why, we can, you'll have about an  
21 hour to do all these things.

22           MR. KUMIEGA: Okay. Thank you, your Honor.

23           THE COURT: Is Ms. Walbridge here?

24           MR. KUMIEGA: She's on the way, your Honor.

25           MR. MARTIN: While we're waiting on her, could I

1 address those two concerns, your Honor, I had of her testimony?

2 THE COURT: Yes.

3 MR. MARTIN: When she does -- assuming, your Honor,  
4 that you rule at the Daubert she's allowed to testify, I have  
5 two concerns about her testimony that I wanted to address  
6 before she testifies.

7 One is, your Honor, I think it's improper for her to make  
8 any statements concerning her tests were based upon statements  
9 made by my client, since there is no evidence, information or  
10 testimony that he's ever talked to any government agent about  
11 anything --

12 THE COURT: So far I never heard anything about her,  
13 during the direct examination I never heard any of that  
14 mentioned.

15 MR. MARTIN: Well, it's in her report and that's my  
16 concern. That's in the report, and that's one concern. The  
17 second thing, your Honor, is her tests about stamping and  
18 painting and using the same exhibits that the expert Howard  
19 Kong, that the paint was on prior to the stamping is  
20 cumulative, duplicious, it's the identical testimony. And I  
21 don't think it -- it hasn't even been challenged yet. And for  
22 the government to go over that specific item that the paint was  
23 supposedly on the firearm prior to the stamping two times  
24 before we even get to put on a case I think is inappropriate  
25 and improper and cumulative.

1 THE COURT: Thank you, Mr. Martin. Is any of her  
2 testimony going to be based upon alleged statements that the  
3 defendant made to somebody?

4 MR. KUMI EGA: No.

5 THE COURT: So that won't be an issue?

6 MR. KUMI EGA: We'll, just to give the Court the full  
7 background. The reason the solvent tests were performed is  
8 because we had information through a witness, from Mr. Bobby  
9 Hunter, how Mr. Friesen altered or tried to raise, supposedly,  
10 the serial number. And that's why in the report of the  
11 interview or report from ATF chemist to do what she did was to  
12 show that that, in fact, was impossible to do. The United  
13 States is not going to address that, but I think that's part of  
14 the government's presentation that there is a layer of paint,  
15 there was nothing ever removed and nothing added.

16 THE COURT: You can do that without any inference or  
17 reference to Mr. Hunter's hearsay testimony?

18 MR. KUMI EGA: Of course.

19 THE COURT: Okay.

20 MR. MARTIN: That's my concern.

21 THE COURT: So that issue is moot.

22 Is our witness here?

23 Ms. Walbridge, you're under the same oath that you gave  
24 when you began your testimony this morning. You may be seated.

25 Mr. Martin, you may cross-examine.

1 MR. MARTIN: Thank you, your Honor.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. MARTIN:

4 Q. Ms. Walbridge, you were testifying about the tests that  
5 you performed, in particular about the stamping of the firearm  
6 with some type of die, painted and unpainted. Do you recall  
7 that, ma'am?

8 A. Yes.

9 Q. Okay. And I believe you testified that you actually, you  
10 didn't age the paint, right?

11 A. No.

12 Q. Okay. Did you use the -- I mean, you now say you  
13 determined the composition of the coating somehow, you had  
14 those charts, right, that determined what kind of composition  
15 the paint was?

16 A. Right. The IR spectroscopy.

17 Q. How do you -- the coating that you put on in these tests,  
18 was that the same chemical composition that was on the firearm?

19 A. No. I wasn't trying to replicate, replicate the firearm  
20 in terms of the type of metal or the paint that I used. I was  
21 simply trying to visually see does the stamping process impact  
22 the paint, does it impact it into the impression.

23 Q. Okay. So you didn't use the same kind of paint?

24 A. I did not.

25 Q. Okay. Did you use any type of metal plates that were,

1 say, oh, 20 years old?

2 A. I don't know the age of the metal plate that I used.

3 Q. Okay. And these were just flat plates, right?

4 A. Yeah. It was actually a cover to a circuit breaker box  
5 we had in our laboratory.

6 Q. You didn't use any rounded objects, like a barrel?

7 A. I did not.

8 Q. Okay. So then the test relating to the stamps would have  
9 been used on a different type of -- a different -- I'll try to  
10 use the right terminology here -- a flat object versus a round  
11 object, and a paint of unknown composition, right?

12 A. Right. I wasn't replicating anything.

13 Q. Okay. So that wasn't comparative analysis of what was --  
14 what we actually had, then?

15 A. The comparative analysis part comes into play of the  
16 question I had was, does the stamping process -- I'm seeing  
17 under the microscope with the exhibit that the stamping process  
18 physically alters that paint, drives it into the impression.  
19 So I just did that, stamped something that was painted --

20 Q. Well --

21 A. -- and found that the paint was wedged into the  
22 impression when the paint was applied to the metal and then  
23 stamped. And it visually, so visually it looked the same and  
24 that's where the comparison comes into play. It's the visual  
25 portion of it.

1 Q. But the -- there are a lot of variables based on that,  
2 based on the lack of uniformity in your experiment; would you  
3 agree with that, ma'am?

4 A. I wouldn't agree, because I was just looking at it  
5 visually. I used paint, stamping process, that forced the  
6 paint. It doesn't matter what the material is, per se, I just  
7 found that that paint wedged into the impression, had the  
8 similar visual -- visually looked the same as the evidence.

9 Q. Did you bring those plates with you today?

10 A. No.

11 Q. Okay. Could you have done the same experiment then on  
12 wood?

13 A. I wouldn't have done it on wood because I was dealing  
14 with metal here.

15 Q. Okay.

16 A. I was trying to have likes, but not replication.

17 Q. Well, likes would be a round tube and the same type of  
18 paint and same type of stamps, would you agree?

19 A. No. That would be complete replication.

20 Q. Well, similar. Would you agree with that, with that  
21 terminology, "similar"?

22 A. Sure.

23 Q. And there are different hardnesses and thicknesses of  
24 metal, are there not?

25 A. I believe there are, but I'm not a metal expert.

1 Q. Well, that might alter how paint looks after it has been  
2 hit with a die; would you not agree?

3 A. In what way? I don't think I understand your question.

4 Q. That might alter the way it would look if it had been hit  
5 with a die, how the paint would look in the metal, the  
6 hardness, thickness of the metal?

7 A. I think either way the paint is going to be driven into  
8 an impression, whether that impression be made in wood, metal,  
9 whatever. I kind of think of it as icing the cake, really nice  
10 and perfectly clean and then having someone come along and  
11 stick their finger in it. They crack the icing, they push the  
12 icing into the cake. The material at hand really doesn't  
13 affect my visual exam, what I saw.

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

15 THE COURT: Yes.

16 (Brief pause)

17 MR. MARTIN: Nothing further, your Honor.

18 THE COURT: Anything further, Mr. Kumi ega?

19 MR. KUMI EGA: No, your Honor.

20 MR. MARTIN: I was going to ask if we can admonish  
21 the witness not to make reference as we did in the limine  
22 matter, should you rule she can testify.

23 THE COURT: First of all, based upon Rule 702, the  
24 Court does find that the Ms. Walbridge is an expert and is  
25 qualified to render this opinion based upon her knowledge,

1 skill, experience, training, or education. Really, I heard no  
2 challenge to her expertise based upon her testimony and her  
3 resume. The Court does find that she does qualify as an expert  
4 under Rule 702.

5 Secondly, under Daubert, the Court does find that Ms.  
6 Walbridge's opinion is reliable, that her theories have been  
7 tested, they've been subject to peer review. The Court heard  
8 no error, potential for error in her testing, and the Court  
9 finds that her methodology is generally accepted in the  
10 scientific community.

11 The Court also finds that the, her scientific, technical  
12 and specialized knowledge will assist the trier of fact. As  
13 stated, she's qualified in this area, the evidence that she's  
14 going to testify to is relevant to the issues connected to this  
15 trial, and that the underlying facts upon which her opinion is  
16 based is reliable.

17 Ms. Walbridge, based upon the Court's findings, you will  
18 be allowed to testify as an expert in this area. You made some  
19 tests, you gave a brief statement as to the reason you made  
20 some of your tests were made based upon what an agent told you,  
21 that the defendant in this case Mr. Friesen may have told  
22 somebody else. The Court is going to sustain the objection to  
23 any mention of why you made certain tests. You can give  
24 results of the tests, but none of the results of the tests are  
25 based upon what somebody else may have said or something else.

1 But the Court is going to admonish you not to discuss what some  
2 agent told you that somebody else told him that Mr. Friesen may  
3 have said or may have done something. So I understand that,  
4 from your testimony, that was the reason why you performed some  
5 test was some information you had about what may have been  
6 done, so I'm going to admonish you not to give the reason for  
7 the test based upon this, but simply the results of your test  
8 and how you did it.

9 THE WITNESS: Okay.

10 THE COURT: In other words, any inference or reference  
11 to Mr. Friesen should not be a part of your testimony.

12 THE WITNESS: Okay.

13 THE COURT: Okay. With that, you may be excused, and  
14 we're going to reconvene at one o'clock, so be ready to testify  
15 then.

16 Mr. Kumiaga, you have another -- the Court is also going  
17 to overrule the objection based on it being cumulative, Mr.  
18 Martin.

19 You have another motion in front of the Court relating to  
20 Terri LeMaster, Terri Dennis, Terri LeMaster.

21 MR. KUMIAGA: Yes, your Honor.

22 THE COURT: Is that a man or woman?

23 MR. KUMIAGA: Woman.

24 THE COURT: Your proposed order relates to a him.

25 MR. KUMIAGA: I apologize, your Honor.

1 THE COURT: That's why I questioned that. Do you want  
2 to take up that motion at this time? Is it Ms. LeMaster or is  
3 it Ms. Dennis? Which is it?

4 MR. KUMIEGA: It's Ms. Dennis, your Honor.

5 THE COURT: Are they here? Have you discussed her  
6 testimony with her attorney?

7 MR. KUMIEGA: Your Honor, they -- I've had some slight  
8 proffer sessions, if you want to call it that. I've not  
9 discussed her testimony. I've not even discussed the  
10 procedures basically, she's represented by Jeff Byers. And I  
11 was downstairs prior --

12 THE COURT: Are they here?

13 MR. KUMIEGA: They were here this morning, your Honor.  
14 I don't know if --

15 THE COURT: I'll let you -- we'll take a break until  
16 about 12:45, and I'll let you visit, have an opportunity to  
17 visit with her and him and, if they are available. If they are  
18 unavailable would you -- we'll just deal with it when they are  
19 after lunch, I guess.

20 MR. KUMIEGA: And I still need to talk to Mr. Ladd to  
21 make sure there is no violation, the concern that I also have  
22 and you have and Mr. Martin has.

23 THE COURT: Well, we'll just -- when would you  
24 anticipate calling Ms. LeMaster?

25 MR. KUMIEGA: I think towards the end of the day,

1 Judge.

2 THE COURT: Okay. Well, we can wait and take up that  
3 issue then at an afternoon break or something. We'll just  
4 reconvene, be in recess until one p.m., and you make sure Mr.  
5 Ladd, you've had an opportunity to visit with him. And you  
6 said you may call Mr. Hunter?

7 MR. KUMIEGA: Yes, your Honor. And I also just talked  
8 to Mr. Knopp, Ms. Johnson's husband, Annette Johnson who just  
9 testified, she could not identify the guns. We got ahold of  
10 her husband and we would like to put him on testifying under  
11 oath that those guns are his.

12 MR. MARTIN: Your Honor, they are in evidence. I  
13 haven't raised -- that's not going to be an issue in the trial.  
14 I'll tell you that.

15 THE COURT: Can you just stipulate those guns are his?

16 MR. MARTIN: We will stipulate that those are his  
17 guns, your Honor.

18 THE COURT: Okay. That takes care of it.

19 We'll be in recess until one p.m., and get that  
20 stipulation entered and when we come back, you can enter that  
21 stipulation into the record. We'll be in recess until one p.m.

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

24 THE COURT: We're missing a witness, Mr. Kumienga.  
25 Dr. Bugg, if you would retake the witness stand, please,

1 and the Court will remind you you're under the same oath as you  
2 were when you gave your testimony this morning.

3 THE WITNESS: Yes, sir.

4 THE COURT: You may cross-examine.

5 MR. MARTIN: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. MARTIN:

8 Q. Is it Dr. Bugg or Mr. Bugg?

9 A. Either, sir.

10 Q. Okay. You're a chiropractor, a licensed chiropractor?

11 A. Yes, sir.

12 Q. Okay. It's my understanding that you had met Doug years  
13 ago because you had had a patient that apparently was a client  
14 of his and that's how you first met him?

15 A. Yes, sir.

16 Q. And that in that process through a conversation using the  
17 words 357 you found out that the two of you both were firearms  
18 enthusiasts, right?

19 A. I believe so. Yes.

20 Q. And I think you testified that you had years earlier,  
21 probably in '96 or so, if you know, correct me if that date is  
22 wrong, but sometime in the '90s had purchased a machine gun  
23 from him; is that right?

24 A. What I do with my patients is before I talk to them I  
25 have a file, and I was thinking at noon if when you ask me a

1 question if I could look at a piece of paper that actually had  
2 that time, then I could then tell you an exact date. I think  
3 that would work better, sir, if I could.

4 Q. Well, I'm not asking for an exact date, but I'll show you  
5 something that's been provided to me by the government and ask  
6 you if that appears to be the firearm that you purchased from  
7 Mr. Friesen, and I think that's --

8 A. '96.

9 Q. In May of 1996?

10 A. That is.

11 Q. And do you recall what kind of gun that was?

12 A. A Mac 11.

13 Q. A Mac 11?

14 A. Uh-huh.

15 Q. Is that an automatic firearm, sir?

16 A. Yes, sir.

17 Q. Okay. And after that, I'm assuming for a period of time  
18 you had contact with Mr. Friesen off and on; is that correct?

19 A. Yes, sir.

20 Q. And then I understand that you didn't really have any  
21 contact with him for a period of time, but contacted him  
22 sometime around 2003 about whether or not he had certain  
23 firearms that might be available to you?

24 A. I believe that was the date. Yes. Yes.

25 Q. Okay.

1 A. Like in November or something of 2003.

2 Q. Of 2003. And I'm not trying to trick you up on the date,  
3 and I don't have a piece of paper to show you on that one.

4 A. Okay, sir. That's to the best of my knowledge.

5 Q. So did you talk to him on the phone, did you go see him?

6 A. I called him on the phone.

7 Q. Okay. And then you all made arrangements to visit at his  
8 office?

9 A. Yes.

10 Q. Okay. And you went into his law offices; is that right?

11 A. Yes, sir.

12 Q. And you're familiar with that office, are you not?

13 A. Fairly well.

14 Q. That's the one on 13th and Classen?

15 A. Yes.

16 Q. And he has a personal office, does he not, sir?

17 A. Yes.

18 Q. And that's upstairs?

19 A. Second floor, I believe. Yes.

20 Q. And that's where you were, is it not, sir?

21 A. Yes.

22 Q. There by his desk or somewhere in his personal office?

23 A. Yes. In front of his desk.

24 Q. In front of his desk?

25 A. Uh-huh.

1 Q. Okay. Now, that was sometime after November of 2003; is  
2 that right?

3 A. Yes.

4 Q. As a matter of fact, is the day that you saw the firearm  
5 the day you purchased the firearm, or did you go back on  
6 another occasion?

7 A. I went -- I believe, I believe I went back on another  
8 occasion.

9 Q. Okay. So you show up and you see the firearm, and you go  
10 think about it or something, and then you come back on another  
11 occasion? How much time lapsed between?

12 A. Sir, I don't remember. I may have purchased it then. I  
13 may have given him the check then, we had agreed upon a price,  
14 I may have paid it then. I'm sorry, I don't remember exactly.

15 Q. I'm just asking you. I'm not trying to -- so you just  
16 don't remember; would that be fair, sir?

17 A. That would be fair, sir.

18 Q. You know you went there, you know you saw it, you know  
19 you eventually bought it or may have even bought it that day?

20 A. Exactly.

21 Q. Okay. And in front of you, sitting right in front of you  
22 is a firearm, it's Government's Exhibit 3.16. Is this the  
23 firearm that you saw the day you were in Doug Friesen's office?

24 A. May I examine it?

25 Q. Yes, sir.

1 A. Yes. This is one of them.

2 Q. Okay. You actually on that day, whatever day, whenever  
3 you were there, purchased also another machine gun and a  
4 suppressor or silencer, right?

5 A. Yes, sir.

6 Q. And that day that you were there, you wrote him a check,  
7 didn't you?

8 A. Yes.

9 Q. Okay. And then I think you testified that you didn't get  
10 the firearm and you were first instructed that there was some  
11 problems with the way the paperwork had been prepared and you  
12 had to redo the paperwork, correct?

13 A. Yes, sir.

14 Q. And then after another inquiry you were told that there  
15 was problems because of 9/11 and the transfer process with the  
16 ATF was slowed down or something, right?

17 A. Possibly. Yes.

18 Q. Okay. Then I believe you testified that a letter was  
19 sent to Doug, I guess on your -- by your wife for you?

20 A. Yes.

21 Q. And I think that's Government's Exhibit 5.1, that letter,  
22 right?

23 A. Yes.

24 Q. Okay.

25 MR. MARTIN: Do we have that letter?

1 Q. (By Mr. Martin) Mr. Kumi ega, you recall, had you read  
2 the top portion of that letter, right?

3 A. Yes, sir.

4 MR. MARTIN: Can we highlight the bottom portion?

5 Q. (By Mr. Martin) Can you read that for us, please?

6 A. Yes. Excuse me. This part of the letter is the one that  
7 kind of angered me because it tried to make me sound like I'm  
8 demanding a gun on him.

9 Q. I asked you a question, sir. Can you read the bottom  
10 portion --

11 A. I believe I can.

12 Q. -- and then I'll ask you more questions, okay?

13 A. Okay.

14 "You can make all the demands which you want. I  
15 don't control the ATF's time schedule and I'm not  
16 going to break any laws by giving your husband these  
17 guns prior to the ATF authorizing the transfer.  
18 As soon as the transfer papers come through or  
19 rejection of same, I will transfer to Dr. Bugg either  
20 the guns or money depending on what the ATF approves.  
21 Sincerely, Doug Friesen."

22 Q. Okay. And --

23 MR. MARTIN: That's all with that.

24 Q. (By Mr. Martin) You understand, do you not, sir, that it  
25 is unlawful for him to give you those firearms prior to the

1 approval by the ATF?

2 A. Of course. Yes, sir.

3 Q. Okay. And you, in this particular case, you had written  
4 that check, as a matter of fact, I think, wasn't it on January  
5 30th, 2004? Do you recall that, sir?

6 A. If I can see the check I can verify the exact date.

7 Q. That's what I'm going to do. I'm going to go to Exhibit  
8 5, I think it's Exhibit 5, second page. Can you see the date  
9 at the top?

10 A. Yes.

11 Q. Is that January 30th, 2004, or '04?

12 A. Yes, sir.

13 Q. Okay. And that would be 2004, right?

14 A. Yes.

15 Q. And you don't have any reason to believe that's not the  
16 accurate date, do you, sir?

17 A. No.

18 Q. The reason I ask you that is because the government has  
19 made a chart over here and on this chart they've put down that  
20 you bought this gun in February of 2004. We don't have any  
21 reason to think that date is wrong, do we?

22 A. Well, no. You know, that's when I tried to purchase the  
23 gun, a day or two later is February of 2004, so it's what I  
24 assume happened. I'm not sure.

25 Q. I guess what my question is: You have no reason to think

1 that you would have written an incorrect date on your check, do  
2 you?

3 A. No, sir.

4 Q. Okay. Now, there are three items on this, there's a  
5 serial number for what looks like an Uzi?

6 A. Yes.

7 Q. Do you see the U-Z-I, then a serial number?

8 A. Yes.

9 Q. Then there's a serial number, I think that stands for  
10 suppressor written above it?

11 A. Yes.

12 Q. And then there's a Sten --

13 A. Yes.

14 Q. -- a serial number written for the Sten. Do you see  
15 that, sir?

16 A. Yes.

17 Q. And that Sten serial number is E687, correct?

18 A. Yes.

19 Q. And the Sten you were trying to buy was E683, right?

20 A. Yes.

21 Q. Okay. And as a matter of fact, you testified before the  
22 grand jury in this matter?

23 A. Yes, that I made a mistake.

24 Q. Well, you testified before the grand jury in this matter;  
25 is that correct?

1 A. I believe so.

2 Q. Yeah. As a matter of fact, prior to you testifying, Mr.  
3 Kumi ega gave you immunity for your testimony, didn't he, sir?

4 A. I believe so. I don't know. I'm not sure.

5 Q. Do you remember Mr. Kumi ega telling you that if you admit  
6 any crimes under oath or -- you're going to get immunity?

7 A. I believe I heard those words. Yes.

8 Q. Okay. And in your testimony before the grand jury, you  
9 were questioned about that serial number written on your check,  
10 were you not, sir?

11 A. Yes.

12 Q. And you told the grand jury under oath that Doug's  
13 personal office that you were in on the second floor, that it  
14 was dark in his office, and I didn't have these with me?

15 A. Right.

16 Q. And you hold up, I'm assuming, a pair of glasses like  
17 what I have in my hand?

18 A. Yes.

19 Q. And you couldn't see the number clearly?

20 A. Correct.

21 Q. Is that correct?

22 A. And that may have been why I put the wrong number.

23 Q. Okay. Now, so there's two reasons then. Number one, it  
24 was dark in his office; is that right?

25 A. I believe so. Yes. I know it was dark in his office.

1 Q. Not very good lighting?

2 A. Correct.

3 Q. And number two, you, like me, sometimes need a little  
4 help for seeing up close or seeing far away?

5 A. Up close and far away too.

6 Q. Okay. Both kinds.

7 Now, you understand, sir, that -- well, let me ask you if  
8 you understand, sir, that the parts on a Sten firearm are all  
9 authentic parts except for the receiver. Do you understand  
10 that, sir?

11 A. I do not know that.

12 Q. Okay. Do you know whether or not you could bring, import  
13 a receiver into the United States on a Sten machine gun, sir?

14 A. I do not know that.

15 Q. Okay. And I assume because you went back to Mr. Friesen  
16 for these other three NFA firearms we've talked about, the Uzi,  
17 suppressor and the Sten, that you had no problems whatsoever  
18 with Mr. Friesen in May of 1996 when you bought that other  
19 firearm.

20 A. No, sir.

21 Q. No, sir, you had no problems?

22 A. I had no problems.

23 Q. So on January 30th of 2004, you didn't have any  
24 difficulty -- well, let me rephrase that. Except for the light  
25 and the lack of glasses, you didn't have any difficulty

1 identifying that there was a serial number on that firearm?

2 A. No.

3 Q. Okay.

4 A. I made a mistake somehow. I don't know if --

5 Q. I'm not asking you about that, but you saw a serial  
6 number?

7 A. Yes.

8 Q. You might not have seen it correctly?

9 A. Or I might not have written it correctly. I'm not sure  
10 which one I did, but I did make a mistake and I did rescind  
11 that.

12 Q. You did what? I'm sorry?

13 A. I did rescind that and I did correct that.

14 Q. What do you mean "rescind" it?

15 A. State that I made a mistake on the number.

16 Q. Oh, oh. You mean through the testimony?

17 A. Yes.

18 Q. You didn't sign some document or anything?

19 A. No.

20 Q. I understand that.

21 MR. MARTIN: Nothing further, your Honor.

22 THE COURT: Redirect?

23 MR. KUMIEGA: Thank you, your Honor.

24

25

1

## REDI RECT EXAMI NATION

2 BY MR. KUMI EGA:

3 Q. Dr. Bugg, Mr. Martin said that it would be illegal for  
4 you to take the gun before ATF approved the transfer; is that  
5 correct?

6 A. Yes, si r.

7 Q. In fact, Mr. Friesen couldn't even loan you the gun to  
8 try it out; is that correct?

9 A. That was my understanding. Yes.

10 Q. And did he tell you that?

11 A. Yes.

12 Q. Okay. Now, when you were in the grand jury, did you  
13 admit to any crimes?

14 A. No.

15 Q. Okay. You don't know if it's a formality or not by the  
16 government; is that correct?

17 A. I'm sorry? What, si r?

18 Q. You don't know if that statement is a formality or not by  
19 the Uni ted States?

20 A. Correct. I don't.

21 Q. But you did not admit any crimes; is that correct?

22 A. Correct.

23 Q. Now, you said it was dark in the office; is that correct?

24 A. Yes.

25 Q. And you wrote down the wrong -- one of the numbers wrong;

1 is that correct?

2 A. The last number. Yes.

3 Q. So you wrote down the E right?

4 A. Yes.

5 Q. You wrote down the 6 right?

6 A. Yes.

7 Q. You wrote down the 8 right?

8 A. Yes.

9 Q. And you missed the last one; is that right?

10 A. Yes.

11 Q. Now, did Mr. Friesen ever point to you, point out the  
12 part number?

13 A. No.

14 Q. Okay. Take a look at the gun that you wanted to buy. Do  
15 you see that? That's the gun; is that right?

16 A. Yes.

17 Q. And you see a magazine well?

18 A. Yes.

19 Q. Do you know what that is?

20 A. Yes.

21 Q. What is that from your own understanding, please?

22 A. That's where you put the magazine that holds the stacked  
23 nine millimeter shells.

24 Q. Can you see a little number in there?

25 A. There appears to be some kind of a number, several

1 numbers here.

2 Q. Okay. Can you read them?

3 A. Yes.

4 Q. All right. Why don't you read them for the record.

5 A. Looks like an L, and an R.

6 Q. All right.

7 A. And then a D95843.

8 Q. All right.

9 A. And then down below that is A, L and then a 254.

10 Q. All right. Let me ask you this: How did you know, sir,  
11 that that was the serial number that belonged to that gun?

12 A. I'm sorry? What?

13 Q. How did you know that serial number went to that gun?

14 A. I assumed that was a part number.

15 Q. All right. How did you know that serial number went to  
16 the gun?

17 A. I assumed since it was on here.

18 Q. All right. Could you see it clearly enough?

19 THE COURT: Excuse me. Are you talking about the  
20 number he just read?

21 MR. KUMI EGA: The serial number, your Honor.

22 THE WITNESS: It's not very clear but, I mean, it's  
23 there.

24 Q. (By Mr. Kumi ega) All right. Did anyone point out that  
25 serial number to you?

1 A. Doug di d.

2 Q. What di d he say?

3 A. Sai d that' s the serial number of the gun.

4 MR. KUMI EGA: Nothi ng further.

5 MR. MARTIN: No questi ons.

6 THE COURT: Dr. Bugg, you may be excused, and I woul d  
7 advi se you you' re not to di scuss your testi mony you' ve gi ven  
8 here today wi th any other persons who may be a wi tness in thi s  
9 matter.

10 THE WITNESS: Yes, si r.

11 THE COURT: You may be excused.

12 Cal l your next wi tness.

13 MR. KUMI EGA: Your Honor, the Uni ted States woul d li ke  
14 to cal l Sarah Wal bri dge.

15 Judge, I thi nk there' s a sl ight confusi on. She' s on her  
16 way up here now.

17 THE COURT: We' ll stand at ease un less you have  
18 another wi tness.

19 MR. KUMI EGA: No, your Honor. May I be excused for a  
20 mi nute?

21 (Mr. Kumi ega l eaves the courtroom)

22 THE COURT: Yes. Can' t say anythi ng, the attorney i s  
23 not here.

24 (Mr. Kumi ega returns)

25 THE COURT: You had a questi on, si r?

1 JUROR: May I request a two- or three-minute break?

2 THE COURT: Yes. We'll just take about a -- we'll  
3 just stand at ease for about five minutes while the jury is  
4 excused to go to the jury assembly room. So we'll just stand  
5 at ease for about five minutes.

6 All rise while the jury exits. You need to go down to the  
7 jury assembly room.

8 (The jury exits the courtroom.)

9 THE COURT: We'll be in recess for about five minutes.

10 (A recess was had, after which the following was had in  
11 open court:)

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

13 THE COURT: Be seated.

14 MR. KUMIEGA: Your Honor, something off the record. I  
15 want to tell you why there is a little delay, that's all. Mr.  
16 Martin can hear it. Something funny, that's all.

17 THE COURT: Well, I guess I need to hear something  
18 funny.

19 (An off-the-record discussion was had at the bench:)

20 SARAH WALBRIDGE,  
21 called as a witness, having been duly sworn, testifies as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. KUMIEGA:

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

1 A. My name is Sarah, S-A-R-A-H, Walbridge,  
2 W-A-L-B-R-I-D-G-E.

3 Q. And how are you currently employed, please?

4 A. Since June of 2004, I'm a forensic chemist with the  
5 Bureau of Alcohol, Tobacco, Firearms, & Explosives, forensic  
6 science laboratory in Walnut Creek, California.

7 Q. What's the nature of your work?

8 A. My specialty is trace evidence. Examples of trace  
9 evidence include hairs, fibers, paints, and then other items  
10 that don't fit into the other disciplines in our laboratory.

11 Q. Can you tell the jury the other disciplines that comprise  
12 your laboratory, please?

13 A. Yes. Fingerprint laboratory, a firearms and toolmarks  
14 section, arson section, and explosives section, and then the  
15 trace section.

16 Q. Prior to working for ATF, what was your work experience,  
17 if you can give the jury a sense of that?

18 A. For two years I worked for a company called Microtrace in  
19 Illinois. My title was inspector microscopist and I was  
20 looking at trace evidence as well.

21 Q. What is trace evidence?

22 A. Trace evidence is, again, examples of trace evidence are  
23 hairs, fiber, paint, anything that really needs a microscope to  
24 look at. It's a pretty small thing.

25 Q. What is your formal educational background, please?

1 A. I have a bachelor's in chemistry from Elby College in  
2 Elby, Michigan, and a master's in forensic science from  
3 Michigan State University.

4 Q. And what field of forensic science, is there a particular  
5 branch of forensic science you got your education, your  
6 master's degree in, please?

7 A. The master's degree is general.

8 Q. All right. Have you received any specialized training  
9 and/or experience in your scientific field, please?

10 A. I have received training, in-service training with ATF,  
11 from other qualified examiners, as well as taking a plethora of  
12 courses given at scientific meetings or given by colleges.

13 Q. Are you a member of any professional organizations  
14 related to your field?

15 A. I'm a member of the American Academy of Forensic  
16 Scientists, the Midwestern Association of Forensic Scientists,  
17 the California Association of Criminalists.

18 Q. And do you have any particular or individual  
19 certifications in your field also?

20 A. I do. I'm certified, I'm a fellow, a trace analysis  
21 hairs and fibers fellow with the American Board of  
22 Criminalists.

23 Q. And what does that mean?

24 A. Certification for forensics, it's similar to board  
25 certified if a doctor. My certification means that I passed an

1 extensive exam on hairs and fibers and that I work for a  
2 laboratory full-time performing case work in that discipline,  
3 and that to keep my certification I have to take yearly  
4 proficiencies.

5 Q. Ma'am, let me ask you this: Is your laboratory in  
6 California, is it specially certified by some type of  
7 certification, I guess, group here in the United States?

8 A. Yes. The board certification for forensic labs in the  
9 United States is done by the America Society of Crime Lab  
10 Directors. The acronym that we use is ASCLD Lab. And our  
11 laboratory is accredited by ASCLD Laboratories.

12 Q. You were tasked to analyze a certain exhibit for your  
13 testimony today; is that correct?

14 A. Correct.

15 Q. In front of you is Government's Exhibit 3.16. Can you  
16 identify that, please?

17 A. I can identify this. My name is right here on the  
18 evidence identification tag.

19 Q. All right. And does that firearm look familiar to you?

20 A. It does look familiar. Yes.

21 Q. Is that the gun that you worked on?

22 A. This is the gun I worked on.

23 Q. Can you tell the jury roughly, in summary fashion, and  
24 we'll get into more detail, what type of tests, what type of  
25 analysis you were looking for when you were getting ready to

1 actually do the scientific work on the firearm?

2 A. I was asked to examine some markings that consisted of  
3 the letter E followed by the three numbers 683 that were on the  
4 firearm. I was asked to look at the coating.

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

6 A. I did.

7 Q. And how long did it take you to do this analysis, please?

8 A. I would have to reference my notes on that.

9 Q. All right. Let me ask you this then: Coupled with that,  
10 did you generate a body of notes or reports associated with  
11 your analysis?

12 A. I did. I generated a body of notes, photographs, and a  
13 final report associated with my exam.

14 Q. If you can give the jury a rough estimate of how much  
15 time it took you to compile your reports and examine the  
16 firearm, please?

17 A. If I could reference my notes --

18 Q. Sure.

19 A. -- to kind of look at the dates. I do multiple casework  
20 so lots of things come up. I don't necessarily do it  
21 consecutively. Roughly about five working, full working days.

22 Q. All right. Does that include all the examinations you  
23 were tasked to do; is that correct?

24 A. That does, yes.

25 Q. All right. Can you tell the jury what examinations you

1 were tasked to do or you, in fact, did, that you, in fact, did  
2 in this case, please?

3 A. Okay. I examined the firearm under a microscope. A  
4 microscope is simply just a series of lenses that helps us  
5 magnify an object so we can see the fine detail of that object.  
6 So during my examination of the markings E683, I could see that  
7 there was a single layer of black paint present surrounding  
8 those markings, and I could also see that the stamping process  
9 had physically altered the paint and wedged it into the  
10 impressed markings.

11 Q. All right. So that's one analysis you did. Was there  
12 another companion analysis you did also?

13 A. In addition to that, I did look at -- I sampled some  
14 paint that was within the impression and compared it to some  
15 paint that was adjacent to the impression. I found that they  
16 shared the same elemental composition and chemical composition.  
17 So that just indicated to me that the paint was on the firearm  
18 prior to this stamping process.

19 Q. All right. And did you do some type of comparative  
20 analysis between -- well, did you also do an experiment  
21 regarding the stamp vis-a-vis the paint?

22 A. I did. When I was looking at it under the microscope, as  
23 I said, it appeared as if the stamping process had physically  
24 altered that paint and pushed it into the impression. Very  
25 similar to if you nicely iced a cake and someone comes along

1 and pushes their finger into it, they poke that icing into the  
2 cake, they crack the icing. So I wanted to, you know,  
3 visually, under the microscope, it appeared as if that paint  
4 must have come first, but I wanted to do an experiment to see,  
5 you know, would this happen again, does the stamping process  
6 really physically alter that.

7 So what I did is I just took a metal plate that we had at  
8 our lab, and just took a piece of masking tape, put it down the  
9 middle. On one side I stamped it first and then painted over  
10 it. On the other side I painted the metal first, let the paint  
11 dry, and then stamped it. What I found was that process of  
12 painting it first and then stamping it visually appeared very  
13 similar to the exhibit. The other, where I stamped it first  
14 and painted, looked completely different. There was no  
15 alteration to the paint, it was smooth surface. It just  
16 visually didn't even look the same.

17 Q. Did you also do some type of work with solvents?

18 A. I did. I did some solubility tests. I used some common  
19 solvents to see if there possibly was ever a coating removed  
20 from this area. And I found that, to me, there was no  
21 indication of any type of solution or solvent being used to  
22 remove the coating surrounding the impressed markings.

23 Q. Now, Ms. Walbridge, did you prepare a series of  
24 photographs for your forensic, I guess, testimony today?

25 A. I did for my case notes. During my examination I did

1 take photographs. Yes.

2 Q. What I've presented to you for identification purposes at  
3 this time is Government's Exhibit No. 10. Can you take each,  
4 take your time and look at each of those photographs and  
5 related comments, and is that your handiwork, please?

6 A. This is my work, yes. These are photographs that I took.

7 Q. And this is for your preparation for your testimony  
8 today; is that correct?

9 A. Actually, I took these photographs as part of my  
10 examination. That's something that I like to do. All of our  
11 case notes and our analysis and reports is peer-reviewed by  
12 another qualified examiner, so this helped that examiner see  
13 what I was seeing. And I also documented the evidence as well  
14 as documenting anything I may have done to the evidence.

15 MR. KUMIEGA: Your Honor, at this time the United  
16 States would move into evidence Government's Exhibit No. 10,  
17 the photographs taken by Ms. Walbridge.

18 MR. MARTIN: Your Honor, in light of my earlier  
19 objection, I've got to object.

20 THE COURT: Okay. Objection will be overruled. Will  
21 be admitted.

22 Q. (By Mr. Kumi ega) Ma'am, if we look at the first series  
23 of photographs, if you can look at No. 10, the first  
24 photograph, what is that, please?

25 A. This is a photograph not taken under the microscope, so

1 we call these macro photographs, showing the evidence as it  
2 came into the evidence laboratory. When I unpackaged it this  
3 is what the evidence looked like.

4 Q. All right. Let's look at the next photograph, please.

5 A. This is a similar photograph, again, a macro photograph  
6 of the impressed markings.

7 Q. Is it important, ma'am, or can you tell the jury why you  
8 had a ruler above the numbers, please, above the purported  
9 serial number?

10 A. We have protocol, standard operation procedures for  
11 handling evidence in our laboratory, and one of them is at any  
12 time that it's physically possible to put a ruler in the  
13 photograph we need to put the ruler in the photograph.

14 Q. Next page, please. Again, that's your photograph; is  
15 that correct?

16 A. That's correct.

17 Q. And is that your initials that appear here?

18 A. Yes. SW.

19 Q. And who is HK, please?

20 A. Howard Kong. He's a firearms examiner for our  
21 laboratory.

22 Q. And you took this at ten times magnification; is that  
23 correct?

24 A. That's correct. What that means is the -- it's not a  
25 true magnification, because the camera is on top. So this is

1 actually a photograph taken under the microscope, it's not a  
2 macro photograph. So if I was viewing it under the eyepieces  
3 it's a little different than with the camera not being an  
4 eyepiece. So it's not true mag but it's roughly mag. Yes.

5 Q. Let's look at the next photograph, please. Now, Mr. Kong  
6 testified regarding this before, and we don't want go over it  
7 again, but you used this photograph to explain what you did in  
8 this -- in a different analysis; is that correct?

9 A. This is a photograph taken under the microscope, so  
10 essentially it's a photograph documenting what I saw under the  
11 microscope where I saw that the black painting -- paint, excuse  
12 me, was wedged into the impression, and I believe in Adobe  
13 Photo Shop used an arrow to kind of point to that.

14 MR. KUMIEGA: Next photograph, please.

15 Q. (By Mr. Kumiega) All right. Is this your work here?

16 A. That's, yes.

17 Q. All right.

18 MR. KUMIEGA: Let's go to the next one.

19 Q. (By Mr. Kumiega) Now, we'll talk about your solubility  
20 studies. Can you explain to the jury what the purpose of this  
21 test was and what you did, please?

22 A. The purpose of the solubility test was to determine  
23 whether the black paint was soluble in anything, and also to  
24 visually examine what the results of that solubility test would  
25 look like. So I used some common solvents. Ethyl alcohol, we

1 have that in our cabinets at home; acetone is nail polish  
2 remover. Now, Fry's Reagent we don't have. That's actually a  
3 solution used by firearms examiners to restore serial numbers,  
4 so that was sort of applicable to this case.

5 And this is a photograph -- it's not -- well, actually,  
6 it's pretty good on that screen, showing the results of that  
7 solubility. So solubility is essentially, does something  
8 completely dissolve in something else. And from the results,  
9 the ethyl alcohol, the black paint was just partially soluble.  
10 In acetone, it completely came up and you could see all the way  
11 down to the metal of the firearm, and the Fry's Reagent, no  
12 paint was soluble on the Fry's Reagent. So I was just  
13 documenting my test with these photographs

14 Q. And "solubility" means dissolving; is that correct?

15 A. Yes, it means dissolving.

16 Q. And you came --

17 MR. KUMIEGA: Let's go to the next photograph.

18 Q. (By Mr. Kumiega) This is your handiwork here?

19 A. Yes.

20 MR. KUMIEGA: Can you go to the next photograph,  
21 please? Let's go back to the last one.

22 Q. (By Mr. Kumiega) How long did it take you to do these  
23 test, can you tell us how you performed them, please?

24 A. The tests didn't take more than an hour or two. It  
25 wasn't a whole day process or anything. And what I did was I

1 used clean sterile swabs and saturated each of the swabs with  
2 the solvent of choice, and then just rubbed it across the area  
3 on the firearm. And then observed, you know, was black paint  
4 coming up, just like we're taking nail polish off of our nails,  
5 is it coming off onto the cotton ball we're using, or whatever.  
6 So it did partially a little bit with the ethyl alcohol,  
7 completely with the acetone, and none at all with the Fry's  
8 Reagent.

9 Q. And what conclusion did you reach then regarding the  
10 paint and the use of the solvents to apparently attempt to take  
11 off paint?

12 A. Well, this test helped me determine that, back to looking  
13 at the impressed markings E683, there really wasn't any  
14 appearance that some sort of solvent or solution was used,  
15 because if you can see from that photograph, you know, it looks  
16 like something has been colored outside the lines, you can see  
17 completely down to the metal. There was no indication of that  
18 appearance surrounding the E683. So that indicated to me that  
19 there was no use of a solution or solvent to uncover that  
20 particular marking.

21 Q. Let me ask you this: Did you determine through your  
22 analysis how many layers of paint was on the machine gun, the  
23 purported E683?

24 A. Surrounding the E683, I could see under the microscope  
25 that there was a single layer of black paint.

1 Q. All right. When you say single layer of black paint,  
2 that means it was just one uniform paint across where, please?

3 A. Across the markings, one single layer of black paint.

4 Q. And what test or what devices did you use or utilize to  
5 aid you in that analysis, please, and conclusion?

6 A. Well, when you're looking at a layer sequence you can  
7 just use a microscope, like I said, that's helping me see the  
8 fine detail. So under magnification I could see that there was  
9 one layer present.

10 Q. All right. Did you also do some type of comparison test  
11 for, I guess a comparative analysis between paint in the serial  
12 number, as you testified before, and paint outside the serial  
13 number?

14 A. Yes, I did. I did a lot of comparative analysis in this  
15 exam, and that was one of them.

16 Q. Before you get into that, can you tell the jury, what is  
17 comparative analysis, and what basis in forensic work it's  
18 referenced to, please?

19 A. Comparative analysis is essentially looking at  
20 similarities and differences. You know, it's problem-solving.  
21 We problem-solve all the day, every day. We compare things  
22 daily. It's no different for forensics than comparative  
23 anatomy where someone is comparing cells on a slide to cells,  
24 you know, of something known, or if a botanist collects a  
25 flower and takes it back to his or her laboratory and is

1 Looking at known specimens to determine is that a new flower or  
2 is this, you know, a new species.

3 So with forensics we are just comparing, you know, like  
4 similarities and differences between two materials.

5 Q. Now, the comparative analysis you did was that you took  
6 paint from, as you said, from outside of the number and the  
7 paint inside the number; is that correct?

8 A. That's correct.

9 Q. All right. Let's look at -- what number did you take the  
10 paint from, please?

11 A. I took paint from the number 3.

12 Q. Okay. Is this the one that's displayed for the jury? Is  
13 that where you took the paint?

14 A. Yes. That's the photograph, and the arrow indicates  
15 where I took some paint above, and then there's two arrows  
16 below, that's the paint I took adjacent to the impression.

17 Q. All right. Can you show to the jury, if you can point on  
18 the actual machine gun where you took -- you scraped some paint  
19 off near the serial number; is that correct?

20 A. Yes.

21 Q. Can you point it out to the jury, please.

22 A. So I took a scraping there above the 3, and then you and  
23 I both cannot see where I sampled within the 3, but that's  
24 reflective of the photograph and that's why, you know, one of  
25 the reasons I took the photograph. So within that impression,

1 that was the paint that was lodged within the impression, and  
2 then I collected paint adjacent to the impression.

3 Q. All right. And how many milliliters -- millimeters, I  
4 guess, between the E number the -- the 3 where you plucked out  
5 a little piece of paint and where you sampled from the firearm,  
6 please?

7 A. I would have to measure it with a ruler.

8 Q. If you can just guesstimate.

9 A. I'm really bad at that.

10 Q. Do you have a ruler with you?

11 A. I do not have a ruler with me.

12 Q. Okay. Then I withdraw the question.

13 A. Okay.

14 Q. Is it kind of close?

15 A. It's close. Yes. I mean, I sampled it rather close to  
16 the impression because that would, you know, looking at that  
17 E683 and could see that that was all the single layer. So I  
18 wanted to sample pretty close that impression to see, you know,  
19 was that paint within the impression similar to the paint  
20 adjacent to the impression.

21 Q. All right. And so you get something from that number  
22 here, and then you get something from this paint adjacent; is  
23 that correct?

24 A. Correct.

25 Q. And can you tell the jury what procedures you do to make

1 that comparison and if it's commonly accepted in the forensic  
2 field, please, these tests analysis?

3 A. So I used two instruments on the samples. So the first  
4 instrument is called a -- this is big -- Fourier Transform  
5 Infrared Spectrometer. And it's IR, for short, and --

6 Q. Is that for infrared?

7 A. Infrared. Yes. Thank you. What we do is we take  
8 infrared light and we focus it on the sample, and then we  
9 measure how much of that light is absorbed by the sample. The  
10 absorbance that we can detect, what's absorbed and what's not,  
11 is characteristic to the chemical makeup of the sample. So I  
12 did that for both samples of paint. And when we get a graph  
13 readout that we call a spectra, then I can compare the two  
14 spectra.

15 Q. And how long did it take you to run the spectra or that  
16 test, please?

17 A. That probably took a day or two. It all depends, you  
18 really need -- there is certain sampling preparation. I have  
19 to prepare the sample on something, I need to make sure that  
20 it's flat so I can, and both samples are flat so the light can  
21 transmit through the sample.

22 Q. All right. And did you reach your conclusion from the  
23 two separate areas you sampled?

24 A. Yes. I found that they both shared the same chemical  
25 makeup.

1 Q. And that means what, in laymen's terms?

2 A. In laymen's terms that means that -- I can't without  
3 using --

4 Q. Is the paint the same?

5 A. They share -- it shares the same chemical makeup based on  
6 that test.

7 Q. All right. You also did another test to determine if the  
8 serial number was placed on the firearm when the firearm was  
9 coated versus whether the serial number was on the firearm and  
10 then coated; is that correct?

11 A. That's correct.

12 Q. All right. And you did some type, I guess, of  
13 comparative analysis?

14 A. Yes. That was the metal plate experiment.

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

16 A. Sure. So I took a metal plate and stamped one side of it  
17 first, and then painted over it. And on the other side I  
18 painted it first, let the paint dry, and then took some die  
19 stamps and stamped some numbers into it and visually compared  
20 that, what I saw under the microscope, because I definitely  
21 looked at it under a microscope to see whether the paint was  
22 lodged into the impression, whether the stamping process  
23 physically altered the paint like I had seen with the exhibit.  
24 And I could see that was true, that when you painted the metal  
25 surface first and then stamped it, it did physically alter the

1 paint. When you stamped the metal surface first and then  
2 spray-painted over it, it was very smooth, it didn't have  
3 defect to it, wasn't altered at all.

4 Q. Let's go back. Is that one -- is this how you started  
5 the test? Ms. Walbridge, is this how you started the test?

6 A. That's a magnified image, I actually have another  
7 photograph.

8 Q. Let's go back to --

9 A. So this isn't a photograph of the whole plate, but this  
10 was taken under the microscope so it's a magnified image of  
11 some of those markings. And you can see on the bottom, that's  
12 the result of stamping it first and then painting it with black  
13 spray paint. You can see it's smooth, there's no cracks in the  
14 paint. The paint is lodged within the impression, but it's not  
15 cracked on the surface, doesn't have that effect of, you know,  
16 sticking your finger in the cake, if I can go back to that.

17 Q. All right. So in this -- let me see. Does that mean  
18 that the paint in these numbers are uniform?

19 A. Yes.

20 Q. All right. And in the other way, where you paint and  
21 then stamp, it would be quite different; is that correct?

22 A. That's correct. And that's what the above photograph  
23 shows. And it's not a magnified image of each of the numbers,  
24 so from what you're seeing here, you know, you can say, well,  
25 it doesn't look like there's any paint in the impressions, but

1 I actually have a photograph of a magnified, even more  
2 magnified image of one of those numbers.

3 Q. These are the magnified images?

4 A. That's the magnified image and those arrows point to --  
5 you can see that paint was driven into the impression by the  
6 stamping process.

7 Q. Is the same for this?

8 A. Yes.

9 Q. All right. Can you tell -- can you tell the jury how you  
10 did that, what type of device you used to do the stamping,  
11 please?

12 A. I used die stamps, and I used die stamps because our  
13 firearms examiner had concluded that die stamps were used to  
14 make the E683.

15 Q. All right. Does this analysis also corroborate what Mr.  
16 Kong collaborated with you when you put the series of  
17 photographs together?

18 A. In what sense?

19 Q. About it being stamped?

20 A. Oh, yes. That's why he gave me die stamps because he had  
21 determined that die stamps were used to make the impressions.  
22 That wasn't something that I have expertise in determining.

23 Q. All right. Let me ask you this, ma'am: This work that  
24 you did, the body of analysis and conclusions, it falls under  
25 the rubric of comparative analysis; is that correct?

1 A. That's correct.

2 Q. And you talked about peer review. What is peer review,  
3 please?

4 A. Peer review means that we have another qualified  
5 examiner, for me, qualified in trace evidence, then reviews all  
6 of my case notes, all of my photos, all of the data that was  
7 produced by an instrument, as well as my report.

8 Q. Okay.

9 A. All at once, all in a complete package.

10 Q. And who reviewed that particularly for today's testimony?

11 A. A trace chemist, forensic chemist for the ATF, her name  
12 is Lee Brun-Conti.

13 Q. All right. And have you worked with her before?

14 A. I have. She was my trainer. I said I had in-service  
15 training with ATF, she was one of my trainers for ATF, and I  
16 have worked with her at ATF and have known her in the field  
17 before.

18 Q. Can you tell the jury about any standards that control  
19 the method and theory of your comparative analysis, and are  
20 there error rates associated with any of the tests you that  
21 performed, please?

22 A. Our laboratory has methods and procedures for handling  
23 forensic evidence. We also have methods and procedures for the  
24 techniques that we use when analyzing evidence. And these  
25 techniques have been based historically on techniques that have

1 been proven to be reliable and accurate in the forensic field.

2 Q. Have you done anything unusual, ma'am, in any of your  
3 testing or use anything that's pushing the envelope of science  
4 regarding, I guess, the facilities or instruments you used in  
5 the course of your analysis?

6 A. I have not. I used instruments that have been used for  
7 many, many years, and comparative analysis has been done for  
8 thousands of years in forensics.

9 Q. All right. And are you saying then these techniques, are  
10 they generally accepted in the scientific community?

11 A. Yeah. My techniques are generally accepted in the  
12 scientific community.

13 Q. Could you have done these tests without a microscope?

14 A. No. And I wouldn't have. I wouldn't have been able to  
15 see the detail and come up with conclusions.

16 MR. KUMIEGA: Your Honor, if I may have just a moment  
17 with the --

18 THE COURT: Yes.

19 (Brief pause)

20 Q. (By Mr. Kumiega) So, ma'am, in short then, your final  
21 conclusions are that, regarding the Sten, and the Layer, you  
22 concluded what, please?

23 A. My conclusion was that the paint surrounding the  
24 impressed marking E683 was a single layer of black paint, and  
25 that that black paint was on the firearm prior to the stamping

1 process.

2 Q. All right. And you made a conclusion regarding the  
3 solvents?

4 A. I did. I did not see any indication that a solvent or  
5 solution was used to remove the paint or coating.

6 Q. All right. And so, obviously, it was painted, then  
7 stamped, and there was no --

8 MR. MARTIN: Your Honor, I think he's leading the  
9 witness. If he wants to ask her conclusions --

10 THE COURT: Will be sustained.

11 Q. (By Mr. Kumiaga) The conclusion regarding painting and  
12 the stamping, please?

13 A. That the paint was on the firearm prior to it being  
14 stamped in that area E683.

15 Q. And when you talk about solubility tests, is that what it  
16 is?

17 A. Solubility test. Yes.

18 Q. And when you talk about fingernail polish, that takes  
19 away something, is that the point, for the --

20 A. Yes. Solubility test is a test to see if something will  
21 dissolve in something else.

22 Q. Okay.

23 MR. KUMIAGA: I have nothing further, your Honor.

24 THE COURT: You may cross-examine.

25

1 CROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. Ms. Walbridge, as I understand, it's your testimony that  
4 around the serial number based upon your examination you  
5 determined that there was a single layer of paint; is that  
6 right?

7 A. That's correct.

8 Q. Okay. Did you examine the entirety of the firearm for a  
9 single layer of paint, or just around the serial number?

10 A. I really just concentrated around the markings E683.

11 Q. All right. And I also understand then, well, it would be  
12 fair to say then you don't know if there's other layers of  
13 paint at other portions of that firearm?

14 A. I do not know. No.

15 Q. All right. Now, let me ask you, ma'am: Your -- when  
16 talking about the coating, I believe your examination, you  
17 said, was based upon, or your conclusion was that there was a  
18 single coating was based upon a microscopic examination, right?

19 A. That's correct.

20 Q. And that's a subjective determination; is that not right?

21 A. That's correct.

22 Q. I mean, you look at it and based upon what you observe  
23 you form the opinion that this is a single layer?

24 A. It's based on that and training that I've had and  
25 experience of looking at multiple-layered paints, if we're

1 going to just talk about the material, multiple-layer things,  
2 single-layer things.

3 Q. You independently made a subjective determine, was my  
4 question, right?

5 A. I independently looked at it. Yes.

6 Q. Okay. Now, about -- when we're talking about the coating  
7 of the firearm, or around the serial number, let's use that  
8 because that's where you looked, I think you testified that the  
9 paint around the firearm that you saw outside the serial  
10 number, and the paint that you saw inside the serial number  
11 were of the same or similar type of composition; is that  
12 accurate?

13 A. Yes. They had the same elemental composition and  
14 chemical composition.

15 Q. Okay. So based upon your training and background, if I  
16 have a can of paint, we'll just say I have a can of paint here,  
17 spray paint, okay? And I spray just a tube with that spray  
18 paint, can you tell from a microscope how many times I've  
19 painted that tube with that same can of paint?

20 A. I might be able to, yeah. I probably would need to do,  
21 look at it, to do some form of, you know, take it up like I did  
22 here with the razor blade to see if there was a layer sequence.

23 Q. Well, you didn't do that in this case, you said you just  
24 looked at it with a microscope, as I understood.

25 A. I did look at it with a microscope. I also sampled it

1 above the 3.

2 Q. And the purpose of that sampling I thought was for the  
3 infrared so you could get a determination that it was the same  
4 type of paint; is that right?

5 A. That's what I used the sample for.

6 Q. Okay. And so I guess my question is: If I take a tube  
7 and I spray it with this can of paint here today, and let's say  
8 I'm not a very good painter and I spray it kind of thick, might  
9 you mistake that for a double coat of paint?

10 A. Depends on if it's the same color.

11 Q. It's all out of this can, same can.

12 A. Okay.

13 Q. And let's just say I spray it a little thick, can you  
14 tell whether or not that's a double coat or a single coat?

15 A. If you sprayed it thick it would be a single coat.

16 Q. Let's assume that I take that spray can and I spray it  
17 today and it dries, and tomorrow I think, out of an abundance  
18 of caution, I want to spray it again, and I just spray it  
19 lightly, just to make sure I haven't -- to cover up any  
20 possible imperfections, like there might just be a spot like a  
21 white spot or something, and I'm using and painting this item  
22 right here. Are you going to be able to tell that there's a --  
23 that I painted it the next day?

24 A. With your example of spray paint it could be difficult to  
25 determine whether there are multiple layers.

1 Q. So -- and it's fair to say you have no knowledge of the  
2 manner in which Government's Exhibit 3.16, the firearm, was  
3 painted; would that be accurate?

4 A. I don't have any knowledge of how it was painted. No.

5 Q. Okay. And you don't know if someone may have painted it  
6 and the next day just given it a light coat over or something  
7 like that; would that be fair?

8 A. Are you asking if I think there is multiple layers?

9 Q. No. My question was, ma'am: You don't know if somebody  
10 painted it, and the next day lightly coated over it, just like  
11 I explained on this example right here?

12 A. From the E683, really, all I was making a conclusion on  
13 is that the stamping process forced the paint within the  
14 impression, the paint came first.

15 Q. Okay. So the answer to my question is, I don't know, Mr.  
16 Martin; is that right?

17 A. I guess I can't tell that. No.

18 Q. Okay. So I'm going to get to the serial numbers here in  
19 a minute, because you also did a solubility test. There was  
20 three tests basically. Coats of paint, solubility, and your  
21 examination of serial numbers, right? Those were the three  
22 tests you did?

23 A. Can you repeat those.

24 Q. The coats of paint?

25 A. Uh-huh.

1 Q. Solubility, examination of the serial numbers?

2 A. I only examined E683, so you're saying "numbers."

3 Q. I meant E683. I'm not trying to trick you up there. I  
4 apologize.

5 A. That's okay. My whole analysis encompassed looking at  
6 E683 and applying tests to do a comparative analysis of what I  
7 thought the sequence of events were.

8 Q. Okay. Which included, among other things, trying to make  
9 a determination as to the number of coats, right?

10 A. That's correct.

11 Q. Number two, you did a solubility test. Do you recall  
12 that?

13 A. I did do a solubility test. Yes.

14 Q. And you used, I believe, three separate reagents for your  
15 solubility, right?

16 A. I did use three. Yes.

17 Q. And Mr. Kumiaga and you were going a while ago talking  
18 about rates of error and how your testing is very precise, and  
19 that you use -- you have all this accredited laboratory. Do  
20 you recall that testimony, ma'am?

21 A. Yes, I do.

22 Q. Okay. When you picked three reagents, for example, one  
23 of them I think you said was acetone, right?

24 A. Acetone. Yes.

25 Q. One was fryer-something?

1 A. Fry's Reagent.

2 Q. And what was the third one?

3 A. Ethyl alcohol.

4 Q. Those were just guesses, right?

5 A. In terms of what?

6 Q. You have no idea what, if any, reagent may have been used  
7 on that firearm?

8 A. I do not know what reagent was used, if there was one,  
9 but I didn't see any indication that a reagent, solution, or  
10 solvent was used.

11 Q. My question was: Those three, those were just guesses on  
12 what to use?

13 A. They weren't necessarily guesses. There was a scientific  
14 thought process behind it, which there always is when I'm doing  
15 an exam. The Fry's Reagent was used because that is a solution  
16 used by firearms examiners to restore serial numbers. This was  
17 a firearm, this was a questioned, quote unquote, serial number.  
18 The material itself was paint. Paint can be soluble, and in  
19 this case was in acetone because typically paint is soluble in  
20 something that it's made up of. And ethyl alcohol is another  
21 solution, solvent that is used in solubility tests. So it  
22 really wasn't a guess, I was using scientific reasoning in  
23 choosing those three things.

24 Q. If one of those solvents, or reagents, I'm sorry, was  
25 not used, your testing would be in error as to whether or not

1 some other substance might have been used; isn't that true,  
2 ma'am?

3 A. No. Probably if none of those, if the paint wasn't  
4 soluble in any of those, I would have kept going and looking  
5 for something that did dissolve this paint, because what I was  
6 trying to do was do a comparison, what does that look like and  
7 do I see that similarities in the E683 markings.

8 Q. And did you find a similarity in the E683 markings?

9 A. I didn't. I found that acetone readily dissolved that  
10 paint, it gave that appearance of completely coming down to the  
11 metal, you know, coloring outside the lines is the best way for  
12 me to explain that. And I didn't see any indication around the  
13 E683 markings that any solvent or solution had been used.

14 Q. So the answer was, I did not find any solvent that any  
15 reagent, that was similar to what was on the E683; is that  
16 right, ma'am?

17 A. No. My conclusion is I didn't see any indication that a  
18 solution or solvent was used to remove the coating around  
19 E683.

20 Q. My question, ma'am, and I'm not trying to be difficult  
21 is: Of the three you used, you found none of those to create  
22 any characteristic similar to what you had seen on E683; is  
23 that right, or wrong?

24 A. Again, I didn't see any indication that a solution or  
25 solvent dissolved any of the paint surrounding E683.

1 Q. Well, of the three you used, I'm not talking about the  
2 three, I'm talking about any other solutions.

3 A. Well, the point was just to look at solubility, and I  
4 found that acetone did dissolve the paint. It could have been  
5 -- we could call it solvent X. So the point was to look at the  
6 solubility, what does the result of that look like. Does it  
7 take up the paint down to the metal, you can see the metal.  
8 You can't really dissolve just itty bitty pieces of the paint.  
9 So, again, comparing that to the E683, no indication that a  
10 solvent or solution was used to dissolve any of that coating  
11 surrounding those numbers and that one letter.

12 Q. Did you do any experiment, I mean, I saw -- we had an  
13 exhibit up here where you had three different stripes. Do you  
14 recall that, one involving these each of the reagents. Do you  
15 recall that exhibit?

16 A. I do. Yes.

17 Q. Okay. And would you agree with me, ma'am, the amount of  
18 paint that you removed would be based upon the amount of  
19 reagent that you used and the amount of pressure used?

20 A. I would not base it on pressure, solubility has nothing  
21 to do with pressure, actually. Because if two things aren't  
22 soluble, like oil and water, it doesn't matter how much you  
23 stir it, it's not going to dissolve. The -- each cotton swab  
24 that was used was completely saturated with the choice of  
25 solvent.

1 Q. Well, my question was: Pressure does play a role, does  
2 it not, ma'am, if the reagent removes some of the paint? For  
3 example, fingernail polish. My wife wears and she occasionally  
4 uses a cotton ball or a some type of swab to remove that. If  
5 she doesn't have enough solution, enough fingernail polish  
6 remover -- that's acetone, right?

7 A. That's acetone. Yes.

8 Q. If she doesn't have enough acetone or she doesn't rub it  
9 hard enough, she's not going to remove all of the fingernail  
10 polish; will you agree with that?

11 A. If she doesn't have enough acetone on the cotton ball she  
12 might not remove it all at once. The pressure has nothing to  
13 do with solubility.

14 Q. So you're saying if she just lays the cotton ball on  
15 there and there's enough on there it will remove it?

16 A. It will remove some of it. Yes.

17 Q. You said to the bare?

18 A. I didn't say to the bare.

19 Q. Maybe I misunderstood you. That's what I'm asking you.  
20 Depending upon how much pressure you use, if it's something  
21 like acetone, you may remove a portion of it, or you may remove  
22 all of it. Is that a fair statement, ma'am?

23 A. It depends on how much of the acetone you have on the  
24 cotton ball.

25 Q. Okay. And you didn't run any kind of variations based

1 upon amount, you just saturated it; is that correct?

2 A. That's correct.

3 Q. So if I have less acetone and rub harder on an object to  
4 remove paint, it won't remove as much paint if I have more  
5 acetone and don't rub as much?

6 A. It all depends if the paint is soluble in acetone.

7 Q. I'm making an assumption. Let's assume it is.

8 A. Repeat the question then, please.

9 Q. Okay. We'll assume that the paint is soluble in acetone.

10 A. Okay.

11 Q. If I have less reagent, less fingernail polish remover,  
12 just a half cotton ball, and I rub harder, and then I have a  
13 full cotton ball, a cotton ball that's fully saturated, and I  
14 rub less, which is going to remove more?

15 A. I don't know. I would have to do that experiment I  
16 guess. I've never really done it.

17 Q. That's the question I've been trying to ask you, and  
18 maybe I've done it very poorly, and I apologize. But it  
19 depends on -- it can depend upon the amount of pressure  
20 involved, would you agree, ma'am, in the rubbing?

21 A. With how much is taken off? Is that what you're asking?

22 Q. Yes.

23 A. Again, I would have to do it. I was just looking at  
24 solubility. I wasn't really thinking or even considering  
25 pressure.

1 Q. Okay. Now, you talked about a -- pardon me -- a stamping  
2 experiment, and we had some pictures up where you stamped some  
3 letters on one side of a piece of metal and then some letters  
4 on the other side of a piece of metal, one of them was painted  
5 first, then stamped, the other one wasn't painted first but  
6 painted after it was stamped. Do you recall that, ma'am?

7 A. That's correct. Yes.

8 Q. Okay. Did you use the -- you had the chemical compound  
9 of the paint from your experiment, not the chemical compound, I  
10 think you called the elements of the paint from that firearm.  
11 Did you use that type of paint, same type of paint in your  
12 experiment on that firearm, ma'am?

13 A. Actually, it's chemical makeup, and I didn't identify the  
14 paint, I just compared the chemical makeup of the two.

15 Q. Okay. My question was: Did you use the same paint?

16 A. No, because I didn't identify the same paint, I didn't  
17 use the same paint. I used the same color, used black spray  
18 paint.

19 Q. Okay. And that firearm, you would agree with me, would  
20 you not, has a round barrel on it?

21 A. Yes, I would agree with that.

22 Q. Did your stamps, was it on a round object or a different  
23 type of shaped object?

24 A. It was a flat piece of metal.

25 Q. Okay.

1 A. Circular piece of metal.

2 Q. And did you determine the density or type of metal that  
3 is to make sure you used the same kind of metal in your  
4 stamping experiment?

5 A. No. I wasn't trying to replicate what was occurring  
6 here, I was simply trying to use something as a comparative  
7 value to what I was seeing that the stamping process forces the  
8 paint into the impression.

9 Q. Well, then, for comparison purposes then, if we use  
10 different variables, that still makes your results just as  
11 valid; is that your testimony?

12 A. I would have to do that different experiment, then I  
13 would compare the two and make a conclusion based on that  
14 comparison.

15 Q. So you didn't do a comparison based on this firearm,  
16 stamping upon with dies on that firearm, something identical to  
17 that firearm with that same type of paint; is that right?

18 A. The purpose of my comparison was just to look, see what  
19 does the stamping process do to paint, if the paint comes first  
20 or the paint comes second.

21 Q. Okay. Let me ask my question again, because I don't  
22 think you understood me. You did not do an experiment with  
23 that type of metal from that firearm and that type of paint?

24 A. I did not. No.

25 Q. Okay. Now, likewise, in your stamping process, the flat

1 stamp that you had -- excuse me -- the flat piece of metal that  
2 you stamped and painted and then flat piece of metal that you  
3 painted and then stamped, did you age the paint? For example,  
4 if that paint is several years old, did you take into  
5 consideration what impact, if any, the age of the paint might  
6 have on the results of your test?

7 A. I did not age the paint. No.

8 Q. Okay. I'm having put up here Government's Exhibit 10. I  
9 think it should be 18. This one right here. Do you see that  
10 one, ma'am? There's a screen there in front of you.

11 A. Okay.

12 Q. As I understand from your testimony, this is the metal  
13 plate that was stamped and then sprayed with black paint after  
14 the use of -- or acetone to dissolve the paint; is that right?

15 A. That's correct. Yes.

16 Q. Okay. And it's -- I think you talked about this was  
17 magnified, this is a photograph through the microscope, right?

18 A. Yes. Taken in the microscope.

19 Q. And it's close to 5X. I think you said based upon where  
20 it is it might be closer or farther or something?

21 A. It's not true magnification, is what that means.

22 Q. Okay. And what I want to --

23 MR. MARTIN: May I borrow your pointer?

24 Q. (By Mr. Martin) This area right here (indicating)?

25 A. Uh-huh.

1 Q. I want to make sure I understand. Is that areas where  
2 the paint because of solubility was removed from the inside of  
3 the stamp?

4 A. That's correct.

5 Q. And again, that was, you said you painted it, you stamped  
6 it, then painted it. How much time passed from the time you  
7 painted it until the acetone or whatever reagent was used on  
8 that one?

9 A. Could I check my notes to see?

10 Q. Sure.

11 A. Okay. I did it the same day, according to my notes, my  
12 notes for -- my notes on the process of spray paint and  
13 die-stamping the metal dated 4/14/08. Also on 4/14/08, I'm  
14 discussing how I was demonstrating what it might look like if  
15 solvent was used to dissolve the coating, and I explained that  
16 I used the stamp backwards nine, it's just a six.

17 Q. So it was the same day?

18 A. It was the same day.

19 Q. And if someone, for example, had taken one of the  
20 solvents that you testified about and removed the paint around  
21 the serial number, and then got the same can of spray paint  
22 that it had been painted with earlier and painted it again, and  
23 let's assume they removed the entire area that you examined at  
24 and put a whole fresh coat of paint on it, would that look like  
25 one coat of paint, or another coat, or two coats of paint?

1 A. I'm processing your question, which was, if you don't  
2 mind repeating it, that the original layer was completely  
3 removed?

4 Q. By some type of solvent.

5 A. By some type of solvent, and then resprayed?

6 Q. Correct.

7 A. First of all, it wouldn't look the same. It would look  
8 like the experiment that I did where it was stamped first and  
9 then painted. It would be smooth, you wouldn't see any cracks  
10 in the paint. But then if I was -- the same paint the results,  
11 you know, would have the same chemical and elemental  
12 composition, but they visually wouldn't look the same.

13 Q. It visually wouldn't look the same because it was just  
14 painted?

15 A. Correct. It was painted over the impressed markings  
16 versus painted first and then impressed. So we can refer back  
17 to the photographs from my experiment on the metal plate.

18 Q. So the paint that you examined, let me make sure I  
19 understand your answer. The examination you made would have  
20 been covered up by the new coat of paint; is that correct?

21 A. I don't understand what you're asking.

22 Q. Numbers are stamped in on painted, on a painted gun, at  
23 some point, that layer is removed, and it's repainted with the  
24 same can of paint in that area by the serial number, your  
25 examination of the stamps that, the serial numbers that you

1 looked at, is going to have paint in it, correct?

2 A. The impressions are going to have paint in them?

3 Q. Yes, ma'am.

4 A. I thought you said with your scenario that the --  
5 whatever was used originally took that up.

6 Q. Well, from my understanding from your experiment that  
7 won't all be taken out.

8 A. No. Actually, it totally could be done, it just wouldn't  
9 look like this exhibit. It -- you would see all metal. It  
10 would be gone like the photograph that you showed. If you  
11 worked on it you could get all the paint out of the impression,  
12 but you're also going to dissolve all the paint surrounding  
13 that impression as well.

14 Q. I understand that. And then it's repainted, ma'am.

15 A. If it was repainted it wouldn't look like what I observed  
16 under the microscope. You wouldn't have that look of paint  
17 within the impression and the cracking on the outside of the  
18 impression. It just wouldn't look the same.

19 Q. And if you looked at it under the microscope, say, 22  
20 years later?

21 A. I still don't think you would see the physical altering  
22 of the paint that you can tell was impacted by the stamping  
23 process.

24 Q. Is there a way, and I'm asking this out of ignorance,  
25 which have been most of the questions I've asked today, but if

1 there's a way, ma'am, is there a process where the paint can be  
2 aged to simulate 22-year-old paint?

3 A. There are aging processes that I know of, whether -- I  
4 don't know whether -- how you would go about aging 22 years,  
5 but I do know that you can age paint.

6 Q. And none of that, we're in agreement, none of that  
7 occurred in this examination that you did, or testing?

8 A. I did not do any experimentation with aging.

9 Q. Now, let me ask you, ma'am: From your -- from the tests  
10 you performed, I think you testified that you removed some of  
11 the paint from the inside of the serial number with a needle.  
12 Do you recall that?

13 A. I did do that. Yes.

14 Q. Okay. And I'm assuming anyone could do that.

15 A. If you're not equipped with a microscope and you don't  
16 have the skill that I've learned in my six years of doing this,  
17 I think it would be difficult.

18 Q. So I can't just take a pin and magnifying glass and stick  
19 it in there and drag it along the serial number in an attempt  
20 to make it more legible?

21 A. No. A magnifying glass wouldn't magnify it enough, one,  
22 and tip of a pin is much larger in diameter than the really  
23 fine needle that I used.

24 Q. So there's no way, you're saying, that any prior owners  
25 of this firearm could have removed any of the paint out of the

1 impression; is that your testimony?

2 A. With what?

3 Q. With some type of a needle or something, some type of a  
4 sharp object.

5 A. If someone had a tungsten needle, which typically no one  
6 but people who do trace evidence have, it would be really  
7 difficult with the lack of a microscope and the lack of skill  
8 to just go in each of the impressions and remove that.

9 Q. Well, I'm not saying remove all the paint, I'm just  
10 saying remove some paint.

11 A. I don't think so. No.

12 Q. Over time does paint -- from your training, over time  
13 does paint decompose, break down?

14 A. Paint can weather, but really doesn't break down. If  
15 that was the case we would probably be repainting the walls  
16 inside our houses every couple of years. But I have a house  
17 from 1956 that had original paint. It's weathered. It might  
18 yellow, but doesn't fall completely off the wall.

19 Q. Well, I had an old 1988 Delta car, and the entire hood  
20 almost disappeared. Is that because of weather, is that  
21 because it just deteriorates?

22 A. With automotive paint, that's typically caused by  
23 ultraviolet light from the sun.

24 Q. So I'm talking about paint on metal like paint on a car.  
25 So that weathers and wears off; would you agree with me, ma'am?

1 A. That automotive paint and it can weather and be affected  
2 by sunlight based on the layers of the paint. It's all  
3 different based on automotive -- there's so many factors  
4 involved, automotive manufacturer, you had an old Delta, they  
5 may not have put a clear coat, nowadays there's clear coats on  
6 our vehicles that kind of reduce the weathering and  
7 aging-effect of the sunlight. There's just a plethora of  
8 factors involved.

9 Q. You'll agree with me that firearm was not painted with  
10 interior house paint?

11 A. I did not identify the paint.

12 Q. You don't think it was painted with interior house paint,  
13 do you?

14 A. I didn't identify it.

15 Q. Well, was it painted with automotive paint?

16 A. I can certainly -- my guess would be from knowing  
17 automotive paint that it wasn't, but again, I didn't identify  
18 it. Typically automotive paint -- and the reason I can say  
19 this is automotive paint isn't soluble in acetone. We would  
20 have big problems with our cars if it was.

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

22 THE COURT: Yes.

23 (Brief pause)

24 MR. MARTIN: Nothing further.

25 THE COURT: You may redirect.

1 REDI RECT EXAMI NATION

2 BY MR. KUMI EGA:

3 Q. Ma'am, does this cross-examination change your  
4 conclusions in any manner?

5 A. No.

6 MR. KUMI EGA: Nothing further.

7 THE COURT: Ms. Walbridge, you may be excused.

8 Call your next witness.

9 MR. KUMI EGA: Your Honor, United States would like to  
10 call Donald Ladd.

11 THE COURT: I think before we do that -- I'm sorry, I  
12 didn't realize how close to three it was. Let's take about a  
13 20-minute break, and we'll be in recess for approximately 20  
14 minutes. And again, I would remind you of the same admonitions  
15 I've given you each time.

16 All rise while the jury exits.

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

19 THE COURT: You can use this opportunity, Mr. Kumi ega,  
20 to talk to the one other witness on the immunity issue.

21 MR. KUMI EGA: Yes, your Honor.

22 THE COURT: See if that's an issue we're going to have  
23 to deal with.

24 MR. KUMI EGA: Yes, sir.

25 THE COURT: We'll be in recess.

1 (A recess was had, after which the following was had in  
2 open court:)

3 THE COURT: Is it Mr. Ladd?

4 MR. KUMI EGA: Yes, sir.

5 THE COURT: Mr. Ladd, if you would stand and raise  
6 your right hand and be sworn by the clerk, please.

7 DONALD LADD,

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

10 DIRECT EXAMINATION

11 BY MR. KUMI EGA:

12 Q. You might pull that microphone down towards you, Mr.  
13 Ladd, so you can speak into it.

14 MR. MARTIN: Your Honor, may we have a very brief  
15 bench conference?

16 THE COURT: All right.

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

19 MR. MARTIN: Your Honor, I had previously filed a  
20 motion in limine on his testimony pursuant to Mr. Kumi ega's  
21 405(b) motion, and I'm not sure we've had a ruling on my motion  
22 in limine, trying to keep out his testimony relating to my  
23 client allegedly trying to sell him an automatic weapon in 2004  
24 or '5, I think.

25 MR. KUMI EGA: September '05.

1 THE COURT: The Court is going to overrule the  
2 defendant's motion as it relates to that specific testimony of  
3 Mr. Ladd. You said you were concerned about something else  
4 about the testimony. Have you had a chance to visit with him?

5 MR. KUMIEGA: Yes. I visited with him, along with Mr.  
6 Lacy and the agents, your Honor, and it's going to be a narrow  
7 focus and not talk about any other extraneous matters.

8 THE COURT: Okay.

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

11 Q. (By Mr. Kumi ega) Si r, can you introduce yourself to the  
12 jury, please?

13 A. Yes. I'm Donald Ladd.

14 Q. And can you spell your last name?

15 A. L-A-D-D.

16 Q. Mr. Ladd, how old are you?

17 A. Sixty-two.

18 Q. Now, from the garb you're wearing, you're incarcerated;  
19 is that correct?

20 A. Yes.

21 Q. What crime have you been convicted of, please?

22 A. Bank robbery.

23 Q. And when did you plead guilty to bank robbery, please?

24 A. 2005, the end of 2005.

25 Q. And what sentence did you receive, please?

1 A. 218 months.

2 Q. And have -- do you have other bank robbery convictions in  
3 your record, please?

4 A. Yes.

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

6 A. I robbed some banks back in the early '90s, and was  
7 convicted and did ten years, five months, and got out for 3 1/2  
8 years, did it again, and here I am.

9 Q. All right. Mr. Ladd, what court convicted you on your,  
10 on some of these last offenses, please?

11 A. This court. I don't know. I can't tell you what judge.  
12 I can't remember, but it was this court.

13 Q. In this very courthouse; is that correct?

14 A. Yes.

15 Q. Now, you said you received a 218-month sentence; is that  
16 correct?

17 A. I believe that's what it was.

18 Q. And prior to that, you had a bank robbery conviction, was  
19 it in Ft. Smith, Arkansas?

20 A. Yes.

21 Q. And here in Oklahoma City?

22 A. Yes.

23 Q. What year did you receive a sentence here in Oklahoma  
24 City, or a bank robbery conviction?

25 A. '95.

1 Q. Do you remember what sentence you got, please?

2 A. Forty-six months, I believe it was, added on to what I  
3 had already received.

4 Q. And from where?

5 A. In Arkansas.

6 Q. All right. And Ft. Smith?

7 A. Yes.

8 Q. And what sentence did you receive in Arkansas, please?

9 A. Eight years, whatever, 90-something months.

10 Q. All right. You also had other, another property offense  
11 here in Western District, or in Oklahoma County, is that  
12 correct, or state of Oklahoma, some other felony convictions?

13 A. No. I had arrests, but no convictions.

14 Q. Okay. Let me ask you this: You testified in a case that  
15 I prosecuted back in 1995; is that correct?

16 A. Yes.

17 Q. And do you remember the nature of your testimony in that  
18 case, please?

19 A. Yes. A friend of mine decided he wanted to rob some  
20 banks and told me about it, and you found out about it, so I  
21 testified.

22 Q. And did you get a break in your sentence, if you  
23 remember?

24 A. Yeah. Before I testified, not after.

25 Q. All right. Now, you're here hoping for some type of

1 leniency; is that correct?

2 A. It would be nice. Yes.

3 Q. Tell the jury about that, please. What are you hoping  
4 for?

5 A. I don't know, a time cut. I don't have any idea what it  
6 would be.

7 Q. All right. And did your attorney inform you the  
8 procedures that our office would have to go through?

9 A. Yes.

10 Q. Can you tell the jury about that, please, if you  
11 remember?

12 A. Well, the way I understand it, there's a group of federal  
13 attorneys that look over what the, I guess the testimony and  
14 how it impacted the case, and decide whether someone deserves a  
15 time cut or not. I've never been through it before, I don't  
16 really know.

17 Q. And who makes the ultimate decision if you get a time cut  
18 or not?

19 A. The judge.

20 Q. The sentencing judge?

21 A. Yes.

22 Q. All right. I want to bring your attention to September  
23 of 2005. Do you remember that time?

24 A. Yes.

25 Q. And do you remember meeting Friesen on or about that day?

1 A. Sometime in early September.

2 Q. And how do you -- how do you come up with the date of  
3 September of 2005 in relationship to meeting Mr. Friesen? What  
4 triggers that for you, please?

5 A. I just -- I knew it was sometime around there. I  
6 couldn't tell you exactly when, I mean, I didn't write it down  
7 or anything, but I just knew it was around either the end of  
8 August or first part of September.

9 Q. Was that a significant event that happened in your life  
10 that you would be able to date that time?

11 A. Well, I'll put it this way: When I saw some machine guns  
12 in the back of the car that I was riding in it scared me, it  
13 scared me, because if we had been pulled over I would have  
14 gotten ten years in a heartbeat.

15 Q. Let me ask you this: Do you remember being arrested on  
16 your current bank robbery charge?

17 A. Yes.

18 Q. All right. And can you date that arrest from seeing Mr.  
19 Friesen?

20 A. Well, it was October 13th, so it was about a month and a  
21 half afterwards.

22 Q. Okay. Or a month and a half before, right?

23 A. Well, yeah, after I met him. Yes.

24 Q. Tell us the circumstances, Mr. Ladd, how you meet Mr.  
25 Friesen.

1 A. I went to the Red Dog Saloon, and I pulled up in the  
2 parking lot about ten o'clock at night, and I ran into Doug  
3 Friesen and a friend of his, some tall, looked like a biker,  
4 had a black leather jacket and long hair. And we talked a  
5 little bit and he said, you know, let's go drink a beer.

6 Q. Who said that?

7 A. Mr. Friesen. I didn't know the other guy. He never  
8 introduced the other fellow, so --

9 Q. What happened next after he made that statement?

10 A. I said yeah. So, yes, I jumped in the car with him and  
11 we took off and headed west on Northwest Tenth Street. And we  
12 got to the turnoff to Lake Overholser, and I say where are we  
13 headed, and he said I've got something I want to show you. So  
14 by this time it's dark, really dark. So we pulled out around  
15 the lake and there was no one there, and they pulled over and  
16 he opened the trunk and pulled out what I thought was a Mac 10,  
17 I can't tell the difference between a Mac 10 and a Mac 11, but  
18 anyway, a machine gun, with -- they've got barrel extenders  
19 that screw on the front. And it had one of those with a, like  
20 a hose clamp like you clamp a hose on a radiator on the front  
21 of it to hold it together, apparently, and it was a silencer.  
22 And, man, I didn't know what to think. So there was no one  
23 around. He cocked it and fired off most of a clip, I don't  
24 know if it was a whole clip, but most of a clip, and asked me  
25 what I thought. And I said pretty impressive.

1 Q. Did he try to sell you the firearm?

2 A. Yes.

3 Q. Tell the jury about that, please.

4 A. He asked me -- he said he knew I had just gotten out of  
5 prison a while back for bank robbery and wanted to know if I  
6 wanted to buy it. And I said, no, not really. He said he  
7 would sell it to me for \$3,000 with the silencer. And I said,  
8 no thanks, I don't need it. So then he put it back in the  
9 trunk, slammed the trunk, and we went by his house, sat around  
10 and drank some beer and talked.

11 Q. Let me ask you, Mr. Ladd: You met him at the Red Dog?

12 A. Yes.

13 Q. Was there any -- did you observe a firearm at the parking  
14 lot at that time, or at a different location?

15 A. No. At the -- out at the lake.

16 Q. All right. Did you shoot the gun?

17 A. No. I never touched the gun.

18 Q. Who shot the gun at that point?

19 A. Doug Friesen.

20 Q. All right. And what direction was the gun being -- was  
21 it a machine gun?

22 A. Was it what?

23 Q. Was it a machine gun?

24 A. Oh, yeah.

25 Q. How do you know?

1 A. I think they had 30-round clips, and he went through  
2 either all the clip or most of the clip just like that, and he  
3 shot it toward the water.

4 Q. Was the other gentleman with him?

5 A. Oh, yeah.

6 Q. What was he doing?

7 A. He was standing around. He didn't look too happy about  
8 the whole thing.

9 Q. All right. Did -- other than Mr. Friesen, did anybody  
10 else shoot the machine gun?

11 A. No.

12 Q. Was there an attached silencer to that machine gun?

13 A. Yes.

14 Q. What type of report or noise did it make?

15 A. Very little. It didn't sound like a, like any gun you  
16 would fire without a silencer. It was fairly quiet.

17 Q. Did Mr. Friesen describe the type of weapon he was  
18 showing you, please?

19 A. Yeah. He said it was a Mac 10.

20 Q. And did he describe the silencer?

21 A. Just said it was made out of a barrel extender. I know  
22 that barrel extenders were designed to hold the gun, not really  
23 as silencers. I mean, they came from the factory. I've seen  
24 that before. But he had taken one and converted it to a  
25 silencer.

1 Q. All right. Were you employed at that time when --

2 A. No.

3 Q. -- you ran into Mr. Friesen?

4 A. No.

5 Q. Now, how did you become aware, sir, of Mr. Friesen's  
6 legal difficulties?

7 A. I saw an article in the paper, The Oklahoman.

8 Q. And when you read that, what did you do, please?

9 A. I gave a note to the SIS lieutenant at the prison.

10 Q. What is SIS? What does that stand for?

11 A. Special Investigative Service, I think. Apparently he  
12 got ahold of you.

13 Q. And do you remember being interviewed by myself and the  
14 agent?

15 A. Yes.

16 Q. All right. Now, you had prior dealings with Mr. Friesen;  
17 is that correct?

18 A. Yes.

19 Q. Is that why you knew him back in September of '05?

20 A. Yes.

21 MR. KUMIEGA: Nothing further, your Honor.

22 THE COURT: You may cross-examine.

23 CROSS-EXAMINATION

24 BY MR. MARTIN:

25 Q. So you saw an article in the newspaper that Doug had been

1 indicted, and you handed a note to somebody at the prison  
2 facility where you're staying so Mr. Kumi ega would find out  
3 that you were willing to testify for him again, right?

4 A. Again.

5 Q. You and Mr. Kumi ega have been to the rodeos before  
6 together, so to say?

7 MR. KUMI EGA: Objection. Improper comment.

8 THE COURT: Will be sustained.

9 Q. (By Mr. Martin) You've testified for Mr. Kumi ega before  
10 in a trial, correct, sir?

11 A. Yes.

12 Q. And what facility were you at when you read this article  
13 in the paper?

14 A. Forest City, Arkansas.

15 Q. Okay. And after you handed that note, sometime later,  
16 you had a meeting with Mr. Kumi ega, was Mr. Knopp there?

17 A. Yes.

18 Q. Were there any other law enforcement agents there?

19 A. A gentleman from the ATF. I don't know his name.

20 Q. Another ATF agent?

21 A. Yes.

22 Q. And you told them that in September of 2005, or August of  
23 2005, September or August of 2005, you run into Doug in the  
24 parking lot of the Red Dog Saloon?

25 A. Yes.

1 Q. Okay. And the Red Dog Saloon is a drinking  
2 establishment; is that right, sir?

3 A. It's a strip joint.

4 Q. A strip joint. Okay. And had you been inside there or  
5 had Mr. Friesen been inside there, sir?

6 A. I don't know if he had. I had been in there many times,  
7 but I hadn't that night.

8 Q. That's what I'm saying, that night. I'm focusing my  
9 questions on what happened that night, sir, okay?

10 A. No, I hadn't been in.

11 Q. Okay. But you saw him in that parking lot?

12 A. Yes.

13 Q. Okay. And that was sometime before ten in the evening?

14 A. Right around ten.

15 Q. Right around ten in the evening. There was another  
16 individual with him, correct?

17 A. Yes.

18 Q. And I believe you testified that there was a trunk full  
19 of machine guns that scared you to death; is that right? Is  
20 that what you said?

21 A. Well, it scared me. Yeah.

22 Q. Because you didn't want to go back to prison?

23 A. Right.

24 Q. But that's where you are now, right?

25 A. Yes.

1 Q. Okay. Now, you said you left there, and so I'm assuming  
2 you got in the automobile with Mr. Friesen?

3 A. Right.

4 Q. Is that right? You didn't drive your own car?

5 A. No.

6 Q. What kind of car was it?

7 A. It was a Chevy Impala.

8 Q. A Chevy Impala?

9 A. Yes.

10 Q. Was it Mr. Friesen's car?

11 A. He wasn't driving, so I don't know.

12 Q. He was not?

13 A. No.

14 Q. Okay. And I'm assuming the other individual was driving?

15 A. Yes.

16 Q. And you drive to Lake Overholser, right?

17 A. Yes.

18 Q. And Mr. Friesen -- who opens the trunk?

19 A. He did, he took the keys.

20 Q. He took the keys from the guy that was driving and opened  
21 the trunk?

22 A. Yes.

23 Q. And he pulled out -- how many machine guns were in this  
24 trunk?

25 A. I saw two.

1 Q. Okay. And you described them as Mac 10s?

2 A. Either a Mac 10 or Mac 11. I can't tell the difference.

3 Q. All right. And you also described them as having  
4 homemade silencers on them, right?

5 A. The one he fired did. Yes.

6 Q. Okay. And you knew it was homemade because it was  
7 somehow crudely fashioned or something, sir?

8 A. No. He took a barrel extender, if you know anything  
9 about the guns, there's a tube that screws on from the factory  
10 that you can hold onto the gun with, and apparently he sawed  
11 the end off, made a silencer and put the end back on with a  
12 hose clamp, looked like.

13 Q. So a little hose C-clamp that you tighten up, and that  
14 was on part of the firearm, right?

15 A. Right.

16 Q. On the silencer?

17 A. On the silencer. Yes.

18 Q. All right. And you said that the firearm was -- almost  
19 emptied the clip or did empty the clip, you're not sure which;  
20 is that right?

21 A. Right.

22 Q. After that occurred, you all drive back to his house?

23 A. I guess it was his house. He opened the door. He had  
24 the keys to the door.

25 Q. Where was that? What's the address?

1 A. South of Tenth Street and west of Council, I believe.  
2 Anyway, just south of the lake.

3 Q. Just south of Lake Overholser?

4 A. Yes.

5 Q. Okay. And you said he had the keys to the door?

6 A. Yes.

7 Q. All right. And --

8 THE COURT: Excuse me. I don't mean to interrupt your  
9 cross-examination.

10 MR. MARTIN: That's fine.

11 THE COURT: You're saying "he", and I don't know --  
12 there's Mr. Friesen and another gentleman, and so I don't know  
13 which.

14 MR. MARTIN: I apologize, your Honor.

15 THE COURT: I don't mean to interrupt you.

16 MR. MARTIN: I appreciate your interrupting me, Judge.

17 Q. (By Mr. Martin) Mr. Friesen had the keys to the  
18 residence?

19 A. Yes.

20 Q. Okay. And I believe you testified that Mr. Friesen  
21 offered to sell you this machine gun and silencer for two or  
22 \$3,000; is that right?

23 A. 3,000. Yes.

24 Q. 3,000. And it's your hope today that based on that  
25 testimony, Mr. Kumiega is going to talk to the powers that be

1 who will ask a judge -- who was your sentencing judge?

2 A. I couldn't tell you. I can't remember.

3 Q. Well, ask your sentencing judge to cut something off the  
4 218 months you have to do on this last bank robbery, right?

5 A. I certainly hope so.

6 Q. Okay. Now, you got convicted, as I understand, of a bank  
7 robbery in Arkansas back in 1992, an armed bank robbery,  
8 correct?

9 A. Yes. It wasn't charged that way, but it was.

10 Q. You went in there with a firearm?

11 A. Yes.

12 Q. And robbed a bank in Arkansas in 1992, and you were given  
13 97 months, right?

14 A. Yes.

15 Q. And then in 1995, you got convicted of or pled guilty to  
16 another bank robbery here in the Western District of Oklahoma,  
17 right?

18 A. Well, I pled guilty to conspiracy. Yes.

19 Q. And that's when you met Mr. Kumiaga for the first time?

20 A. Yes.

21 Q. And you testified for him in another case or in that case  
22 to help him with another, prosecute another individual, right?

23 A. Yes.

24 Q. And because of that, you may have got a shorter sentence  
25 than you might normally have gotten; would you agree, sir?

1 A. Yes. I didn't get it after the testimony, so I don't  
2 know -- I don't know what I would have gotten.

3 Q. But you know you got a break for helping Mr. Kumi ega out,  
4 right?

5 A. Probably. Yes.

6 Q. Okay. And then less than, or approximately a month after  
7 you testified you had seen Doug and these events occurred, you  
8 rob another bank; is that right?

9 A. Yes.

10 Q. In Lawton, Oklahoma?

11 A. Yes.

12 Q. With a dangerous weapon?

13 A. No.

14 Q. You didn't -- you didn't enter a plea of guilty to bank  
15 robbery with a dangerous weapon?

16 A. I used a pellet gun that was inoperative. To me, it  
17 wasn't dangerous. It was a gun.

18 Q. I'm sorry?

19 A. I say, it was a firearm, but --

20 Q. You had something that appeared to be a firearm, would  
21 you agree?

22 A. Yes. Yes.

23 Q. Okay. And so you went into a bank, this would be the  
24 third time, with a pellet gun, and it's in Lawton, as I recall.

25 A. Yes.

1 Q. And you ultimately entered a plea in 2005 and were  
2 sentenced to 218 months on that?

3 A. Yes.

4 Q. And you're now 62?

5 A. Yes.

6 Q. So you've served, January of 2005, you've served, say, 30  
7 or 40 months of your sentence?

8 A. Yes.

9 Q. And you made an agreement with Mr. Kumiaga in this case,  
10 he actually wrote a letter to your lawyer -- you've seen the  
11 letter, have you not, sir?

12 A. Yes.

13 Q. Where he said if you'll come testify for me in Doug's  
14 case, I'll talk to the downward departure committee about a  
15 possible Rule 35. Do you know what that means, sir?

16 A. Yes.

17 Q. You know what a Rule 35 is, don't you, sir?

18 A. It's means substantial help, testimony, whatever, that I  
19 can receive a downward departure.

20 Q. Which means the judge has the authority to, the judge has  
21 the authority to let you out of prison immediately if he wanted  
22 to?

23 A. He has the authority.

24 Q. Or he could do nothing?

25 A. Yes.

1 Q. And you're hoping that he would do something; is that  
2 correct, sir?

3 A. Of course.

4 Q. Now, those aren't the only instances that you've had of  
5 trouble with the law, are they, sir?

6 A. No.

7 Q. As a matter of fact, this gentleman right here was your  
8 lawyer in 1989, wasn't he, sir?

9 A. Yes.

10 Q. He represented you on a criminal charge pending against  
11 you, not for bank robbery, but for something over in, I'm  
12 pointing over here to Oklahoma County District Court, didn't  
13 he, sir?

14 A. Yes.

15 Q. And you hired him to represent you, didn't you, sir?

16 A. Yes.

17 Q. As a result of that representation, you got a probated  
18 sentence?

19 A. No. I got suspended sentence.

20 Q. Suspended sentence, probated. Okay. You got -- you  
21 didn't have to go to prison?

22 A. No.

23 Q. Okay. And after he got through representing you, you  
24 filed a lawsuit against him; isn't that true, sir?

25 A. Yes.

1 Q. And you sued him because he was holding as collateral  
2 towards his attorney fees a motorcycle that you had put up, and  
3 you sued him to get the motorcycle back, and ultimately you did  
4 get the motorcycle back when you paid his attorney fees; isn't  
5 that true, sir?

6 A. Yes.

7 Q. And not only did you sue him, but you filed a complaint  
8 with the Oklahoma Bar Association against him because he was  
9 holding your motorcycle too, didn't you, sir?

10 A. Yes.

11 Q. And that was the only time Mr. Friesen represented you,  
12 isn't it, sir?

13 A. Yes.

14 Q. So your testimony is that the attorney that represented  
15 me in 1989 tried to sell me a Mac 10 with a silencer in 2005,  
16 and I've sued him and filed a bar complaint on him; is that  
17 correct?

18 A. Yes.

19 MR. MARTIN: Nothing further.

20 THE COURT: Any redirect?

21 MR. KUMI EGA: Yes, your Honor.

22 REDI RECT EXAMI NATION

23 BY MR. KUMI EGA:

24 Q. Mr. Ladd, did anyone, did either I, Mr. Knopp, or the FBI  
25 -- or first of all, you were convicted by the FBI agents' work

1 in 1995; is that correct?

2 A. Yes.

3 Q. Since 1995, prior to our meeting at the prison where you  
4 were incarcerated, did I ever have any contact with you?

5 A. No.

6 Q. You testified you saw something in the newspaper; is that  
7 correct?

8 A. Yes.

9 Q. What did you see in the newspaper, Mr. Ladd?

10 A. A small article about that big (indicating) that said  
11 Doug had been arrested for, I think lying to the ATF about  
12 serial numbers on a machine gun.

13 Q. All right. Now, you testified you saw Mr. Friesen with  
14 silencers; is that correct?

15 A. Yes. Or I know one was.

16 Q. Was there any mention in that article about silencers?

17 A. No. Not that I remember.

18 MR. KUMIEGA: Your Honor, may I approach the bench  
19 regarding a follow-up question?

20 THE COURT: Yes.

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

23 MR. KUMIEGA: Your Honor, I want -- out of an  
24 abundance of caution, Mr. Martin asked if Mr. Ladd sued him,  
25 started a line of questioning. I want to ask Mr. Ladd now why

1 he sued Mr. Fri esen.

2 MR. MARTIN: I asked him.

3 MR. KUMI EGA: Excuse me?

4 MR. MARTIN: I asked him. He sai d because he coul dn' t  
5 get hi s motorcycl e back.

6 MR. KUMI EGA: I think there was more to it than that.

7 MR. MARTIN: I have the lawsui t.

8 MR. KUMI EGA: We can ask what the basi s was, why he  
9 sued him i f he thought that. Mr. Fri esen, obvi ously, Mr.  
10 Fri esen was doing him wrong to i ssue a lawsui t.

11 MR. MARTIN: I think we're going way -- number one,  
12 thi s i s 404(b), and we're going way coll ateral now.

13 THE COURT: You brought it all up about being sued  
14 whi ch went to hi s credi bility. I' ll allow you some very  
15 l i mi ted questi ons on that, but l et' s keep it very l i mi ted.

16 MR. MARTIN: I would prefer him ask him a l eadi ng  
17 questi on, i f you have something i n mi nd. I' m afraid to turn  
18 thi s guy l oose.

19 MR. KUMI EGA: I am too.

20 THE COURT: I f you won' t object to a l eadi ng questi on,  
21 you can ask a l eadi ng questi on.

22 MR. KUMI EGA: I f i t' s all ri ght wi th the Court, why  
23 di d you sue hi m, and I woul d end i t ri ght there.

24 MR. MARTIN: I' ve got the peti ti on.

25 MR. KUMI EGA: Wel l , sure.

1 THE COURT: That's pretty open-ended.

2 MR. KUMI EGA: What did you sue him about in taking the  
3 motorcycle or keeping the motorcycle.

4 THE COURT: Because he testified that he sued him to  
5 get his motorcycle back.

6 MR. KUMI EGA: Obviously, Mr. Ladd is savvy enough to  
7 know that he owes the lawyer something for his representation.

8 THE COURT: I'll allow some limited questions, but  
9 let's don't get too far out. I thought this was a legitimate  
10 question to test his credibility to show his prior animosity  
11 between the parties. So I'll allow some limited questions, but  
12 don't go too far with it.

13 MR. KUMI EGA: Yes, sir.

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

16 Q. (By Mr. Kumi ega) Mr. Ladd, why did you sue Mr. Friesen  
17 to get your motorcycle back?

18 A. When I first talked to him he told me he would represent  
19 me for \$2,000, and I paid that. And he said for a little more  
20 that he would guarantee that I would get probation or the  
21 charge would be dropped. All right. So I attended a couple of  
22 meetings with him and his secretary, who --

23 Q. Stop.

24 MR. KUMI EGA: Your Honor, may I approach the bench?

25 THE COURT: All right.

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

3 MR. KUMIEGA: I want to put the Court on notice,  
4 that's why I asked it, that he's going to talk about Mr.  
5 Friesen. The reason I'm asking is I'm doing this out an  
6 abundance of caution that Mr. Ladd is going to launch into an  
7 explanation that Mr. Friesen attempted to suborn perjury, and  
8 that's part of the underlying reason for the lawsuit.

9 MR. MARTIN: That's not in the lawsuit at all. I have  
10 the petition.

11 MR. KUMIEGA: But that's one of the reasons, that's  
12 part of his story. That's why I wanted to give the Court  
13 notice of this. I can withdraw the question at this point if  
14 you want me to, but that's the truth. That's the way Mr. Ladd  
15 sees what happened.

16 MR. MARTIN: That's what he says happened. I mean,  
17 Judge, we're getting way far afield. He's got the --

18 THE COURT: I understand, Mr. Martin. You opened this  
19 whole subject with the lawsuit, and I think he has a right to  
20 cross-examine and explain the lawsuit. I mean, I think  
21 certainly it was proper cross-examination to show his prejudice  
22 and bias against Mr. Friesen, but I'm a little concerned about  
23 how far we go in this.

24 MR. KUMIEGA: Your Honor, is it possible we can take a  
25 five-minute recess to make sure the parameters are right so Mr.

1 Martin knows what is going to be stated. I don't want to have  
2 a mistrial. I'm the last person that wants it.

3 MR. MARTIN: I have the petition, which I would be  
4 happy to introduce as a Court's exhibit, that doesn't mention  
5 anything about what he's getting ready to say, Judge.

6 THE COURT: Well, of course -- can you get to where  
7 there was just a dispute over the fee?

8 MR. KUMIEGA: If you can give me a recess I can talk  
9 to Mr. Ladd. I'm just afraid he would blurt out -- Mr. Lacy,  
10 his attorney, will be there, your Honor. I just don't want a  
11 mistrial. That's why I'm asking the Court's indulgence.

12 THE COURT: Can we hold the jury down in the jury room  
13 for about ten minutes?

14 THE CLERK: Yes.

15 THE COURT: Do you want me to swear you in as a  
16 bailiff or anything for that?

17 THE CLERK: I swear.

18 MR. MARTIN: Why don't we just excuse them to the jury  
19 room.

20 THE COURT: But they don't know where it is.

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

23 THE COURT: Ladies and gentlemen of the jury, we have  
24 a little evidentiary matter that is going to take a little  
25 time, but it's not going to take very long. Instead of taking

1 you clear down to the jury assembly room I'm going to introduce  
2 you to a new room, and it's the jury room here on the fifth  
3 floor, and Ms. Youngberg is going to take you there. So we'll  
4 be in recess for about five to ten minutes.

5 And Ms. Youngberg, if you'll just start with Mr. Anderson  
6 and just go right out this, follow Ms. Youngberg out this door.

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

9 THE COURT: We're going to take a ten-minute recess.  
10 Mr. Kumi ega, I hate to go clear back down.

11 MR. KUMI EGA: If the marshal can accommodate us, your  
12 Honor, if there's a side room, I can do it standing up, with a  
13 chair.

14 THE COURT: Mr. Lacy, you're here to be --

15 MR. LACY: I represent Mr. Ladd in his two prior  
16 cases.

17 THE COURT: Mr. Martin, you have a law book in your  
18 hands.

19 MR. MARTIN: Your Honor, I was going to draw your  
20 attention to Rules of Evidence Rule 608 which I think are  
21 pretty pertinent to the testimony that I anticipate they are  
22 going to try to get into.

23 THE COURT: All right.

24 MR. MARTIN: If Ed can narrow the issue, then --

25 THE COURT: I think that's what he -- that's the

1 purpose of our recess, Mr. Martin.

2 MR. MARTIN: Okay.

3 THE COURT: We'll be in recess for about ten minutes.  
4 If you can just visit over here or is there a holding room over  
5 there? Is there room for Mr. Lacy, you and Mr. Kumi ega could  
6 go in holding room? I don't know how big it is. If there's  
7 room, you can just go in there.

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

9 (A recess was had, after which the following was had in  
10 chambers:)

11 THE COURT: Are we ready to resume?

12 MR. KUMI EGA: Yes, your Honor.

13 THE COURT: My concern is that I think doing something  
14 general over some kind of fee dispute, but if you start getting  
15 into what you mentioned, then I think we're going to get into  
16 being much more prejudicial than probative.

17 MR. KUMI EGA: That's why I went to the Court. I'm  
18 passing that over. I think another thing that Mr. Ladd said is  
19 that complaint and the lawsuit might have mention about the  
20 perjury in it. So --

21 THE COURT: Might have what?

22 MR. KUMI EGA: Mentioned about subornation.

23 MR. MARTIN: The lawsuit doesn't.

24 MR. KUMI EGA: The complaint does, is the way --

25 THE COURT: Oh, the Bar complaint?

1 MR. KUMI EGA: Yes.

2 THE COURT: The Bar compl ai nt.

3 MR. KUMI EGA: And I don't have it either because the  
4 records would be destroyed. I don't have anything to  
5 corroborate it. It's old records, it's not in there.

6 THE COURT: So are you comfortable with what questi on  
7 you're going to ask him?

8 MR. KUMI EGA: Yes. I'm going to ask him to expl ain  
9 the lawsuit, and not menti on perjury, what he's saying, the  
10 subornation of perjury. My understanding is he's going to say  
11 the motorcycle was worth a lot more than 3,000 bucks and he  
12 thought he was getting the shaft.

13 MR. MARTIN: I can live with that.

14 MR. KUMI EGA: And then I'm going to have him read the  
15 letter.

16 MR. MARTIN: I have a copy.

17 THE COURT: Oh, okay.

18 MR. KUMI EGA: Just standard, your Honor.

19 THE COURT: So it's a letter from Mr. Friesen or  
20 somethi ng?

21 MR. KUMI EGA: No.

22 THE COURT: Okay. Well, that's basically then a fee  
23 di spute over the value of the motorcycle. So if we can limit  
24 it to that, I have no problem.

25 MR. KUMI EGA: Judge, I think at this point I'm getting

1 close to resting. We have Terri LeMaster outside.

2 THE COURT: Have you talked to her attorney and are we  
3 going to need to deal with the use immunity?

4 MR. KUMI EGA: I think so.

5 THE COURT: Okay.

6 MR. KUMI EGA: And I don't know how long that's going  
7 to take, your Honor.

8 THE COURT: It shouldn't take very long.

9 MR. KUMI EGA: Yes.

10 MR. MARTIN: I've got LeMaster and maybe Delbert.

11 MR. KUMI EGA: Then the stipulation regarding the --

12 MR. MARTIN: That those guns were whatchamacallit.

13 MR. KUMI EGA: Then we have housekeeping regarding some  
14 of the exhibits and things in the beginning that I asked to be  
15 introduced, and I think I've got some law on that.

16 MR. MARTIN: What?

17 MR. KUMI EGA: Remember, like 1.8 there was a -- they  
18 did a search.

19 THE COURT: We'll do that later.

20 MR. KUMI EGA: Yes, sir.

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

23 THE COURT: Mr. Kumi ega, You may resume your  
24 redi rect.

25 Q. (By Mr. Kumi ega) Mr. Ladd, I think one of the last

1 questions or series of questions was about a lawsuit that you  
2 lodged against your attorney, Mr. Friesen.

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. And can you explain to the jury why you filed that  
7 lawsuit, please?

8 A. As I said, I paid him \$2,000. He more or less  
9 guaranteed, which I know that he can't guarantee the outcome of  
10 a proceeding, but more or less said it would either be  
11 dismissed or I would get probation. So come up to sentencing  
12 day said, well, they are not going to drop it and the best  
13 you're looking at is a suspended sentence. I said, man, that's  
14 not what I paid you for, so I get sentenced.

15 Q. What was the sentence, please?

16 A. Five years.

17 Q. Suspended?

18 A. Yes. Then he duns me \$3,000 more. I said I'm not paying  
19 it. And he had my bike, the bike was worth a whole lot more  
20 than \$3,000. So it was either pay the money or lose the bike.

21 Q. All right. Did you -- did you have representation on  
22 your lawsuit?

23 A. No.

24 Q. You did it by yourself?

25 A. Yes.

1 Q. And did you make an allegation to the Oklahoma Bar  
2 Associati on?

3 A. Yes.

4 MR. KUMIEGA: Your Honor, may I approach the witness  
5 regarding the letter?

6 THE COURT: Yes.

7 Q. (By Mr. Kumi ega) Mr. Ladd, are you fami liar with this  
8 document?

9 A. Yes.

10 Q. What is that document, please?

11 A. It's a letter from you to Mr. Lacy, my attorney, telling  
12 me how the situation goes on the Rule 35 downward departure.

13 Q. Mr. Lacy, is he present in the courtroom?

14 A. Yes.

15 Q. Can you point him out and describe what he's wearing,  
16 please?

17 A. The gentleman over there with the gray jacket and glasses  
18 and the orange tie.

19 Q. All right. And can you read that letter into the record  
20 for the jury, please?

21 A. "Dear Mr. Lacy, In consideration for your client's  
22 truthful, candid, and honest testimony at trial or any  
23 judicial proceeding or interview, I will forward to  
24 the Rule 35, or downward departure committee, of my  
25 office a summary of his testimony or interview. The

1 purpose is to give your client a possibility for a  
2 reduction in sentence. As you know, only the Rule  
3 35, or downward departure committee, can approve a  
4 reduction in sentence. If the committee recommends  
5 reduction, then only the sentencing judge will make a  
6 decision whether to reduce Mr. Ladd's sentence, and to  
7 what extent. If you have any questions please do not  
8 hesitate to call me."

9 Q. All right. Was that the only extent of your contact with  
10 Mr. Friesen back in -- what year did you get the sentence?

11 A. This sentence?

12 Q. No. The sentence that you discussed. The lawsuit  
13 sentence.

14 A. Yeah. That was the only time.

15 Q. What year was that, if you remember, Mr. Ladd?

16 A. '89 or '90. I think I went to court in '89, I believe.  
17 '90 is when I got my bike back.

18 MR. KUMIEGA: All right. Nothing further, your Honor.

19 THE COURT: Any recross, Mr. Martin?

20 MR. MARTIN: Very briefly, your Honor.

21 RECCROSS-EXAMINATION

22 BY MR. MARTIN:

23 Q. On November 27, 1989, you signed a written statement  
24 under oath, did you not, saying that you maintained a house  
25 which was used for the distribution of drugs, marijuana, and

1 while you maintained that house you had a .22 caliber firearm  
2 in your possession; is that right, sir?

3 A. Yes.

4 Q. And that's what Mr. Friesen represented you on, right?

5 A. Yes.

6 Q. And you thought he should have got those charges,  
7 possession of marijuana with intent to distribute, or  
8 maintaining a house where drugs are distributed and possession  
9 of a firearm during the commission of a felony, dismissed; is  
10 that your testimony?

11 A. Well, it's much more complex than that, but yes.

12 Q. Okay. Now, you ultimately got the bike back?

13 A. Right.

14 Q. Now, without going through all of it, you probably are  
15 very, very familiar with how the system works; wouldn't you  
16 agree with that, sir?

17 A. What system are you referring to?

18 Q. The judicial system.

19 A. As it pertains to me.

20 Q. Okay. And you knew back in 1995 that if you cooperated  
21 with the government you would get a break, right?

22 A. I hoped to. Yes.

23 Q. Okay. And you assumed you did?

24 A. Like I said, I got the sentence before I ever testified.  
25 I never got a reduction afterward.

1 Q. But they knew before you --

2 A. I got less than I could have gotten, let's put it that  
3 way.

4 Q. They knew before you testified what you were going to say  
5 and what benefit you were going to provide to their case; isn't  
6 that true, sir?

7 A. Yes.

8 Q. Okay. And then in 2005, after the events you've  
9 described occurred, you get arrested again, correct?

10 A. Yes.

11 Q. And you're thinking, boy, I need to do anything I can to  
12 try to help myself out on this third bank robbery, right?

13 A. No. Actually I didn't know anything else to tell  
14 anybody.

15 Q. Well, according to what you just told this jury, you knew  
16 about some lawyer who was in possession of machine guns trying  
17 to sell them to a guy, didn't you, sir?

18 A. Yes. But I figured if I told them that they would laugh  
19 and forget about it without any other evidence.

20 Q. So you didn't tell them that?

21 A. No, I sure didn't, until I saw that in the paper.

22 MR. MARTIN: Nothing further.

23 THE COURT: Anything else?

24 MR. KUMIEGA: No, your Honor.

25 THE COURT: Mr. Ladd, you may be excused, and I would

1 advise you not to discuss your testimony with any other person  
2 who may be a witness in this matter. You may be excused.

3 Call your next witness.

4 MR. KUMI EGA: Your Honor, if we may approach the bench  
5 about the evidentiary matter.

6 THE COURT: All right. Is that about your motion?

7 MR. KUMI EGA: Yes.

8 THE COURT: Any other witnesses?

9 MR. KUMI EGA: Mr. Knopp, your Honor.

10 THE COURT: Can we take care of him first?

11 MR. KUMI EGA: Yes, Your Honor. United States would  
12 like to call Mr. Knopp.

13 THE COURT: You've been sworn in this case previously,  
14 Mr. Knopp, and you're under the same oath that you gave before  
15 you began your earlier testimony.

16 THE WITNESS: Yes, sir.

17 DELBERT KNOPP,  
18 recalled as a witness, having been previously sworn, testifies  
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. KUMI EGA:

22 Q. Mr. Knopp, back when this investigation was ongoing you  
23 were the case agent; is that correct?

24 A. Yes, I was.

25 Q. And you testified previously in the first day of this

1 trial; is that right?

2 A. Yes, I did.

3 Q. Now, I want to ask you some questions about certain  
4 materiality portions of this, of the investigation.

5 A. Yes.

6 Q. You understand that?

7 A. I understand that.

8 Q. If someone tells the, tells the ATF, the inspectors that,  
9 and falsely identifies a serial number, is that material to  
10 your investigation?

11 A. Yes, it would be.

12 Q. Why is that, please?

13 A. Well, because it would lead us to believe that there is  
14 possibly a criminal violation that has occurred or is  
15 occurring, and we would continue our investigation to determine  
16 whether the weapon is a lawful weapon and lawfully possessed.

17 Q. All right. You read the indictment about February 19,  
18 2003; is that correct?

19 A. That's correct.

20 Q. And the D number is not a serial number; is that correct?

21 A. That's correct.

22 Q. And is it material to your investigation to explore  
23 whether or not the D number is a serial number?

24 A. Yes. When we learned about this, we pursued an  
25 investigation, and found that in fact the D number was not a

1 lawfully registered serial number on any firearm, and we  
2 suspected at that time we had an unregistered machine gun, and  
3 pursued a full investigation that entailed numerous interviews  
4 and a substantial amount of investigation.

5 Q. You put a lot of manhours in this case; is that correct?

6 A. That is true.

7 Q. Resources?

8 A. Yes.

9 Q. Let me ask you this: Was it also material that an  
10 application to transfer a firearm from Mr. Friesen to Dr. Bugg  
11 was rejected?

12 A. Yes.

13 Q. Why is that, please?

14 A. Well, again, this is a firearm with a -- that had been  
15 presented as a firearm that we believed at that time was an  
16 unlawful firearm, and now it's being presented for transfer to  
17 Dr. Bugg, which we believe is also an unlawful firearm. And  
18 it's being falsely represented and, therefore, we have to --  
19 it's a continuing part of our investigation.

20 Q. Okay. On the date of the search warrant, June 10th,  
21 2004, Mr. Friesen made a statement to you regarding someone  
22 missing some serial numbers; is that correct?

23 A. Yes.

24 Q. Was that statement, both statements that you testified  
25 to, that this is the machine gun lawfully registered to him,

1 and the statement that the girls, inspectors missed the serial  
2 number because they were in a hurry, was that material to the  
3 investigation?

4 A. Yes, it was.

5 Q. Why is that, please?

6 A. Well, there again, up until that time the information we  
7 had is he presented a firearm as one that was lawfully  
8 registered to him that did not contain a serial number. Now he  
9 presents it as one that the inspectors missed the serial  
10 number, and, of course, there is some inconsistencies, and we  
11 had to follow-up our investigation and determine what the true  
12 facts were.

13 Q. All right. And the last count, Count No. 2, the  
14 statement to Haley McGrew. Do you remember that statement?

15 A. Yes.

16 Q. Where the, where Mr. Friesen stored firearms other than  
17 the second floor; do you remember that?

18 A. Yes.

19 Q. Was that material also, please?

20 A. Yes. Again, that's a storage facility we learned of that  
21 was in his license premises. We knew firearms coming in the  
22 license premises had to be recorded, storage had to be  
23 disclosed, and we had to conduct an investigation and  
24 ultimately led to a search warrant at his residence, or  
25 premises.

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

2 THE COURT: Mr. Martin.

3 CROSS-EXAMINATION

4 BY MR. MARTIN:

5 Q. You've read the indictment, Agent Knopp?

6 A. I have.

7 Q. You understand Count 1 deals with the part number, do you  
8 not, sir?

9 A. It's been some time since I've read it, so I would like  
10 to see it again.

11 Q. Count 1.

12 A. Yes.

13 Q. That's that D number, is it not, that agent, excuse me,  
14 Inspector Rowden found on that gun; is that correct?

15 A. Yes.

16 Q. Okay. And, as a matter of fact, if we go through every  
17 exhibit, the agent, excuse me, the inspectors were checking out  
18 all of the firearms, were they not, sir? Do you recall that?

19 A. You're talking about --

20 Q. The compliance inspection.

21 A. Yes. They actually examined the firearm, compared the  
22 numbers that they saw against the documents they had in their  
23 possession at that time. They subsequently requested a search.

24 Q. And they wrote the numbers down, I'm talking about on the  
25 19th, they wrote the numbers down, right?

1 A. Yes, they did.

2 Q. Okay. And they wrote the numbers down for approximately  
3 60 or 70 firearms, right?

4 A. Yes.

5 Q. And in truth and fact, they are the ones that decided  
6 what numbers to write down as far as serial numbers were  
7 concerned, weren't they, sir?

8 A. Yes. They observed the firearms and recorded the serial  
9 numbers.

10 Q. And on Count 1, they recorded this D95843, right?

11 A. Yes.

12 Q. And Count 3, if you need to look at the indictment, deals  
13 with the attempted sale of the firearm to Mr. Bugg, Dr. Bugg?

14 A. Yes.

15 Q. Okay. And on the transfer papers to Dr. Bugg, the serial  
16 number that's written down on those papers for that Sten is  
17 E683; isn't that true, sir?

18 A. Yes.

19 Q. And you will agree with me, E683 is the number that's on  
20 the firearm that was registered to Mr. Friesen?

21 A. Yes. It was a firearm with E683 that was registered to  
22 Mr. Friesen.

23 Q. Okay, sir. And Count 4 relates to statements that were  
24 made to you during the search; is that right, sir?

25 A. Yes.

1 Q. There's two separate ones?

2 A. Yes.

3 Q. Okay. One of them has to do with a statement Mr. Friesen  
4 made to you about the girls, I think that's what it says here,  
5 the inspectors?

6 A. Yes.

7 Q. And another has to do with the fact that he says the  
8 firearm that you all seized, Government's Exhibit 3.16, was in  
9 fact the firearm that was registered to him; isn't that true,  
10 sir?

11 A. That's true.

12 Q. And you would agree with me, sir, that neither Inspector  
13 Rowden or Inspector McGrew indicated in any way, shape, or form  
14 in their testimony that they told Mr. Friesen they believed he  
15 was in possession of an unregistered machine gun?

16 A. No. If I recall the testimony correctly, they told him  
17 they didn't find the serial number that they were looking for  
18 on the firearm.

19 Q. Now, from February 19th up until June 10th, February 19,  
20 2003 up until June 10, 2004, no one notified Mr. Friesen that  
21 they suspected that he was in possession of an unregistered  
22 machine gun, did they, sir?

23 A. No.

24 Q. So he had no reason to be concerned with that firearm;  
25 isn't that true, sir?

1 A. Well, he knew that they did not find the serial number on  
2 the firearm they were looking for.

3 Q. Okay. Now, let me -- let me shift gears just a second.  
4 You remember Mr. Erb testifying yesterday?

5 A. Yes.

6 Q. And do you remember in his testimony in particular on  
7 cross-examination with me he went into great detail about  
8 documents that you had shown him relating to the register of  
9 E683 and approximately 25 other guns. Do you remember that,  
10 sir?

11 A. Yes, I do.

12 Q. As a matter of fact, he talked about the fact that this  
13 was a firearm, there was one registry that you showed him, but  
14 he went into great detail to talk to you about this May 14th  
15 Form 2. Do you recall that?

16 A. Yes, I do.

17 Q. And there were two forms that I showed him, one dated  
18 April 20th, 1986, and one dated May 14th, 1986. Do you recall  
19 that, sir?

20 A. Yes, I do.

21 Q. And you actually talked to him, did you not, sir, prior  
22 to his testimony, you prepared a reported of interview with  
23 him?

24 A. Yes.

25 Q. And you showed him Defendant's Exhibit 100, did you not,

1 sir?

2 A. Yes. Yes, I did.

3 Q. Okay. And you showed him this exhibit for the purpose of  
4 finding out if he actually created E683, correct?

5 A. Well, first, I didn't show him Defendant's Exhibit 100.  
6 I showed him that form that's depicted on there.

7 Q. Okay. I understand that. I've highlighted this. I  
8 don't mean to imply -- you showed him the information that's  
9 contained on this form, right?

10 A. The form that's on that. Yes.

11 Q. Okay. And you didn't show him, nor did you discuss with  
12 him, nor did you have any reason to believe there was another  
13 form dated May 14th, 1986; isn't that true, sir?

14 A. That's the form I carried out there and showed him on  
15 that first occasion that we interviewed him. Yes.

16 Q. You never discussed with him a second form dated May  
17 14th, 1986, that day; isn't that true, sir?

18 A. In that period, I didn't even know about it.

19 Q. Okay. As a matter of fact, probably the first time you  
20 found out about this was when we were in court the other day,  
21 isn't it, sir?

22 A. Well, I had observed the exhibit, sir, the certified  
23 copies that contained the later exhibit; however, I didn't make  
24 the connection.

25 Q. So the first time you even realized this form was

1 different than the blue ribbon was when we were in court the  
2 other day and I pointed it out on cross-examination; isn't that  
3 true?

4 A. Well, prior to that I had reviewed documents where they  
5 had disallowed a form, and then made -- had him make  
6 corrections to his receivers, and then they approved it after  
7 re-examined it.

8 Q. After the trial started?

9 A. Yes. Or right before it started. Whenever the documents  
10 from Atlanta came in.

11 Q. And those came after -- those came after we had already  
12 picked this jury?

13 A. Yes. I believe so.

14 Q. So the statements under oath to this jury about talking  
15 to you about that form dated May 14th, 1986 are incorrect;  
16 isn't that true, sir?

17 A. I didn't understand that.

18 Q. The statements that Charles Erb made to this jury under  
20 oath about discussing a form, ATF Form 2 dated May 14th, 1986,  
21 with you, are untrue; isn't that true, sir?

22 A. I don't recall that. I know we went through the form and  
23 the guns and whatnot. As far as whether we discussed a May  
24 form, the latter form, I don't believe so. I don't recall  
25 that.

1 Q. You and I had a conversation where I stood right there  
2 and talked to you about this form and the May 14th form, didn't  
3 we, sir?

4 A. Yes, I believe we did.

5 Q. And you advised me in that conversation that you never  
6 talked to him about the May 14th, 1986 form; isn't that true,  
7 sir?

8 A. Yes, I believe that's correct.

9 MR. MARTIN: One moment, your Honor.

10 (Brief pause)

11 MR. MARTIN: Nothing further, your Honor.

12 THE COURT: Any redirect?

13 MR. KUMI EGA: Just briefly, your Honor.

14 REDI RECT EXAMI NATION

15 BY MR. KUMI EGA:

16 Q. Mr. Knopp, in your interview with Mr. Erb back in  
17 Pennsylvania, you showed him how many forms?

18 A. One form.

19 Q. That's Form 2, the birthing document; is that correct?

20 A. That's correct.

21 Q. In fact, you thought that was the correct document; is  
22 that correct?

23 A. Yes. That was the firearms that were manufactured  
24 containing the suspect firearm that we were looking at.

25 Q. From your investigation and from all the testimony that

1 occurred in the last couple of days, does that mean there are  
2 two sets of E Erb guns running around with the same numbers?

3 A. No.

4 Q. Why not?

5 A. Because, as I just stated and we heard from Erb, that is  
6 the original form the inspectors went in and disallowed it,  
7 they made him make some corrections to his firearms, and then  
8 he resubmitted another form.

9 MR. KUMI EGA: Nothing further.

10 RECCROSS-EXAMINATION

11 BY MR. MARTIN:

12 Q. Defendant's Exhibit 100 you obtained from the National  
13 Firearm Branch of Washington, D.C.; isn't that true, sir?

14 A. That's true.

15 Q. This exhibit here --

16 A. That form.

17 Q. This exhibit dated April 20th, 1986; isn't that true?

18 A. Yes.

19 Q. And you contacted Washington, D.C. and said, I need the  
20 birthing document for E683, and they send you this form which  
21 is not in the blue ribbon documents that's been introduced as a  
22 state's exhibit; isn't that true, sir?

23 A. I got that form from the National Firearm Registration  
24 and Transfer Record at that time, and yes, it is not the same  
25 form that is in the blue ribbon document.

1 Q. And the National Firearms Registration Branch is the same  
2 people that made the blue ribbon documents; is that correct,  
3 sir?

4 A. Yes, it is. Yes.

5 Q. So they gave you a form different from the one that they  
6 brought to court?

7 A. Yes.

8 MR. MARTIN: Nothing further.

9 MR. KUMIEGA: May I have one follow-up question, your  
10 Honor?

11 THE COURT: One.

12 REDIRECT EXAMINATION

13 BY MR. KUMIEGA:

14 Q. Did you get the official certified form, blue ribbon  
15 fancy stuff when you called up Washington, D. C. ?

16 A. No.

17 MR. KUMIEGA: Nothing further.

18 THE COURT: Agent Knopp, you may be excused.

19 You need another short recess?

20 MR. KUMIEGA: Yes.

21 THE COURT: Is that your last witness?

22 MR. KUMIEGA: Yes.

23 THE COURT: Ladies and gentlemen, we have another  
24 evidentiary matter before this next witness testifies, so we're  
25 going to, Ms. Youngberg will take you back to the jury room up

1 here, and we'll be in recess about ten minutes.

2 All rise while the jury exits.

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

5 THE COURT: Mr. Kumi ega.

6 MR. KUMI EGA: Yes.

7 MR. MARTIN: For the record, your Honor, the same  
8 motion in limine I filed on 404(b) would also apply to Ms.  
9 LeMaster, and it's my understanding Mr. Kumi ega intends to  
10 introduce multiple forms, I don't know if it's 3s or 4s, signed  
11 by her as alleged evidence of other offenses dating back to,  
12 like, 1996. I think the most current one is '96 or '97.

13 THE COURT: Is that right?

14 MR. KUMI EGA: It's all part of my 404(b), your Honor,  
15 that I filed.

16 THE COURT: Based upon the motion and the response to  
17 the motion, the Court is going to rule that it's -- overrule  
18 the defendant's objection to the 404(b) evidence based upon  
19 what's been represented in the motions.

20 I think what we'll do is just have a short meeting in  
21 chambers, in the library in chambers, we'll need to put that on  
22 the record too. So we'll adjourn to chambers where, Mr.  
23 Kumi ega, I'll meet and discuss your motion.

24 (The following was had in chambers, with the Court, Mr.  
25 Kumi ega, Mr. Jeffrey Byers, and Ms. Terri Dennis:)

1 THE COURT: This is in Case Number CR-2008-41-L,  
2 United States of America, plaintiff, versus Larry Douglas  
3 Friesen. This hearing is being held in judge's chambers based  
4 upon a motion filed by Assistant United States Attorney Mr. Ed  
5 Kumiaga. Present in chambers are Ms. -- you are Terri  
6 LeMaster?

7 THE WITNESS: Yes.

8 THE COURT: Ms. LeMaster, Mr. Kumiaga, and Mr. -- Ms.  
9 LeMaster has been appointed counsel. Would you identify  
10 yourself for the record.

11 MR. BYERS: Jeff Byers for the witness Terri LeMaster  
12 Dennis.

13 THE COURT: Is it Ms. LeMaster Dennis?

14 THE WITNESS: Actually Dennis, but when they filed  
15 this it was LeMaster.

16 THE COURT: Ms. Dennis, the government has filed a  
17 motion asking the Court to grant you what's called use immunity  
18 based upon the information that you may take the Fifth  
19 Amendment and refuse to testify or answer his questions based  
20 upon your right against self-incrimination. And is it my  
21 understanding from counsel that Ms. LeMaster intends to take  
22 the Fifth Amendment to certain questions.

23 MR. BYERS: That would be the case if not granted  
24 immunity. Yes, Judge.

25 THE COURT: And you understand if I grant use

1 immunity, Ms. LeMaster, you will be granted immunity from any  
2 kind of prosecution relating to your testimony other than the  
3 possible prosecution for perjury if you perjure yourself under  
4 oath. But -- so in other words, you cannot incriminate  
5 yourself if you can't be prosecuted. So if the Court grants  
6 use immunity, anything you testify could not then be used  
7 against you in any future prosecution against you.

8 Do you understand basically, have you consulted with your  
9 attorney and do you understand if the Court grants you use  
10 immunity then you will be, you will have to testify and you  
11 will have to answer questions asked you by the United States  
12 and by Mr. Friesen's attorney?

13 THE WITNESS: Yes.

14 THE COURT: And the only thing could happen as a  
15 result of your answers would be if you did perjure yourself.  
16 You understand that?

17 THE WITNESS: Yes.

18 THE COURT: And you understand if you would still  
19 refuse after being granted immunity, if you would still refuse  
20 you could be held in contempt of court and incarcerated. Do  
21 you understand that?

22 THE WITNESS: Yes.

23 THE COURT: Mr. Kumi ega, anything further that's --  
24 other than what's in your motion?

25 MR. KUMI EGA: No, your Honor.

1 THE COURT: Well, based upon the motion and the  
2 Court's review of all of the factors in it, it will be the  
3 order of the Court and I will sign the order electronically,  
4 but it will be the order of the Court that Terri LeMaster  
5 Dennis, has been called to testify and provide other  
6 information, it will be -- and the Court has -- based upon the  
7 judgement of the United States Attorney that she's refused to  
8 testify based upon statement of counsel, and provide other  
9 information based on her privilege against self-incrimination,  
10 the Court has reviewed also the letter with approval from the  
11 assistant attorney general in charge of the criminal division  
12 of the United States Department of Justice, and the Court has  
13 also determined that the testimony and other information from  
14 Ms. Dennis LeMaster, LeMaster Dennis may be necessary to public  
15 interest. And, therefore, the Court, pursuant to United States  
16 Code 6002, 6003, that Terri Dennis, Terri LeMaster be required,  
17 orders that she be required to testify and provide other  
18 information recorded in the above matter, that is the matter  
19 against Larry Douglas Friesen, and testify and provide other  
20 information in such proceedings resulting in this trial or  
21 similar matters thereto. It will be ordered that Ms. Dennis is  
22 hereby granted immunity from the use against her any other  
23 criminal case of any testimony or other information compelled  
24 under such order or any information directly or indirectly  
25 derived from this testimony or other information except that

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1 the above does not immunize Ms. LeMaster Dennis against charges  
2 of perjury giving a false statement or otherwise failing to  
3 comply with the order of the Court.

4 Are there any questions you have or Ms. LeMaster has?

5 THE WITNESS: I don't have any.

6 THE COURT: Okay. Anything further?

7 MR. KUMI EGA: No.

8 MR. BYERS: Nothing, Judge.

9 (The following was had in open court, without the jury's  
10 presence:)

11 THE COURT: Mr. Kumi ega, I'm going to sign that order  
12 first of all.

13 Ms. Youngberg, I've signed the order relating to Ms.  
14 Dennis.

15 Mr. Kumi ega, you indicated Mr. Martin had another issue.

16 MR. KUMI EGA: I have an issue, your Honor.

17 THE COURT: Okay.

18 MR. KUMI EGA: The reason I'm bringing this to the  
19 Court's attention, during the course of this investigation and  
20 during the course of trial we had word that Ms. Dennis, Ms.  
21 LeMaster Dennis was going to invoke her right to the Fifth  
22 Amendment under the United States Constitution. I had a  
23 conversation with her now court-appointed attorney, Jeff Byers,  
24 and Mr. Byers informed me that according to his client, Mr.  
25 Friesen went over to Ms. LeMaster's office at the Oklahoma

1 County courthouse where she's a bailiff for Judge Deason, and  
2 my understanding of the information Mr. Byers gave me is that  
3 Mr. Friesen walked into the bailiff's office, saw Ms. Dennis,  
4 dropped down two reports of interview, the first report of  
5 interview of '04 with Ms. Dennis, second report of interview in  
6 '08, and the government's partial, a portion of the United  
7 States' motion for 404(b), said something to her like, this is  
8 what the government said about me, turned around and walked  
9 out.

10 Days later, Mr. Byers informed me, is that Mr. Friesen on  
11 his own letterhead went to Ms. Dennis, and there are five  
12 different sentences here, five different areas of inquiry, had  
13 Ms. Dennis look at it, and Ms. Dennis signed it, again my  
14 understanding, I'm not sure if Mr. Friesen was accompanied by  
15 somebody or he did it by himself, but the proffer again from  
16 Mr. Byers is that Ms. Dennis signed this documents after only  
17 partially reading it, and gave it to Mr. -- and had her sign it  
18 and took it back to wherever.

19 As soon as I heard this information Friday, I contacted  
20 Mack Martin. I did not know about the affidavit, but I got it  
21 at a later date. The United States believes that this is  
22 borderline witness intimidation, and I would like to ask the  
23 Court if I can go into this inquiry with Ms. Dennis regarding  
24 Mr. Friesen's contacts after the indictment with the United  
25 States' witness, your Honor.

1 THE COURT: Mr. Martin.

2 MR. MARTIN: Well, your Honor, I think it more  
3 appropriate that Mr. Kumi ega maybe get his information from Ms.  
4 LeMaster or Ms. Dennis, or maybe if we need to have an in  
5 camera hearing as to what occurred. But be that as it may, I  
6 don't think providing a witness, if what Mr. Kumi ega says is  
7 accurate, providing a witness with their reports that are  
8 written by a law enforcement is witness intimidation, coupled  
9 with the statement, here is what they said you say about me, or  
10 something like that. With nothing more I don't know see how  
11 that borders on any type of intimidation. It gives her an  
12 opportunity to see what somebody had written that she said.

13 THE COURT: Any objection, Mr. Martin, to Mr. Kumi ega  
14 asking Ms. Dennis on her examination what occurred in her --

15 MR. MARTIN: I don't see how I can hardly object to  
16 that, but, you know, what she says, she says. I mean --

17 THE COURT: You're just asking the Court if it's  
18 permissible to go into in your examination of Ms. Lemaster as  
19 to what contact she had with Mr. Friesen after this indictment  
20 has come down?

21 MR. KUMI EGA: Right. And just prior to trial, your  
22 Honor. And again, I wanted to bring this to the Court's  
23 attention so we'll have no heated side bar regarding that  
24 information. I did this out of an abundance of caution again.

25 THE COURT: Thank you, Mr. Kumi ega. Unless there is

1 some objection, I don't see any problem with Mr. Kumi ega asking  
2 about -- I don't know what all her testimony is going to be, I  
3 don't know what all they are going to get into, but I don't see  
4 any difference in that than what you asked him what contact  
5 she's had with agents and other people, Mr. Martin.

6 MR. MARTIN: Let me ask one question, Ed. Do you  
7 intend to go into the affidavit?

8 MR. KUMI EGA: Yes. I think that's part and parcel of  
9 what was, what she signed.

10 MR. MARTIN: Okay. I just want to make sure I  
11 understood.

12 THE COURT: Is that already, is that an exhibit of any  
13 kind?

14 MR. KUMI EGA: No, it isn't. I would like to show the  
15 Court the exhibit, if possible.

16 THE COURT: It's not in any of my exhibit books, is  
17 it?

18 MR. KUMI EGA: It is. I think it was a standby  
19 exhibit, your Honor. Eleven.

20 THE COURT: Eleven?

21 MR. MARTIN: You've marked it and it's an exhibit.

22 THE COURT: I'll just look at it here.

23 Okay. Anything further?

24 MR. MARTIN: Your Honor, I will object if we get to  
25 it, to the affidavit, if it's offered, but I'll just make that

1 part of the record. But -- if we get to that point.

2 THE COURT: What grounds will you object?

3 MR. MARTIN: Well, number one, it's hearsay, your  
4 Honor.

5 MR. KUMIEGA: It's a sworn document from the witness,  
6 it's not hearsay.

7 THE COURT: Why isn't it hearsay?

8 MR. KUMIEGA: It's her, she signed it. She's  
9 ascribing to the statements under oath.

10 MR. MARTIN: Well, then I'll just introduce a bunch of  
11 affidavits tomorrow and rest.

12 MR. KUMIEGA: She's going to -- this document was  
13 handed to her and she signed it.

14 THE COURT: We'll cross that bridge when the document  
15 is introduced, if we come to it.

16 Let's have the jury come in, Ms. Youngberg.

17 (The jury was brought into court.)

18 THE COURT: You may call your next witness.

19 MR. KUMIEGA: Thank you, your Honor. The United  
20 States would like to call Terri Lemaster Dennis, please.

21 THE COURT: Ms. Dennis, if you'll come forward,  
22 please, and be sworn.

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TERRI DENNIS,  
called as a witness, having been duly sworn, testifies as follows:  
  
DIRECT EXAMINATION  
  
BY MR. KUMIEGA:  
  
Q. Ma'am, can you introduce yourself to the Court and spell the last name, please?  
  
A. Terri LeMaster now Dennis. The Terri is with an I, T-E-R-R-I, L-E, capital M-A-S-T-E-R. And my married name is Dennis, D-E-N-N-I-S.  
  
Q. You're currently married; is that correct?  
  
A. Yes.  
  
Q. And are you currently employed, please?  
  
A. Yes, I am.  
  
Q. Can you tell the jury about that, please?  
  
A. I work at the Oklahoma County courthouse for a judge, I'm a bailiff.  
  
Q. And what judge do you work for, please?  
  
A. Donald Deason.  
  
Q. And how long have you worked for Mr. Deason, please?  
  
A. Nine years.  
  
Q. And prior to that, who else did you work for, please?  
  
A. Various judges. I've been in the court system since 1983.  
  
Q. All right. Here in Oklahoma County?

1 A. Yes.

2 Q. Ma'am, you're testifying under a grant of use immunity  
3 from the United States government; is that correct?

4 A. Yes.

5 Q. Can you tell the jury in your own words what type of  
6 immunity you think you received from the United States, please?

7 A. For anything that might be alleged that I might have been  
8 involved in a crime in this investigation.

9 Q. Is that your understanding?

10 A. Yes.

11 Q. Do you understand that that use immunity goes to any  
12 question I ask you regarding any previous activities? Do you  
13 understand that?

14 A. Yes.

15 Q. Do you also understand, ma'am, that the use immunity  
16 granted by the United States does not go to perjury, if you  
17 perjure yourself under oath today. Do you understand that?

18 A. Yes.

19 Q. In other words, what is perjury, please?

20 A. Not telling the truth.

21 Q. Under oath?

22 A. Yes.

23 Q. And you understand you're under oath today?

24 A. Yes, I do.

25 Q. All right. Ma'am, at one time you had a relationship

1 with Mr. Friesen; is that correct?

2 A. Yes.

3 Q. And can you tell the jury the nature of that relationship  
4 and what it was, please?

5 A. We had a personal relationship, and I did work for him in  
6 his law firm.

7 Q. All right. And what time frame, please?

8 A. In the early '90s.

9 Q. All right. And how long did you date him, please?

10 A. I'm not sure. Maybe six years.

11 Q. Beginning when and ending when, if you can tell the jury,  
12 and if there are certain events in your life that would then  
13 key you when that relationship was terminated or ended?

14 A. I don't recall the exact time we started dating. I think  
15 I quit dating him and working for him sometime around 1994 the  
16 first time.

17 Q. All right. Let me ask you this: You were involved in  
18 certain firearms activity also with Mr. Friesen; is that  
19 correct?

20 A. Yes.

21 Q. All right. In general, can you tell the jury how you  
22 assisted him in his firearms business, please?

23 A. Setting up the firearms at the state fairgrounds when  
24 they would have gun shows.

25 Q. All right. Anything else?

1 A. As far as the gun sales?

2 Q. Yes. The business end of it, please.

3 A. I may have helped fill out some of the forms when the  
4 people were there to purchase firearms. I don't recall if I  
5 did or not.

6 Q. Okay. You don't remember that?

7 A. I don't. I don't know if I did or not.

8 Q. Now, recently, ma'am, you were subpoenaed for trial in  
9 this very matter; is that correct?

10 A. Yes.

11 Q. And in the last month or so, if you remember when, I  
12 believe this is end of August 2008, did Mr. Friesen pay a call  
13 to your office, please?

14 A. Yes.

15 Q. August 2008?

16 A. I believe it was that time period.

17 Q. And were you, again, working where?

18 A. For Judge Deason.

19 Q. And can you tell the jury the events that happened when  
20 you were working at that office and when Mr. Friesen came to  
21 your office, please?

22 A. It was just to let me know there were inconsistencies in  
23 the two or three meetings that I had had with agents and you.

24 Q. All right.

25 A. And I might want to know that they were there.

1 Q. All right. Tell us how that -- tell us what he did, how  
2 that happened.

3 A. Just told me that there were inconsistencies, gave me the  
4 papers, and that was it.

5 Q. All right. And what papers did he give you?

6 A. The interview, the first interview that I did, I believe  
7 the second and third interview, and one sheet out of some  
8 motion. I'm not sure what it is.

9 Q. You gave two interviews, if you remember?

10 A. No. I believe I've given three.

11 Q. You gave three. And you got copies of all those  
12 interviews?

13 A. I do now. Yes.

14 Q. All right. Did he give it to you in your office?

15 A. Yes.

16 Q. Was somebody accompanying Mr. Friesen?

17 A. On that day I don't know. We were busy.

18 Q. All right. And he said something to you when he gave you  
19 the documents?

20 A. Just that I might want to know that there were  
21 discrepancies in the different reports.

22 Q. All right. Did he also give you a United States pleading  
23 in the case, a motion?

24 A. There was one paper that was attached to the reports of  
25 my -- when I would talk to you guys. I don't know what it was.

1 Q. Okay.

2 A. There was only one page in there.

3 Q. Who did you give that document to ultimately?

4 A. Jeff Byers.

5 Q. All right. Was there a follow-up with Mr. Friesen, and  
6 again he visited you at your office? Do you remember that?

7 A. Yes.

8 Q. And that's dated August 22nd, 2008; is that correct?

9 A. Yes.

10 Q. And --

11 MR. KUMIEGA: Agent, if you can show her Government's  
12 Exhibit No. 11, please.

13 Q. (By Mr. Kumi ega) Ms. Dennis, if you can look at  
14 Government's Exhibit No. 11 and see if that document in fact is  
15 accurate?

16 A. Yes.

17 Q. Is that the document that he handed to you?

18 A. Yes, it is.

19 Q. Is that a document you signed?

20 A. Yes, it is.

21 MR. KUMIEGA: Your Honor, at this time the United  
22 States would move for introduction of Government's Exhibit 11  
23 into evidence.

24 MR. MARTIN: Same objection we made in the in-camera  
25 hearing, your Honor.

1 THE COURT: Is this being offered for the truth of the  
2 matter asserted?

3 MR. KUMIEGA: No. It's offered to prove that the  
4 actual acts occurred and it is not offered to prove the truth  
5 of the matter asserted.

6 THE COURT: Objection will be overruled. It will be  
7 admitted.

8 Q. (By Mr. Kumi ega) Ma' am, did you sign that document?

9 A. I did.

10 Q. And did you read it fully before you signed it?

11 A. I glanced at it. Yes.

12 Q. What do you mean "glanced at it"?

13 A. I glanced over it, and maybe overbroad in some areas, but  
14 yes.

15 Q. All right. And who was Mr. Friesen with when he gave you  
16 that document?

17 A. One of the members of his staff.

18 Q. Do you know who that was?

19 A. I don't know her name.

20 Q. And there is also a notary republic, or notary public  
21 towards the bottom left. Was that person there when that  
22 document was signed?

23 A. I believe that was the person that was with him.

24 Q. And for the record, what's that person's name, please?

25 A. Brandy Day.

1 Q. And can you tell the jury, how long this activity took  
2 before you, when you signed it and, with the government  
3 exhibit, please?

4 A. I'm sorry? Do what?

5 Q. How long do it take you to read this and do what with it,  
6 then?

7 A. Less than five minutes.

8 Q. Well, if you glanced at it, it's not going to take you  
9 five minutes.

10 A. No.

11 Q. And you signed it and you did what with it, please?

12 A. I signed it and Mr. Friesen took it.

13 Q. Was it notarized in your presence?

14 A. No.

15 Q. All right. And in truth and fact, it's on whose  
16 letterhead, please?

17 A. Mr. Friesen's.

18 Q. All right. Now, let me ask you this: You said that you  
19 have reports of interview with the United States government; is  
20 that correct?

21 A. Yes.

22 Q. And one report, one interview was quite lengthy; is that  
23 right?

24 A. Yes.

25 Q. And do you remember where the interview took place?

- 1 A. I believe at the, the IRS, in that building.
- 2 Q. The IRS building?
- 3 A. Right.
- 4 Q. Right next to the Colcord?
- 5 A. Right.
- 6 Q. But that was -- it wasn't in the IRS office?
- 7 A. No, it was not in their office.
- 8 Q. Whose office was it, if you remember?
- 9 A. I don't remember.
- 10 Q. If I told you it was ATF, you wouldn't --
- 11 A. That would be correct.
- 12 Q. Okay. And there were at least two agents there and the  
13 secretary and myself; is that right? If you remember.
- 14 A. I don't remember a secretary but, yes, there were two  
15 agents and yourself.
- 16 Q. All right. Let me ask you this: You talked about your  
17 relationship with Mr. Friesen; is that correct?
- 18 A. Yes.
- 19 Q. And then you talked about your activities at gun shows  
20 with Mr. Friesen; is that correct?
- 21 A. Yes.
- 22 Q. You, in fact, went to Mr. Friesen's home and assisted him  
23 with doing some type of repairs on firearms; is that correct?
- 24 A. Yes.
- 25 Q. And do you remember I was questioning you about bluing

1 guns; is that correct?

2 A. Yes.

3 Q. And can you give the jury the sense of the type of work  
4 you would do with firearms with Mr. Friesen, please?

5 A. I'm not sure what you mean by the type of work.

6 Q. How do you aid him in his gun stuff?

7 A. In setting them up?

8 Q. No. In repairing them.

9 A. Bluing.

10 Q. You blued guns with him?

11 A. Yes.

12 Q. Can you tell the jury for those that don't know what does  
13 it mean to blue a gun?

14 A. I don't know that I can even tell you anymore what it  
15 means. It was cleaning them up.

16 Q. Did you help him with that?

17 A. Yes.

18 Q. And did you ever talk -- did he ever talk to you about  
19 the serial numbers?

20 A. Yes.

21 Q. And what did he say about bluing guns and the serial  
22 numbers, please?

23 A. He was adamant not to mess up any number on the firearm.

24 Q. Especially what area?

25 A. The serial numbers, any numbers that were on there.

1 Q. All right. Don't mess with it?

2 A. Right.

3 Q. Did you know about Mr. Friesen's enthusiasm for certain  
4 type, I guess, exotic weapons, automatic weapons and silencers?

5 A. I knew he had an interest in them.

6 Q. Right. Did you ever see some of them?

7 A. Yes, I did.

8 Q. What type of weapons did you see, please?

9 A. A Gatling gun, Uzis, rifles, and pistols with built-in  
10 silencers. Things of that sort.

11 Q. All right. And about what time frame, again, did you see  
12 Mr. Friesen with these firearms?

13 A. It would have been when I lived in a duplex that was  
14 connected to his, or he was still in that duplex. I'm not sure  
15 what that time period was. Probably prior to -- up through the  
16 first part of '96.

17 Q. All right.

18 MR. KUMIEGA: Your Honor, may the agent display the  
19 machine gun to the witness?

20 THE COURT: Yes.

21 Q. (By Mr. Kumi ega) Ma'am, what I have here is Government's  
22 Exhibit 3.16. Do you remember seeing that firearm?

23 A. I remember seeing a Sten gun. I cannot tell you that it  
24 was this one but, yes, I know what it is.

25 Q. Do you remember us showing you this Sten gun in the ATF

1 office in January of 2008?

2 A. Yes. You showed me two of them.

3 Q. All right. And did that Sten gun look familiar to you?

4 A. It looks like Sten gun. It could be -- I know that he  
5 had a Sten gun. Yes.

6 Q. How do you know he had a Sten gun?

7 A. I had seen it.

8 Q. Under what circumstances, ma'am, did you see a Sten gun?

9 A. I had seen most of the firearms that he had during the  
10 course of setting up gun shows, being over at his duplex,  
11 things of that sort.

12 Q. All right. The type of gun you saw, you called it a Sten  
13 gun; is that correct?

14 A. Yes.

15 Q. How did you know it's a Sten gun?

16 A. I did not remember what a Sten gun looked like until I  
17 was presented with a picture by your office.

18 Q. All right. Does that refresh your recollection about  
19 what a Sten gun now looks like?

20 A. Yes.

21 Q. All right. Is that the type of gun Mr. Friesen showed  
22 you when you were -- were dating him?

23 A. I believe so.

24 Q. All right. Now, did he also tell you that that gun was a  
25 machine gun?

1 A. I don't -- I don't recall whether it was said it was a  
2 machine gun. I may have assumed that, he may have said that, I  
3 don't recall.

4 Q. You're saying you're not a hundred percent sure; is that  
5 correct?

6 A. I'm not a hundred percent sure.

7 Q. Do you remember when Mr. Friesen displayed that gun to  
8 you, what you believe is a Sten gun, the last time you saw it?

9 A. I do not remember the last time I saw it. No.

10 Q. Do you remember making a statement to ATF back in January  
11 of 2008, January 22nd, 2008, about when you saw that machine  
12 gun?

13 A. They asked me to try to pinpoint a time, and I said I  
14 believed it might have been before the bombing.

15 Q. What bombing is that?

16 A. 1995.

17 Q. The Oklahoma City bombing?

18 A. Yes. But I couldn't be certain, that's what my belief  
19 was.

20 Q. Okay. And that was the type of gun that was displayed to  
21 you by Mr. Friesen that you assume was a machine gun?

22 A. As far as I can recall.

23 Q. All right.

24 MR. KUMIEGA: Your Honor, may I have a moment?

25 THE COURT: Yes.

1 (Brief pause)

2 MR. KUMIEGA: No other questions, your Honor.

3 THE COURT: You may cross-examine.

4 CROSS-EXAMINATION

5 BY MR. MARTIN:

6 Q. Would it be fair to say, Ms. Dennis, that -- do you go by  
7 Ms. Dennis or Ms. LeMaster?

8 A. Dennis.

9 Q. Okay. Would it be fair to say, Ms. Dennis, that although  
10 you were interviewed three times by the government, they didn't  
11 give you any of the reports that they prepared of those  
12 interviews?

13 A. No, they did not.

14 Q. Okay. And the first time you knew what had been  
15 purportedly written about what you said was when those were  
16 provided to you by my client, right?

17 A. Correct.

18 Q. Okay. And you were left those along with one page from a  
19 motion. Did you read those, ma'am?

20 A. Yes, I did. That's why I contacted an attorney.

21 Q. Okay. And were you concerned because you found  
22 inaccuracies in what was written in the report and what you  
23 recalled saying, ma'am?

24 A. Yes, I was.

25 Q. Okay. And as a matter of fact, that's what prompted --

1 this is Government's Exhibit, I think it's, it's been  
2 introduced as 11. This is the affidavit, right?

3 A. Correct.

4 Q. And as a matter of fact, it's, there's no deception to  
5 it, it's right here on it for the world to see, it's on my  
6 client's letterhead, isn't it?

7 A. Yes, it is.

8 Q. There's no deception about that, is there?

9 A. No.

10 Q. Okay. And you said you've read this?

11 A. Yes.

12 Q. And you say it might be a little broad in certain areas?

13 A. Yes.

14 Q. Okay. Let me ask you, ma'am: The first sentence says:

15 "I've read over the report of investigation made  
16 herein by Delbert Knopp dated February 13, 2008."

17 Is that true, ma'am?

18 A. Yes.

19 Q. Okay. The second part says:

20 "I did not make any, quote, straw purchases, end  
21 quote, for Doug Friesen."

22 Is that true, ma'am?

23 A. Yes, it is.

24 Q. The third one is that:

25 "Only 4473s I filled out were for guns I purchased and

1 all these guns have since been resold or stolen from  
2 me."

3 Is that correct, ma'am?

4 A. They were for the ones I assumed I had purchased, and I  
5 don't believe I resold any of them. I think they were all  
6 taken from me.

7 Q. Taken from you?

8 A. Stolen.

9 Q. Stolen. Mr. Friesen had nothing to do with that?

10 A. No.

11 Q. Okay. All right. So you assume the Form 4473s related  
12 to the guns you purchased?

13 A. Correct.

14 Q. Okay.

15 "That I advised Mr. Knopp I had purchased a Baby Eagle  
16 from Doug Friesen, but not a baby Uzi."

17 Is that correct?

18 A. Correct.

19 Q. Okay. Number 5:

20 "That I never saw Doug Friesen with a machine gun  
21 prior to him being licensed to have machine guns."

22 Is that correct?

23 A. To the best of my knowledge. Yes.

24 Q. Okay. And there is only five sentences, it doesn't take  
25 very long to read this, does it, ma'am?

1 A. Correct.

2 Q. And because you work in the courthouse you understand,  
3 obviously, the significance of signing a document under oath, a  
4 notarized document; is that right?

5 A. Yes.

6 Q. Okay. Now, you had, I guess, met with the government in  
7 2004; is that right? If you recall.

8 A. I believe so. Yes.

9 Q. And then twice in 2008, right?

10 A. Yes.

11 Q. Okay. And you didn't go before the grand jury, did you?

12 A. No.

13 Q. Okay. And until you were provided these written reports  
14 did you have a clue what the government had written down about  
15 what you said, ma'am?

16 A. No, I did not.

17 Q. And I believe your testimony was that today you're not  
18 certain if this is the gun you saw Mr. Friesen with or not; is  
19 that correct?

20 A. I cannot say it's the exact gun he had. No.

21 Q. Okay. All right. But when pressed for a time period by  
22 agents as to when you saw it, I think you told them you're not  
23 certain, but you were pressed for a time and you gave them a  
24 date; is that right, ma'am?

25 A. I tried to go back and do a time line based on things

1 happening in my life. And I remember when I married Mr. Cook  
2 and I was trying to base it on that time line, so I thought it  
3 was prior to that.

4 Q. When did you marry Mr. Cook?

5 A. April 1st of '96.

6 Q. April 1st of 1996?

7 A. Yes.

8 Q. Okay. So it was sometime prior to April 1st of 1996?

9 A. Yes.

10 Q. Okay. And you can't give us an exact date, obviously?

11 A. I cannot give you an exact date.

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

13 THE COURT: Yes.

14 (Brief pause)

15 MR. MARTIN: Nothing further.

16 THE COURT: Any redirect?

17 MR. KUMIEGA: Yes, your Honor.

18 REDI RECT EXAMI NATION

19 BY MR. KUMIEGA:

20 Q. Ma'am, you did make the statement that's memorialized in  
21 the government's report dated January 22, '08 about seeing what  
22 you thought was a Sten machine gun?

23 MR. MARTIN: Your Honor, I don't think it's  
24 appropriate to lead the witness. If he's got a specific  
25 question -- I object.

1 MR. KUMI EGA: I'm impeaching the witness, your Honor,  
2 regarding the report.

3 THE COURT: Why don't you show it to her and see if it  
4 refreshes her recollection.

5 MR. KUMI EGA: May I approach?

6 THE COURT: Yes.

7 Q. (By Mr. Kumi ega) Ms. LeMaster, if you can look at No.  
8 21, please. Does that refresh your recollection?

9 A. As to what?

10 Q. As to the statement.

11 A. That I believe it was before the bombing?

12 Q. That's what the report says?

13 A. That's what I had said at that time. Yes.

14 Q. Can you read that statement to the jury, please?

15 A. "She stated she observed this gun before their breakup  
16 and was certain that occurred prior to the Oklahoma  
17 City bombing incident in 1995."

18 Q. And do you know what date the bomb went off?

19 A. April 19th.

20 Q. During that period of time, ma'am, you also -- excuse me.  
21 Strike that.

22 During the interview with the ATF, do you remember the ATF  
23 showing you some 4473 documents?

24 A. I did not recall seeing them. I recall a document in  
25 front of him that he had, but I do not recall seeing them.

1 Q. Would you say -- how would you categorize the meeting at  
2 the ATF back in January of 2008?

3 A. I'm not sure I understand how you mean how would I  
4 categorize.

5 Q. Was it contentious?

6 A. At the ATF office?

7 Q. Yes.

8 A. Yes.

9 Q. It was contentious?

10 A. I believe so.

11 Q. And what was -- what was contentious about it?

12 A. There were times that it felt like you were playing good  
13 cop/bad cop.

14 Q. Really?

15 A. Seriously.

16 Q. So you're saying that these statements are incorrect?

17 A. I'm saying that I don't believe that they are down  
18 exactly as they were stated.

19 Q. All right. But you did say what you read to the jury; is  
20 that right?

21 A. Yes.

22 Q. Okay. No fault of anyone other than what you told the  
23 agents; is that right?

24 A. As to the bombing, believing it was before then?

25 Q. Yes.

1 A. Correct, because at that time that's what I believed.

2 Q. Okay. And you thought about it after you saw the reports  
3 of interview given to you by Mr. Friesen?

4 A. Yes.

5 MR. KUMIEGA: Nothing further, your Honor.

6 THE COURT: Anything further, Mr. Martin?

7 MR. MARTIN: Very briefly.

8 RECCROSS-EXAMINATION

9 BY MR. MARTIN:

10 Q. You testified today, as I recall, that you told the  
11 agents that you could not be certain about the time; is that  
12 right? Do you recall just testifying to that prior?

13 A. Yes. I told them that today.

14 Q. But in the report it says you were certain. Did you tell  
15 them you weren't certain, or did you tell them you were  
16 certain?

17 A. No. I do believe at the time I said I'm not certain, but  
18 I believe it was around the bombing.

19 Q. All right. And did you feel like in that interview with  
20 the -- that you were being pressured by the government into  
21 trying to make you say something that you didn't know or didn't  
22 believe?

23 A. I felt like I was being pressured for a period of time  
24 that I wasn't certain of.

25 Q. To give answers that you weren't certain of?

1 A. To be more accurate. Yes.

2 MR. MARTIN: Nothing further.

3 MR. KUMIEGA: Briefly, your Honor.

4 RERECT EXAMINATION

5 BY MR. KUMIEGA:

6 Q. Ma'am, can you look at Government's Exhibit 11.1?

7 A. Okay.

8 Q. Do you know what that is?

9 A. It's a timeline I tried to work up for Mr. Knopp.

10 Q. Okay. And you -- how did you give it to Mr. Knopp,  
11 please?

12 A. I left it at the Oklahoma County DA's office.

13 Q. Because why?

14 A. Because I'm not certain of times and I was trying to  
15 refresh my own memory and think about the times that these  
16 things happened.

17 Q. You know Mr. Knopp works at the district attorney's  
18 office now; is that correct?

19 A. Yes.

20 Q. And this is your handiwork; is that correct?

21 A. Yes.

22 Q. Okay.

23 MR. KUMIEGA: Your Honor, may I approach to make sure  
24 there is no other innocuous notations on that document?

25 THE COURT: May you approach the witness?

1 MR. KUMIEGA: Yes.

2 THE COURT: Okay.

3 Q. (By Mr. Kumi ega) Ma'am, does that document also contain  
4 your handwriting?

5 A. Yes, it does.

6 Q. Okay. Ma'am, the question I have is, if the meeting was  
7 so contentious, why did you attempt to do a follow-up?

8 A. Because I was trying to be certain of dates, and I am not  
9 certain of dates.

10 Q. All right. The question is: If it was so contentious,  
11 why did you try to aid the ATF in the investigation?

12 A. Because I don't want anything that I have said to be  
13 wrong. I wanted to make sure that I was as accurate as I could  
14 be, and I told Mr. Knopp I would try to do a timeline.

15 MR. KUMIEGA: Your Honor, at this time the United  
16 States would move introduction of Government's Exhibit 11.1  
17 into evidence.

18 MR. MARTIN: Hearsay, your Honor.

19 THE COURT: Will be admitted.

20 MR. KUMIEGA: Nothing further, your Honor.

21 MR. MARTIN: May I have a moment, your Honor? We've  
22 introduced a brand-new document in this last bit of direct.

23 RECCROSS-EXAMINATION

24 BY MR. MARTIN:

25 Q. Ms. Dennis, do you have Exhibit 11.1 in front of you?

1 A. Yes, I do.

2 Q. Okay. You prepared that document?

3 A. Yes, I did.

4 Q. Okay. It appears there's an address at the top in 1990.

5 It should be on the monitor. I've got to push the button

6 there. Is this your residence in 1990, ma'am?

7 A. Yes.

8 Q. Okay. It's on that monitor, if it helps you. And did

9 you move in 1992, you think?

10 A. As the best of my recollection. Yes.

11 Q. Are you saying this document, there might be some

12 inaccuracies in this document, ma'am?

13 A. There might be, but I'm pretty sure that's a good time

14 line.

15 Q. Okay. And you worked for Mr. Friesen through part of

16 '93, and then worked for another attorney there, Mr. Thetford?

17 A. Yes.

18 Q. That is another attorney, right?

19 A. Yes, it is.

20 Q. Okay. And you quit working and dating him you think in

21 1993?

22 A. Yes.

23 Q. And then you started dating him again in '94?

24 A. Yes.

25 Q. "Him" meaning my client, Doug?

1 A. Yes.

2 Q. All right. You think in '95 or '96 you would have done  
3 one gun show and you lived on Northwest 17th Street, right?

4 A. Correct.

5 Q. And you don't know which year it was?

6 A. No.

7 Q. Doug lived on 804 Northwest 8th?

8 A. Yes.

9 Q. Do you know the period of time that is, ma'am?

10 A. I don't know when he moved out of that duplex.

11 Q. Okay.

12 A. He lived in it when I lived in the one that was connected  
13 to it.

14 Q. Okay. And then this bottom says:

15 "Council to Tenth, Tenth to Davis, Davis to"--

16 Is that directions on how to get there?

17 A. Correct.

18 Q. Okay. And that was provided to Mr. Knopp after this, for  
19 lack of a better word, contentious interview in an attempt to  
20 provide them with some type of a time line; is that correct?

21 A. Yes.

22 Q. Okay. And Mr. Knopp working for the DA's office is in  
23 the adjoining building next to yours, right, where you work?

24 A. Yes.

25 Q. Okay. All right.

1 MR. MARTIN: Nothing further.

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

3 THE COURT: Ms. Dennis, you may be excused, and I  
4 would advise you you're not to discuss the testimony you've  
5 given here with other persons who may be a witness in this  
6 matter.

7 THE WITNESS: Thank you.

8 THE COURT: You may be excused.

9 Call your next witness.

10 MR. KUMIEGA: Judge, with certain housekeeping  
11 matters, the government is on the cusp of resting; however, I  
12 think there might be some motions at the bench regarding other  
13 exhibits that I would like to discuss with the Court.

14 THE COURT: Okay. What exhibits are not introduced or  
15 admitted? What are your housekeeping matters?

16 MR. KUMIEGA: First of all, there's the certificates,  
17 1.7, 1.8 and 1.9.

18 THE COURT: Do you have any other witnesses, Mr.  
19 Kumi ega?

20 MR. KUMIEGA: No. We don't intend to call any more  
21 witnesses, your Honor.

22 THE COURT: So we can take up these matters outside  
23 the presence of the jury?

24 MR. KUMIEGA: Yes, sir.

25 THE COURT: Okay. Ladies and gentlemen of the jury,

1 we're going to recess for the evening, it appears to be a good  
2 time to take a break. We will reconvene at a new time tomorrow  
3 to try to get as much as we can done, we will reconvene at 9:15  
4 in the morning. Does that create a problem for anybody? And  
5 probably work until about this time tomorrow evening. Once  
6 again, I remind you that we will not -- we'll take a break in  
7 the trial on Thursday and Friday, but we will reconvene on  
8 Monday morning. So we'll figure out what time, see how we do  
9 tomorrow. And hopefully we can come close to completing the  
10 case Monday.

11 With that, again, I advise you to not read anything or  
12 listen to any news reports or do any research on your own on  
13 the internet or anything else regarding the subject matter of  
14 this case or this case or the parties involved therein, also do  
15 not reach any conclusions until you've heard all the evidence  
16 and I've instructed you on the law. With that, have a good  
17 evening, what's left of it, and we'll see you in the morning at  
18 9:15.

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

21 THE COURT: Mr. Kumi ega.

22 MR. KUMI EGA: Yes, your Honor.

23 THE COURT: What else do we have to take care of?

24 MR. KUMI EGA: Your Honor, the United States attempted  
25 to introduce Government's Exhibit 1.7. That's the negative

1 certificate from the ATF about the D98543 serial number, 1.8,  
2 and that's the tube.

3 THE COURT: I have 1.7 as admitted.

4 MR. KUMIEGA: I do not, your Honor.

5 THE COURT: You don't? Okay.

6 MR. MARTIN: Your Honor, I don't have it admitted.

7 THE COURT: Ms. Youngberg doesn't, and she's the --

8 MR. MARTIN: That was the one I objected to, I said it  
9 was prepared specifically for the purpose of -- it was not an  
10 official record, it was prepared specifically for the purpose  
11 of litigation in this case.

12 THE COURT: Let me relook at it here.

13 MR. KUMIEGA: And, your Honor, I would point to the  
14 Court Rule 803 10 that might aid the Court in its analysis.

15 THE COURT: What rule?

16 MR. KUMIEGA: Your Honor, Federal Rules of Evidence  
17 803 hearsay exceptions, and 8 is public records and reports and  
18 number 10 is absence of public records or entry.

19 THE COURT: Mr. Martin, any additional comment  
20 regarding the applicability of 803 paragraph 10 as an exception  
21 to the hearsay?

22 MR. MARTIN: Your Honor, I would first state these are  
23 not public records. I can't just walk up to the ATF and say  
24 let me know -- these are taxpayer records, and I don't think I  
25 can obtain them that way, and that's what these relate to,

1 absence of public records, and I don't think this makes that an  
2 exception to the hearsay rule.

3 THE COURT: Based solely on these are not public  
4 records?

5 MR. MARTIN: Well, and also that this document was  
6 prepared -- the earlier objection that I made, your Honor, was  
7 that these documents were prepared specifically for the purpose  
8 of the prosecution of this matter, which is another reason to  
9 exclude it as hearsay.

10 MR. KUMIEGA: Your Honor, the response of the United  
11 States is that this is -- says public office or agency. It's  
12 got nothing to do with public record. It shows the occurrence  
13 of a non-event. Mr. Friesen did not have a firearm registered  
14 on the D number, and that's the, I guess, the matter in  
15 contention. Under that rule, as long as a certified document  
16 -- they searched and did a diligent search from my memory,  
17 remembering the testimony of Denise Brown, I think the law is  
18 pretty legion that that's allowed to be introduced, your Honor.

19 MR. MARTIN: But the only response, your Honor, is it  
20 then becomes cumulative, because Denise Brown has already  
21 testified to the content of document.

22 MR. KUMIEGA: Because of Mr. Mack Martin's original  
23 objection, your Honor.

24 THE COURT: The Court finds that the exhibit should be  
25 admitted; I'll overrule the objection. The Court find it is a

1 public record, or public records were examined under the  
2 certificate and it does fit the excepted hearsay rule under  
3 803, paragraph 10, and the Court will admit the Exhibit No. 1.7  
4 and overrule the objection.

5 MR. KUMIEGA: Your Honor. The government proffers to  
6 admit 1.8 and 1.9. 1.8 is the NFA search records of the tube  
7 that was presented, that's actually been presented. That's  
8 Government's Exhibit No. 8.

9 THE COURT: I'm sorry. 1.8?

10 MR. KUMIEGA: Yes, your Honor.

11 THE COURT: You said Exhibit 8.

12 MR. KUMIEGA: The actual tube is Exhibit 8.

13 THE COURT: Oh, okay.

14 MR. KUMIEGA: 1.8, your Honor, is a companion document  
15 to show that it's a registered machine gun. And 1.9 is  
16 transfer application where the application was denied by ATF  
17 regarding the transfer of the firearm in contention, E683, with  
18 the purported transfer to Dr. Bugg, who testified about it  
19 today, and I think that's Government's Exhibit 5, another  
20 document that Mr. -- Dr. Bugg brought to the Court today, your  
21 Honor.

22 THE COURT: Any objection, Mr. Martin?

23 MR. MARTIN: Your Honor, I had earlier objected to  
24 1.8. 1.9 I object too, because I'll advise the Court that as  
25 of today, my client will testify about it in this case, he has

1 never been officially notified, never received any notice from  
2 the ATF that the transfer to James Howard Bugg was not  
3 approved. And there is no supporting documentation other than  
4 some letter here that -- or this September 5th, 2008, and I  
5 don't see any supporting documentation for that, your Honor,  
6 and I object because there is just nothing in there to support  
7 this finding, even.

8 MR. KUMI EGA: Your Honor, I believe they rejected the  
9 application because E683 on that machine gun is not the right  
10 serial number, and it was rejected. That's part of the  
11 government's evidence.

12 THE COURT: Do you have the rejection? Do you have  
13 the letter rejecting it?

14 MR. KUMI EGA: Yes, your Honor. It's in the  
15 certificate. Yes, sir.

16 THE COURT: Where is it?

17 MR. KUMI EGA: It's in 1.8. Excuse me. It's 1.9, your  
18 Honor.

19 MR. MARTIN: If they have it, I don't have it, Judge.

20 MR. KUMI EGA: It's my understanding that's what the  
21 certificate purports to be.

22 THE COURT: All 1.9 says is that it's Ms. Brown's  
23 search of the records. Do you have the supporting document  
24 that shows that that transfer was not approved?

25 MR. KUMI EGA: Your Honor, my mistake. 1.9 I have

1 here, your Honor. It says:

2 "After a diligent search of said record, I certify the  
3 firearm described below is registered to Larry Douglas  
4 Friesen doing business as Lobo Arms, and I further  
5 certify that the National Firearms Act Branch has an  
6 application that was not approved to transfer the  
7 firearm as noted Larry Douglas Friesen to James Howard  
8 Bugg."

9 THE COURT: Is there anything showing that it was not  
10 approved, any record? Where would she get that from  
11 unless there is some record that shows that it was not  
12 approved?

13 MR. KUMIEGA: Government's Exhibit No. 5 is the actual  
14 application. Again, this is like the D number, it's a  
15 non-event. It never occurred and it would have the same  
16 import, your Honor, as the first exhibit.

17 THE COURT: So what you're saying is when they don't  
18 approve it they just never act on it?

19 MR. KUMIEGA: Yes. And I think the ATF lawyer -- Mr.  
20 Vann, is that, in fact, correct?

21 MR. MARTIN: They sent a rejection, Judge. They've  
22 done it in other cases.

23 MR. KUMIEGA: I think notice has nothing do with it.  
24 Either it happened or didn't happen, it's a non-event.

25 MR. MARTIN: So we just hold the gun forever then?

1 THE COURT: They don't notify people that it's not  
2 approved, they don't send any kind of a rejection or a letter  
3 to the people transferring, the transferor or transferee saying  
4 this is not approved?

5 MR. KUMIEGA: Your Honor, I don't know. I think the  
6 lawyer from ATF can address that. But I think notice, I don't  
7 think notice has to do with any non-event. Just like saying --

8 THE COURT: My question is: If she examined the  
9 records --

10 MR. KUMIEGA: Yes, sir.

11 THE COURT: -- and there's never an approval that  
12 would tend to indicate that it's still pending, or is there a  
13 time period that after there's not an approval it's just  
14 rejected, or is there something in the records that say this  
15 transfer is not approved?

16 MR. KUMIEGA: I don't know the answer to that.

17 THE COURT: Well, the Court will admit Exhibit 1.8 as  
18 properly certified under 902, a proper exception to the hearsay  
19 rules. But there appears to be from Ms. Brown's search some,  
20 something in the records that disapproved this transfer, which  
21 there should be a supporting document to show that.

22 MR. KUMIEGA: Okay.

23 THE COURT: So at this time I will not admit 1.9.  
24 Anything else?

25 MR. KUMIEGA: Yes. Government's Exhibit 6.0.1 is a

1 photo of 682. I imagine the Court --

2 THE COURT: Just a minute. Let me get to it. 6 what?

3 MR. KUMI EGA: 6.0.1, your Honor.

4 THE COURT: Okay.

5 MR. KUMI EGA: That's the photograph of the actual  
6 firearm, E682.

7 THE COURT: Which firearm is that?

8 MR. KUMI EGA: It's one of the machine guns, your  
9 Honor, one of the bookend guns.

10 THE COURT: Okay. Is there any objection to that, Mr.  
11 Martin?

12 MR. MARTIN: No, sir.

13 THE COURT: Will be admitted.

14 MR. KUMI EGA: Same with 6.0.2, it's the close-up of  
15 the Sten Mark II serial number, your Honor.

16 THE COURT: Any objection, Mr. Martin?

17 MR. MARTIN: No, your Honor.

18 THE COURT: Will be admitted.

19 MR. KUMI EGA: Same with Government's Exhibit 7.0.1,  
20 it's a photograph of the E685.

21 MR. MARTIN: No objection, your Honor.

22 THE COURT: Will be admitted.

23 MR. KUMI EGA: And last, your Honor, is the photograph  
24 I believe of the tube in Government's 8 with E705. It's a  
25 photograph of that, your Honor.

1 THE COURT: I'm sorry?

2 MR. KUMI EGA: 8.0.1.

3 THE COURT: Any objection, Mr. Martin?

4 MR. MARTIN: No, sir.

5 THE COURT: Will be admitted.

6 MR. KUMI EGA: Your Honor, I think the last  
7 housekeeping issue would be the stipulation that I'll have to  
8 draft and read it to the jury tomorrow regarding Annette  
9 Johnson's husband that I believe Mr. Martin agreed to.

10 THE COURT: Draft that and show it to Mr. Martin prior  
11 to beginning of trial.

12 MR. KUMI EGA: Yes, sir.

13 THE COURT: And it should be a very simple, shouldn't  
14 be any objection to it. And we'll read that and then you'll  
15 rest?

16 MR. KUMI EGA: Yes, sir.

17 THE COURT: Okay. Anything further, Mr. Martin?

18 MR. MARTIN: No, your Honor.

19 THE COURT: So you're ready to start first thing in  
20 the morning?

21 MR. MARTIN: Yes, sir.

22 THE COURT: 9:15 we'll bring the jury up.

23 MR. MARTIN: Yes, sir.

24 THE COURT: Okay. We'll be in recess.

25 Mr. Martin, the reason I asked that is are there going to

1 be motions from the defense? I don't want to spend 20 minutes  
2 arguing that in the morning.

3 MR. MARTIN: I do intend to make a Rule 29 motion,  
4 your Honor, for acquittal.

5 THE COURT: Let's do that now. The Court will  
6 consider it and -- in other words, I don't want to bring a jury  
7 up and have a stipulation and then spend 20 minutes discussing  
8 a motion.

9 MR. MARTIN: Your Honor, comes now the defendant  
10 Douglas Friesen and moves the Court for a directed verdict of  
11 acquittal pursuant to, or pursuant to Rule 29 of the Federal  
12 Rules of Criminal Procedure, and would urge the Court that as  
13 to all counts, Count 1 through 5, that the evidence taken in  
14 the light most favorable to the state would not prove false  
15 statements to a federal agency as alleged in Counts 1 through  
16 4, nor the possession of an unregistered firearm as alleged in  
17 Count 5 of the information. And as a matter of fact, it's -- I  
18 think the Court can take into consideration several credibility  
19 issues and several inconsistencies in all the testimony, and  
20 would be appropriate in entering verdicts of not guilty as to  
21 all counts and would, therefore, ask that be done.

22 THE COURT: Response, Mr. Kumi ega.

23 MR. KUMI EGA: Your Honor, the United States, your  
24 Honor, stands on the record of the trial.

25 THE COURT: Well, I'll wait to make my ruling until

1 the government officially closes, so we'll begin in the morning  
2 at 9:15.

3 MR. MARTIN: Okay.

4 THE COURT: We'll be in recess.

5 (Court stood in recess until September 24, 2008. For  
6 further transcription, see Volumes VI and VII of this  
7 transcript.)

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9 REPORTER'S CERTIFICATE

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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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