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1 (The following was had in open court on September 24th,  
2 2008. For prior transcription, see Volumes I through V of this  
3 transcript.)

4 THE COURT: The first matter -- this is CR-2008-41,  
5 United States of America versus Larry Douglas Friesen. The  
6 first matter is counsel has spoken to me briefly in chambers  
7 regarding a proposed expert of the defendant, and Mr. Martin,  
8 who is the expert, please, and what is his proposed testimony?

9 MR. MARTIN: Your Honor, the expert is Fritz,  
10 F-R-I-T-Z, Scheurne, S-C-H-U-E-R-N-E. Your Honor, he has a  
11 Ph.D.

12 THE COURT: In what?

13 MR. MARTIN: Statistical mathematics, your Honor.

14 THE COURT: Uh-huh.

15 MR. MARTIN: And his testimony would be regarding,  
16 your Honor, the methodology and the implications of the report  
17 and audit done on the NFRTR, the records of the ATF, and the  
18 accuracy there of those records relating to firearms. In  
19 particular, his testimony will be that there are -- they are  
20 replete with errors, and that because of that they cannot be  
21 relied upon for any type of accuracy with regards to criminal  
22 prosecution. In particular, your Honor, that they -- we would  
23 hope that his testimony would merit an instruction from this  
24 Court at the conclusion of this case that any reliance on the  
25 NFRTR records must be viewed with great caution and that also

1 to attack the credibility, your Honor -- also, your Honor, we  
2 would hope that his testimony would be used to attack the  
3 credibility underlying all of the government's blue ribbon  
4 records which have been introduced in this case.

5 In particular, your Honor, the government had a  
6 demonstrative exhibit, I don't know if it has a number on it or  
7 not, that had 13 firearms on it that they indicated were not  
8 found. And part of that, your Honor, is because of the  
9 inaccuracies in the record. In particular, your Honor, the  
10 firearm in this case, Government's Exhibit 3.16, there has  
11 already been testimony that the NFRTR records relating to it  
12 are inaccurate. The government's introduced I believe it's  
13 Exhibit 1.1, it's in the 1 series, of their blue ribbon records  
14 of it. And their very first witness, Ms. Denise Brown, was the  
15 sponsor of Defendant's Exhibit 100, which was the ATF Forms 2.  
16 Both of them of the same firearms, both of them on different  
17 dates, ours April 20th, their May 14th. Through the testimony  
18 of Delbert Knopp it's obvious that both of those records are  
19 kept in the NFRTR database, and only one of those records, only  
20 one of those records was in the, quote, blue ribbon records of  
21 the government. And that's --

22 Your Honor, I think those points are extremely relevant to  
23 draw to the jury's attention the extreme caution they have to  
24 use when relying on these records, particularly since the  
25 government has introduced eight or nine different exhibits

1 relating to those which goes to the burden of proof they have  
2 in this case.

3 He would also, your Honor, testify about certain things  
4 that could be done to correct those records, but for purposes  
5 of the motion of his testimony, that would be my offer of proof  
6 as to what he would say in this regard.

7 May I talk to co-counsel just a second?

8 THE COURT: Let me ask you one question. What  
9 relevance would his testimony have regarding what they can do  
10 to correct the records?

11 MR. MARTIN: Well, I'll withdraw that, your Honor,  
12 that part of his testimony. I want to make sure I didn't leave  
13 anything out.

14 That would be my offer of proof, your Honor.

15 THE COURT: Mr. Kumi ega.

16 MR. KUMI EGA: Your Honor, the United States stands on  
17 its motion in limine and the case that the United States filed  
18 in support of that motion in limine which we filed it on  
19 September 15th of this year.

20 THE COURT: Well, I have some question regarding the  
21 relevancy, but two things persuade me to allow the testimony  
22 and overrule the motion. One is, of course, the duplicate  
23 records of Exhibit 100, and then the government's record of the  
24 same firearms, which both appear -- I've never heard  
25 satisfactorily explained why there were two of those records.

1 Secondly, the other relationship to the issue over the  
2 accountability of the other guns that are on the government's  
3 chart. And thirdly, the issue, the fact that the government  
4 has relied almost exclusively on many of its exhibits which are  
5 records from the -- Mr. Kumi ega, is it N-F --

6 MR. KUMI EGA: It's NFRTR, your Honor.

7 THE COURT: NFRTR, with the appropriate certifications  
8 which the Court has admitted. So I'll allow the limited  
9 testimony of that expert on the first part of your issues.

10 MR. KUMI EGA: Your Honor, one question. I got this  
11 report yesterday on what Mr. Scheurne was going to testify to,  
12 and he references something called data quality and record  
13 linkage techniques. It's published in 2007, it's a book I  
14 guess he published. The government would need that document  
15 obviously to cross-examine --

16 THE COURT: I think it's right behind you.

17 MR. MARTIN: I was going to use it on direct.

18 MR. KUMI EGA: You've only got one of these?

19 MR. MARTIN: No. Go ahead.

20 THE COURT: Okay.

21 MR. MARTIN: Can we have it back when you're through?

22 MR. KUMI EGA: Judge, it's 200 pages. I don't know how  
23 I'm going to --

24 THE COURT: Well, I've been frustrated this whole  
25 trial with both the government's lack of production of evidence

1 before the trial and supporting data and reports and the  
2 defendant's lack of providing the government with the  
3 supporting information and reports. So it's been very  
4 frustrating for both sides and been, caused much time delay,  
5 and both the government, the defendant getting the government's  
6 documentation that it could read plus the supporting  
7 documentation from its experts, and now the shoe is on the  
8 other foot and it's been very frustrating I'm sure for the  
9 government now to not have information. These are all supposed  
10 to be, this was all supposed to be done prior to trial. Both  
11 counsel have created some delays in this case because of that.

12 So let's have the jury brought up, Ms. Youngberg.

13 MR. KUMIEGA: Judge, there's a stipulation we would  
14 like to read, then we're going to rest, your Honor.

15 Your Honor, there's another document, there's another  
16 document that he cites to regarding the document I talked to  
17 the Court about in chambers regarding that there was no one  
18 ever prosecuted for something wrong with the NFA documents, and  
19 I would like to have that document because I think that's part  
20 of his analysis he's going to talk to. We don't have that  
21 document.

22 THE COURT: Ask Mr. Martin for it and he'll provide  
23 it.

24 Mr. Martin, and Mr. Kumiega, the representations by  
25 government's counsel are that he intends to offer that

1 stipulation relating to the guns belonging to that one  
2 gentleman which the lady brought to the defendant's office, and  
3 rest. Based upon my review of the evidence and viewing that  
4 evidence in the light most favorable to the government, which  
5 the Court must do under a Rule 29 motion for judgment of  
6 acquittal, the Court is going to overrule the defendant's  
7 motion based upon the standards the Court has to view the  
8 evidence at this time and in reviewing the indictment and the  
9 charges against the defendant. The Court will overrule at the  
10 appropriate time the motion for judgment of acquittal under  
11 Rule 29.

12 All rise for the jury.

13 (The jury was brought into court)

14 THE COURT: Good morning. Case Number CR-2008-41-L,  
15 United States of America, plaintiff, versus Larry Douglas  
16 Friesen, defendant. Parties ready to proceed?

17 MR. KUMI EGA: Yes, your Honor.

18 THE COURT: Defendant ready to proceed?

19 MR. MARTIN: Yes, sir.

20 THE COURT: Okay. Mr. Kumi ega.

21 MR. KUMI EGA: Yes, your Honor. I have a stipulation  
22 that has been signed by all parties regarding this case and I  
23 would like to read it to the jury.

24 THE COURT: All right.

25 MR. KUMI EGA: Ladies and gentlemen of the jury: Both

1 parties stipulate that Mr. Johnson, the husband of Annette  
2 Johnson, will testify that the firearms seized on June 10th,  
3 2004, from the safe of Mr. Friesen's law office are his  
4 firearms. These are depicted in Government's Exhibit's No.  
5 2.7, a Taurus .38 revolver, and No. 2.8, a nine millimeter  
6 pistol. Signed by Ed Kumiaga, Assistant United States  
7 Attorney, Mack Martin, counsel for the defendant, and the  
8 defendant, Larry Douglas Friesen.

9 THE COURT: Okay. You said he will testify, if called  
10 to testify that's what his testimony would be?

11 MR. KUMIAGA: Yes, your Honor. We would ask this be  
12 made part of the record.

13 THE COURT: Mr. Martin, you're in agreement with that  
14 stipulation?

15 MR. MARTIN: Yes, sir.

16 THE COURT: Okay. Mr. Kumiaga.

17 MR. KUMIAGA: With that, your Honor, the United States  
18 of America rests.

19 THE COURT: Okay. And Mr. Martin, you made a Rule 29  
20 motion --

21 MR. MARTIN: I'm sorry, your Honor.

22 THE COURT: -- in anticipation of the government  
23 resting this morning with that stipulation, you have argued a  
24 Rule 29 motion yesterday evening. The Court has reviewed that  
25 and based upon the standards the Court has to consider at this

1 time the Court is going to overrule that motion.

2 Are you ready to call your first witness?

3 MR. MARTIN: Yes, your Honor. To begin with, your  
4 Honor, I have a stipulation also. It's not reduced to writing,  
5 but it relates to the introduction of one exhibit. If I might,  
6 your Honor, we can reduce it to writing, but the stipulation is  
7 that both the United States and the defense would agree that if  
8 Gina Kishur were called to testify she would testify that  
9 Defendant's Exhibit 37 is a photograph taken of Government's  
10 Exhibit 3.16 on February 14th, 2008. And we would move for the  
11 admission, your Honor, of Defendant's Exhibit No. 37.

12 THE COURT: Any objection, Mr. Kumi ega?

13 MR. KUMI EGA: No, your Honor.

14 THE COURT: It will be admitted.

15 MR. MARTIN: Your Honor, we would call Dr. Fritz  
16 Schuerne.

17 THE COURT: Dr. Scheurne, if you'll come forward and  
18 be sworn by the clerk, please.

19 FRITZ SCHUERNE,  
20 called as a witness, having been duly sworn, testifies as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. MARTIN:

24 Q. Would you introduce yourself to the ladies and gentlemen  
25 of the jury?

1 A. You heard my name. You can probably tell from my  
2 appearance that I have a few years on me, and I have a lot of  
3 experience as a statistician in lots of settings, mostly with  
4 administrative records like the records we're looking at here,  
5 but also in other settings as well. I do a lot of publishing,  
6 written several books, one of which has just been mentioned on  
7 data quality, which has some bearing on what you've been  
8 hearing and what you'll hear today. And a number of other  
9 reports and books as well. I don't -- I'm happy to go into  
10 those in detail but I think I'll just stop there.

11 Q. Dr. Scheurne, would you tell us what type of degrees you  
12 have, sir, and in what area?

13 A. I have a Ph.D. in mathematical statistics, I teach  
14 statistics at George Washington University, I work for the  
15 University of Chicago, I do a lot of consulting on hard  
16 problems here in the U.S. and overseas.

17 Q. And, sir, specifically as relates to mathematical  
18 statistics, have you published any articles or written any  
19 books, sir?

20 A. I've published hundreds of articles and written about a  
21 half dozen books.

22 Q. Okay, sir. And have you testified in court or in any  
23 congressional hearings relating to statistical analysis, sir?

24 A. Yes. In both.

25 Q. And on approximately how many occasions?

1 A. Oh, about a half dozen altogether I would say, maybe a  
2 little more.

3 Q. Okay. And in that regard, sir, are you familiar with,  
4 I'll try to get the acronym right, the Bureau of Alcohol,  
5 Tobacco, Firearms, & Explosives records known as the NFRTR  
6 records?

7 A. Yes, I am.

8 Q. And what is your --

9 A. Broadly familiar.

10 Q. I'm sorry?

11 A. Broadly familiar.

12 Q. First of all, tell us, what are those records?

13 A. They are forms that do the registration process for the  
14 records, for the firearms.

15 MR. KUMIEGA: Your Honor, the United States would  
16 object. The doctor just testified he's broadly familiar with  
17 those documents, and if he's not intimately familiar with these  
18 documents, the government would say he doesn't have the  
19 expertise to testify --

20 THE COURT: I guess he can describe his familiarity  
21 with them. I don't know what he means by "broadly".

22 THE WITNESS: My --

23 MR. MARTIN: Hold on a second. May he continue, your  
24 Honor?

25 THE COURT: Why don't you lay a little more

1 foundation.

2 MR. MARTIN: Okay.

3 Q. (By Mr. Martin) Would you tell us a little bit about  
4 your familiarity with the NFRTR records, sir?

5 A. My familiarity extends from my examination of the audit  
6 reports that were done of the system, both the one done in 1998  
7 and one done in 2006.

8 Q. Okay. And who did --

9 A. And the supporting, excuse me, and the supporting  
10 material that went along with those, the work papers.

11 Q. And who did the audit reports?

12 A. They were done by the inspector general.

13 Q. 1998, and what was the other one, sir?

14 A. 2006. Published in 2007.

15 Q. Published in 2007, done in 2006?

16 A. Yes.

17 Q. And tell us, if you would, generally, sir, what those  
18 audit reports related to.

19 A. Well, they addressed specific issues that were of concern  
20 about the accuracy of the system in areas that were deemed to  
21 be critical. And then the first, the first report had an audit  
22 sample attached to it, something I am -- audit sampling is  
23 something I'm familiar with, and I've taught it. The second  
24 report did not have an audit sample, but just did an audit.

25 Q. All right, sir. And I'm going to show you what's been

1 previously introduced as Government's Exhibit 1.1, and  
2 represent to you, sir, that this is what's been referred to in  
3 this case as a blue ribbon document relating to the records  
4 that are contained in the NFRTR records. Have you seen  
5 documents, or these types of certificates before, sir?

6 A. I've heard about them.

7 Q. Okay.

8 A. They are very appealing in form.

9 Q. All right, sir. And in regards to the NFRTR records,  
10 sir, have you conducted investigation and analysis based upon  
11 the 1998 audit report, sir?

12 A. Yes, I have.

13 Q. Okay. And what were your findings as relate to the  
14 documents, the NFRTR records from the 1998 audit?

15 MR. KUMIEGA: To which the United States would object,  
16 your Honor. There is no proper foundation to show that he  
17 examined those documents. The expert just testified he's  
18 unfamiliar with the blue ribbon certificate that was the  
19 purpose of this case, and no proper foundation to show that he  
20 has any knowledge to articulate to the jury any problems  
21 regarding the documents.

22 MR. MARTIN: Your Honor, the blue ribbon certificate  
23 was to ask if he's ever seen that particular certificate, one  
24 like that. He's not here to testify about the, as we had in  
25 our motion hearing, about the particular records in this case,

1 except as will be relevant as to two documents that we briefly  
2 discussed.

3 THE COURT: Objection will be overruled.

4 Q. (By Mr. Martin) Do you remember my question, sir?

5 A. I'm very familiar with the work papers that underlie the  
6 audit report.

7 Q. Okay. And based upon your familiarity with those papers,  
8 and relating to the NFRTR records, what conclusions did you  
9 draw, sir?

10 A. The audit, the original audit report had a -- found an  
11 error rate of about 18 percent, which is very high. And it  
12 wasn't, I don't think it was expected to be that high. It was  
13 very high. And after they looked at it they went back and  
14 redefined what they called critical errors. And with a  
15 different definition of critical errors, they were able to  
16 lower the error rate to under five percent.

17 I have some problems with that, with the way they did  
18 that, because they are the ones who decided what was critical  
19 error to begin with, and then they changed their mind when they  
20 didn't like the result. And there are things that can be done  
21 to deal with that, but they didn't go all the way and finish  
22 the work that they should have done if they really had a change  
23 of heart about what a critical error was.

24 Q. And what kind of problem, sir, did inaccuracies in these  
25 records create in the NFRTR records? What kind of problems can

1 that create, sir?

2 A. Well, if you're using them for making an individual  
3 determination, then you have to question whether the record you  
4 have in from of you has accuracy in it that's ample or adequate  
5 for that particular use. It may have that accuracy, it may  
6 not. But when the overall system has error rates of that  
7 magnitude, what it does call into question the uses of that  
8 system alone. My view is that the system can be used, but it  
9 can't be used by itself. It needs to be used in conjunction  
10 with other evidentiary information in order to make a  
11 determination.

12 MR. MARTIN: Your Honor -- pardon me.

13 Q. (By Mr. Martin) Mr. Scheurne, would the type of  
14 inaccuracies we're talking about, do they relate to documents  
15 that would be duplication of the same registration?

16 A. You gave an example here in my presence that I heard  
17 about earlier. Yes. Duplication would be particularly  
18 troublesome of terms of efficiency of the system, but also it  
19 can lead to other problems if the duplication weren't complete  
20 or if it were inaccurate in some other way.

21 Q. I'm going to show you what's been previously introduced  
22 as Defendant's Exhibit 100. Do you see that, sir?

23 A. Thank you. You have to remember that I have cheaters,  
24 okay? I really do need glasses. Thank you.

25 Q. All right. In particular, I'm referring to, if you can

1 see there --

2 A. Not right now. Now I can. Yes.

3 Q. -- a firearm registered E683 on April 20th, 1986. Do you  
4 see that, sir?

5 A. Yes, I do.

6 Q. Okay. I'm also going to show you a page out of  
7 Government's Exhibit 1.1 that you've previously seen, the blue  
8 ribbon records --

9 A. Yes.

10 Q. -- and show you the same firearm E683, May 1st, 1986 down  
11 here I think it's May 14th, 1986. Do you see that, sir?

12 A. Yes, I do. Yes.

13 Q. And, sir, both these records that have been introduced  
14 into evidence are contained in the records of the NFRTR's  
15 records relating to the same firearm. What kind of problems  
16 does that cause, sir?

17 MR. KUMIEGA: Objection, your Honor. Misstating what  
18 was presented today.

19 THE COURT: Will be sustained.

20 Q. (By Mr. Martin) Let me rephrase the question. Are these  
21 the kind of concerns that you have from your review of the 1998  
22 and the 2006 audit, sir?

23 A. They would be the kinds of concerns I have. The audit  
24 report doesn't really dwell on duplication issues. It dwells  
25 on inaccuracies and incompleteness in the records.

1 Q. And in that regard, sir, do you have any type of concerns  
2 about the use of the NFRTR records for purposes of examination  
3 and/or prosecution, sir?

4 A. I believe that data can be used in two broad ways. It  
5 can be use in exploratory data, and it could be used to confirm  
6 what you think is true. I find the existing records are quite  
7 useful in an exploratory setting, but they are not accurate  
8 enough by themselves to be used in a confirmatory way. Excuse  
9 me. I apologize to you that those are technical terms that I'm  
10 using, but I think broadly they have the ordinary common sense  
11 English meaning.

12 Q. And in a confirmatory way, by that you mean for purposes  
13 of prosecution or something like that?

14 A. That would be one way, yes.

15 Q. Okay. And are you familiar with this book, sir?

16 A. Yes. I'm one of the authors.

17 Q. Okay. Data Quality and Record Linkage Techniques. And  
18 are issues relating, concerns relating to these particular  
19 records, the NFRTR records, discussed or issues like that  
20 discussed in this book you wrote?

21 A. They certainly are. The record linkage problem is a  
22 duplication problem, and there's quite of bit of material on  
23 that in the book. I might interject that we are going to come  
24 out with a second edition of this book. This book is replete  
25 with case studies of data problems in large systems, okay,

1 including systems that you're very familiar with because of the  
2 continuing discussion of the subprime mortgage crisis. And we  
3 will be using this, this information in the second edition of  
4 this book.

5 Q. "This information" meaning?

6 A. The -- about this system.

7 Q. The NFTR records?

8 A. That's correct.

9 Q. Okay.

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

11 THE COURT: Yes.

12 (Brief pause)

13 Q. (By Mr. Martin) In conclusion, Dr. Scheurne, do you have  
14 concerns from a scientific and expert standpoint about the use  
15 of NFRT [sic] records in a confirmatory prosecution as in this  
16 case, sir?

17 A. My answer is yes if they are used without a lot of  
18 supporting additional information, that they would not be  
19 appropriate.

20 MR. MARTIN: Nothing further.

21 THE COURT: You may cross-examine.

22 MR. KUMIEGA: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. KUMIEGA:

25 Q. Good morning, Doctor. You've done, my understanding,

1 extensive analysis on certain statistical areas relating to the  
2 NFRTR; is that correct?

3 A. Considerable analysis. Yes.

4 Q. All right. And when you said you were broadly  
5 familiar --

6 A. With the detailed forms and reporting systems that  
7 underlie it. Yes.

8 Q. Okay. And the NFRTR, what is that?

9 A. Well, it's the national firearm registration and record  
10 system.

11 Q. All right. And what data does it compile, please?

12 A. A series of forms, of calculation forms around the  
13 registration process for different kinds of firearms.

14 Q. Okay. And are you aware how the data is input into the  
15 system?

16 A. It's been done different ways, but it's usually done by  
17 the manufacturer.

18 Q. It's done by the manufacturer?

19 A. By the purchaser, the person who -- wholesaler, I guess  
20 it is. Whoever it is that sells the firearm.

21 Q. Okay. And the NFRTR is limited to certain types of  
22 firearms; is that correct?

23 A. That's my belief. Yes.

24 Q. Do you know what firearms it's limited to?

25 A. Pistols and things are not included, for example, machine

1 guns are included.

2 Q. Right. It's the guns that are machine guns, silencers,  
3 sawed-off shotguns, et cetera; is that correct?

4 A. That's my belief.

5 Q. Right.

6 A. More serious kind of weapons.

7 Q. So the NFRTR has nothing to do with just regular guns; is  
8 that correct?

9 A. That's my general understanding. Yes.

10 Q. Okay. Now, you said that you did a statistical analysis  
11 to determine the data quality of this self-reporting system; is  
12 that correct?

13 A. That isn't really what I said.

14 Q. Okay.

15 A. What I said is I reviewed the statistical analysis done  
16 by the inspector general.

17 Q. Okay. So you never actually delved into the records, you  
18 just did an analysis of the report?

19 A. That's correct. And the work papers.

20 Q. Okay. So your criticism goes to the way -- the inspector  
21 general's analysis of it, or the whole, or the whole system?

22 A. That's a -- could I answer that in parts?

23 Q. Well, I mean --

24 A. Yes. Yes, it goes to both, how's that, to start off.

25 Q. So it goes to -- you actually looked at the underlying

1 data that the inspector general looked at?

2 A. I just told you no.

3 Q. Okay.

4 A. I just told you no.

5 Q. I didn't understand.

6 A. I looked at the work papers.

7 Q. So you never looked at underlying data, just the way the  
8 inspector general compiled his analysis?

9 A. There were examples of the underlying data, but not all  
10 the underlying data.

11 Q. Okay. Example of it. Okay. Now, you said back in --  
12 there was two reports. First one in 1998.

13 A. Correct.

14 Q. Where there was an error rate of 17 or 18 percent?

15 A. Eighteen percent.

16 Q. Then in 2008, the error rate went down to five percent;  
17 is that correct?

18 A. No, that's not what happened and I didn't say it either.

19 Q. Okay. I misunderstood.

20 A. What happened is the original 1998 report had an 18  
21 percent and they looked at it and said it was too high. And  
22 that was based on a set of predetermined critical variables.  
23 And they went back in and change the critical variables that  
24 they were using based on the error rate they had in order to  
25 bring the error rate down to something under five percent.

- 1 Q. So in 2008 then the error rate now has jumped down to --
- 2 A. They did not do another audit sample in 2006. The report  
3 is dated 2007.
- 4 Q. Okay.
- 5 A. Most of the work was done in 2006.
- 6 Q. So you said there is a different error rate from the 1998  
7 report? I'm having a hard time.
- 8 A. Yeah, you are.
- 9 Q. Explain it to me, please.
- 10 A. There was no error rate calculated.
- 11 Q. When?
- 12 A. In the 2007 report.
- 13 Q. So --
- 14 A. Because they didn't do an audit sample.
- 15 Q. So what was the conclusion then in that report, the 2007  
16 report?
- 17 A. What they did was they looked at the system and they  
18 compared it to what they had seen earlier, and they noticed  
19 some improvements in the system. Most of the improvements do  
20 not bear on this part of the system. Improvements in  
21 responsiveness, things like that. They also continued to  
22 notice some of the same problems that they had seen earlier in  
23 that there wasn't a systematic uniform approach to the process.  
24 And they had -- they talked to employees, some of whom were  
25 very favorably impressed by the improvements, and some were

1 saying there is some of the things with the same problems.

2 Q. So what's the --

3 A. They did not get another error rate directly, which is  
4 one of my objections that they should have done that. Because  
5 in fact, their reworking of the original 1998 data is data  
6 fishing. And you cannot make a statement about the  
7 reliability, the probability of your being right with that data  
8 fishing, that exercise. So they should have done another audit  
9 sample.

10 Q. How did you come up with this five percent thing? What  
11 is that?

12 A. You -- it's in their work papers and they describe it in  
13 their report.

14 Q. As what? What is the five percent? What does it mean?

15 A. They reduced the scope of what they call critical errors.

16 Q. Yes.

17 A. And then the errors that remain that were then still  
18 called critical errors were under five percent.

19 Q. All right. So you're saying that even though they said  
20 there was a change from their overview from 18 percent to five  
21 percent, you still think that's inaccurate because they never  
22 did a full-blown study. Is that what you're saying, yes or no?

23 A. I am saying yes, they cannot -- having fished the data  
24 that can't then assert they know what the error rate is. They  
25 have to test it again.

1 Q. So you're quibbling with the conclusion of the inspector  
2 general regarding the five percent error rate now, yes or no?

3 A. I don't like the word "quibble".

4 Q. Well --

5 A. If the word is "quibble," the answer is no, I don't think  
6 it's a quibble.

7 Q. Then what is it?

8 A. It's a serious concern about a misinterpretation of work  
9 that they did.

10 Q. Now, your whole purpose of saying that the system is  
11 wrong is because you cannot use it in an investigatory manner,  
12 is that right, or exploratory manner. Is that your words?

13 A. You -- you -- I said you can use the system to explore  
14 concerns.

15 Q. But you can't use it in a confirmatory manner?

16 A. Not by itself.

17 Q. Not by itself, right. So the point being is if the  
18 government brought a series of documents standing alone you  
19 would have concerns with that; is that correct?

20 A. That would be an example of a case where I would have  
21 concerns. I'm very impressed by that document, but I can't  
22 read that from this distance.

23 Q. We'll bring it a lot closer. Don't worry.

24 A. Thank you. I need to be age-adjusted nearly all the time  
25 now.

1 Q. I need glasses too. Professor, have you seen those  
2 documents before?

3 A. Yes. I've seen them before. But this, this, this is  
4 sort of a bit over the top.

5 Q. I'm asking have you seen these documents?

6 A. These specific documents?

7 Q. Yes. You've never seen them before; is that correct?

8 A. Not at this point to the level that you've asked me to  
9 look at them, yes, I've not. I've not seen this book.

10 Q. Have you seen the documents associated with that book?

11 A. How can I argue that? I haven't looked at one of them  
12 yet.

13 Q. Counsel hasn't shown you what was introduced for  
14 courtroom presentation?

15 A. Not this material.

16 Q. Can you take a look at these government's certificates,  
17 please?

18 A. Sure. Oh, this is -- yes. How much do I do?

19 Q. Well, I want you to familiarize yourself with it before I  
20 ask you some questions.

21 A. Well, I'm obviously, I know what this is now.

22 Q. Okay. What are they?

23 A. They are -- they are supporting materials that the, the  
24 defendant in this case has apparently submitted.

25 Q. No, it's not. Look again.

1 A. Well, they have Doug Friesen in there.

2 Q. Yeah, they do. Yes, they do.

3 A. What is -- what is the concern that I'm not saying the  
4 right thing here.

5 Q. Well, my understanding is you're not familiar with the  
6 actual testimony of the presentation here.

7 A. Absolutely not. I was not here, I did not hear anything.

8 Q. All right. Now, you're an expert witness; is that right?

9 A. In a limited application today; is that correct?

10 Q. And how much are you getting paid for your testimony?

11 A. I don't know exactly. I did discuss a fee with -- but  
12 I'm going to be donating the money.

13 Q. I'm not asking about donation. How much are you getting  
14 paid?

15 A. \$300 for preparation an hour and \$500 for testimony an  
16 hour.

17 Q. And how much preparation have you done?

18 A. About 11 hours.

19 Q. Eleven hours of preparation?

20 A. Yes.

21 Q. And your courtroom testimony is going to be \$500 an hour?

22 A. Yes. Probably will be less than an hour.

23 Q. And you haven't seen these documents before; is that  
24 correct?

25 A. No, I did not. I would like to elaborate.

1 Q. No. Let me do my presentation, okay?

2 A. Certainly, sir.

3 Q. Then Mr. Martin can bring that up, okay? Those documents  
4 are NFA documents; is that correct?

5 A. Yes.

6 Q. They trace the, I guess the pedigree, the lineage of a  
7 firearm; is that correct?

8 A. That's what they appear to do. Yes.

9 Q. And from -- from your statistical analysis, those  
10 documents alone you say are not reliable; is that right?

11 A. We're making a distinction, statisticians talk about  
12 groups. That's our expertise.

13 Q. Okay.

14 A. We don't talk about individual cases, as statisticians we  
15 may know a lot less about an individual case certainly than an  
16 expert at ATF.

17 Q. So let me ask you --

18 A. But we can speak about systems as whole. That's what I'm  
19 speaking about.

20 Q. So you're talking about the whole system, the universe of  
21 the documents, but you don't know anything about the  
22 information that was provided for the courtroom testimony; is  
23 that correct, yes or no?

24 A. The answer is I cannot speak to the specific documents.

25 Q. Right. Okay. So when you say for investigatory purposes

1 or exploratory purposes the documents should be questioned  
2 because of the error rate; is that correct?

3 A. You seem to be mixing up things that I say.

4 Q. No, no, no.

5 A. I'm not sure if you're doing it on purpose.

6 THE COURT: Wait, wait. Ms. Ring can't take it down  
7 when both people are talking at once, so ask your questions,  
8 then you can answer them or say you don't understand.

9 THE WITNESS: Yes, sir.

10 THE COURT: We don't need a lot of additional comments  
11 on either the questions or the answers.

12 THE WITNESS: Yes, sir.

13 Q. (By Mr. Kumi ega) I wrote down, Doctor, that the records  
14 are good for exploratory purposes.

15 A. That's correct.

16 Q. But they are not good for confirmation purposes or  
17 confirmatory purposes; is that correct?

18 A. By themselves.

19 Q. By themselves?

20 A. Yes.

21 Q. Exactly.

22 A. By themselves.

23 Q. So --

24 MR. KUMI EGA: Your Honor, may I move this chart closer  
25 to the doctor?

1 THE COURT: Yes.

2 THE WITNESS: How about half again.

3 MR. KUMI EGA: How about right here, Agent Knopp?

4 THE WITNESS: That would be -- thank you.

5 MR. KUMI EGA: Your Honor, may I speak from here?

6 THE COURT: Yes.

7 MR. KUMI EGA: Thank you.

8 THE COURT: Move to the other side. You're blocking

9 Mr. Anderson. Move over here, Mr. Kumi ega. You on this side.

10 MR. KUMI EGA: Oh, this side.

11 THE COURT: There you go.

12 Q. (By Mr. Kumi ega) Professor, are you familiar with a Form

13 2?

14 A. Broadly, as I've said before.

15 Q. What is a Form 2?

16 A. It's one of the forms in the system.

17 Q. What does the form purport to be?

18 A. It purports to create the beginning of the system.

19 Q. Now, since you've never analyzed the chain, you really

20 can't testify to the statistics regarding this; is that

21 correct?

22 A. We're looking at a specific case.

23 Q. Right.

24 A. Statisticians don't call a specific case a statistic,

25 sir. So that's lay terminology. We call it data. This is

1 data.

2 Q. Exactly. So when somebody comes from a -- Charles Erb  
3 comes and says he manufactured a gun and went to Chicago,  
4 that's not part of the data system; is that correct? It's not  
5 part of your system or your analysis; is that correct?

6 A. It's data --

7 Q. Answer yes or no, sir, please. Is that part of your  
8 analysis?

9 A. This specific one, no.

10 Q. No. Okay. And when Mr. Kemmerer gets it from Chicago to  
11 here --

12 A. Same answer.

13 Q. Same answer. And then when it goes from here and the  
14 actual person-sponsored numbers, the serial number comes here,  
15 and testifies to that, that's not part of your system either;  
16 is that correct?

17 A. It's data in the system that -- yes.

18 Q. Right. And then when he says he gave it to your client,  
19 Mr. Friesen, that's not part of your analysis either; is that  
20 correct?

21 A. It -- you're right. Yes.

22 Q. Exactly. And then when I showed you those documents that  
23 you're not familiar with, and they trace the pedigree or the  
24 lineage of the firearm, and people come in here to support,  
25 they testify that this is the guns that pass through --

1 A. Uh-huh.

2 Q. -- what was that, what would that tell you statistically,  
3 if it can?

4 A. It would be an individual datum for the system as a  
5 whole. The information I reported earlier from an audit  
6 report, okay, talked about a sample.

7 Q. Right.

8 A. And which had a higher, a higher error.

9 Q. So if these people came in to support the documents,  
10 there would be no error rate; is that correct?

11 A. For this --

12 Q. Is that yes or no?

13 A. Yes. The answer is for this particular case.

14 Q. Okay. Exactly. For this particular case. Now, let me  
15 get a pen here.

16 A. Because, I might add --

17 Q. Doctor, let me ask the questions, okay? Now, this is  
18 683, this is a gun purportedly owned by Mr. Friesen, and the  
19 same thing. 682, gun 682 and Form 2 was made by Erb, it went  
20 the same way to Mr. Perry, went to Mr. Kemmerer, went to Mr.  
21 Davenport, and went to somebody else. And the government  
22 brought supporting people to support the documents. Again,  
23 there would be no statistical problem with that; is that  
24 correct, yes or no?

25 A. The answer is yes. There would be no problem.

1 Q. Right. Okay.

2 A. But --

3 Q. Let me finish. And if I brought 685 and did the same  
4 thing, would there be a statistical problem, yes or no?

5 A. The answer is there would not be a statistical problem.

6 Q. Right. From looking at that chart, if there were  
7 supporting witnesses to sponsor the documents, that would be  
8 something of confirmation; is that correct?

9 A. It would be an example of what I said earlier --

10 Q. Yes.

11 A. -- that the system itself is not sufficient, but if you  
12 bring in witnesses for every step, then that's pretty strong  
13 confirmation.

14 Q. Well, not only is it strong but it's absolute; is that  
15 correct?

16 A. I don't -- except on Sundays I don't do absolutes. Life  
17 is uncertain.

18 Q. I know. Now, is it Professor or Doctor, or both?

19 A. Both.

20 Q. Okay. Doctor, let me ask you this: You've looked at you  
21 said the inspector general's report regarding --

22 A. Yes.

23 Q. And that was, I guess, you said 1998 and 2008, or '7, the  
24 subsequent report, whatever you want to call it; is that  
25 correct?

1 A. Correct.

2 Q. In the first report is there mention that nobody has ever  
3 been convicted wrongfully because of some data that the  
4 government brought for trial throughout the United States of  
5 America?

6 A. I do remember seeing that.

7 Q. Can you find it for us?

8 A. My colleague back there is looking at the material. I  
9 did not consider that an especially crucial point.

10 Q. Well, wait, wait, wait.

11 A. I didn't find it --

12 Q. Listen. You analyze, you make a career of doing this --  
13 you make a career criticizing these documents; is that correct?  
14 You go around the country testifying.

15 A. Of course not.

16 Q. You don't?

17 A. Of course not.

18 Q. Okay. You wrote a book criticizing the materials in the  
19 inspector general's report; is that correct?

20 A. That doesn't deal with this.

21 Q. But is there not a statement that says that nobody in the  
22 United States of America has been wrongfully convicted because  
23 of those documents; yes or no?

24 A. I do remember seeing that.

25 Q. Okay. Can you find it for us?

1 A. I will have to find it for you, but I don't have it right  
2 now.

3 Q. Okay.

4 A. I remember reading it.

5 Q. In sum then, Doctor, if somebody sponsors the documents  
6 and shows every step of the way until it goes to Mr. Friesen,  
7 that would alleviate your concerns regarding the statistical  
8 problems in this case; is that correct?

9 A. That would be a very good approach to alleviating my  
10 concerns. Yes.

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

12 (Brief pause)

13 MR. KUMIEGA: No further questions.

14 THE COURT: Yes.

15 (Brief pause)

16 THE COURT: Any redirect, Mr. Martin?

17 MR. MARTIN: Just a moment, your Honor.

18 (Brief pause)

19 REDI RECT EXAMI NATION

20 BY MR. MARTIN:

21 Q. Doctor, your testimony relates to the records of ATF as a  
22 whole?

23 A. Correct.

24 Q. Not as to individual, individual records as is reflected  
25 in this --

1 A. That is correct?

2 Q. -- demonstrative chart, right?

3 A. That's correct.

4 Q. And although you didn't come here to testify about this,  
5 if there is a break in the link, for example, one of these  
6 witnesses didn't testify, would that cause you a concern from a  
7 statistical standpoint?

8 A. You're using the word "statistic" in a casual way. My  
9 answer is that if there was gap in the evidence, yes. If there  
10 was a chain of custody break, yes.

11 MR. MARTIN: Nothing further.

12 RECCROSS-EXAMINATION

13 BY MR. KUMIEGA:

14 Q. Doctor, I got a summary of your testimony yesterday. You  
15 have a -- you submitted a three-page resume. This is yours; is  
16 that correct?

17 A. I can't see, but looks like it is. Yes.

18 Q. Okay. Let me show you.

19 A. I just wish I had the eyes I had when I was younger.  
20 Yes, this is one of my resumes, it's the one that was  
21 submitted.

22 Q. Very impressive, Doctor. And you also did a half-page  
23 report on your testimony today; is that correct?

24 A. Yesterday I put together a brief, what I will be -- what  
25 scope I would have.

1 Q. That's your report; is that right?

2 A. That is correct. And the judge, of course, had narrowed  
3 the report, narrowed my scope this morning.

4 Q. Okay. And I do have this document that's just been faxed  
5 to me, and this is from the United States Department of Justice  
6 Office of the Inspector General, Evaluations and Inspection  
7 Division.

8 MR. KUMIEGA: Your Honor, may I approach again?

9 THE COURT: Yes.

10 Q. (By Mr. Kumi ega) Are you familiar with that document?

11 A. Yes. This is, I think this is what I was referring to.

12 Q. Right. You're familiar with that document; is that  
13 correct?

14 A. This is only one page here, but yes, I'm familiar with  
15 it. Page 31, yes.

16 Q. Is this the sentence that's contained in that document?

17 A. Yes.

18 Q. Can you read it for the jury, please?

19 A. "We do not find evidence that errors in the NFRTR  
20 records cause inappropriate seizures or criminal  
21 charges of NFA weapons owners of federal firearms  
22 licensees."

23 Q. Thank you.

24 A. This is, I think, 1998.

25 Q. This is the one where the error rate is 18 percent; is

1 that correct?

2 A. In 1998 it was 18 percent.

3 Q. And this is the '98 report?

4 A. I believe that's correct.

5 MR. KUMIEGA: Nothing further, your Honor.

6 THE COURT: Anything further, Mr. Martin?

7 MR. MARTIN: No, sir.

8 THE COURT: Doctor, you may be excused.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: Call your next witness.

11 MR. MARTIN: Doug Fri esen.

12 THE COURT: Mr. Fri esen, if you'll come forward, raise  
13 your right hand and be sworn, please.

14 LARRY DOUGLAS FRI ESEN,

15 called as a witness, having been duly sworn, testi fies as  
16 follows:

17 DIRECT EXAMI NATION

18 BY MR. MARTIN:

19 Q. Introduce yourself to the ladies and gentlemen of the  
20 jury, please.

21 A. My name is Larry Douglas Fri esen, I go by Doug.

22 Q. And Doug, what is your profession or occupation?

23 A. I'm an attorney.

24 Q. And would you tell us a little bit about your educational  
25 background?

1 A. I have a juris doctorate, which is just a law degree, and  
2 then I took a few additional classes at OU toward a business  
3 administration. I think I've got, I don't know, 30 hours or so  
4 towards my master's in business administration.

5 Q. All right, sir. And practicing law, do you have any type  
6 of specialty or anything? Would you tell us a little bit about  
7 your practice?

8 A. Not really. I have a general practice. It's always  
9 interesting when anybody asks you what do you do, and my most  
10 common answer is that I represent people. I tried to set up my  
11 practice so that when somebody comes in to my office if, in  
12 fact, they and I are compatible they can come to my office for  
13 most of the things that will happen to an average person  
14 throughout the course of their lifetime. We do domestic  
15 things, we do what I would consider light criminal actions,  
16 small business consultation, that type of thing.

17 Q. All right, sir. And tell us a little -- when did you  
18 open your office?

19 A. Opened my office in 1987. It was in the building right  
20 across the street from the county courthouse called the Park  
21 Harvey Center. I was initially office-sharing with another  
22 lady, a friend of mine by the name of Betty Lawler, who was  
23 also an attorney, she's deceased now. The following year I  
24 rented an adjoining suite with her -- and from her, I rented an  
25 adjoining suite from her and moved into my own office. Stayed

1 there until 1996 when I purchased the building and we moved  
2 into the building that we're currently in.

3 Q. Okay. And that's the building that we've seen pictures  
4 of and the video of from the ATF search; is that right?

5 A. Yes, sir.

6 Q. And why did you move to that building in '86? What was  
7 the purpose of that move, not '86, '96?

8 A. As I said, we just represent people. A lot of them are  
9 intimidated by going downtown to -- on the one-way streets.  
10 Parking has always been a problem in downtown Oklahoma City,  
11 and I felt my practice had established itself enough that I was  
12 willing to take the chance on buying a building and trying to  
13 get some equity. So there were a number of reasons, probably  
14 the most important of them was client availability.

15 Q. And when you purchased that building, what was it like?

16 A. The building was -- it was built in approximately 1925.  
17 It was in about the shape that the picture showed my house to  
18 be in, which I'm a little embarrassed by, but it was  
19 approximately in that shape. We have totally redecorated it in  
20 the years since, and I think we finished the decoration of the  
21 office or redecorating the office in about 2002.

22 Q. Okay. And let me ask you: During this same period of  
23 time and before, did you have any other interests, sir?

24 A. Yes, sir. In I believe 1994, I obtained my private  
25 investigator license, which also allowed me the availability of

1 carrying a firearm. From there, my interest in both firearms  
2 and various interests in the outdoor world, in other words,  
3 hunting and fishing, grew. I knew I needed some additional  
4 firearms, and my goal was to try and set up a business of  
5 buying and selling firearms so that I could try essentially to  
6 get the additional firearms that I would need for free.

7 Q. Okay, sir.

8 MR. MARTIN: If I might approach, your Honor, I'm  
9 going to grab the defendant's exhibit book here.

10 THE COURT: Yes.

11 Q. (By Mr. Martin) Did you obtain an FFL license, sir?

12 A. Yes, sir. In 1994, in furtherance of my attempts to get  
13 the additional firearms that I would need essentially at no  
14 cost or at lower cost to me, I obtained first a federal  
15 firearms license and then I obtained a Class 3 license. The  
16 federal firearms license allowed me to deal in what they call  
17 sporting type firearms - rifles, shotguns, pistols. The Class  
18 3 allowed me to deal in other weapons such as machine guns,  
19 silencers, sawed-off shotguns, short-barreled rifles, any other  
20 devices.

21 Q. Would you characterize yourself as gun enthusiast, sir?

22 A. I would characterize myself as a gun enthusiast.

23 Q. In front of you is a notebook, and if you would go to tab  
24 5, sir. And if you will look through tab 5 through tab 20,  
25 just briefly.

1 A. Yes.

2 Q. Do you recognize what are contained in tabs 5 through 20,  
3 marked Defendant's Exhibits 5 through 20, sir?

4 A. Yes, sir.

5 Q. And would you briefly describe for me what is contained,  
6 what those purport to be?

7 A. Our Exhibits 5 through 20 are a compilation of a number  
8 of classes that I have both taken and taught in reference to  
9 firearms. In 1994, when I first got my private investigator  
10 license, I was lucky enough to meet a lady who was then the  
11 business administrator for CLEET, or the Council on Law  
12 Enforcement Education and Training. They are responsible for  
13 licensing all of the police officers, the peace officers in the  
14 State of Oklahoma, and they train almost all of those except  
15 the ones that have an in-house training staff, which would  
16 include the highway patrol, Oklahoma City, Tulsa, and there may  
17 be one or two more.

18 She introduced me to a gentleman by the name of Glen  
19 McIntyre, who was the chief firearms instructor for the State  
20 of Oklahoma. He was kind enough to allow me to take the police  
21 basic pistol training class, and as I took that class and was  
22 able to pass it, he and I became friends and I became  
23 acquaintances with a number of other of the CLEET firearms  
24 instructors. As a result of that relationship, they allowed me  
25 to audit, or they requested that I audit for safety purposes

1 for CLEET a number of the other classes. There were, I  
2 believe, four or five handgun instructor classes that I audited  
3 and passed. There was the fire -- excuse me -- Shotgun  
4 Instructor class that I audited and passed, Long Range Rifle  
5 Instructor class that I audited and passed, AR 15 Instructor  
6 class, Shoothouse Instructor class, and I believe Lever Action,  
7 if I didn't mention that one. But all of those classes I  
8 audited for CLEET to give them my opinion in reference to the  
9 things they needed to do different for any potential liability  
10 that CLEET may have.

11 In the course of that, there were a number of other  
12 use-of-force classes that I took and that I eventually started  
13 teaching to firearms people. I have taught a number of  
14 classes, continuing education classes for CLEET, I'm an  
15 instructor for CLEET, I think they call it an adjunct  
16 instructor, but I'm an instructor for CLEET for continuing  
17 education for the private investigators, I'm -- every year  
18 police officers have to get a certain number of hours of  
19 continuing education to maintain their credentials. I'm an  
20 adjunct instructor for that and have taught many of those  
21 classes. I have given -- I've been asked to and wrote a model  
22 use-of-force policy and its aftermath. In other words, when a  
23 police officer is involved in use of force, what, how to handle  
24 it during that incident, and also in its aftermath, what  
25 happens -- what should happen procedurally after a police

1 officer has shot somebody, which has been adopted in a number  
2 of jurisdictions.

3 And this year I was privileged to be on the CLEET board of  
4 review or whatever for revamping the Concealed Carry classes.  
5 I've been teaching Concealed Carry classes since its very  
6 enactment. In fact, my instructor number for the Concealed  
7 Carry classes is number four, I was the fourth instructor they  
8 licensed in the State of Oklahoma. And this year I helped them  
9 rewrite the book to help them update it to bring it up to date  
10 because there's changes in it every year.

11 The items 5 through 20 are some of the certificates that I  
12 have received in those various classes, and some of the classes  
13 that I have given that I have just spoken about.

14 MR. MARTIN: Your Honor, I move for the introduction  
15 of Defendant's Exhibits 5 through 20.

16 MR. KUMIEGA: No objection.

17 THE COURT: Will be admitted.

18 Q. (By Mr. Martin) Let me ask you, Mr. Friesen: Has your  
19 exposure to firearms over the years, your teaching, your  
20 training, your background in that, helped you in your law  
21 practice?

22 A. Absolutely. I found that almost all of my marketing at  
23 this point is to some type of gun or gun-related activity.  
24 Approximately 75 percent of the new clients coming through the  
25 door are either police officers or come to the office as a

1 result of a seminar that I've put on or classes that are taught  
2 for concealed carry or use of force. Something around  
3 approximately 75 percent of my new clients come from this area.

4 Q. All right, sir. And likewise, sir, have you been  
5 involved in activities in the Oklahoma Bar Association, the  
6 lawyers group here in the state?

7 A. Yes, sir. For the Oklahoma Bar Association itself, I am  
8 currently a member of the professionalism committee. I serve  
9 on the -- I serve as one of the mentors on a mentoring  
10 committee, which is where they try, the Bar Association tries  
11 to match up older attorneys with younger attorneys to help them  
12 as they go through the process of opening their own office. I  
13 have been a past member of the ethics committee, past member of  
14 the mental health committee. I've also -- I'm also on the  
15 Oklahoma County Bar Association's continuing education  
16 committee. And there are a number of other programs connected  
17 with the Bar that we -- we, as an office, in particular, I,  
18 donate our time for. I've been a continuous member of the  
19 legal aid -- legal aid system since 1989, which is when the  
20 legal aid office here in Oklahoma City is either overloaded or  
21 has a conflict. I'm one of the attorneys that they call and  
22 refer cases to. Those are all handled on a pro bono basis.

23 Right after the tornado, myself and a couple of members of  
24 my staff manned the booth for people coming in and wanting to  
25 get information because of legal problems they were having

1 regarding that. That was done on a pro bono basis and we ended  
2 up, I think, handling three or four cases for people that were  
3 not able to resolve their differences with the insurance  
4 companies or whoever. We did all of that on a pro bono basis.

5 Also I was also on a panel for the American -- for the  
6 American Trial Lawyers Association for the group that was  
7 attempting to get some compensation for the victims of 9/11.  
8 Also I think every year since I've been practicing I have  
9 donated my time for the Ask A Lawyer day that's held every year  
10 by the Bar Association, as well as there is a little park about  
11 a block from the office, and the office and I have taken it on  
12 to just clean it up as part of our giving back to the  
13 community, if you will.

14 Q. So you're very active in the Bar and the community?

15 A. Yes, sir.

16 Q. Okay, sir. Now, do you have what's been referred to in  
17 trial as a Class 3 license, sir?

18 A. I do have one now. I used to --

19 THE COURT: Excuse me, Mr. Martin. Since we started a  
20 little earlier I think we need to take about a 15-minute break.  
21 I know you're getting into a new subject.

22 Ladies and gentlemen of the jury, we'll take about a  
23 15-minute break and reconvene at 11:00, and we'll work until  
24 about 12:15 or 12:30, and take our lunch break then.

25 (The jury exits the courtroom, after which the following

1 was had in open court:)

2 THE COURT: We'll be in recess until 11:00.

3 (A recess was had, after which the following was had in  
4 open court:)

5 THE COURT: You may continue.

6 MR. MARTIN: Thank you, your Honor.

7 Q. (By Mr. Martin) Mr. Friesen, I think I just asked you a  
8 question about whether or not at any time you had a Class 3  
9 license. Do you remember that, sir?

10 A. Yes, sir.

11 Q. And did you?

12 A. Yes, sir.

13 Q. When did you get it?

14 A. If memory serves correct, from somewhere in 1994 through  
15 '96 or '7 I believe.

16 Q. All right, sir. And what does a Class 3 license allow  
17 you to do?

18 A. Class 3 license allows you to deal in a little different  
19 firearms: machine guns, submachine guns, silencers, sawed-off  
20 shotguns, short-barrel rifles, a category of any other weapons,  
21 and allows an individual, allows a dealer to sell those  
22 particular items to an individual person.

23 Q. So you now -- you have a federal firearms license as a  
24 dealer and you also had a Class 3 license?

25 A. As a dealer. Yes, sir.

1 Q. Okay. So does that authorize you to buy and sell these  
2 specialized weapons or specialized firearms you described?

3 A. Yes, sir. It allowed me during the period of time that I  
4 had it to literally send off for those items in the mail, have  
5 them come to me, and then allowed me, after filling out the  
6 proper paperwork, to sell them to members of the general  
7 public, assuming they qualified.

8 Q. Okay. They -- there's special requirements, they have to  
9 have background checks and things like that?

10 A. Yes, sir.

11 Q. And pay taxes on the transfers and those types of things?

12 A. Correct.

13 Q. Now, who do you get these two licenses from?

14 A. It has changed name over the course of the years.  
15 Originally it was the ATF, Bureau of Alcohol, Tobacco &  
16 Firearms, then it became the Bureau of Alcohol, Tobacco,  
17 Firearms & Explosives, but the ATF.

18 Q. Okay, sir. Did you have a business name for your  
19 purchase and sale of these firearms?

20 A. Yes, sir. Lobo Arms.

21 Q. Do you know what a compliance inspection is?

22 A. Yes, sir.

23 Q. Okay. Would you tell us briefly what you believe a  
24 compliance inspection to be?

25 A. Up to once a year the ATF has a right to send their

1 agents, compliance inspectors, out to your place of business to  
2 match up your inventory with the guns that you have to keep a  
3 record of in your acquisitions and dispositions book, and just  
4 to make sure that what you're doing is legal and comports with  
5 the law.

6 Q. And does that include all the firearms in your  
7 possession, or the firearms belonging to the business of Lobo  
8 Arms?

9 MR. KUMIEGA: To which we object, your Honor. I would  
10 like to approach the bench.

11 THE COURT: Okay.

12 (The following was had at the bench, out of the hearing of  
13 the jury:)

14 MR. KUMIEGA: Your Honor, most of this litigation  
15 revolves around, and this is one of the reasons we have the  
16 motion to suppress that counsel filed regarding the search  
17 warrant, is that there is a differentiation between guns for  
18 sale and personal firearms. However, I think my response was  
19 that if you have a place of business and he's selling in Lobo  
20 Arms at his business, the law office, according to ATF law and  
21 regulations, he's got to keep accounting of both of those  
22 firearms if they are commingled. There is no allegations he  
23 separated them, and I think they are trying to create a false  
24 light by going down a wrong path that the Court is going to  
25 have to address as matter of law as a jury instruction, and

1 that's one of the jury instructions they filed a couple days  
2 ago, and the United States are getting people to address that.  
3 So there's a problem, if they are going to go down this tact,  
4 the Court needs to know that the law is basically uncontested  
5 that you have to account for those if they are, if they are  
6 commingled. And that's what the evidence shows in this case.  
7 So I just want to advise the Court that this is, this, this  
8 question and answer are going down a path that is not what the  
9 law says. And that's a problem, Judge.

10 MR. MARTIN: Valerie Rowden, your Honor, testified  
11 that her interpretation of the ATF, and my recollection was  
12 that she testified that if the firearms are segregated they are  
13 not subject to inspection, if they are not segregated they are.  
14 Number one, I don't think that's accurate law, but number two,  
15 if she opened the door I can ask him, he's a lawyer, his  
16 opinion of the records, and we're going to get into the fact  
17 that his personal firearms, a large extent of them, are  
18 segregated.

19 THE COURT: I recall her testimony is that if the  
20 firearms for sale are commingled with personal firearms, then  
21 they have a right to see them all. What I understand your  
22 theory is, we have a right to see those that are commingled but  
23 not those commingled.

24 MR. MARTIN: When -- if they were in Dallas, Texas,  
25 Judge --

1 THE COURT: What I understood her testimony to be, if  
2 your personal collection is commingled with the firearms for  
3 sale in any way, they have a right to see them all.

4 MR. MARTIN: I agree that's probably her testimony,  
5 your Honor; I don't agree that's the law.

6 THE COURT: But that was her testimony. What I  
7 understand you're trying to say is she only has a right to see  
8 those that were commingled, not others that were somewhere  
9 else.

10 MR. MARTIN: Correct.

11 THE COURT: But what I understood her testimony to be,  
12 if your personal collection is commingled in any way, then she  
13 has a right to see them all, those that are together and those  
14 that are separate, all of them.

15 MR. MARTIN: I agree that's her testimony.

16 THE COURT: I don't know what the law is but I guess  
17 we'll find out on instructions, but you can't keep him from  
18 asking these questions.

19 MR. KUMIEGA: I understand that. But my response in  
20 his motion --

21 THE COURT: These are arguments for instructions, not  
22 for his questioning the witness.

23 MR. KUMIEGA: Well, if the Court rules the way I think  
24 the law shows, we're just going down a false path that the law  
25 does not allow, and I think Mr. Martin is on notice from -- the

1 whole case is replete with those very pleadings and testimony,  
2 Judge, and that's one of the reasons I imagine the Court made  
3 the ruling on the motion to suppress. I understand where  
4 you're going, but that's a misstatement of the law when he gets  
5 on the stand and says that.

6 MR. MARTIN: Well, of course, I disagree.

7 THE COURT: The Court is going to instruct on the law,  
8 not the attorneys.

9 MR. KUMI EGA: I understand.

10 THE COURT: So we'll address that during the  
11 instructions. And we've had testimony on what Ms. Rowden  
12 thought she understood the regulations and law were, and she  
13 can testify to that. That's why she wanted to see all of the  
14 firearms.

15 MR. KUMI EGA: Right.

16 THE COURT: So I guess he can testify as to what he  
17 understands it is.

18 MR. KUMI EGA: But there is no basis for him to cite.

19 THE COURT: I understand that. You'll have a chance  
20 through cross-examine.

21 MR. KUMI EGA: Okay.

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

24 Q. (By Mr. Martin) I believe my question was: During that  
25 compliance inspection, if you're a dealer, do you have to show

1 the inspectors your personal firearms as well as the business  
2 firearms, if you know?

3 A. Only if the personal firearms are commingled with the  
4 business firearms. For example, in my home safe I had some  
5 business firearms as well as some personal firearms. Those  
6 were commingled, so they certainly had a right to go through  
7 those assuming they had a right to go to the house. But once  
8 they were at the house, they had a right to see both of those  
9 because they were commingled. They would not have a right to  
10 see either the guns of my clients or my personal guns if they  
11 were segregated in a separate area and had no business firearms  
12 with them.

13 MR. KUMIEGA: To which the United States objects, your  
14 Honor.

15 THE COURT: What are you objecting to? Objecting to  
16 the law or objecting to his testimony?

17 MR. KUMIEGA: His statement of the law.

18 THE COURT: Well, you can cross-examine, plus the  
19 Court is going to instruct the jury on what the law is.

20 Q. (By Mr. Martin) Let me ask you: You held this federal  
21 firearms license for ten, 12 years approximately?

22 A. Somewhere very close to that. Initially, in 1994, when I  
23 obtained it, I was trying, as I said, to sell enough guns to  
24 get the other ones that I needed for the various classes that I  
25 was going to be taking. And so I was doing, was putting, or

1 going to, not putting on, but attending a lot of gun shows for  
2 the purpose of exhibiting what I had. After 1996 when we  
3 bought the office, most of the deconstruction of the office was  
4 done by me over the weekends and I did almost all of the  
5 landscaping myself. Once I purchased the office, I stopped  
6 going to any gun shows because I was simply too busy at the  
7 office on weekends. And so there was a kind of a switch in  
8 time after the purchase of the office I didn't do any more gun  
9 shows, and for all practical purposes, I stopped the Lobo Arms  
10 business at that point. I let my Class 3 firearms license  
11 expire virtually immediately and I think it expired in '97. I  
12 kept the other, my regular FFL until, I believe it was towards  
13 the end of 2003. But I didn't sell any firearms after either  
14 the last part of '96 or the very first part of '97. I didn't  
15 buy or sell any guns through Lobo Arms.

16 Q. Okay. So from the time you got your license until -- let  
17 me just ask you this: Have you ever had a compliance  
18 inspection?

19 A. The first compliance inspection I ever had was the one in  
20 connection with this case, February 19th, 2003.

21 Q. Okay. Did the agents call you up and schedule it? How  
22 did this occur?

23 A. The first I knew about it, I had been to court early that  
24 morning, and when I got back Nicki --

25 Q. Who is Nicki?

1 A. My receptionist -- advised me that the ATF officers were  
2 there. I took them upstairs into my office. When they  
3 explained what they wanted to do, and that we had to go over to  
4 the house, I knew it was going to take a while, so I called  
5 downstairs to Nicki, I had her reschedule the clients that I  
6 was supposed to see that morning and early afternoon.

7 Q. Okay. And while she was doing that, tell us what you did  
8 with the compliance inspectors.

9 A. Initially, we sat down and talked in a little lounge area  
10 that I have around my office. I have -- it's set up so that at  
11 the west end of my personal office I have my credenza, my desk  
12 and a couple of client chairs, and then towards the east end of  
13 the office I have a couch, it would be a real tight fit for  
14 three people, kind of oversized for two people, a little round  
15 table there and another chair. And then if I need more chairs  
16 I bring the other client chairs from in front and sit them over  
17 here. We sat down in that little lounge area and they went  
18 through why they were there, what they were going to need from  
19 me to do, asking about some of my processes and procedures.

20 Q. Okay, sir. And what did you all do after they went  
21 through this process with you?

22 A. After we got through talking I went and showed them some  
23 firearms that I had around the desk area. And I believe I  
24 showed them a little, what they call a Stinger, but it is, it's  
25 just a little device about this long (indicating) that shoots

2 the east end of the office. When we got through there they  
3 said they needed --

4 Q. Let me stop you just a second.

5 A. Yes, sir.

6 Q. You said you show them the device in the display case.  
7 What are they doing with the items? For example, are you  
8 picking them up, are they getting them? What's going on there?

9 A. I will pick them up, check them to make sure that they  
10 were empty. I will give them to one of the ladies, and the  
11 inspector would then look at it, read off whatever serial  
12 number it was, and then the other inspector would write them  
13 down, would write the number, make, model and number down.

14 Q. Did you confirm the validity of any of these numbers?

15 A. No, sir. I never looked at any of the paperwork that  
16 they did.

17 Q. Okay. Or confirm the validity of them, for example,  
18 reading off a number?

19 A. No, sir.

20 Q. Okay.

21 A. I was just giving it to them and making sure they got it  
22 in an unloaded condition.

23 Q. So you gave them the firearm and making sure it was  
24 unloaded?

25 A. Yes, sir.

1 Q. So after you looked at those firearms at the office where  
2 did you go?

3 A. We went over to my residence.

4 Q. Why were guns not -- Lobo Arms' business is at your  
5 office, right?

6 A. Correct.

7 Q. Okay. Why were the firearms not at your office?

8 A. I had originally moved -- purchased the office in '96, I  
9 purchased a new residence in '98. I had always kept the bulk  
10 of the inventory in a safe at my residence. It was on  
11 Northwest 8th up until '98, then I moved it over to the  
12 residence that I currently have on 17th Street. I simply  
13 wasn't doing any business during this time period, hadn't been  
14 doing any business, so I was keeping the guns over at the house  
15 because there wasn't enough room for them, A, at the office,  
16 and B, I was practicing law and rebuilding the office at this  
17 point in time.

18 Q. Now, when you moved, you say you bought a new residence,  
19 how far is your office from your house?

20 A. About six blocks.

21 Q. So it's right up the street here, right?

22 A. Yes, sir.

23 Q. Okay. And you've lived in that house since what year?

24 A. Since 1998.

25 Q. Bought the office in '96?

1 A. Yes, sir.

2 Q. Okay. Now, let me ask you: During the date of the  
3 inspection, did you provide the inspectors any records at all?

4 A. Yes, sir. While we were at the office I gave them a -- I  
5 had a little binder, a three-ring binder that had my Class 3  
6 acquisitions and dispositions records book in it, as well as  
7 all the paperwork accompanying all of the Class 3 weapons.

8 Q. Those are the specialized weapons?

9 A. Yes, sir.

10 Q. Okay.

11 A. The NFA weapons.

12 Q. And those were given to the inspectors the first day?

13 A. Yes, sir.

14 Q. All right.

15 A. They were there at the office.

16 Q. Your office?

17 A. Yes, sir.

18 Q. All right, sir. Now, you went to your house, and was an  
19 inventory of some firearms done at the house?

20 A. Yes, sir.

21 Q. And how did that occur?

22 A. Went through much the same process. I took the  
23 inspectors downstairs to the safe, I open the safe. Once  
24 again, I would check to make sure that the guns were unloaded,  
25 give them to one of the inspectors, who would then write down,

1 or who would then call out the number to the other inspector  
2 who was writing them down, as well as make, model, caliber.

3 Q. I'm going to ask you if you would to look at Defendant's  
4 Exhibit No. 32, sir.

5 A. Yes, sir.

6 Q. And do you know, sir, approximately when this photograph  
7 was taken?

8 A. This particular photograph was taken sometime in April or  
9 May of this year in preparation for litigation, as an exhibit  
10 to give to you.

11 Q. And what's depicted in that Defendant's Exhibit No. 32,  
12 is that the, appear to be how the basement appeared on the date  
13 of the -- what's depicted in that photograph on the date of the  
14 compliance inspection?

15 A. I know that the tool chests were not there at that time.  
16 I know the safe and the worktable next to it were there. I  
17 don't know if the floor was finished when they were there or  
18 not. I simply do not remember.

19 Q. But for our purposes --

20 A. The safe and the worktable were exactly where they are.

21 Q. Look at Exhibit 34 if you would.

22 A. Yes, sir.

23 Q. Is that the safe?

24 A. Yes, sir.

25 Q. Okay. And the workbench?

1 A. Yes, sir.

2 Q. And that's where they were on the date of the compliance  
3 inspection?

4 A. Yes, sir.

5 MR. MARTIN: Your Honor, I'll move for introduction of  
6 Defendant's Exhibit 34.

7 MR. KUMIEGA: For the limited purpose of litigation  
8 the government has no objection, your Honor.

9 THE COURT: What other purpose?

10 MR. KUMIEGA: Well, it doesn't accurately portray  
11 anything that happened during the course of the trial.

12 THE COURT: But you have no objection to the  
13 introduction?

14 MR. KUMIEGA: No.

15 THE COURT: Will be admitted.

16 Q. (By Mr. Martin) I'm going to show what has been  
17 introduced then as Defendant's Exhibit No. 34. Is this a  
18 photograph that we were just discussing of the safe in your  
19 basement, sir?

20 A. Yes, sir.

21 Q. Okay. And is this where the inspection at the house  
22 occurred?

23 A. Yes, sir.

24 Q. All right, sir. And you opened that safe and they  
25 inventoried the items that were in there, right?

1 A. Yes, sir.

2 Q. And after you completed the inventory at the residence,  
3 let me ask you: While they were there did they also, did you  
4 also advise them about another firearm that wasn't right there,  
5 a Gatling type firearm we've heard testimony about?

6 A. No. The Gatling type gun was a, it was just a device  
7 that I had found in some trade magazine which inverted six  
8 SKSes on a round cylinder, if you will, and was set up so that  
9 you can crank a handle and turn those. It was not a Class 3  
10 device. Those SKSes were in the back of, I say the back, I  
11 apologize, towards the south end of the basement, an area that  
12 was still under construction. We talked about them the first  
13 day, but it is -- it was extremely dusty and dirty that day,  
14 and it's my recollection that they saw, that the inspectors saw  
15 the Gatling gun with the six SKSes but did not take down the  
16 serial numbers on that date.

17 Q. All right, sir. And after you completed the inspection  
18 at the residence, where did you go?

19 A. At the completion of the inspection at the residence they  
20 indicated that -- "they" being the inspectors, indicated that  
21 there were some Class 3 items that I had not accounted for. I  
22 had forgotten, and apparently I normally keep them at the  
23 house, but I apparently had been showing them to somebody for  
24 sale. They were back at the office with the exception of a  
25 silencer that a friend of mine, Edmond police officer by the

1 name of Bobby Hunter, had to do some testing and evaluation for  
2 the Edmond TAC team. I allowed him to have the silencer for  
3 that purpose. The rest of the items that they wanted to see  
4 were all Class 3 items that were in the closet of my personal  
5 office.

6 Q. Okay. And where did you all go?

7 A. We went back to the office. And when we got back to the  
8 office the door was closed to my office, to my personal office.

9 Q. Okay.

10 A. And I asked them if it would be okay if they came back  
11 later because there was a client interview going on in there.

12 Q. And do you know who was doing the interview?

13 A. Yes. A lady by the name of Lana Cohlmi a.

14 Q. We've already heard testimony about her, right?

15 A. Yes, sir.

16 Q. That's the lady that you did the radio show with and you  
17 had the class action litigation going on with, right?

18 A. Yes. We got into those because Lana, it turned out, had  
19 taken FenPhen, and I heard her on another radio show. We  
20 already had our radio show going on, but I heard Lana on  
21 another radio show talking about the FenPhen and I thought she  
22 had a very powerful message. And we discussed it and decided  
23 that it would be something that we could potentially use the  
24 radio show to gather clients in that area.

25 Q. Was she meeting with a client in your office?

1 A. Yes. She had clients back-to-back that day. She was  
2 meeting with clients back-to-back that day, I believe, from  
3 11:00 straight through till 5:00.

4 Q. Okay. So ATF left?

5 A. The ATF left.

6 Q. Did they come back that day?

7 A. Yes.

8 Q. And when they got back, where do you go?

9 A. When they got back we went back into my office --

10 MR. KUMI EGA: Objection, your Honor. We need a  
11 foundation of when they came back so we have a perspective.

12 MR. MARTIN: It was going to be my next question, but  
13 I'll go ahead and ask it first.

14 Q. (By Mr. Martin) The ATF came back, right?

15 A. Approximately four hours later, and I apologize.  
16 Approximately four hours later they came back.

17 Q. What time would that have probably been?

18 A. It's my recollection that it was around 4:30 in the  
19 afternoon. That doesn't have to be right, but I know it was  
20 towards the very end of the day.

21 Q. End of the day. This is February 19th?

22 A. Yes, sir.

23 Q. Middle of the winter?

24 A. Yes, sir.

25 Q. Does the sun go down earlier in the winter?

1 MR. KUMI EGA: Objection. Testifying, your Honor.

2 MR. MARTIN: I apologize.

3 THE COURT: Will be sustained.

4 MR. KUMI EGA: Leading.

5 Q. (By Mr. Martin) Will you tell the ladies and gentlemen  
6 of the jury, do you recall whether or not the sun went down  
7 earlier in the winter or in the summer, Mr. Friesen?

8 MR. KUMI EGA: We'll stipulate to that, your Honor.

9 THE COURT: Move on.

10 MR. MARTIN: Thank you, your Honor.

11 Q. (By Mr. Martin) When they got there late that afternoon,  
12 Mr. Friesen, did -- what did you all do?

13 A. I had already retrieved the suppressor that, the .30  
14 caliber suppressor, silencer, from Bobby Hunter's possession.  
15 I had it there for them to look at. There was -- and in their  
16 testimony they stated that there were six firearms, which is a  
17 little bit misleading. There was a suppressor, there was a  
18 .22, a Ruger 1022 that had an integral silencer built onto it.  
19 You could not separate the two of them.

20 Q. So that's how many guns?

21 A. I count it as one, they counted it as two when they said  
22 six.

23 Q. Okay.

24 A. There was a Ruger pistol that had an integral silencer on  
25 it that you couldn't take off. They counted that as another

1 two, I would have counted that as just one. And then there was  
2 the Sten. So that's how they came up with the six, all of that  
3 was either Class 3 or had Class 3 items attached to it.

4 Q. Okay. And I'm going to bring up to you what has been  
5 marked and introduced into evidence as Government's Exhibit  
6 3.16. Do you recognize that?

7 A. Generally.

8 Q. Okay. And is that the same firearm that you purchased in  
9 1996?

10 A. Yes, sir.

11 Q. Okay. Is that the same firearm that you showed the  
12 inspectors during the compliance inspection?

13 A. Yes, sir.

14 Q. Does the firearm look the same today that it looked the  
15 last time you saw it?

16 A. No, sir.

17 Q. What is different about it?

18 A. There are a lot of scratches and bare metal here, here,  
19 over here (indicating) where the tape has been, over on this  
20 area, this shell reflector or cartridge reflector has been bent  
21 over, and there is a lot of bare metal over here that was not  
22 there when I showed it to them.

23 Q. Now, I'm going to ask you some questions about what  
24 happened when the inspectors, when you provided that firearm to  
25 the inspectors on February 19th in the late afternoon.

1 A. The Sten was the last gun that I pulled out of the  
2 closet. I checked to make sure it was unloaded. I gave it to  
3 I believe Valerie Rowden, although I can't swear to that for  
4 sure, but I believe that she's the one that inspected it. She  
5 looked at it, she could not -- the E683 was not as visible then  
6 as it is now. She looked and the number that she saw was this  
7 D number here, and that's what they wrote down.

8 Q. Did she read that off, if you recall?

9 A. Not that I recall.

10 Q. Okay.

11 A. She could have. I don't know.

12 Q. Were you advised at that time that there was any problem  
13 with the serial number?

14 A. She did indicate that that wasn't the serial number, but  
15 the inspector that was writing down the numbers looked at me  
16 and said you've only had one Sten, correct? And I said yes.  
17 She said you've never had another Sten? And I say that is  
18 correct. And she said okay. They gave me back the Sten and I  
19 put it up, and that was the end of it.

20 Q. Did they leave?

21 A. They left.

22 Q. So did you feel there was any concern about that weapon  
23 at that time?

24 A. Absolutely not.

25 Q. Okay. And let me ask you: You did have further contact

1 with the inspectors after that date, did you not, sir?

2 A. Absolutely.

3 Q. Briefly tell the ladies and gentlemen of the jury what  
4 other contact you had with them for the next few days.

5 A. They had asked me for my federal firearms record book. I  
6 had shown them the NFA record book, which I had kept at the  
7 office, but the federal firearms record book I could not find  
8 the day of the inspection. They had an absolute right to that.  
9 I couldn't find it that day. It had been six years since I had  
10 made any entry into it.

11 I told them that night that I would, or when they left  
12 that day that I would have it for them the next day, because I  
13 didn't think it would be that hard to find. I had people at  
14 the office looking for it, and then I looked for it at the  
15 house. I could not find it that evening. Within a day I had  
16 made myself comfortable that it was not at the office so it had  
17 to be in the house. Once again, my embarrassment, but the  
18 house was really torn up at the time so I was having to look at  
19 a little bit of everywhere to find it.

20 It was a few days, four or five days before I was able to  
21 find it, and when I found it, it was behind the gun safe that  
22 you just saw. The only way I found it back there was I had a  
23 mirror and I was able to look at -- look down there, I shined a  
24 flashlight and a mirror and I was able to look down behind that  
25 area. And I had found it but hasn't been able to fish it out.

1 I called Ms. Rowden and told her that I had found it and would  
2 have it the next day. I remember her asking me --

3 MR. KUMIEGA: Objection to the narrative form of the  
4 response to the question, your Honor.

5 THE COURT: Be overruled.

6 THE WITNESS: I remember her asking me how are you  
7 going to get it? And I said, well, if I can't get it any other  
8 way I'll have to cut out the wall behind it because you have a  
9 right to it. I was lucky enough to be able to catch it with  
10 some wire and fish it out.

11 Q. (By Mr. Martin) So did you provide those records to her?

12 A. Yes. They aren't -- the blue book that they have around  
13 here somewhere certainly was not in the condition that it is  
14 now. It was grody and filthy. I had knocked the dust off of  
15 it, but I didn't clean it up. It was grody and it had spider  
16 webs on it. It had been back behind in a construction area for  
17 -- I don't know how long it had been back there, I just know  
18 when I got it it was filthy.

19 Q. Did you have any conversations with -- I can't remember  
20 which inspector -- one of the inspectors on March 4th about  
21 locations for storage of the firearms of Lobo Arms?

22 A. Yes, sir.

23 Q. Okay. And what was asked of you?

24 A. It was asked of me, the inspector went through and told  
25 me the various places that we had looked at.

1 Q. Okay.

2 A. And asked if there were any other Lobo Arms weapons  
3 anywhere, or guns, inventory, anywhere else, and I said no,  
4 because we had accounted for the entire inventory.

5 Q. All right. Tell the ladies and gentlemen of the jury why  
6 you did not tell or show Inspector McGrew, I believe it was,  
7 about the safe in the library.

8 A. The safe in the library is probably one of those things  
9 that I -- it was just -- it was kind of a vanity thing when I  
10 first put it together. We were -- we literally redid every  
11 wall in the office, both internal and external, didn't have  
12 any, didn't have any insulation in it. So we had to redo all  
13 of them. As we were moving walls we were trying to make them  
14 more, so that they would fit our particular needs better.

15 As we did that somebody came up with the idea, and I don't  
16 remember who, I know it wasn't me, but I thought it was kind of  
17 neat, of just putting a little hidden compartment between our  
18 conference room and the library room. It was, like I say, it  
19 was kind of a vanity thing but I thought it would be kind  
20 of neat. At the same time I thought it would serve a really  
21 good purpose for two reasons. When we moved into the area at  
22 13th and Shartel it was still an extremely rough area. It  
23 isn't now anymore, but it was an extremely rough area at the  
24 time and we had had some break-ins. Also we at times have to  
25 keep some very valuable items for clients.

1 I wanted an area that I could keep client stuff in,  
2 whether it be client valuables, jewelry, whatever, and keep  
3 that in an area separate from everything else. I've never put  
4 any Lobo Arms inventory into that. The items that my clients  
5 do give me, because of attorney/client privilege, I'm not  
6 allowed to tell that to anybody who the clients are, what they  
7 have.

8 MR. KUMIEGA: Objection, your Honor. Misstatement of  
9 the law.

10 THE COURT: Will be sustained.

11 Q. (By Mr. Martin) Let me ask you: Do you have a duty to  
12 protect your clients' confidences?

13 A. Yes, sir.

14 Q. Do you have a duty to protect their property?

15 A. If they give it to me for safekeeping, yes, sir.

16 Q. Okay. Has your office ever been broke into?

17 A. Three different times.

18 Q. Okay. Do you keep clients' property, whatever it is,  
19 valuables, firearms, whatever, in that safe, sir?

20 A. Yes, sir.

21 Q. Okay. Now, at the time you spoke with Inspector McGrew  
22 on March 4th, 2003, were there any Lobo Arms firearms in that  
23 safe, sir?

24 A. None.

25 Q. Okay. Now, after the inspection, sir -- let me just ask

1 you this: Is it illegal to have a machine gun or a Sten  
2 without a serial number?

3 A. Without what? Excuse me.

4 Q. A serial number. Serial number.

5 A. I'm not going to say it's illegal, per se, and the reason  
6 that I say that is you could have an item such as this, shoot  
7 it enough that the serial number wore off. If it was legally  
8 registered to you, you could have it refurbished. I don't  
9 think that would be illegal if it was a legal weapon itself,  
10 although it could cause, definitely cause you some problems if  
11 the serial number could not be found.

12 Q. Okay. And after your conversation with Inspector McGrew,  
13 where she asked you whether or not you had any other Stens or  
14 anything else and told you okay, did that cause you some  
15 concern about maybe causing you to later inspect this firearm?

16 A. That isn't what caused me the concern about later  
17 inspecting the firearm. When Inspector McGrew came out, she  
18 came out because they wanted the serial numbers off the six  
19 SKSes that were on the Gatling gun setup, if you will, and  
20 there was another gun that I had forgotten about that I had not  
21 previously told her about that I showed her at that point.  
22 That was not what made me later look at the Sten in terms of  
23 finding the serial number.

24 Q. Tell us what caused you or when you did your examination  
25 of the Sten.

1 A. It was shortly after I found my record book because  
2 that's all I was thinking about at that time is finding the  
3 record book so I could get it turned over to them. I knew from  
4 what they had, from the comments that they had said that they  
5 were having trouble finding the serial number. That was of a  
6 concern to me. And so I examined at home. I have -- on my  
7 workbench at home I have a kind of an angling telescoping light  
8 that's a magnifying glass on the inside and it's got  
9 illumination light on the outside. And I put the Sten  
10 underneath that telescoping light, or whatever it is, and I was  
11 able to find the serial numbers at that point.

12 Q. And is that in the basement?

13 A. Yes, sir.

14 Q. You said it was a telescoping light?

15 A. It's in two portions. It's spring-loaded and it's got an  
16 arm, and then another arm and the light swivels at the end of  
17 it. And you can straighten it up, and on one end of it, it has  
18 a light, and on other end is a little, kind of pin to go down  
19 into a hole to make it stand up straight.

20 Q. Does it have any type of magnification on it?

21 A. Yes. On the inside of the light, it's got a light that's  
22 approximately, I would say, eight inches around, a round  
23 fluorescent light. And in the middle of that is a  
24 magnification lamp.

25 Q. Okay. As a matter of fact, in front of you, I think

1 we've already introduced Exhibit 34. Do you see Exhibit 34?

2 A. Yes, sir.

3 Q. In that picture you see this item right here  
4 (indicating), that long --

5 A. Yes, sir.

6 Q. And what is that?

7 A. That is what I was talking about, kind of the telescoping  
8 light. It's got -- about at the middle of the page on the  
9 extreme right it has the little pin that sits down into a hole  
10 in my workbench, and then this folds over, the single arm on  
11 top folds over and the light at the top, you can see the lamp  
12 around the outside, and the glass on the inside is a magnifying  
13 glass.

14 Q. Right there where my finger is pointing?

15 A. Yes, sir.

16 Q. Okay. And when you took that and examined the firearm,  
17 what did you determine?

18 A. I determined that there had been paint that covered up  
19 the serial number that is right here.

20 Q. Okay. So what did you do?

21 A. Can I explain a little bit about how the paint got there?

22 Q. I was going to ask you what work you had done to that  
23 firearm. Let me just back up. Can you tell us when you got  
24 that firearm in '96, let me back up, what did you do with it?

25 A. The original purpose that I ordered the Sten for was to

1 have another gun on the table for the gun shows. I only had  
2 two machine guns at that point. There were a number of  
3 silencers, but I only had two machine guns. I was using it as  
4 something to draw attention to the table. I don't -- I can't  
5 even tell you whether I ever set up at a gun show after I got  
6 this, to tell you the true. But I wanted another cheap machine  
7 gun just to draw interest to the table.

8 I kept it at the same safe that we've seen here, the one  
9 that I had at home I had in my residence on 8th Street out in  
10 the garage, and that's where I kept this. When I moved in  
11 1998, I moved it into the basement of the house that I'm  
12 currently living in. What I didn't take into account for at  
13 that point was the fact that the basement was a lot more humid.  
14 There is a hole in the top of the safe where, because it's so  
15 large, to move it they put, they just put a bolt assembly in  
16 there to move the thing with kind of a crane on the back of it  
17 for installation purposes. And the doors were not sealed  
18 tight.

19 Approximately in 2000 -- and I didn't do anything with the  
20 gun at that point after I moved except sit it in there. In  
21 approximately 2000, 2001, as I was cleaning up in there one day  
22 I noticed that the Sten had a lot of rust on it because of the  
23 humidity. At that point what I did is, it had come with  
24 absolutely no instruction book or anything. I didn't even know  
25 how to take this item apart, and like I say, I'm not sure that

1 I have ever even shot it. I tried to find a regular  
2 instruction book for this and couldn't. The only thing that I  
3 can find that even came close was in one of the trade books  
4 there was how to manufacture a Sten II. And I figured if it  
5 could teach me how to manufacture one it could teach me how to  
6 take this thing apart and put it back together. So I ordered  
7 that.

8 After I got that I took it apart, took rust remover and  
9 removed as much of the rust as I could find, buffed the rest of  
10 it out with the buffing wheel that I had downstairs in the  
11 basement, spray-painted it and reassembled it. It is obvious  
12 to me that I obviously was way too heavy on the spray-painting  
13 of this gun.

14 Q. And so you painted the gun?

15 A. I painted the gun.

16 Q. Okay. And the reason -- in the video we saw How to Make  
17 a Sten II, you had?

18 A. I had. Yes.

19 Q. And you had it for the purpose of teaching yourself --

20 A. How to assemble it and disassemble it.

21 MR. KUMI EGA: Objection. Leading the witness.

22 THE COURT: It's already been asked and answered.

23 Q. (By Mr. Martin) And so you painted the gun. Later,  
24 after the inspection, you view the gun, and you see the serial  
25 number. What do you do?

1 A. At that point what I did, and like I say, I was viewing  
2 it under the light that we saw. At that point what I did, is I  
3 took some kind of paint remover, and I don't have a clue what  
4 kind. I know the kind of paint that I put on it and that was a  
5 charcoaler paint. And the reason that I used a charcoaler  
6 paint was because it's supposed to withstand higher  
7 temperatures, and I thought if I ever did shoot it I didn't  
8 want just regular paint on there so it would be coming off. So  
9 it was paint for a charcoaler.

10 I barely wet the, it was just an old rag that I had, a  
11 shop rag that I had down there, and I rubbed it across around  
12 in that area until the serial number became more visible. I  
13 then took a nail punch and put it against the cloth backing and  
14 kind of tried to take out some of the paint that was inside  
15 some of these serial numbers.

16 Q. Okay, sir. And did you do anything else to the firearm?

17 A. No, sir.

18 Q. Okay. Now, after you did that, located the serial  
19 number, why didn't you call the ATF up?

20 A. Because they had just checked it off, I thought that they  
21 had just checked it off and said you've only got one of these,  
22 okay, and they were done with it. They didn't indicate to me  
23 there was any kind of a problem. If I had known that there was  
24 any kind of a problem I would have called them.

25 Q. Okay. Now, at the time of the inventory inspection, were

1 you a licensed federal firearms dealer?

2 A. I was a federal firearms -- licensed federal firearms  
3 dealer, yes. I was not a Class 3 dealer anymore.

4 Q. Okay. What is the status of your federal firearms  
5 license today?

6 A. Later on in 19 -- excuse me -- in 2003, I think it's  
7 about in November, when I realized that I hadn't sold any guns  
8 through, bought or sold any guns through Lobo Arms the last six  
9 years, I just packed up my records and sent them in to the ATF,  
10 as you're supposed to turn them in, and I gave up my license  
11 essentially. I'm not saying I didn't buy or sell any firearms  
12 in the last six years, I know I have bought some. But since I  
13 teach the legal portion of the Concealed Carry class at H&H,  
14 and I wanted guns, I was simply buying them from H&H and just  
15 filling out my own 4473 at that point, even though I had a  
16 license, I was just buying them individually and had been for a  
17 number of years.

18 Q. Okay.

19 A. So I just sent it back in and gave it up.

20 Q. And after you found the serial number, did your  
21 examination on that firearm -- do you know an individual by the  
22 name of James Bugg, Dr. Bugg?

23 A. Yes, sir.

24 Q. And did you have any contact with him about machine guns?

25 A. Yes, sir. In approximately November of 2004, he called

1 me up and asked me whether -- 2003 maybe.

2 Q. Right.

3 A. Yes. It was 2003. He called me up and said he was  
4 looking for some more, or Class 3 items. I had previously sold  
5 him one. I said sure, because I hadn't used any of mine for  
6 over six years at that point. I hadn't fired a round through  
7 any of them for that long. And so we talked about a number of  
8 them and he expressed a potential interest in three different  
9 items. We arranged a time when he would come to the office,  
10 and I brought them from home to the office to show him.

11 Q. And are they the three items that we saw, heard him  
12 testify about yesterday?

13 A. Yes, sir.

14 Q. What were those items?

15 A. A micro Uzi, a silencer for the micro Uzi, and this Sten  
16 machine gun.

17 Q. And you heard him testify about the lighting in your  
18 office, didn't you, sir?

19 A. Yes, sir.

20 Q. And would you describe for the ladies and gentlemen of  
21 the jury the type of lighting that you have in there?

22 A. I suppose the real problem -- the type of lighting that I  
23 have is mainly fluorescent lighting. I think there are three  
24 areas where -- throughout the room where there are a number of  
25 fluorescent bulbs sitting together. There were those and there

1 are some accent lights to go against, to go to show off the,  
2 some items that I have on my walls. That is the only lighting  
3 that is in there, or whatever ambient light is coming through  
4 the windows. The wall -- the carpet is kind of a dark red and  
5 the walls, as well as the ceiling, are all solid wood and  
6 finished in a dark walnut.

7 Q. So your office has got a dark finish?

8 A. Yes, sir.

9 Q. Okay. And you heard his testimony yesterday about the  
10 lighting there, did you not, sir?

11 A. Yes, sir.

12 Q. Do you agree with that?

13 A. It is dark in there as a general rule. I mean, I have  
14 lights specifically over my desk, which is where I work, and  
15 then the rest of it, I would call it kind of a dimmed lighting.  
16 It's comfortable for sitting around talking. It is certainly  
17 not as bright as in here.

18 Q. All right, sir. After that, you mailed off the forms,  
19 right?

20 A. Mailed off the forms to the -- for Jim Bugg?

21 Q. Yes, sir. I'm sorry. Yes.

22 A. Yes. First of all, I called the ATF and asked them for  
23 the forms. We filled out the forms and sent them off. They  
24 sent them back and said you've got to redo them, we've got new  
25 updated forms. So we filled out new forms and I sent them off.

1 Q. And did you talk to anyone prior to these sales, like,  
2 either of the inspectors?

3 A. Yes. I talked to, I believe it was Inspector Rowden and  
4 asked her, because it had been a considerable period of time  
5 since I had transferred any Class 3 items, and I said, asked  
6 her for the forms and I said is there anything else I need to  
7 know about in terms of transferring these. Is there anything  
8 that has changed?

9 Q. Okay. And, to date, have you ever heard from the ATF  
10 about any of these three transfers?

11 A. I personally have heard nothing. I heard the lady  
12 testify that they had turned down the sale of the Sten, but I  
13 haven't received an acceptance or rejection for any of the  
14 three items. I don't think there is any allegations against  
15 the other two items, and I haven't -- those haven't been told  
16 to me whether they've been approved or not.

17 Q. Okay. Go forward seven or eight months to June 10th,  
18 2004. Something unusual happen that day?

19 A. Very unusual happened that day.

20 Q. What happened?

21 A. I generally get to the office right around 7:30. We have  
22 an office meeting every morning at ten till 8:00, from ten till  
23 8:00 to 8:00, we kind of look at where everybody is going to be  
24 that day and arrange the work for the upcoming two weeks and  
25 see what we need to shift around. I was upstairs in my office

1 when a gentleman came through the door, identified himself as  
2 an ATF officer, and indicated that they were there with a  
3 search warrant.

4 Q. And did you cooperate with them?

5 A. Yes, sir.

6 Q. And did they seize that government's exhibit, E683?

7 A. Yes, sir.

8 Q. And tell the ladies and gentlemen of the jury whether or  
9 not that's the same firearm you purchased.

10 A. It is absolutely the same firearm that I purchased. It's  
11 the one that I got through the mail. I haven't ever had a  
12 different one. When I was looking at the others up here I can  
13 see that I think I got cheated a little bit in reference to the  
14 quality of the one they sent me, but I didn't know any  
15 differently. It was the only one that I had ever had. I  
16 hadn't had much interest in Class 3 weapons, it was just to do  
17 something as to get a draw over to the table at the gun show.  
18 And that's the only one that I've ever had in my hand.

19 Q. Okay. And after they seized that firearm, did you have  
20 any conversations sometime during that day with Agent Knopp?

21 A. Yes, sir.

22 Q. And as a matter of fact, did he confront you about the  
23 fact or talk to you about the fact that they couldn't find all  
24 your Class 3 weapons?

25 A. Yes, sir. They spent literally all day, most of the

1 staff, I think they questioned a few members of my staff,  
2 although I wasn't there, but I think they questioned a few  
3 members of my staff in the conference room, sent me -- told me  
4 I needed to leave. They did allow two attorneys that were  
5 working for me to get their case file so that they could go to  
6 court this morning, or that morning. We canceled as many  
7 clients as we could get ahold of. And so they spent the full  
8 day there at the office and they also spent the full day over  
9 at the house.

10 At the end of the day, I lock up the office and go over to  
11 the house, and they are done with the office. They said to  
12 come over to the house because I had just been hanging around  
13 because there wasn't anyplace for me to go, but I had to stay  
14 outside the office. I walked into the house. They were  
15 finishing up the search at that point. I saw Inspector McGrew  
16 talking to Agent Knopp, and she was showing him some records  
17 and indicating that there was some, I thought from their body  
18 language there was some kind of a problem. Special Agent Knopp  
19 came up to me and said, we are convinced that these two items,  
20 and it was a Mac 11, a submachine gun, and that little .22  
21 Stinger that I was talking about earlier, we're convinced that  
22 these are nowhere around. What have you done with them?

23 Q. What do you do?

24 A. Well, I informed him that the Mac 11 was downstairs in  
25 the gun safe, and that the .22 Stinger was over in the office.

1 And so he said, well, show me. We went downstairs into the gun  
2 safe.

3 Q. In your residence?

4 A. Yes, sir.

5 Q. Okay.

6 A. I pulled out the Mac 11, I showed it to him. They  
7 checked it off that. Then we went over to the office and the  
8 Stinger was in the same little display box that it's always  
9 been in, and I showed it to them there. They checked the  
10 serial numbers off of that. And I had ridden with him over to  
11 the office, he was giving me a ride back to the house and he  
12 said, what's the deal on the Sten? And I said the inspectors  
13 just missed it.

14 Q. Is that the serial number?

15 A. Yes, sir.

16 Q. Okay. Did you make a statement to him about whether or  
17 not that Sten, Government's Exhibit 3.16, was in fact the gun  
18 that as was registered to you?

19 A. I could have. I don't specifically remember, but I know  
20 that we talked about it at least in reference to the serial  
21 numbers, and I told him that they just missed it. I may have  
22 told him that I only had the one and had never had another one.  
23 I don't know. I'm not saying I didn't, I just don't remember.

24 Q. All right, sir. Now, the firearm, you haven't seen it,  
25 have you, sir, or since June 10th, when was the first time you

1 ever saw that firearm again?

2 A. First time I saw the firearm again was at the beginning  
3 of trial last week.

4 Q. Okay. It's been stipulated and moved into evidence  
5 Defendant's Exhibit No. 37, that there is a photograph of how  
6 this firearm appeared on February 14th, 2008. Do you see that,  
7 sir?

8 A. Yes, sir.

9 Q. And do you know a Gina Kishur who took the photograph?

10 A. Yes, sir.

11 Q. How is it that you know her?

12 A. She's been a client of mine, I use her in quite a few of  
13 my cases. She has an amateur -- she's a licensed professional  
14 counselor, an LPC. I use her in a number of my domestic cases.  
15 She is -- for the last number of years she's had a hobby of  
16 taking photographs. She's been in The Daily Oklahoman on a  
17 number of times. It's something that she enjoys.

18 You had requested -- when this case started, you requested  
19 that I obtain somebody to go take photographs of the firearm.  
20 You told me a time and place and I made sure Ms. Kishur was  
21 there.

22 Q. This Defendant's Exhibit No. 37?

23 A. Yes, sir.

24 Q. Okay. Is that the picture that she took of that firearm,  
25 sir?

1 A. Yes, sir.

2 Q. Let me ask you: You have the actual picture and it's in  
3 the book, right?

4 A. Yes, sir.

5 Q. And looking at the picture in the book, does the paint on  
6 the firearm appear to be in the same condition in the picture  
7 as it does on the firearm now?

8 A. Absolutely not. In the picture it just seems to be a  
9 solid coat of paint with the exception of right around the  
10 serial numbers. It even has on that picture, I don't know  
11 whether you can see it, but this tab here.

12 Q. What is that tab?

13 A. It's a tab that's on the gun for deflecting spent  
14 cartridges when they come out.

15 Q. That is this tab right here where my finger is?

16 A. Yes. In this photograph, at least in this photograph you  
17 can see it's nice and straight.

18 Q. Right.

19 A. In this one, it's completely bent over. All of the paint  
20 that is showing on 37 is just a nice clean coat. This has had  
21 the daylight scratches out of it.

22 Q. Okay, sir. But we know that's how it looked on February  
23 14th, 2008, based on that photograph?

24 A. Yes, sir.

25 Q. Now, during the search, did the ATF seize any items that

1 could be used to make homemade silencers like those described  
2 by the witness Donald Ladd yesterday?

3 A. Absolutely not. I got a list of everything that they  
4 took, and there was absolutely nothing in my house, nor that  
5 they took that could have been used as raw material for  
6 silencers, that could be used as raw material to manufacture  
7 any guns. There just was absolutely nothing there. I didn't  
8 need to manufacture any of this stuff, I can buy whatever I  
9 needed to.

10 Q. Go ahead.

11 A. I don't know --

12 MR. KUMI EGA: Objection, your Honor. We need a  
13 question.

14 THE COURT: I think he's answered the question.

15 MR. MARTIN: I'm sorry, your Honor. I was trying -- I  
16 need to grab a notebook.

17 THE COURT: Are we getting into a little bit of a new  
18 area?

19 MR. MARTIN: We are. I'm getting ready to change  
20 gears.

21 THE COURT: Okay. Ladies and gentlemen, we'll take  
22 our lunch break, and we'll reconvene -- I do have a matter to  
23 take up with counsel over the lunch hour, so we'll reconvene at  
24 1:30, and I would give you the same admonitions as I've given  
25 you on all other breaks.

1 All rise while the jury exits. We'll reconvene at 1:30.

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

4 THE COURT: Mr. Martin, do you plan on calling your  
5 expert, Mr. Savage, today?

6 MR. MARTIN: Your Honor, depending on length of  
7 cross-examination, I would expect he would be my next witness.

8 THE COURT: Okay. Are you ready to present him for  
9 the Daubert hearing?

10 MR. MARTIN: I can, your Honor.

11 MR. KUMIEGA: Your Honor, can I run to the restroom  
12 and be right back?

13 THE COURT: Yes.

14 (Mr. Kumi ega exits the courtroom)

15 MR. MARTIN: May my client step down?

16 THE COURT: Oh, yes. Excuse me, Mr. Friesen. You may  
17 step down.

18 We'll wait on Mr. Kumi ega.

19 MR. MARTIN: I'm just trying to get things ready.

20 THE COURT: Have a seat, Mr. Savage. We'll swear you  
21 in when Mr. Kumi ega gets back.

22 (Mr. Kumi ega returns to the courtroom)

23 THE COURT: Mr. Savage, if you would stand, raise your  
24 right hand and be sworn by the clerk, please.

25 (Witness sworn)



1 Q. Okay. What is your area of concentration in that?

2 A. Primarily research and development. I design firearms  
3 mostly for other manufacturers. I also do custom builds, but  
4 the nuts and bolts of it is doing research and development for  
5 other manufacturers in the industry.

6 Q. All right. And do you have any other type of licensures  
7 from any federal agencies?

8 A. Yes. I am a holder of a Federal Firearms License to  
9 manufacture firearms. I am also a special occupational  
10 taxpayer, or able to manufacture Title 2, or Class 3 NFA  
11 weapons, other than destructive devices.

12 Q. Okay. And let me ask you: Do you have any experience or  
13 background in the area of machine guns?

14 A. Yes, I do.

15 Q. And could you briefly tell us about that?

16 A. I have done restorations of historic machine guns,  
17 registered Class 3 items for owners who had problems, had a gun  
18 blowup, wear out. They are all 22-plus years old at this point  
19 and wear out pretty regularly. Some of the other experiences  
20 is I take historic machine guns as far as parts and the design  
21 and redesign them so that they can be lawfully possessed as a  
22 Title 1 firearm, which means that when you pull the trigger it  
23 only fires one time, it fires from a closed bolt. And all of  
24 my designs have been sent through the Firearms Technology  
25 Branch at the BATF&E.

1 Q. All right. And are you generally familiar with the, or  
2 are familiar with the operation of machine guns?

3 A. Yes.

4 Q. And, in particular, Sten machine guns?

5 A. I have some experience with Sten machine guns; I have  
6 performed repairs from time to time. I'm certainly familiar  
7 with how they were made. They are a tubular receiver. There  
8 are several other firearms out there that are very similar.  
9 And as a matter of fact, back in 2005, I had specifically  
10 contacted the BATF about the use of registered tube receivers  
11 and what would be allowable and what wouldn't.

12 Q. You mentioned that you had performed research and  
13 development and worked for other types of manufacturers. Could  
14 you tell us who some of those are, sir?

15 A. Ohio Ordnance, Calico Light Weapons Systems prior to it  
16 being sold, RPB of Atlanta. I'm trying to think. Sentry Arms,  
17 Masterpiece Arms before it was sold.

18 Q. Okay, sir. And have you developed and designed any  
19 firearm systems?

20 A. Yes, I have. Several.

21 Q. And what would those be?

22 A. The Bren semi-automatic, the RPD semi-automatic, the SGMB  
23 semi-automatic. I worked on the Gunzilla Program, which was  
24 kind of a fantasy gun, and some caliber conversion systems  
25 having to do with registered machine guns, the Calico upper

1 specifically, which allows the use of a Calico helical feed  
2 magazine in an MK11 system or MK10 system.

3 Q. Have you ever testified or been a technical adviser or  
4 expert witness in federal court?

5 A. Yes, I have.

6 Q. On approximately how many occasions?

7 A. I've been involved in five to seven cases. I've  
8 testified in federal court as an expert and qualified as an  
9 expert witness in a couple of different districts. I believe  
10 it would have been Seattle, Washington, and then Milwaukee,  
11 Wisconsin.

12 Q. All right, sir. Have you been involved in any type of  
13 publications or written any articles or had any type of  
14 documentaries done about any of the work you performed?

15 A. Several. A lot of my firearms have been featured in  
16 magazines such as Small Arms Review. There's been some minor  
17 write-ups in Shotgun News. I did write an editorial for, I  
18 wanted to say Soldier of Fortune, and I've been quoted by the  
19 Congressional Research Service in a report.

20 Q. Okay. Have you ever been involved in the application of  
21 serial numbers to firearms, sir?

22 A. Yes, I have, in my day-to-day duties.

23 Q. And particularly, do you have experience based upon  
24 background and training of 20-some-odd years of what happens  
25 when metal is stamped?

1 A. Yes. I'm very familiar with working with metal and what  
2 happens to metal when it is stamped or impressed.

3 Q. And have you ever restored markings on any type of  
4 firearms?

5 A. Restored and sometimes recreated, especially if I'm  
6 trying to reproduce an historic firearm.

7 Q. And I believe in this particular case you were provided  
8 some of the discovery materials for review in preparation for  
9 trial, were you not, sir?

10 A. Yes, sir.

11 Q. Okay. And in particular, I think you were provided the  
12 materials that were provided to us relating to, I think it's  
13 Mr. Kong or Dr. Kong, I can't recall which, and also Sarah  
14 Walbridge. Do you recall that, sir?

15 A. Yes, I do.

16 Q. Okay. And even beyond that, were you given the  
17 opportunity last Friday to conduct an inspection of the  
18 firearm, State's [sic] Exhibit 3.16?

19 A. I was given a limited opportunity.

20 Q. All right. Let me ask you: During that examination,  
21 what did you do?

22 A. I, first of all, inspected it with a magnifying glass. I  
23 looked all over, front to back. I had requested whether or not  
24 I could disassemble the trigger mechanism to inspect the tube  
25 inside of the trigger housing, and I was told no.

1 Q. Okay.

2 A. I measured the receiver tube in several locations.

3 Q. And that's -- is that this area right here I'm holding  
4 State's Exhibit No. -- Defendant -- Exhibit 37.

5 A. Yes. That's precisely what I examined. It didn't look  
6 like that, though.

7 Q. Okay. And what was your purpose for measuring that tube?

8 A. To make sure that it was round and straight and  
9 consistent, if there was any visible seams, if it had been  
10 welded.

11 Q. Okay. And during your examination, did you reach any  
12 conclusion about the stamping of these serial numbers?

13 A. Yes, I did.

14 Q. And what conclusions did you reach?

15 A. Well, that those stampings had to be applied prior to  
16 assembly back when it was a tube.

17 Q. Okay. And did you conduct any independent experiments  
18 after examination of this firearm to determine whether or not  
19 the firearm was stamped after it was assembled?

20 A. Yes, I did.

21 Q. And would you tell the Court what you did?

22 A. Well, upon taking measurements of the tubular receiver, I  
23 set about on Saturday trying to find material of the same  
24 outside diameter, same inside diameter, or as close as I could  
25 approximate. The alloy of the steel is unknown, but it appears

1 to be mild steel, just mechanical tubing. And then I went  
2 about stamping the sample tubes to try to replicate what was on  
3 the Sten 36 -- or E683 was the serial number. But I tried to  
4 replicate those markings and concluded definitively that the  
5 markings must have been applied prior to complete assembly.

6 Q. And do you have for introduction as evidence the results  
7 of your independent examination in this case?

8 A. Yes, I do.

9 Q. And let me see. I'm going to hand you what has been  
10 previously marked as Exhibits 111 and 110, and ask you what  
11 those are.

12 MR. KUMIEGA: Your Honor, the United States never has  
13 -- has never had an opportunity to look at those devices nor  
14 were we ever informed that physical objects were going to be  
15 admitted.

16 MR. MARTIN: They weren't done until Saturday, your  
17 Honor. We weren't allowed to examine it until Friday.

18 MR. KUMIEGA: Nor was I on notice, your Honor, as soon  
19 as the examination was done, or even this morning this was  
20 going to be an object or the purpose of this testimony.

21 MR. MARTIN: This is part of it, your Honor, it's not  
22 all of it.

23 THE COURT: Go ahead.

24 Q. (By Mr. Martin) Would you look and tell us what 110 and  
25 111 are, sir?

1 A. Well, Exhibit 111 is a piece of mechanical tubing the  
2 same approximate thickness, seamless, same approximate outside  
3 diameter. Because I stamp serial numbers regularly and  
4 actually do build guns, I strongly suspected that there was  
5 going to be a problem with what the government was theorizing,  
6 and one of the reasons I had measured specifically over the  
7 serial number area is I was looking to find evidence of a  
8 depression. Because if you stamp a tube that is unsupported  
9 without a precision mandrel, it caves in, it dents.

10 Q. Did you do that on your sample?

11 A. Yes, I did.

12 Q. And what did you find?

13 A. Well, when I stamped it with a quarter-inch die with just  
14 a single blow, I had a 25-thousandths depression in the overall  
15 size of the tube specifically right over the serial number.  
16 And if you'll hold it up to the light you can see the waves  
17 formed by the depression because of the impact of the die with  
18 a hammer into the steel.

19 Q. Okay. And how does that compare to Government's Exhibit  
20 3.16?

21 A. There was less than two-thousandths' deviation all the  
22 way across the serial number. And as a matter of fact, when I  
23 was measuring that area very specifically and very carefully, I  
24 was watching the readout on my digital micrometer, I did  
25 inadvertently remove some paint from the tube, and I did note

1 it in the report.

2 Q. Do you also have another tube there, sir?

3 A. Yes, sir.

4 Q. And what testing did you do on that tube?

5 A. Well, I tried to closely replicate what I was given by  
6 you in the discovery by Mr. Kong, and I guess Ms. Walbridge  
7 talked about it, where they talked about the double strikes.  
8 So I, in an attempt to do that, hit the die twice and moved it  
9 over slightly. And not surprisingly, the depressions are even  
10 deeper because every time you strike this, it's going to get  
11 deeper and deeper and deeper without a precision mandrel to  
12 prevent this from being crushed.

13 Q. Okay, sir. And so those two exhibits you intend to  
14 illustrate the point that -- those two exhibits you intend to  
15 illustrate the point -- where is the firearm? Is the firearm  
16 up there?

17 A. No, sir.

18 Q. How would you describe for the jury, if you were allowed  
19 to, the difference between Exhibits 110 and 111 and the  
20 government's exhibits relating to the die stamps?

21 A. The die stamps in this area (indicating) are smooth;  
22 there is no depression whatsoever. And because of personal  
23 experience, and bitter experience actually of destroying  
24 firearm receivers by accident, I have to have precision  
25 mandrels. I have them for most of my receivers when I

1 manufacture them because, from bitter experience, if you don't  
2 back it up with a mandrel, the tube crushes and it at least  
3 crushes appreciably. I mean, there is no way, if the metal is  
4 soft enough to take an impression, it's soft enough to crush.

5 Q. And what is a mandrel?

6 A. A mandrel is a precision instrument. It kind of turns  
7 the hollow tube into, into a solid piece so that it can't  
8 crush. And it's got -- when I say "precision," it's got to be  
9 within one- or two-thousandths. And even at that precise of a  
10 measurement, every time you die-stamp with a mandrel, you  
11 usually have to beat it out with a mallet and a brass rod,  
12 because impacting the tube, I mean, just does that. You're  
13 displacing metal.

14 Q. So the mandrel goes inside the tube?

15 A. Yes.

16 Q. Okay. Can a mandrel have been used in Government's  
17 Exhibit 3.16 in its current condition?

18 A. It could but it would have to be specially made. It  
19 would be a precision instrument that most people wouldn't be  
20 familiar with, and it would be a one-time use, and they are  
21 relatively expensive to make because they have to be precise.

22 Q. Okay. Additionally, did you perform certain tests to  
23 determine whether or not in your opinion the paint -- excuse me  
24 -- the die stamps were placed on Government's Exhibit 3.16  
25 prior to it being painted or not painted?

1 A. And prior to actually coming out here, yes, I did.

2 Q. And what did you do?

3 A. Very similar tests to what the government had put in  
4 their report, that they had stamped a piece of plate steel that  
5 was previously painted, and I stamped a piece of plate steel  
6 that was not painted, and then compared. And then -- but even  
7 the government's own exhibits on this matter don't compare,  
8 because it's been my experience, when you impact a die on  
9 painted metal, because you're crushing and displacing metal  
10 directly under the die, sometimes it's forced out because -- if  
11 you were to do a cross-section on it, it's V-shaped. And so  
12 some metal is crushed down, some is crushed out, some actually  
13 rises up, like a ridge, like the government testified to.

14 And from the picture here that I had received right here  
15 (indicating), there is paint on the inside of the mark, and my  
16 test didn't show that, even at the low magnification, I used a  
17 magnifying glass, and there is so much paint, I'm kind of  
18 familiar with what would have happened there because it's  
19 happened to me when I've restored firearms. Remember when I  
20 tell you that it's kind of shaped like this (indicating), a die  
21 stamp, if you were to look at it in a cross-section, it looks  
22 like a round object that didn't quite make it to the bottom of  
23 the die stamp was traced around it. And paint is disrupted  
24 around the edge and only around the edges, kind of like a dull  
25 phonograph needle, it doesn't go all the way to the bottom of

1 the groove. And that's why I reached the conclusions that I  
2 did, that I sent you in that summary based on their tests, and  
3 then based on my attempt to replicate their results.

4 MR. MARTIN: Can I have just a moment, your Honor?

5 THE COURT: Yes.

6 (Brief pause)

7 Q. (By Mr. Martin) Did you conduct any other -- well, let  
8 me ask you one other question. Did you conduct any examination  
9 of this gun while you were there on -- last Friday, I forget  
10 the date -- to determine whether or not you could tell that it  
11 had been, had any type of solvent applied to it?

12 A. Well, actually, I didn't do a test, but it's visible, and  
13 I did document it photographically.

14 Q. And you have photographs to back this up?

15 A. Yes, I do.

16 Q. Okay. And what did you document?

17 A. Well, with the photographs documented, first of all, Mr.  
18 Kong's report is in error, because he talks about the use of  
19 rivets determining this to be a Sten Mark III. These are not  
20 rivets, these are socket-head cap screws. I use them every  
21 day, I know what they are for. And there is halos around the  
22 socket-head cap screws, which means solvent has leached out  
23 from the threaded area of the screw over time. At some point  
24 this firearm has been exposed to solvent because of the  
25 multiple halos. There's here, here, here, here, there, and

1 there (indicating). Pretty much if you look at where these  
2 socket-head cap screws are attaching the barrel bushings,  
3 you'll notice that solvent has leached out from behind them and  
4 formed a halo effect.

5 Q. And is that what is exhibited in what's going to be  
6 marked as Defendant's Exhibit 125?

7 A. Yes. A good picture of a halo.

8 Q. And Exhibit 126?

9 A. Yes.

10 MR. KUMIEGA: Your Honor, I don't know if we have  
11 those pictures.

12 MR. MARTIN: We gave them to you, but there they are.

13 Q. (By Mr. Martin) Did you perform any other testing or  
14 examination that you are -- that we've discussed in your  
15 testimony about, sir?

16 A. No. But I was never able to examine the entirety of the  
17 receiver tube.

18 Q. Okay. You didn't get to complete your examination. Is  
19 that your testimony?

20 A. Yes, sir.

21 Q. Okay.

22 MR. MARTIN: Your Honor, that -- that's all.

23 THE COURT: Mr. Kumi ega, because of your inability to  
24 know what Mr. Savage was even going to testify about, and not  
25 having seen the sheet metal pieces and not having a chance to

1 review those or look at the pictures, the Court is going to not  
2 allow Mr. Savage to testify today, but like I gave you, we took  
3 a day off to give you an opportunity, Mr. Martin, to review  
4 some of the late reports and information those reports were  
5 based upon, the Court is going to allow Mr. Kumi ega an  
6 opportunity to, if he wants to, to look these matters over and  
7 take this up Monday morning before Mr. Savage can testify.

8 MR. KUMI EGA: Your Honor, because this testimony is  
9 highly precise and very scientific, I would imagine, a couple  
10 of requests that the United States would ask. We ask to have a  
11 transcript of Mr. Savage's testimony today, we also would like  
12 to have the opportunity to send these devices overnight express  
13 to Mr. Kong in San Francisco, have him look at it. And I  
14 believe the United States will intend to use Mr. Kong in  
15 rebuttal to Mr. Savage's testimony at trial, and also obviously  
16 to examine his proffered testimony for the Daubert hearing, if  
17 that's okay with -- with the Court.

18 MR. MARTIN: Your Honor, I -- they can conduct their  
19 own tests with their own cylinders. I object to giving those  
20 to them. If that occurs, I would like Mr. Savage to be given  
21 unlimited access to this firearm so that he can complete the  
22 examination that he's done. But he's got the testimony of how  
23 he did the tests, everybody saw what he did. I don't mind them  
24 taking any photographs, but I'm very concerned about them  
25 losing our exhibits.

1 MR. KUMI EGA: Your Honor, the government will concede  
2 that, first of all, Mr. Savage, after he scraped the serial  
3 number, he wanted to get out of there, he never requested that  
4 the --

5 THE COURT: We're not dealing with that.

6 MR. MARTIN: I do not mind having Mr. Savage or  
7 whoever look at the gun under laboratory conditions. We'll  
8 have the agents there, we'll spread it out, it will be recorded  
9 again. That is not a problem. I just don't want -- I just  
10 want to make sure we have a fair opportunity to cross-examine  
11 Mr. Savage regarding this new experiment that he provided.

12 THE COURT: Well, I would I think that you would have,  
13 that Mr. Kong could certainly review the metal tubes that Mr.  
14 Savage has purchased and conducted his experiments on. So I  
15 see no problem with that.

16 MR. KUMI EGA: And again --

17 THE COURT: If you can get them there and get them  
18 back by Monday.

19 MR. KUMI EGA: Oh, yes. I'm going to try to get Mr.  
20 Kong here by Monday. He will be one of our rebuttal witnesses,  
21 your Honor.

22 THE COURT: So Mr. Martin, do you have -- after Mr.  
23 Friesen completes his testimony, do you have some other  
24 witnesses you can put on?

25 MR. MARTIN: I have some, your Honor. I don't believe

1 I'll -- depending on length of cross-examination, I don't know  
2 how long I'll go. I'll go as long as I can.

3 MR. KUMIEGA: Two questions, your Honor: I can  
4 continue the Daubert hearing Monday then?

5 THE COURT: Yes.

6 MR. KUMIEGA: Okay. And can I have a five-minute  
7 break to get a cup of coffee to prepare myself for the next --  
8 if that's possible.

9 THE COURT: Well, we're going to reconvene at 1:30.

10 MR. KUMIEGA: Oh, okay.

11 THE COURT: I don't think we have anything else to  
12 take up, do we?

13 MR. KUMIEGA: No, sir. I didn't know we were  
14 reconvening at 1:30, your Honor.

15 THE COURT: Do you need to -- I would like -- if you  
16 want to ask some questions now, or if you want to just wait  
17 until your expert has had an opportunity to review those  
18 materials and then ask questions on the continuation of the  
19 Daubert hearing.

20 MR. KUMIEGA: Yes, sir. I would like to have an  
21 opportunity to conduct with Mr. Kong.

22 THE COURT: We'll reconvene the Daubert hearing on  
23 Monday morning, and we'll see where we get today and how many  
24 witnesses we have left. But I think because of the lateness of  
25 providing the materials and so forth to the government at this

1 matter, I would treat them the same as I did you, Mr. Martin,  
2 because of the lateness of them providing you materials I gave  
3 you an extra day to review those.

4 So we'll -- Mr. Savage, you may retake your seat. And you  
5 can save Mr. Savage for Monday depending upon the Court's  
6 ruling. And you do need to provide those to the government so  
7 they can --

8 MR. MARTIN: The record should reflect, your Honor, I  
9 just gave both Defendant's Exhibit 10 and 11, I think those are  
10 the numbers, to the --

11 THE COURT: Mr. Kumi ega, on those same pieces, I'm  
12 assuming that Mr. Kong, Dr. Kong, would not conduct further  
13 experimentation on them unless he comes here and does it in  
14 front of Mr. Savage or under some kind of control. I guess he  
15 can get identical pieces and conduct some other experiments,  
16 but I think those need to stay in the same condition and if  
17 he's going to conduct some others you need to at least try to  
18 work that out with counsel.

19 MR. KUMI EGA: Yes, your Honor.

20 THE COURT: We'll be in recess until 1:30.

21 MR. MARTIN: Judge, may I ask one other thing? Could  
22 Mr. Savage obtain copies and at least examine the government's  
23 metal plates they stamped that Mr. Kong testified about and Ms.  
24 Walbridge? We just got reports on those too.

25 THE COURT: Do you have them?

1 MR. KUMIEGA: If Mr. Martin requests them we certainly  
2 would have turn them over. Yes, of course.

3 MR. MARTIN: That's what I'm asking.

4 (A recess was had, after which the following was had in  
5 open court:)

6 THE COURT: You may continue your examination, Mr.  
7 Martin.

8 MR. MARTIN: Thank you, your Honor.

9 Q. (By Mr. Martin) Mr. Friesen, if you would, do you have  
10 the defendant's exhibit book in front of you there, sir?

11 A. Yes, sir.

12 Q. If you would, turn to Defendant's Exhibit No. 2. Do you  
13 see that?

14 A. Yes.

15 Q. Do you recognize what purports to be represented in  
16 Defendant's Exhibit No. 2?

17 A. Yes, sir. It is the appointment calendar we keep for the  
18 office for the date February 19th, 2003.

19 Q. And let me ask you, sir: Do you recall -- not recall,  
20 I'm sorry -- how is that calendar kept?

21 A. Nicki Day is responsible for the day-to-day keeping of  
22 the calendar. Anybody in the office can put -- can schedule  
23 appointments. Nicki schedules most of mine. But as  
24 appointments are made or as court appearances are scheduled, we  
25 put them on the docket so that we can keep that time, reserve

1 that time availability and that we will always run it one day  
2 late. In other words, this morning when we held our morning  
3 meeting we kept the one from yesterday, because we always  
4 update it if somebody doesn't make an appointment or something  
5 or we have something canceled, that is also reflected in this.

6 Q. Okay, sir. And is this something that's kept in the  
7 normal course of business at your office?

8 A. Yes, sir.

9 Q. And is it accurate?

10 A. Yes, sir.

11 Q. And is it a business record of yours?

12 A. Yes.

13 MR. MARTIN: Your Honor, I would move for the  
14 introduction of Defendant's Exhibit No. 2.

15 MR. KUMIEGA: Your Honor, the government is going to  
16 object. A proper foundation has not been laid regarding that  
17 document, unless someone can testify -- this document is five  
18 years old -- how it was retrieved, et cetera, et cetera,  
19 because it's a five-year-old document. I think we need a  
20 foundation.

21 THE COURT: Objection will be overruled. Will be  
22 admitted.

23 Q. (By Mr. Martin) I'm going to ask you, sir, if you would,  
24 this is Defendant's Exhibit No. 2. Do you see that?

25 A. Yes, sir.

1 Q. And I'm going to zoom in to 11 and 12 o'clock. Can you  
2 see that?

3 A. Yes, sir.

4 Q. And do you see an appointment from 11 to 12 o'clock on  
5 that day?

6 A. Yes, sir.

7 Q. And can you tell me what this entry right here is where  
8 my fingers are?

9 A. Means that a potential new client, Peggy Rodman, had an  
10 appointment with Lana Cohlmi a to meet regarding the Baycol  
11 litigation.

12 Q. Okay. And I'm going to ask you, this is page 2 of that,  
13 sir?

14 A. Yes, sir.

15 Q. 12 to 1, 1 to 2, 2 to 3. Do you see those?

16 A. Yes.

17 Q. And can you tell us what those three appointments are,  
18 sir?

19 A. The one at the top, the 12 to 1 does not say "new  
20 client," it says Paul Felton, and possible rabdo, which was  
21 shorthand for maybe some of the symptoms that he was having.  
22 The fact that it doesn't have "new client" up there, it may  
23 have been missed but it would lead me to believe that it's  
24 probably a follow-up appointment.

25 Q. Okay.

1 A. That as 12 to 1. One to 2, we had a new client  
2 appointment with Hilda Hunter in reference to Baycol. That  
3 indicates "new client."

4 Q. Who was seeing that client?

5 A. Lana.

6 Q. Okay.

7 A. Lana Cohlmi a. From 2 to 3, Al Chang, a new client  
8 regarding the Baycol litigation, and was meeting with Lana.

9 Q. All right.

10 A. I had an appointment from 3 to 4, but Lana also had an  
11 appointment from 3 to 4 with Ruth Holder on the Baycol  
12 litigation with another new client.

13 Q. Is that this one right here (indicating)?

14 A. Yes, sir.

15 Q. And that's from --

16 A. That was from 3 to 4. And from 4 to 5, Lana was meeting  
17 with another potential new client by the name of Linda  
18 Streun, S-T-R-E-U-N.

19 Q. And it's your calendar of February 19th?

20 A. 2003.

21 Q. Okay, sir. Now, it would be fair to say, would it not,  
22 sir, that the Sten firearm that you testified about buffing and  
23 painting and cleaning up when you saw rust on it, that's not  
24 the first time you've ever painted a firearm, is it, sir?

25 A. No, sir.

1 Q. As a matter of fact, I'm going to draw your attention to  
2 Defendant's Exhibit No. 22, sir.

3 A. Yes, sir.

4 Q. Do you see what's depicted in that photograph?

5 A. Yes, sir.

6 Q. And would you describe for the ladies and gentlemen of  
7 the jury what those are and what that depicts?

8 A. There are three firearms depicted in Defendant's 22,  
9 there is a Remington 700 .270 caliber rifle. There is a .50  
10 caliber black powder shotgun made by Remington, and there is a  
11 12 gauge black powder shotgun made -- I don't remember who made  
12 it, but it's a black powder shotgun.

13 Q. Let me ask you, sir: Have those firearms been painted?

14 A. Yes, sir.

15 Q. And by who?

16 A. By me.

17 Q. And are those firearms accurately represented in the  
18 photograph that's been depicted as Defendant's Exhibit No. 22?

19 A. Yes, sir.

20 MR. MARTIN: Move for introduction of Defendant's  
21 Exhibit 22, your Honor.

22 MR. KUMIEGA: Judge, again, no foundation. We don't  
23 know when they were painted, who had custody of the firearms.  
24 There is no historical validity.

25 THE COURT: Lay a little more foundation for it, Mr.

1 Martin.

2 Q. (By Mr. Martin) When were these painted?

3 A. These were painted within the last, I think the .270 was  
4 painted approximately five or six years ago. The black powder  
5 shotgun, I just got that about three years ago, so it would  
6 have been painted in that time. I used it to hunt turkeys.  
7 And the black powder rifle is probably four or five years old.  
8 The way I painted them is I got a, just a kit for it. There  
9 was a leaf that's a plastic leaf, and I got some basic green  
10 and black and brown paint cans that came with this, and you  
11 just put the pattern up against the gun and you spray over it.

12 Q. Let me ask you, Mr. Friesen: Have you painted other guns  
13 besides these?

14 A. Yes, sir.

15 Q. Okay. These are just examples, are they not, of firearms  
16 that you have painted other than the Sten; is that right?

17 A. Yes, sir.

18 Q. And --

19 A. I still have all of these guns in my possession.

20 Q. Okay.

21 MR. MARTIN: Again, your Honor --

22 THE COURT: Will be admitted.

23 Q. (By Mr. Kumi ega) And I put on the visualizer here  
24 Defendant's Exhibit 22. These are the firearms that you just  
25 described, right?

1 A. Yes, sir.

2 Q. Okay. What is the one at the top?

3 A. The one at the top is a .50 caliber black powder rifle.

4 Q. And the second one?

5 A. .270 Remington 700 rifle.

6 Q. And the third one?

7 A. 12 gauge black powder shotgun.

8 Q. Okay. And Mr. Friesen, you were talking about -- I  
9 believe we had gotten to, or gone through the point where you  
10 had been in your basement, that light that we found with a  
11 magnifier on it next to the gun safe, and you located the  
12 serial numbers. Do you recall that testimony, sir?

13 A. Yes, sir.

14 Q. And described to the jury how you removed, used some  
15 solvent, removed some paint. When you did that, sir, was there  
16 anyone else present?

17 A. Yes, sir.

18 Q. Tell the ladies and gentlemen who was there.

19 A. There was a lady named Zella Holder that was there.  
20 She's been a family friend, my family friend for about 20  
21 years.

22 Q. How do you know her?

23 A. I originally got to know her playing blackjack, and her  
24 present employment is she's self-employed as a stained glass  
25 maker. She had made some glass for the office and she was over

1 at the house, we were exploring various potential options for  
2 stained glass at the house.

3 Q. All right, sir. And was she in the basement and observed  
4 what you did, sir?

5 A. Yes. I had just -- I knew she was coming over that  
6 evening but I didn't know when. I had just located where it  
7 was on the gun when she knocked on the door. So I went  
8 upstairs, let her in, asked her if she had a little bit of  
9 time. We went downstairs and she observed me doing the process  
10 that I had told you about, and then we switched over and went  
11 and talked about some of the stained glass.

12 Q. All right, sir. Now, I think just before we had broke  
13 for lunch I had asked you questions about when they executed  
14 the search warrant, did you obtain a, what they call a return  
15 that showed everything that the ATF seized from your house?

16 A. Yes, sir.

17 Q. And did they seize any items that could be used or in any  
18 way to make a homemade silencer similar to what Donald Ladd  
19 testified about yesterday?

20 A. No, sir.

21 Q. Do you have any type of substances or materials in your  
22 possession that could be used to make a homemade silencer?

23 A. I can't give you an unqualified no on that because you  
24 can use virtually anything to make a silencer. There are some  
25 that are little, even nails or rivets in there, so I don't want

1 to be misleading. I certainly have some nails at the house and  
2 I certainly have some rivets at the house, but there are no  
3 tubes that are cut or threaded to in any way make silencers. I  
4 do have washers and in some silencers there are some washers  
5 that go in there. But I have no -- they seized no items for  
6 any kind of silencer construction, and I have none.

7 Q. Let me ask you this: Have you ever made a silencer?

8 A. No, sir.

9 Q. You heard Donald Ladd's testimony yesterday, did you not,  
10 sir?

11 A. Yes, sir.

12 Q. Let me ask you this, sir: Any time since 2000, have you  
13 seen Donald Ladd, period?

14 A. Absolutely not.

15 Q. Okay. Do you have any type of affinity for him?

16 A. I didn't even know -- didn't even remember who he was --  
17 the answer is no.

18 Q. Okay. Let me ask you this: Would there be any  
19 particular reason why you would not go to the, quote, Red Dog?

20 A. Yes, sir.

21 Q. And would you tell the ladies and gentlemen of the jury  
22 why you would not go to the Red Dog?

23 A. The Red Dog has a reputation of being fairly rough. In  
24 1996, I sued the Red Dog Saloon on behalf of a client whose leg  
25 got cut off as he was riding his motorcycle and a drunk from

1 the Red Dog Saloon sideswiped him and cut off his leg. I  
2 obtained a judgment against the Red Dog Saloon in 2001, and in  
3 2002, actually sent sheriff officers in there to garnish -- to  
4 take the money that was out of the till. That same evening, my  
5 front door at the office was kicked in. I don't think I would  
6 probably be very welcome there.

7 Q. All right, sir. Let me ask you: Would you look at  
8 what's been marked as Defendant's Exhibit 54.

9 A. Yes, sir.

10 Q. Do you recognize that court document?

11 A. Yes, sir. That is a garnishment execution that was filed  
12 in the case that I was just mentioning where I was sued the Red  
13 Dog Saloon.

14 Q. And who is Roy Copeland?

15 A. Roy Copeland was my client.

16 Q. And who is TeleCorporation DBA Red Dog Cafe?

17 A. The Red Dog Saloon has their license in the name of the  
18 Red Dog Cafe, their liquor license. They were owned and  
19 operated by TeleCorporation.

20 Q. Okay. And this document, Defendant's Exhibit 54, is that  
21 a document that you caused to be prepared and executed by the  
22 sheriff for the execution of this garnishment?

23 A. Yes, sir.

24 MR. MARTIN: Your Honor, I would move for the  
25 introduction of Defendant's Exhibit 54.

1 MR. KUMI EGA: No objection.

2 THE COURT: Will be admitted.

3 Q. (By Mr. Martin) This is Defendant's Exhibit 54, is it  
4 not, sir?

5 A. Yes, sir.

6 Q. And at the top, Roy Copeland, and then the Red Dog Cafe.  
7 That's what you said their liquor license is in?

8 A. Yes, sir.

9 Q. This is a garnishment execution?

10 A. Yes, sir.

11 Q. Filed, does that say September 13, 2002?

12 A. Yes, sir.

13 Q. And then on the second page or on the back, this is the  
14 execution signed by a deputy with John Whetsel, sheriff's  
15 office.

16 A. Yes, sir. I believe it's Larry Watson.

17 Q. And does it not indicate that on September 11th, 2002, at  
18 7:45 p.m. they went into the Red Dog Saloon and seized \$602  
19 from the tills?

20 A. Yes, sir.

21 Q. Do you feel very welcome at the Red Dog Saloon, sir?

22 A. No, sir.

23 Q. All right. Let me ask you also, sir: Do you know what a  
24 Mac 10 is?

25 A. Yes, sir.

1 Q. You heard Donald Ladd talk about Mac 10s; did you not?

2 A. Yes, sir.

3 Q. Have you ever owned a Mac 10?

4 A. No, sir.

5 Q. Tell the ladies and gentlemen of the jury what a Mac 10  
6 is.

7 A. A Mac 10 is a gun that you -- in its original  
8 configuration, it's a fully automatic pistol that is a very  
9 boxy type weapon. They were really popular in the movies up to  
10 a few years ago. They just have -- there is just a box on top  
11 for the receiver, there is a straight handle down, and in that  
12 handle down is the magazine that holds the cartridges goes and  
13 the trigger portion is just right up there. It's almost like a  
14 T with a little trigger portion in front of it. The Mac 10  
15 shoots a .45 caliber shell.

16 Q. And did -- in the execution of the search warrant on your  
17 residence on June 10th of 2004, did they seize any Mac 10s?

18 A. No, sir.

19 Q. Did they --

20 A. They didn't find any Mac 10s.

21 Q. That was my next question.

22 A. Sorry.

23 Q. They didn't find any Mac 10s, they didn't find any  
24 homemade silencers, right?

25 A. That's correct.

1 Q. All right. Now, in 2004, did you live around Tenth and  
2 Council?

3 A. No, sir.

4 Q. Did you hear the location that Donald Ladd described  
5 y'all went to and had a beer at a residence that you unlocked  
6 the door to?

7 A. Yes, sir.

8 Q. Somewhere out by Lake Overholser area?

9 A. Yes, sir.

10 Q. Okay. What is your current residence?

11 A. 524 Northwest 17th.

12 Q. Where did you live in 2004?

13 A. 524 Northwest 17th Street.

14 Q. Is that the residence that you bought in 1998?

15 A. Yes, sir.

16 Q. And how long have you lived there?

17 A. Since 1998.

18 Q. All right, sir. And not only that, but you heard Mr.  
19 Ladd testify that he actually sued you; is that right?

20 A. Yes, sir.

21 Q. Filed a Bar complaint against you, didn't he?

22 A. Yes, sir.

23 MR. MARTIN: Just a moment, your Honor.

24 (Brief pause)

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

1 THE COURT: Yes.

2 Q. (By Mr. Martin) Mr. Friesen, I've got in my hand here a  
3 copy of the indictment, okay?

4 A. Yes, sir.

5 Q. Do you understand there are five counts?

6 A. Yes, sir.

7 Q. Okay. If I might, are you familiar with it enough that  
8 -- do you need to see a copy of it?

9 A. No, sir.

10 Q. Okay. The indictment alleges in Count 1 through 4 that  
11 you made material false statements to the ATF relating to  
12 ownership of the firearm, relating to places where firearms  
13 were stored, relating to sale of the firearms to Mr. Bugg, and  
14 relating to things that the inspector supposedly told you. Do  
15 you recall that, sir?

16 A. Yes, sir.

17 Q. I want you to look the ladies and gentlemen of the jury  
18 in the eye and tell them whether or not you're guilty of making  
19 any false statements to any ATF agents.

20 A. I made no false statements to any ATF agent.

21 Q. Count 5, Doug, alleges that you knowingly possessed an  
22 unregistered nine millimeter Sten machine gun bearing part  
23 D95843. Did you possess -- I want you to look at the jury and  
24 tell them whether you possessed an unregistered machine gun.

25 A. No. I have no unregistered machine guns.

1 Q. State's Exhibit 3.16, the Sten in front of you, tell the  
2 ladies and gentlemen of the jury what configuration it was in  
3 when you received it in 1996.

4 A. It looked exactly like this with the exception of the  
5 finish. This is the gun I got in this configuration. I did  
6 not get a tube, I got this gun like this in 1996.

7 MR. MARTIN: No further questions.

8 THE COURT: You may cross-examine.

9 MR. KUMIEGA: Judge, can I sit this over to the side?

10 THE COURT: What?

11 MR. KUMIEGA: Where do you want me to set this so the  
12 jury can see this?

13 THE COURT: Wherever you want to that Mr. Martin will  
14 agree to.

15 CROSS-EXAMINATION

16 BY MR. KUMIEGA:

17 Q. Now, Mr. Friesen, you testified that you have extensive  
18 knowledge with firearms; is that correct? That was part of  
19 your narrative.

20 A. No, sir.

21 Q. Okay. We've stipulated, the government had no objections  
22 to certain exhibits that were introduced. These are your  
23 exhibits, starting with Exhibit 5. Do you have that in front  
24 of you? Do you have your witness book in front of you?

25 A. Yes, sir.

1 Q. Do you see Exhibit No. 5?

2 A. Yes, sir.

3 Q. Now, what is that exhibit, please?

4 A. This is a certificate that indicates I successfully  
5 completed the two-day Beyond the Basics Training Conference  
6 which was held May 17 and 18, 2007, at the Midwest City Police  
7 Department range.

8 Q. Okay. And the title of that document, please?

9 A. The title of that document, it was -- where it says  
10 Oklahoma Association of Law Enforcement Firearms Instructors.

11 Q. Yes, sir.

12 A. That is the agency that was putting on this conference.

13 Q. All right. And you attended that for Beyond the Basics  
14 Training Conference; is that correct?

15 A. That's correct.

16 Q. For firearms instructors?

17 A. Yes, sir.

18 Q. Okay.

19 A. I'm sorry. This particular class was not for firearms  
20 instructors. It was put on by this agency, but it was not  
21 limited to firearms instructors.

22 Q. Well, would it be a fair inference, it appears it's for  
23 firearms instructors; is that not correct?

24 A. The agency that put it on was OALEFI, the Oklahoma Law  
25 Enforcement Firearms Instructors Organization.

1 Q. Okay. The next page, your Defendant's Exhibit No. 6.

2 A. Yes, sir.

3 Q. Again, by the same organization?

4 A. Yes, sir.

5 Q. And what did you get a certificate for in 2005?

6 A. Successfully completing the CLEET accredited 16-hour  
7 Shoothouse Instructor School held July 21 and 22, 2005, at the  
8 Broken Arrow Police Department range.

9 Q. Okay. And then your Exhibit No. 7. What's that, please?

10 A. That is a certificate of achievement for satisfactorily  
11 completing all required course work for the 16-hour Use of  
12 Force Management Level 1 put on by Smith & Wesson in 1997.

13 Q. Okay. And this is your Shoothouse Instructor deal in  
14 Exhibit No. 6?

15 A. Yes, sir.

16 Q. And this is Beyond the Basics Training Conference for  
17 firearms instructors; is that right?

18 A. Not for firearms instructors, but that is the document  
19 that we were talking about before, sir.

20 Q. Out of curiosity, what were you learning that day?

21 A. The -- Rob Groseclose, who is the president of the  
22 association, who was the president of the association that year  
23 was putting on certain timed activities to see how fast, to  
24 demonstrate how fast the reaction time was between recognition  
25 of a forced drawing a duty weapon and being able to engage the

1 person. There was a shotgun block teaching how to shoot slugs  
2 in a shotgun back to 100-and-some yards. Joe Evans, he works  
3 for Prism and he has an interactive shooting system and he was  
4 teaching use of force, interactive use of force with that  
5 computer interactive system that he has, Prism.

6 Q. He has a computer draw-and-shoot type thing, right?

7 A. Yes, sir.

8 Q. Okay. Next exhibit, this is your Exhibit No. 10. You  
9 got a certificate of achievement for Semi-Automatic Transition  
10 24 hours; is that correct?

11 A. Yes, sir.

12 Q. What's that, please?

13 A. When I originally got my -- whenever anybody originally  
14 gets their private investigator license they have to be trained  
15 initially with a revolver. To transition over to a  
16 semi-automatic, in other words, to be licensed to carry a  
17 semi-automatic as a private investigator, you've got to go  
18 through an additional 24 hours of training. This certificate  
19 reflects that I did that in October of 1994.

20 Q. All right. You also got a certificate, your Exhibit No.  
21 11 for being a security guard, phase IV?

22 A. That would have been the revolver training that I went  
23 through in April of 1994, the first training that I was just  
24 talking about, sir.

25 Q. And specifically for firearms; is that right?

1 A. Correct.

2 Q. For guns. And this is your Exhibit No. 12. What is  
3 Exhibit No. 12, please?

4 A. Number 12 is my self-defense firearms instructor approval  
5 certificate granted to me by CLEET. Down at the bottom you can  
6 see the instructor number SDA004, and it was to issued  
7 11/12/1996, which was the first day you could get them.

8 Q. All right. And you've been certified to train somebody  
9 how to shoot a semi-automatic weapon and a revolver?

10 A. This qualified me as an instructor under the Self-Defense  
11 Act for the entire class. Part of those classes include the  
12 use of both revolvers and semi-automatics. Yes, sir.

13 Q. And it was updated in Defendant's Exhibit No. 13?

14 A. Yes, sir. Thirteen is the one that is currently in  
15 effect.

16 Q. Okay. Let's look at your Exhibit 14. Back in '97 you  
17 got a certificate for what, please?

18 A. For attending the Long Range Rifle Instructor School in  
19 Sand Springs, Oklahoma.

20 Q. And what is that?

21 A. Approximately once a year CLEET puts on a school that is  
22 the closest Oklahoma has for sniper training, I guess. It's  
23 one of the mandatory trainings you have to go through before  
24 you can go on to the general sniper teams if you don't -- if  
25 they did not have individual training. I attended and

1 completed that class back in 1997. We shot at ranges from 100  
2 yards back to a thousand.

3 Q. Right. And you were qualified to be a sniper; is that  
4 right?

5 A. I am qualified to teach people to be an instructor under  
6 the Oklahoma standards for long range rifle instructor school.  
7 There's a lot of things about -- this class just had to do with  
8 shooting a gun at longer distances. As I understand it,  
9 there's a lot of things that go into being a sniper other than  
10 just shooting a gun.

11 Q. Then you've got some other exhibits that you introduced.  
12 Number, what's Number 15? What is that?

13 A. Number 15 is a class I taught on behalf of CLEET in  
14 November of '94 to private investigators for their continuing  
15 education.

16 Q. All right. And the title of the course?

17 A. Private Investigator Gathering Useful Information.

18 Q. And Number 17, what is that?

19 A. Seventeen is completion of a class utilizing the tactical  
20 baton.

21 Q. Okay. Let's look at Government's Exhibit No. 18. Do you  
22 see that?

23 A. Yes, sir.

24 Q. And when did you get that, please?

25 A. The date on the certificate says November 11th, 1995.

1 Q. All right. And where was this course at, please?

2 A. This course was at Gunsite, which is a training center in  
3 Arizona.

4 Q. And how long was that course?

5 A. That was a full week.

6 Q. A full week course. And you completed, if you can read  
7 that for the jury what course you completed, please?

8 A. It says:

9 "Certificate of Achievement having completed the  
10 course of instruction in submachine gun, Doug Friesen  
11 has achieved the status of marksman in the use of the  
12 M11/9 nine millimeter."

13 Q. And did that course entail shooting of submachine guns?

14 A. Yes, sir.

15 Q. And you became a marksman, according to Gunsite training  
16 center; is that right?

17 A. Yes, sir.

18 Q. And you said it was in Arizona?

19 A. Yes, sir.

20 Q. And were there other guns displayed during your tryout  
21 there? What types of machine guns did you see out there during  
22 the course of the week?

23 A. There were a number of different types. Most popular  
24 there was the MP5, Heckler & Koch MP5. I do not remember all  
25 of the other guns that were there. I know that Denver squad

1 and LAPD squad as well as two SEAL trainers attended this  
2 class. I only got into it because Glen McIntyre, who is the  
3 chief firearms instructor for the state of Oklahoma, signed off  
4 so I could go.

5 Q. Okay. What's Defendant's Exhibit 19? Can you explain  
6 that to the jury, please?

7 A. Defendant's 19 is when I took the class for the  
8 semi-automatic pistol instructor school in Oklahoma City.

9 Q. Okay. And this is the certificate for attending  
10 instructor school for shooting semi-automatic pistols?

11 A. Yes, sir.

12 Q. And your Exhibit No. 20. Is this another gun you  
13 qualified on, sir?

14 A. Another type of weapon. Yes, sir.

15 Q. Okay. And can you tell the jury about that, please?

16 A. Once again, this is put on by -- the school is put on by  
17 OALEFI, Oklahoma Association of Law Enforcement Firearms  
18 Instructors. It indicates that I successfully completed the  
19 CLEET accredited 18-hour lever action carbine instructor  
20 school.

21 Q. Okay. Now, you also testified that you -- let me ask you  
22 this: Have you represented different businesses who sell  
23 firearms here in the Oklahoma City metro area?

24 A. I have. Yes, sir.

25 Q. Okay. And what concerns, what businesses have you

1 represented, please?

2 A. I have represented H&H in some matters. I've represented  
3 some other FFL dealers. I think H&H is the only gun dealer  
4 that anybody would recognize. The other ones are mainly out of  
5 the home.

6 Q. Did you represent them for certain type of ATF hearings?

7 A. I did not represent H&H in any type of ATF hearing.

8 Q. Have you ever represented anybody for any compliance  
9 inspections?

10 A. Yes, sir.

11 Q. Who was that?

12 A. I do not remember his name as we're sitting here.

13 Q. Now, my first question was, are you an expert in a  
14 certain type of firearms.

15 A. I would not classify myself as such.

16 Q. Even after bringing these certificates in front of this  
17 jury?

18 A. Yes, sir. If you want me to, I'll explain.

19 Q. Sure.

20 A. All of these classes have to do with shooting. They  
21 don't have to do with maintenance of the firearm, taking apart  
22 the firearm, working on the firearm. These just have to do  
23 with shooting different types of firearms.

24 Q. Okay. But you do have rudimentary training or  
25 understanding about maintaining your firearms and fixing your

1 firearms; is that not correct?

2 A. Rudimentary training in cleaning and recognizing whether  
3 it is safe to shoot or not, sir.

4 Q. Okay. So after you shoot your firearms, do you clean  
5 them?

6 A. Yes, sir.

7 Q. After you display them do you wipe them down with an oil  
8 cloth?

9 A. Depending upon the gun, but yes, sir.

10 Q. Okay. And you have blued firearms in the past?

11 A. Yes, sir.

12 Q. You've cleaned firearms in the past; is that correct?

13 A. Yes, sir.

14 Q. Now, looking back here, sir, back in February of 1996,  
15 you got a Sten II Mark -- Sten Mark II machine gun; is that  
16 correct?

17 A. Yes, sir.

18 Q. Did you get it from Alabama?

19 A. Whatever the paperwork shows. I don't remember as we're  
20 sitting here, but I'm not arguing with you about that.

21 Whatever the paperwork shows, that's where I got it.

22 Q. Okay. Mr. Friesen, let me address that. You are selling  
23 firearms, machine guns, and silencers, you've got the license  
24 to do that between '94 and '97; is that right?

25 A. Yes, sir.

1 Q. And you're also, back in 1993, you have the ability to  
2 sell guns?

3 A. Yes, sir.

4 Q. Okay. Were you aware of certain regulations and laws  
5 that go with the responsibility of selling guns to the public?

6 A. I was aware of certain regulations. I don't know which  
7 one you're talking about as you sit here, but I was aware of  
8 certain regulations.

9 Q. You're a lawyer?

10 A. Yes, sir.

11 Q. You practice in kind of a niche field; is that right?

12 A. Not really.

13 Q. Okay. Explain that, please.

14 A. I'm sorry. I'm not trying to be -- my clients come from  
15 kind of a niche area. They are mainly composed of either law  
16 enforcement or people that I get from the classes that I teach  
17 both in use of force and the concealed carry classes. The  
18 problems they bring to me for solution on a legal level are  
19 pretty much the same ones that anybody goes through: Divorce,  
20 kids getting in trouble, just the whole gamut of things that we  
21 would, that people come into contact with every day.

22 Q. Okay. You were aware that undertaking this  
23 responsibility you had to comply with certain regulations?

24 A. Yes, sir.

25 Q. In fact, you got notices from ATF to tell you what to do

1 in, like, a little booklet or packet; is that right?

2 A. Yes, sir.

3 Q. Now, this is a big step, selling automatic weapons. Did  
4 you get also the same type of pamphlets from ATF regarding  
5 that?

6 A. Yes, sir.

7 Q. Okay. Now, you had it between '94 and '97. And at this  
8 time frame in your life, Mr. Friesen, how many automatic  
9 weapons did you get or have?

10 A. Three.

11 Q. Okay. Three. And what were those, if you could tell the  
12 jury, please.

13 A. I had the Sten machine gun, I had a Mark -- excuse me --  
14 a MK11 nine millimeter, and I had a Micro Uzi, which is, only  
15 way I can describe it is if you ever saw Chuck Norris walking  
16 around with the two machine guns strapped underneath his arms,  
17 those would be -- in one of the movies, those would be Micro  
18 Uzis.

19 Q. And the last one you got was the Sten Mark II?

20 A. Mark II.

21 Q. Now, being a dealer to sell these guns and being an FFL,  
22 you obviously are there to make some money, like you testified,  
23 or have something for your collection or your hobby; is that  
24 right?

25 A. Yes, sir.

1 Q. Okay. Is this -- you got a Mark II then from Alabama; is  
2 that right?

3 A. Whatever the paperwork shows.

4 Q. Whatever the paperwork shows.

5 A. I don't know -- as I'm sitting here today, I don't know  
6 where I got it, but whatever your paperwork shows I'm sure is  
7 correct.

8 Q. Mr. Friesen, are you telling the jury you don't remember  
9 finding the gun in some advertisement and ordering it?

10 A. As we're sitting here today, I do not remember ordering  
11 it back in 1996. That's correct, sir.

12 Q. You said you used this firearm as a prop for your gun  
13 business?

14 A. That was the intention.

15 Q. Okay. You had three machine guns in your collection or  
16 that you actually owned?

17 A. Yes, sir.

18 Q. I imagine in your line of work or because you're such an  
19 enthusiast you would remember the type of gun you got,  
20 especially a World War II simulated weapon. Is that not  
21 correct?

22 A. No.

23 Q. You wouldn't?

24 A. No, sir.

25 Q. Why not, sir?

1 A. In general or for this specific firearm?

2 Q. Well, both.

3 A. In general, because I have a number of firearms, because  
4 of the diversity of my interests --

5 Q. Hang on. One of the diversity of your interests, though,  
6 is at that point in your life you have three machine guns; is  
7 that correct?

8 A. That is correct.

9 Q. Okay. Continue.

10 A. With a rare exception it would be hard for me to tell you  
11 where I got almost any of my weapons from at this particular  
12 point in time unless they had been purchased fairly recently.  
13 There is no question that I bought this Sten, I just don't  
14 remember where I got it from, because I can't remember where  
15 the last guy was. Whatever your paperwork shows, sir, I'm not  
16 arguing with.

17 Q. All right. Well, that was a big contention in this  
18 trial, but now you're saying you got the firearm from Alabama?

19 A. If that's where the guy was. Yes, sir.

20 Q. And you heard Mr. Mike Davenport say that I had the gun  
21 and I just shipped it off when I got it from Kemmerer. Do you  
22 remember that?

23 A. Yes, sir.

24 Q. Now, his testimony was that the configuration of the  
25 firearm is wrong, it's funny; is that right?

1 A. That's what he said.

2 Q. You went to machine gun school, you teach firearms  
3 classes, you're a lawyer. This is something that you desire;  
4 is that correct, Government's Exhibit 3.16?

5 A. Yes, I bought it.

6 Q. Did you not look in one of your gun books to say, hey, I  
7 got the wrong firearm?

8 A. No, sir.

9 Q. Why not?

10 A. Initially, before I went to machine gun school --  
11 initially, before I went to machine gun school I was interested  
12 in machine guns.

13 Q. Okay.

14 A. Upon my return from machine gun school, Glen McIntyre put  
15 me into the -- put me into the shotgun instructor school. At  
16 that point I learned that as a civilian there is nothing that  
17 a, there is no tactical situation that I could find that a  
18 civilian could do with a machine gun that you couldn't do  
19 better with a more conventional weapon. From that point, they  
20 have basically -- I used them as draws coming into my booth at  
21 the gun show where I sold -- I only sold a total of three Class  
22 3 weapons during the time that I had my -- I've only sold three  
23 period. They did draw other people, they did draw people in  
24 because they were a little bit unusual at the time, and I think  
25 I sold more other weapons, conventional weapons as a result of

1 them.

2 But I don't know that I had, since my return -- from about  
3 six months after my return from the machine gun school, I don't  
4 know that I have shot either mine or anybody else's machine gun  
5 because they no longer had an interest for me in terms of  
6 practical application.

7 Q. All right. So you're saying that this firearm after you  
8 got it from you believe Mike Davenport and his concern in  
9 Alabama, you never checked the bonafides on the gun?

10 A. What I checked when I received it was the piece of paper  
11 that came with it that said E683.

12 Q. Right.

13 A. And the serial number here that said E683. Other than  
14 that, I hadn't seen another Sten before other than in  
15 photographs. I certainly had never shot one. I was just  
16 looking for a very cheap filler for my table to draw interest.  
17 That was it.

18 Q. And you don't remember how you came across the people in  
19 Alabama to buy the gun from?

20 A. I will not take issue with the fact that I probably saw  
21 their ad in Shotgun News.

22 Q. Okay. Now, also, sir, when you're a firearms dealer you  
23 have to register a place of business; is that correct?

24 A. Yes, sir.

25 Q. And what place of business did you register?

1 A. Initially, it was my law office at the Park Harvey  
2 Center, and then it was my law office, 1309 North Shartel.

3 Q. That's Lobo Arms; is that correct?

4 A. Yes, sir.

5 Q. And that's where you were licensed to sell your guns?

6 A. Yes, sir.

7 Q. And you, again, remember about the requirements regarding  
8 on how to sell guns. Were you trained on how to sell guns and  
9 what paperwork you needed to do?

10 A. Yes, sir.

11 Q. Can you tell the jury about that?

12 A. Initially, when I got my license they sent, the ATF sent,  
13 not only sent me a pamphlet, they sent me -- they sent out  
14 some, an agent to talk to me and go through the things that I  
15 could and couldn't do with my license. At that time it was  
16 before the three-day check that you had to go through, and so  
17 it was a matter of properly filling out the forms, verifying  
18 the identification of the person, we weren't supposed to sell  
19 more than so many guns in a given time, et cetera. And those  
20 were the instructions that I received.

21 Q. So from '96 to the inspection, did you ever shoot the  
22 gun?

23 A. This gun?

24 Q. Yes.

25 A. I honestly don't know.

1 Q. You don't remember?

2 A. No, sir.

3 Q. Where did you keep it?

4 A. The vast majority of the time I kept it in my home safe  
5 down in the basement.

6 Q. And the other times you said you used it as a prop; is  
7 that right?

8 A. I bought it as a prop in February of '96. And I believe  
9 May of 1996 is when I bought the office. After I bought the  
10 office I went to no more gun shows so it was no longer being  
11 used as a prop.

12 Q. Mr. Friesen, did you shoot the other two machine guns?

13 A. I have shot both of the other machine guns. Yes, sir.

14 Q. Why would you shoot those two and not that one?

15 A. I got them considerably earlier. I went through the  
16 class, my Gunsite training class with the M11, and the Micro  
17 Uzi, I've shot once or twice just because that was back when I  
18 still thought machine guns were really cool.

19 Q. Okay. According to this, did you bring your machine gun  
20 to this school?

21 A. I took my machine gun, I had to make -- yes, sir.

22 Q. Which one?

23 A. The MK11.

24 Q. Okay. So you shot the heck out of it for that one week?

25 A. Yes, sir.

1 Q. Okay. And you cleaned it every day?

2 A. Yes, sir.

3 Q. Took good care of it?

4 A. I believe so.

5 Q. Just like your other machine guns?

6 A. It was the only machine gun that I shot regularly.

7 Q. Okay. How much did you pay for this gun?

8 A. I don't remember. I think around a thousand or \$1,200.

9 Q. Valuable property?

10 A. Relatively inexpensive property in reference to machine  
11 guns; a thousand dollars is a lot of money.

12 Q. You didn't take good care of it; is that what you're  
13 telling the jury?

14 A. The gun did not look like that when it was confiscated  
15 from me.

16 Q. Okay. What did it look like when you first got it?

17 A. It looked much like that when I very first got it. Not  
18 like this. It was painted, it was in this configuration, but  
19 it had a fairly good coat of paint on it.

20 Q. Okay. Now, you testified you stored it the majority of  
21 the time in your safe in the residence?

22 A. Yes, sir.

23 Q. And you testified that it accumulated rust over a certain  
24 period of time?

25 A. This one and a number of my other firearms.

1 Q. Is there any pictures of your other firearms that  
2 accumulated rust that you brought today for court purposes?

3 A. I immediately upon knowing they had rust cleaned them up,  
4 fixed them, and modified my safe so that they would no longer  
5 accumulate rust.

6 Q. You kept all your guns together?

7 A. Excuse me?

8 Q. Did you keep all your guns together?

9 A. I keep the majority of my guns in the downstairs safe.

10 Q. Right. And that's going to be -- let's look at  
11 Government's Exhibit 3.2, please. Mr. Friesen, that's where  
12 you keep the majority of your guns?

13 A. Yes, sir.

14 Q. Including the Sten Mark II, according to the paperwork?

15 A. Yes, sir.

16 Q. Including your other machine guns?

17 A. Yes, sir.

18 Q. Okay. And now you're saying that this gun safe is  
19 conducive to making guns rust; is that correct?

20 A. No, sir.

21 Q. Explain that. That's the way I'm taking it.

22 A. When I moved the safe downstairs into the basement of my  
23 current residence --

24 Q. Okay. Hang on for a second. You had this safe somewhere  
25 else?

1 A. Yes, sir.

2 Q. Where, please?

3 A. In the garage at 8304 Northwest 8th.

4 Q. How many people does it take to move that?

5 A. Seven.

6 Q. Seven?

7 A. Yes, sir.

8 Q. Okay. Continue.

9 A. When I first moved it downstairs, as I said, there is a  
10 hole at the top, and the door is not airtight. I have three  
11 sump pumps in my basement because the water level there is  
12 fairly close to the bottom part of my, of the floor level.  
13 There's a lot of moisture. After noticing that the guns  
14 rusted, I ran an extension cord by the top hole in the safe.  
15 There's a hole right in the middle of the safe on the top where  
16 they can hook a bolt to it and they simply put a crane lift  
17 through it to pick it up to move it when they are delivering  
18 it. I ran the extension cord through that.

19 MR. KUMIEGA: Your Honor, may I approach the witness  
20 with a laser pointer so he can explain it to the jury?

21 THE COURT: Yes.

22 MR. KUMIEGA: Thank you.

23 Q. (By Mr. Kumiega) Mr. Friesen, I think it would be  
24 helpful if you would show the jury what you mean, because I  
25 have a hard time following you.

1 A. Sorry. On the outside top right in the middle of the top  
2 part there is a hole in the very middle of the safe as you're  
3 looking down on it. If you would be looking down there's  
4 approximately a half-inch hole right in the middle of the top  
5 there. To take care of the problem what I did is I ran an  
6 extension cord through the -- through that hole, taped up the  
7 top of that hole, and I got three electric heating rods for the  
8 inside of the safe as well as putting on this weather stripping  
9 right here (indicating) around the outside of where the door  
10 fits so that there would be an airtight gap. So I tried to  
11 keep the moist air out but I knew that I would have some coming  
12 in every time I opened and closed it, so on the interior of it  
13 are three heating rods made for gun safes. And the heating  
14 rods, they are called Golden Rods, they are approximately, I'm  
15 going to guess about 12 inches long. They have little stands  
16 on them, they are about a half-inch in diameter, about 12  
17 inches long, with an electric cord going out of them, and they  
18 maintained a heat element. It's not hot so it can burn  
19 anything if you happen to put something over it. It's not hot  
20 enough to cause combustion, but it's hot enough to dry out the  
21 inside of it.

22 I have one of them on this shelf, I have one of them on  
23 this shelf, and I have one of them on the bottom here  
24 (indicating). And those are the steps that I took to keep the  
25 rust from materializing again. On the guns that the rust was

1 there, I either cleaned up or had somebody else, or I took it  
2 to a gunsmith. I could not take this to a gunsmith because  
3 it's a Class 3 item and I can't take a Class 3 item to a  
4 gunsmith and leave it there.

5 Q. Are these firearms here also?

6 A. Yes, sir.

7 Q. They have gun socks on them; is that right?

8 A. Those have gun socks on them.

9 Q. And can you tell the jury what does the -- how much is  
10 that stuff worth?

11 A. I don't know.

12 Q. Well, Mr. Friesen, at this point in time you're a gun  
13 dealer, you have personal firearms as a collection, you have a  
14 series of silencers, you have three machine guns, you have  
15 another short-barreled shotgun, and you have something called a  
16 pin gun. Tell us how much it is worth, do you think?

17 A. I haven't added it up. I don't know. It's worth in  
18 excess of \$50,000 I would guess.

19 Q. Okay. So there's \$50,000 right here, and you have rust  
20 problems with it; is that right?

21 A. That's correct.

22 Q. Okay. Now, what's the name of your gunsmith that you  
23 would take guns to get fixed, please?

24 A. There's a number of them. Bobby Hunter is a gunsmith  
25 friend of mine that I have taken some guns to. I take -- Chris

1 Vursels is a gunsmith out at H&H that I've taken guns to. A  
2 number of my friends are armorers, which are effectively  
3 gunsmiths. Armorers are people that, like, for police  
4 departments, you get sent to an armorer's school and that gives  
5 you the qualifications to work on certain types of firearms. A  
6 number of my friends are armorers for certain types of  
7 firearms, and I may take a gun to them.

8 Q. You said that you could not give a Class 3 firearm to a  
9 gunsmith because it would be illegal; is that correct?

10 A. That is correct.

11 Q. Okay. How many silencers did you have back during the  
12 inspection in February of 2003, please?

13 A. I'm going to guess 14 or 15.

14 Q. You did give a silencer to a gunsmith; is that correct?

15 A. I gave a silencer to a police officer on behalf of his  
16 agency for testing out with his agency, not to a gunsmith.

17 Q. Okay. And now you know that -- well, you did know back  
18 then that you needed proper paperwork to transfer that silencer  
19 either to the department or the individual; is that correct?

20 A. No, sir.

21 Q. You should have known that; is that correct, Mr. Friesen?

22 MR. MARTIN: Your Honor, I object. This is argument  
23 of the law and I don't necessarily agree with Mr. Kumięga's  
24 statement.

25 THE COURT: Will be sustained.

1 Q. (By Mr. Kumi ega) You loaned the silencer out to Mr.  
2 Hunter; is that correct?

3 A. Yes, si r. As part of the Edmond Police Department.

4 Q. Okay. Did you keep an inventory, a running inventory  
5 that you loaned the silencer to Mr. Hunter?

6 A. Yes, si r.

7 Q. Where was that document kept?

8 A. The document was kept at my office.

9 Q. Where?

10 A. In my form -- in my Class 3 notebook that I gave to the  
11 inspectors on the first day.

12 Q. And you did not inventory that out to Mr. Hunter, did  
13 you?

14 A. Yes, si r.

15 Q. It's in the book?

16 A. Yes, si r.

17 Q. Okay. Now, on February 19, 2003 -- oh, by the way, why  
18 did you give up your license to deal automatic weapons?

19 A. I just let it lapse because I was no longer -- the cost  
20 on that was \$500 a year. I was no longer going to gun shows  
21 and I knew that it was going to be a long period of time before  
22 the office got renovated. I was doing the demolition myself  
23 and most of the outside landscaping and didn't see any time on  
24 the immediate horizon, and I thought it was an unnecessary  
25 expense.

1 Q. And when is the last time, sir, you were active in  
2 selling firearms?

3 A. I don't believe that I have commercially sold a firearm  
4 since 1996.

5 Q. Okay. You would actively go to gun shows back then; is  
6 that correct?

7 A. Yes, sir.

8 Q. Did you take Ms. LeMaster with you at times, Ms. Dennis?

9 A. At times.

10 Q. What was her role at gun shows, please?

11 A. Just to assist me. She enjoyed being there.

12 Q. In fact, she had a relationship with you; is that  
13 correct?

14 A. Absolutely.

15 Q. Okay. Did you pay her for that when she was selling guns  
16 or helping you sell guns at the gun show?

17 A. Not per se.

18 Q. Okay. Now, you said you got this gun back in February of  
19 1996?

20 A. Yes, sir.

21 Q. Did you check to see if there was a serial number on the  
22 gun when you got it?

23 A. Yes, sir.

24 Q. And was there?

25 A. Yes, sir.

1 Q. Where was it?

2 A. Exactly where it is now.

3 Q. Okay. How do you know that?

4 A. Because I checked all of them when they came in.

5 Q. Okay. You said you didn't remember where you purchased  
6 it?

7 A. That's correct.

8 Q. But you remember it came with paperwork?

9 A. Yes, sir.

10 Q. Did you match the paperwork with the serial number?

11 A. Yes, sir.

12 Q. Okay. All right. On February 19th, inspectors come to  
13 your business; is that correct?

14 A. Yes, sir.

15 Q. And you're Doug Friesen doing business as Lobo Arms; is  
16 that correct?

17 A. Yes, sir.

18 Q. And Lobo is kind of -- it's an acronym for one of your  
19 businesses or something; is that correct?

20 A. I'm sorry?

21 Q. What does "Lobo" mean, please?

22 A. To me?

23 Q. Yes.

24 A. I have an affinity for wolves, and that's where the name  
25 came from.

1 Q. Okay. So they come to Lobo Arms, and that's the place,  
2 that's the only place that you're allowed to sell firearms  
3 other than a gun show; is that right?

4 A. Not exactly.

5 Q. Are you sure of that?

6 A. Pretty sure.

7 Q. They come there on the 19th, and who are the inspectors  
8 that come, please?

9 A. My recollection, it was the two inspectors that  
10 testified, Rowden and McGrew.

11 Q. And were they pleasant to you, please?

12 A. Yes, sir.

13 Q. They come to your office and what did they announce to  
14 you? What did they say?

15 A. They are sitting downstairs in the reception area when I  
16 come back from court.

17 Q. What time did you come back from court, please?

18 A. I'm just guessing, but I think around 9:30.

19 Q. Okay. I'm looking for your daily calendar of events.  
20 Were you in court with Judge Doak?

21 A. No. That would have been the other attorney in the  
22 office, Sherry Gray.

23 Q. All right. Is your court date on that document?

24 A. Yes, sir.

25 Q. Where is it at, please?

1 A. It's the fourth entry down.

2 Q. Okay. Preliminary hearing; is that right?

3 A. Yes, sir.

4 Q. Okay. And did that hearing go off?

5 A. I don't remember.

6 Q. Okay. Okay. Your name is not on there, but I assume  
7 that means you were there?

8 A. If it isn't assigned to somebody else that means I have  
9 to do it.

10 Q. Okay. You get there about what time, sir?

11 A. To the office?

12 Q. Yes.

13 A. I'm just guessing, but I think 9:30, quarter to ten.

14 Q. All right. And the inspectors are there?

15 A. Yes, sir.

16 Q. And what's -- how are they dressed?

17 A. Business casual, I guess I would describe it.

18 Q. They are not police officers; is that right?

19 A. They are not in uniform.

20 Q. Okay. Well, they are not police officers, they are  
21 inspectors, they are administrative inspectors; is that right?

22 A. Yes, sir.

23 Q. Okay. And you were on notice, sir, because you were  
24 selling guns or had that license for ten years that you can be  
25 inspected at least, as you testified, once a year?

1 A. Right.

2 Q. And were the inspectors pleasant to you?

3 A. Yes, sir.

4 Q. What did they say to you, sir?

5 A. They tell me what they are there for downstairs. I  
6 invite them to go upstairs to the office, to my office. We sit  
7 down and they just start talking about -- asking me questions  
8 about the business.

9 Q. All right. And their demeanor?

10 A. Professional.

11 Q. All right. And did you tell them about your business?

12 A. Yes, sir.

13 Q. All right. And at the first interview you gave them  
14 firearms in your office; is that correct?

15 A. Some of the firearms in my office.

16 Q. Okay. Some of the firearms in your office?

17 A. Yes, sir.

18 Q. This is on the second floor?

19 A. Yes, sir.

20 Q. Okay.

21 MR. KUMIEGA: Your Honor, if I can have a moment.

22 THE COURT: Yes.

23 (Brief pause)

24 Q. (By Mr. Kumi ega) Mr. Friesen, I'm going to show you a  
25 videotape that was taken on the day of the search warrant, not

1 the day of the inspection. Anything substantially different  
2 between the day of the compliance inspection and the date of  
3 the search warrant?

4 A. At the office?

5 Q. At your second floor office?

6 A. No, sir.

7 Q. Okay.

8 MR. KUMIEGA: Your Honor, may we play Government's  
9 Exhibit 2.0?

10 THE COURT: Yes.

11 (Government's Exhibit 2.0 displayed to the jury)

12 Q. (By Mr. Kumi ega) Is that 1309 Shartel, North Shartel?

13 A. North Shartel, yes, sir.

14 MR. KUMIEGA: Your Honor, I would like to stop this.  
15 I would like to play the clip instead of the whole deal to save  
16 the Court time.

17 THE COURT: I'll give you permission to do that.

18 MR. KUMIEGA: Thank you.

19 (Government's Exhibit 2.0 resumed)

20 Q. (By Mr. Kumi ega) Whose office is that, please?

21 A. That would be my office, sir.

22 Q. This is also your office?

23 A. Yes, sir.

24 Q. Now, you invite them upstairs to the second floor; is  
25 that correct?

1 A. Yes, sir.

2 Q. And you show them what firearms, please?

3 A. I don't know if I can remember all of them. I believe I  
4 had a short-barreled shotgun up there that I showed them and I  
5 think I showed them the little Stinger, the .22.

6 Q. Any other weapon?

7 A. I'm not sure what I showed them initially.

8 Q. Do you think you might have showed them three guns that  
9 day upstairs the first time you were upstairs?

10 A. I could have.

11 Q. Okay. And the reason I'm asking that is hours later you  
12 invited them back upstairs; is that correct?

13 A. That one was not an invitation but, yes, sir, we were  
14 back upstairs.

15 Q. And you pulled out the Sten; is that correct?

16 A. As well as some other items. Yes, sir.

17 Q. Okay. The question is: How come you didn't pull out the  
18 Sten and some other items when you were upstairs on the second  
19 floor the first time?

20 A. Because I normally didn't keep those other items up  
21 there. Those were in the closet and I normally did not keep  
22 those items in the closet. I apparently had just shown them to  
23 somebody maybe for sale or something a day or two before.  
24 Normally all those items were kept back at the, at my  
25 residence. Generally I did not keep firearms in my closet.

1 Q. You found the first item when you pulled out the  
2 short-barreled -- what guns did you show again the first time?

3 A. I know for sure the short-barreled shotgun and the little  
4 Stinger thing.

5 Q. Right. And there's not a third gun?

6 A. There could have been, I just don't remember.

7 Q. All right. And you are saying that you forgot that you  
8 kept your machine gun in the closet?

9 A. I didn't keep my machine guns in the closet, I forgot  
10 they were there. I kept my machine guns at home.

11 Q. But you said you might have displayed them to somebody a  
12 few days before the inspection?

13 A. Yes, sir.

14 Q. Okay. And you forgot that you put them in your office?

15 A. I forgot that they were there. Yes, sir.

16 Q. Okay. The inspectors asked you if you have other  
17 firearms; is that right?

18 A. At which stage, sir?

19 Q. This is all on the 19th. This is the initial interview  
20 on 2/19/03.

21 A. When they were first up in the office talking to me?

22 Q. Yes.

23 A. Yes, sir. They asked where the rest of my firearms were.

24 Q. And you also provide them with a book, is that correct,  
25 or some records?

1 A. Yes. I provided them with my acquisition and disposition  
2 records book for my federal firearm -- for the NFA weapons as  
3 well as all of the sheets for the accompanying paperwork for  
4 all of the NFA weapons, the Class 3 things.

5 Q. You gave Ms. Rowden and Ms. McGrew the NFA book?

6 A. Yes, sir.

7 Q. Okay. Did they ask you at that time for your A&D book,  
8 your acquisition and disposition records?

9 A. They could have.

10 Q. And you didn't know where they were at either; is that  
11 right?

12 A. I did not know where it was at that point.

13 Q. Okay. Now, after they do that inventory, what happens  
14 next?

15 A. From the office?

16 Q. Yes, sir.

17 A. We went over to my residence.

18 Q. Okay. And you invited them there; is that correct?

19 A. No, sir.

20 Q. Explain that to the jury.

21 A. They told me we had to go over to my residence.

22 Q. Okay. And what -- why did you go along with them?

23 A. I can't give you a short answer for that. I can give you  
24 a long one.

25 Q. Mr. Friesen, why -- explain what happened.

1 A. I teach use of force to officers, to police officers, and  
2 I teach interacting with police officers in terms of armed  
3 civilians via the Self-Defense Act, the Concealed Carry Act  
4 that we have in Oklahoma. I needed to come up with one rule  
5 that I could use that would be consistent teaching all the way  
6 through. The rule that I came up with as I teach police  
7 officers, I teach them to be careful once -- to be careful when  
8 they issue an instruction to a civilian because once a police  
9 officer issues an instruction to a civilian he cannot ever go  
10 back. Once they issue an instruction out in the field, you are  
11 going to follow it or bad things are going to happen to you.  
12 If they say get out of your car, you're getting out of your  
13 car. Whether they have a right to or not is not something to  
14 be concerned with at that point, but because they are so  
15 outmanned out on the street, once they give a direction they  
16 need to follow it through. That's teaching that I give to the,  
17 to the law enforcement officers.

18 To the civilians, obviously when you come into contact  
19 with a peace officer you have to identify, under the  
20 Self-Defense Act you have to identify that you are armed  
21 immediately on your first contact with the police officer. But  
22 the question continuously comes down what do I do if I'm in my  
23 car, a police officer tells me get out of the car. And my  
24 answer to that is always get out of the car. If a police  
25 officer asks you to do something wherein you are giving up some

1 of your rights, you can tell them no if it's a request. If  
2 it's a direction, you go along with it without arguing because  
3 you're only going to make your situation worse and you're  
4 carrying a gun and he's carrying a gun and this could go  
5 downhill bad, or fast, so you go along with it. If it is  
6 something that is wrong you deal with it, you see me or  
7 somebody like me later on and you deal with it in court, but  
8 you never fight a law enforcement officer or argue with a law  
9 enforcement officer while they are doing their duty.

10 Q. You're talking about an armed civilian, is that correct,  
11 in your scenario?

12 A. My scenario covers whether they are armed or unarmed. My  
13 directions have to take into consideration that I teach a lot  
14 of people that are armed in terms of when they do encounter a  
15 police officer.

16 Q. So your philosophy is if the police officer asked you  
17 permission or asked one of your clients permission to search  
18 the car you always say yes?

19 A. I always say no if they ask.

20 Q. Okay. And you're telling the jury that there's a  
21 difference what the inspectors did and what your scenario is?

22 A. Yes, sir.

23 Q. What is that difference? Tell the jury that, please.

24 A. They told me that they had to see all of my guns.

25 Q. Okay.

1 A. And that we were going over to my house.

2 Q. Do you know if these people were armed?

3 A. I don't have a clue. Doesn't matter.

4 Q. They are not police officers, they are inspectors.

5 A. They were from the ATF. They are a law enforcement  
6 authority as far as I'm concerned.

7 Q. You could be wrong about that. They are compliance  
8 inspectors; is that right?

9 A. I was not wrong about what I was thinking in my mind. If  
10 they weren't armed or they don't have authority, it doesn't  
11 really matter, but in my mind somebody comes knocking on my  
12 door from the ATF, they are the authority, and they gave me a  
13 direct instruction.

14 Q. Okay. So you take them over to your residence?

15 A. Yes, sir.

16 Q. Okay. And you take them down in the basement?

17 A. Yes, sir.

18 Q. Okay.

19 MR. KUMIEGA: Let's go back to 3.2, please.

20 Q. (By Mr. Kumi ega) And that's when they commence the  
21 inventory?

22 A. That portion of it. Yes, sir.

23 Q. Okay. How long did it take them to inventory your  
24 \$50,000 worth of guns in there?

25 A. Two, two and a half hours.

1 Q. You helped them?

2 A. I helped them in that the procedure was that I would take  
3 a firearm out of the safe, make sure that it was empty, hand it  
4 to one of the inspectors, who would then identify the make,  
5 model, caliber, serial number, and there was the other  
6 inspector that was writing this information down, is how I  
7 remember it.

8 Q. Okay. Those guns at your residence, some of these were  
9 guns you used for sale; is that correct?

10 A. Some of them were in the Lobo Arms inventory. I hadn't  
11 sold any guns and I wasn't in the business of selling any guns  
12 for six, seven years, but they were certainly in Lobo Arms'  
13 inventory, which was a business to buy and sell guns.

14 Q. So you commingled your personal firearms with your  
15 business firearms?

16 A. Inside that safe, yes, sir.

17 Q. Did you tag them to say this is business weapons and  
18 these are personal weapons?

19 A. I did not.

20 Q. Okay. And are you telling the jury at your, your  
21 business you had no firearms for sale?

22 A. You know, I think just about virtually everything I have  
23 is for sale if somebody wants to offer me the right price for  
24 it. I can't tell you that I wouldn't have sold guns that were  
25 at the business. I can tell you that unless somebody reached

1 out to me and asked me about them, I hadn't attempted to sell a  
2 gun through Lobo Arms since '96.

3 Q. Okay. But the bottom line is, everything you had in your  
4 collection, both personal and business, somebody could buy it  
5 for the right price?

6 A. Just about. There is one gun that my dad gave me that I  
7 don't know if I would sell, but other than that, yes, sir.

8 Q. And was that located in Government's Exhibit 3.2?

9 A. Yes, sir.

10 Q. Which one is it?

11 A. It's towards the back. It's one that I don't use very  
12 often. It's a Remington 1100 shotgun.

13 Q. And it has some sentimental value?

14 A. Yes, sir.

15 Q. And you knew exactly where that was; is that correct?

16 A. Not exactly. I know it's at the back of that safe  
17 somewhere, but I don't know where. As we're sitting here I  
18 can't point it out to you.

19 Q. At this time, sir, in your mind, as you're going over the  
20 guns you're handing one by one; is that right?

21 A. Yes, sir.

22 Q. I think the testimony is that they inspect approximately  
23 46 firearms in there; is that right?

24 A. Whatever they said.

25 Q. You read the reports?

1 A. Certainly.

2 Q. Okay. Does it cross your mind that I don't know where my  
3 silencer is and that Bobby Hunter has it or where my Sten  
4 machine gun is?

5 A. No, sir.

6 Q. Okay. Now, after they write everything down, do they  
7 tell you about a silencer that is missing?

8 A. Yes, sir. They asked me about a number of Class 3 items  
9 that were missing.

10 Q. Okay. Including a silencer?

11 A. Yes, sir.

12 Q. You kept your silencers all in here (indicating); is that  
13 right?

14 A. Most of my silencers, there is one that's in a box there,  
15 and most of my silencers were along here (indicating). There  
16 were some of them, I know the one that I had sold to Mr. Bugg  
17 is up -- was and is up in that area because I set it aside,  
18 that and the Micro Uzi and the Sten gun, I set aside because as  
19 far as I was concerned they were sold and I didn't have a right  
20 to use them anymore.

21 Q. Are you talking about selling a gun to Bugg?

22 A. Yes, sir.

23 Q. Can you repeat what you just said, please?

24 A. The Micro Uzi, the silencer for it, and the Sten that I  
25 sold --

1 Q. Sten II?

2 A. Sten II, this one.

3 Q. You sold it to Dr. Bugg?

4 A. Yes, sir.

5 Q. When?

6 A. When? End of '93, first of '94, I think, whenever the  
7 paperwork would show.

8 Q. Okay.

9 A. They were set out in this area here so that I -- they  
10 wouldn't get mixed up or anything else. I had just set them to  
11 the side. Those are the only ones that I know for sure where  
12 they are at. There's a couple of the guns that I can see that  
13 I think I recognize what they are. But other than that there's  
14 nothing in particular --

15 Q. Mr. Friesen, this depicts what happened on June 10th,  
16 2004, but I'm talking about events on February 19, 2003. Do  
17 you understand that?

18 A. I'm sorry. No, I did not. I thought you were asking for  
19 me to describe what I knew was in the safe. I apologize, sir.

20 Q. We're trying to do a chronological --

21 A. My fault. I apologize.

22 Q. So you get the gun, make sure it's not charged or loaded,  
23 and you give it to one of the inspectors who in turn gives it  
24 to another inspector who records the serial number; is that  
25 correct?

1 A. I don't recall the first inspector giving the second  
2 inspector the weapon, or the firearm, I just recall her reading  
3 it off and the second one writing it down.

4 Q. Okay. And at the conclusion of that they said there was  
5 some things missing; is that correct?

6 A. Yes, sir.

7 Q. All right. What was missing? What did they tell you,  
8 please?

9 A. There was a silencer, there was a .22 rifle that had an  
10 integral silencer built in on it, there was a .22 pistol that  
11 had an integral silencer built in on it, and there was the Sten  
12 machine gun.

13 Q. Okay. And you remembered where at least the .30 caliber  
14 silencer was at; is that correct?

15 A. I remember where all of them were, sir.

16 Q. Okay. You remember where all of them were, including the  
17 Sten Mark II?

18 A. Yes, sir.

19 Q. Okay. Okay. And they asked you for your acquisition and  
20 disposition books; is that correct?

21 A. Yes, sir.

22 Q. And what did you say about that?

23 A. I looked around the house a little bit for it. I thought  
24 at the time that it was at the office and I had a couple of my  
25 staff looking for it at the office while we were over at my

1 residence.

2 Q. Okay. The staff that you had to run and do that, who did  
3 you ask to do that? Who did it, please?

4 A. I know I asked Catherine to do it.

5 Q. Catherine Long?

6 A. Yes. The lady that testified.

7 Q. Okay. Who else?

8 A. I don't know for sure.

9 Q. Did you ask Jim Foster?

10 A. I don't have a specific recollection of that. I'm not  
11 saying that I did or didn't, I just don't have a specific  
12 recollection of asking him.

13 Q. Who is Jim Foster, if you can tell that to the jury,  
14 please?

15 A. Jim Foster is a good friend of mine that works for me  
16 sometimes.

17 Q. All right. And --

18 A. Has worked in the past.

19 Q. Is he your best friend?

20 A. I don't know that I would classify him as my best friend,  
21 I don't know how to classify him like that. He's certainly one  
22 of the best friends I have.

23 Q. All right. And who would be the others?

24 A. John Nelson would be an extremely good friend of mine.

25 Q. Who else, please?

1 A. Glen McIntyre is an extremely good friend of mine. Kurt  
2 McKean is a very good friend of mine. Will Andrews is a very  
3 good friend of mine. Joe Evans, Larry Kingery if I haven't  
4 mentioned him. There are -- I feel really blessed with the  
5 friends that I do have.

6 Q. Okay. At this point they said that there is something  
7 lacking in your inventory, but you know where these firearms  
8 are at; is that correct?

9 A. Yes, sir.

10 Q. Okay. And you tell the inspectors that you're going to  
11 find your books?

12 A. Yes, sir.

13 Q. But you really have no clue where they are at?

14 A. That is correct.

15 Q. Did you invite them back to your business, to the law  
16 office?

17 A. No, sir.

18 Q. Okay. What happens then, please?

19 A. They tell me that we have to go back over to the office,  
20 that they have to see the rest of the items.

21 Q. Okay. And does that happen?

22 A. We went back to the business. I had recalled that -- as  
23 soon as they told me about the silencer I called to the office  
24 and had the office make arrangements to get it back from Bobby,  
25 and I knew that the rest, where the rest, the remaining items

1 were.

2 Q. Where were they, please?

3 A. They were in the closet, the closet of my personal  
4 office.

5 Q. Upstairs?

6 A. Upstairs.

7 Q. Where they were the first time they gave you -- where you  
8 showed them the first three guns?

9 A. Yes, sir.

10 Q. Okay. And how many guns were in that closet?

11 A. Three.

12 Q. Were they together?

13 A. I think so, but I can't honestly say at this point.

14 Q. Okay. The other three guns, were they also in the  
15 closet?

16 A. No, sir.

17 Q. Where were they?

18 A. One was on a display, in a little display case towards  
19 the southeast corner of the office, and the other one or two  
20 were around my desk area.

21 Q. Okay. And how far is your desk area from the closet?

22 A. Twenty, 25 feet.

23 Q. It's in that office?

24 A. In the same office. Yes, sir.

25 Q. Okay. Now, before you went back to the house, excuse me,

1 back to your office you also tell the inspectors that you have  
2 a personal firearm in your bedroom upstairs; is that correct?

3 A. Yes, sir.

4 Q. And did you go upstairs and retrieve it?

5 A. I believe so. I don't have a specific recollection of  
6 that, but I'm not going to argue about that.

7 Q. And you brought it downstairs to them; is that correct?

8 A. If they say I did, I did.

9 Q. Mr. Friesen, if that was a personal firearm in your  
10 bedroom, why did you show that to the inspectors?

11 A. They told me I needed to show them all of my firearms.

12 Q. Okay. Now, again, those firearms were never tagged that  
13 said personal or business; is that correct?

14 A. That is correct.

15 Q. And you had no personal firearms under the kitchen sink  
16 somewhere; is that right?

17 A. I don't believe I had one under the kitchen sink.

18 Q. Okay. Now, you go back to the office with the  
19 inspectors; is that correct?

20 A. Yes, sir.

21 Q. And you tell them --

22 A. We drove separately.

23 Q. And you tell them, for whatever reason, you have to  
24 conclude the inspection, or I guess pause it because something  
25 is going on; is that correct?

1 A. Correct.

2 Q. Tell us about that.

3 A. Lana Cohlmi a and I had a radio show together, it was  
4 called Saturday Night Law. We at that point --

5 THE COURT: Excuse me, Mr. Friesen. I think we're  
6 going to stop here for our afternoon recess.

7 We will be in recess for about 20 minutes, and I would  
8 again give you the same admonishments that I've given you at  
9 other breaks.

10 All rise while the jury exits.

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

13 THE COURT: Mr. Friesen, you may retake your seat or  
14 be excused.

15 How much longer do you anticipate for cross-examination?

16 MR. KUMI EGA: Do what, your Honor?

17 THE COURT: I'm just trying to get a handle on where  
18 we are timewise. How much longer do you think it will take for  
19 cross?

20 MR. KUMI EGA: I think I'm just getting started. I'm  
21 trying to go over the whole chronology of the inspection and  
22 the search.

23 THE COURT: I'm just asking a simple question. We'll  
24 finish with Mr. Friesen today, right?

25 MR. KUMI EGA: I think so.

1 THE COURT: Okay. Any redirect you anticipate, Mr.  
2 Martin?

3 MR. MARTIN: If it is, it will be real short, Judge.

4 THE COURT: Okay. We'll be in recess for 20 minutes.

5 (A recess was had, after which the following was had in  
6 open court:)

7 THE COURT: You may continue, Mr. Kumi ega.

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

9 Q. (By Mr. Kumi ega) So Mr. Friesen, you invite the -- the  
10 inspectors come back to your office on the 19th, to -- where  
11 you're going to show them some more firearms; is that correct?

12 A. Which point in time are you talking about? After we  
13 leave the house or when they return again?

14 Q. You leave the house on the 19th, you go to your  
15 residence, I mean, excuse me, you leave the residence, you go  
16 to the office, and you say, well, I've got some client  
17 interviews, come back later when I get the other guns; is that  
18 correct?

19 A. There were some client interviews going on in the office.  
20 Yes, sir.

21 Q. So is that why you did not invite them right away into  
22 the office to get the guns?

23 A. Into my office. Yes, sir.

24 Q. And you say Lana Cohlmi a was one of your associates?

25 A. She wasn't an associate as that term is normally used.

1 Q. What was she?

2 A. Lana Cohlmi a and I shared a radio show. In the course of  
3 that radio show, we decided to try and jointly acquire some  
4 clients both in FenPhen and Baycol and we agreed to split the  
5 work and split the profits that we would get, if any, from  
6 those. Lana moved into the building next door from me, but the  
7 front porch on that building collapsed, and when that happened  
8 it was obvious that she couldn't use that office anymore for  
9 client interviews. So our agreement was that she could use my  
10 conference room for client interviews if I needed my office, my  
11 personal office. And if I didn't need my personal office, then  
12 she could use that for the client interviews.

13 Q. So you allowed her to use your personal office for client  
14 interviews?

15 A. Yes, sir.

16 Q. Because you had a, I guess you were collaborating on a  
17 class action lawsuit; is that correct?

18 A. Yes, sir.

19 Q. And each of these interviews lasted approximately an  
20 hour; is that correct?

21 A. Yes, sir.

22 Q. All right. And you remembered that -- at that point in  
23 time -- when did you remember you had the guns in the closet,  
24 the Sten machine gun and some other firearms?

25 A. Back when we were over at the house.

1 Q. And did you -- you never divulged that to the inspectors,  
2 did you?

3 A. Yes. I told them that those other guns were at the  
4 office.

5 Q. In your closet?

6 A. I don't know if I said "closet," I said "back at the  
7 office."

8 Q. Okay. And you did not mean the secret location behind  
9 the bookshelf?

10 A. No, sir.

11 Q. Okay. You meant the closet in your office on the second  
12 floor?

13 A. In my personal office on the second floor. Yes, sir.

14 Q. That's where you had the Sten machine gun?

15 A. Yes, sir.

16 Q. Okay. And so four hours later they show up; is that  
17 correct?

18 A. Yes, sir.

19 Q. And in the meantime, you were frantic because the  
20 silencer is missing that you had loaned to Bobby Hunter?

21 A. No, sir.

22 Q. You're not?

23 A. No, sir.

24 Q. Tell us about that.

25 A. I knew where the silencer was, and it's my -- everything

1 that I've been told about that is obviously hearsay, but it was  
2 returned shortly thereafter. I knew where that was, it wasn't  
3 anything to be frantic about.

4 Q. All right. And how did you get it back?

5 A. I have been told that Mrs. Hunter brought it back to --

6 Q. Let me ask you this: Who did you tell to get it back?

7 A. I think I just called -- I don't recall for sure. My

8 recollection is that I called Nicki and I said --

9 Q. Called who?

10 A. Nicki my receptionist.

11 Q. All right.

12 A. And said have somebody do this.

13 Q. Okay. All right. The inspectors come back, there's a  
14 four-hour lag, you invite them back upstairs?

15 A. They were there, I invited them upstairs. Yes, sir.

16 Q. You pulled out several guns including the Sten machine  
17 gun?

18 A. Pulled out a total of three guns and one silencer.

19 Q. The silencer, you collect silencers, you had -- how many  
20 did you have?

21 A. I don't really collect them, I had 14 or 15. They are  
22 just sitting around.

23 Q. Okay. What's a silencer worth?

24 A. It depends upon the silencer.

25 Q. What's your silencer inventory worth?

1 A. Anything I tell you now would be a guess because I have  
2 been out of that for so long, but if I was guessing I would say  
3 I maybe have 750 to 1,000 -- 750 -- excuse me, 7500 to \$10,000  
4 worth of silencers.

5 Q. All right. So on the average, how much does each  
6 silencer cost or worth?

7 A. 600 to \$900, maybe.

8 Q. Okay. You pull out the silencer --

9 MR. KUMIEGA: Your Honor, may I approach and pull out  
10 the Sten gun?

11 THE COURT: Yes.

12 Q. (By Mr. Kumi ega) You pull out the Sten gun and you show  
13 one of the inspectors the Sten gun. This is Government's  
14 Exhibit 3.16; is that correct?

15 A. That is Government's Exhibit 3.16.

16 Q. And this is, this is what you remember it kind of looks  
17 like generally when you pulled it out back February 2003; is  
18 that right?

19 A. Yes, sir.

20 Q. Okay. And you say you remembered the firearm was in the  
21 closet because somebody was looking to buy it a couple days  
22 prior to this; is that correct?

23 A. As I sit here today, I do not know why it was in the  
24 closet, but I know that I remember that those three firearms  
25 were in the closet when the inspectors asked me where they were

1 back in my basement.

2 Q. Did you not testify under direct examination that you  
3 thought the Sten machine gun was in the closet because somebody  
4 was looking to buy the Sten machine gun a few days prior to the  
5 inspection?

6 A. I believe that is why it was there.

7 Q. Right. So you --

8 THE COURT: Go back to the podium.

9 Q. (By Mr. Kumi ega) -- that's why it was in the closet, you  
10 were getting ready to sell it; is that right?

11 A. I believe I had showed it to somebody.

12 Q. Who was that individual?

13 A. I have absolutely no idea.

14 Q. When you presented that firearm on that day, a couple  
15 days prior to the inspection, did the person look over it?

16 A. I have no recollection of that. It's my -- I probably  
17 wasn't clear. It is my hypothesis that that's why I would have  
18 taken it to the office, because most of the time, unless I was  
19 showing it for purposes of sale, it was just kept at my  
20 residence safe.

21 Q. If you were showing it for purposes of sale, would you  
22 have displayed the inspection, or the serial number on the  
23 firearm?

24 A. I doubt it.

25 Q. You wouldn't? Why not?

1 A. Well, because I would have just been showing them the  
2 item. I had the paperwork with it.

3 Q. Right. And the paperwork says E683; is that correct?

4 A. Yes, sir.

5 Q. And the prospective buyer would have said paperwork E683,  
6 where is E683, right? Yes or no, sir.

7 A. I don't remember it ever coming up.

8 Q. All right. The inspectors are there during your, they  
9 are in your -- you're in your office now. You give them the  
10 Sten machine gun; is that correct?

11 A. Yes, sir.

12 Q. And they get it and they are looking for the serial  
13 number; is that right?

14 A. I remember the inspector that I handed it to looking for  
15 the serial number.

16 Q. All right. And as she examines, she goes, Mr. Friesen,  
17 where is the serial number; is that correct?

18 A. I do not remember that happening.

19 Q. Okay. You heard the testimony?

20 A. Yes, sir.

21 Q. All right. And she then, I guess, takes it to a window  
22 or some light and looks for the serial number; is that correct?

23 A. I don't remember her ever moving and going over to the  
24 light.

25 Q. Okay. Do you remember the -- Ms. Rowden giving you,

1 excuse me, Ms. Rowden giving the Sten gun to Ms. McGrew, the  
2 blonde?

3 A. No, sir.

4 Q. You don't remember that?

5 A. No, sir.

6 Q. So you're not saying that they did the examination either  
7 collectively or separately. Is that what you're saying?

8 A. I'm not saying anything for sure there. My recollection  
9 of the event is that whoever I handed the Sten to, the Sten to  
10 look at it, the serial number of E683 was not immediately  
11 apparent. They noted something about the D number, asked me if  
12 this was the only one I ever had. I said yes. There was a  
13 confirming, you've never had anything else? No. Any other  
14 Sten? No. And it was handed back to me.

15 Q. All right.

16 A. That's my recollection.

17 Q. The testimony is they asked you where is the serial  
18 number on the firearm. Do you remember that?

19 A. Yes, sir.

20 Q. And according to the testimony, you pointed to the D  
21 number; is that right?

22 A. That's what they said.

23 Q. Are they wrong?

24 A. I do not have a recollection of doing that.

25 Q. All right. So the inspectors are wrong about the D

1 number; is that right?

2 A. According to my recollection.

3 Q. All right.

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

5 THE COURT: Yes.

6 Q. (By Mr. Kumi ega) Mr. Friesen, this is the D number; is  
7 that correct?

8 A. Yes, sir.

9 Q. Okay. And this is the serial number; is that right?

10 A. Yes, sir.

11 Q. And how many inches apart between the serial number and  
12 the D number?

13 A. If I was guessing I would say four.

14 Q. All right. Four inches. And the testimony is that you  
15 pointed this out, you're disagreeing with that; is that  
16 correct?

17 A. I am saying that I don't remember doing that.

18 Q. All right. How come you didn't point out the serial  
19 number?

20 A. It wasn't very visible at the time.

21 Q. It wasn't very visible. When did you refurbish it to  
22 bring it out, please?

23 A. A day or two after I located my acquisitions and  
24 dispositions record book.

25 Q. Okay. And why did you need that -- excuse me, did that

1 aid you in bringing out the serial number?

2 A. I'm sorry. I didn't understand.

3 Q. You said that you put the serial number on, or you pulled  
4 it out two days after the inspection?

5 A. No, sir. I worked on the serial number to make it more  
6 visible two days after I found my A&D book.

7 Q. Okay. And what day is that?

8 A. I believe I found my acquisitions and dispositions books  
9 approximately five days after the 19th. I'm not positive.

10 Q. That's going to be around the 24th then?

11 A. 24th, 26th, somewhere in there. I'm not sure.

12 Q. Okay. Now, you couldn't find your serial number on the  
13 19th; is that right?

14 A. I don't remember ever being asked to look for it on the  
15 19th.

16 Q. Okay. But you said on the 4th, something triggered you  
17 March 4th, is that right, why you had to refurbish the gun or  
18 look for the serial number from your testimony. Do you  
19 remember that?

20 A. No, sir.

21 Q. Okay. All right. At that point you don't think there is  
22 anything wrong; is that correct?

23 A. That's true.

24 Q. All right. But something signals to you that I need to  
25 refurbish the gun, right?

1 A. I knew at the conclusion of the inspection --

2 Q. On the 4th?

3 A. On the 19th.

4 Q. The inspection ended on the 4th. This is day one.

5 A. I knew at the conclusion of day one, 2/19, that the D  
6 number was not the registered serial number to this gun.

7 Q. Mr. Friesen, how did you know that?

8 A. Because I looked it up in my paperwork.

9 Q. Okay. I though you gave the paperwork, your NFA  
10 paperwork, to the inspectors on the 19th during the first part  
11 of the day.

12 A. Yes, sir.

13 Q. So you had additional paperwork?

14 A. I had duplicate copies.

15 Q. All right. And then you realized that, whoops, E683 is  
16 not on the Sten gun you had in your possession; is that  
17 correct?

18 A. I had the Sten machine gun in my possession.

19 Q. But there ain't no serial number on it, ain't no serial  
20 number; is that right?

21 A. There was a serial number on it, sir.

22 Q. There was?

23 A. Yes, sir.

24 Q. The inspectors didn't see it nor did you in the afternoon  
25 on the 19th.

1 A. Yes, sir.

2 Q. Okay. So you said that you did what, now? How did you  
3 find it?

4 A. The lamp that was shown to you in that other exhibit with  
5 extra light and a magnifier, I placed the Sten machine gun  
6 underneath that light until I could locate it.

7 Q. Okay. Where is this lamp located?

8 A. The lamp was hanging up next to the safe. On the  
9 northwest corner of my shop there is a special hole drilled  
10 into the workbench to set that little pin or whatever I pointed  
11 out that's at the bottom of this light to set it in, and  
12 there's an electric bar underneath that to plug it in.

13 Q. The lamp is not near the safe; is that right?

14 A. At the time I'm using it?

15 Q. Yes.

16 A. No, sir.

17 Q. Okay. Because in your photograph it's different from our  
18 photograph.

19 A. The lamp hangs when not in use next to the safe.

20 Q. All right.

21 A. When I was using it I was using it on the workbench  
22 that's on the opposite side from the safe, sir.

23 Q. Sir, if you could look at that.

24 A. Yes, sir.

25 Q. That's your exhibit. That's the lamp; is that right?

1 A. That is correct.

2 Q. And this is the safe?

3 A. Yes, sir.

4 Q. Okay. This is your Defendant's Exhibit 33, and this is  
5 our Exhibit 3.5.

6 A. Yes, sir.

7 Q. It's not there, right?

8 A. It is not right next to the safe. I do not know whether  
9 it is in, a little bit closer there is a white object up on the  
10 top on the right-hand side, and I don't know whether that's it  
11 or not. I can't identify it from that, but it is definitely --  
12 well, I guess I can't say that. On my screen here it looks as  
13 if, with this door open, that the bars of it may be right  
14 behind it.

15 Q. All right. Can you --

16 MR. KUMIEGA: Your Honor, may I approach and --

17 THE COURT: Yes.

18 Q. (By Mr. Kumi ega) If you can show the jury where your  
19 understanding, where you think it is. I want to be accurate.  
20 You have it.

21 A. I'm sorry, sir. It looks like these might be the bars of  
22 it right here (indicating). I can't tell for sure. That  
23 doesn't absolutely have to be right, but it looks like these,  
24 this could be the white leg of it right there. I'm not  
25 positive.

1 Q. All right. So on the 19th, a couple days later, you  
2 realize the serial number is not being displayed, you can't  
3 find it and the inspectors can't find it; is that correct?

4 A. No, sir.

5 Q. And you --

6 A. That is not correct, sir.

7 THE COURT: He said that was not correct.

8 Q. (By Mr. Kumiaga) That was not correct? You can't find  
9 -- you couldn't find the serial number?

10 A. I don't remember ever being asked to look for it is the  
11 reason that I said no.

12 Q. Okay. So you're saying the inspectors never said, here,  
13 find the serial number?

14 A. Not to my recollection, sir.

15 Q. And to your recollection you don't remember pointing out  
16 the D part number?

17 A. I remember looking at the D part number; I do not  
18 remember pointing out the D part number.

19 Q. Do you also remember telling the inspectors about the  
20 historical value of this firearm and where the serial numbers  
21 are placed?

22 A. No, sir.

23 Q. This is all a blank to you, is that what you're telling  
24 us, Mr. Friesen?

25 A. No, sir. I remember talking about the history of the

1 Sten type to the inspectors because it's my recollection that  
2 they indicated they hadn't seen one of these before, and it's  
3 not a particularly attractive firearm as guns go. I told her a  
4 little bit about what I knew about the history of them.

5 Q. Okay. You talked about the history but your recollection  
6 doesn't extend to that, the serial number and the part number?

7 A. My recollection is that they did not find a part number,  
8 I mean, the serial number, but they asked me you only have one,  
9 and I said yes, and so they just said okay and gave it back.  
10 That's my recollection.

11 Q. Does your recollection extend to whether you aided them  
12 in looking for the serial number?

13 A. I don't remember them ever asking me to aid them.

14 Q. Okay. Alarm bells go off days later and you realize, I  
15 got to find that serial number, because you just testified I  
16 looked at the document and it says E683, right?

17 A. No, sir.

18 Q. Explain that, please.

19 A. Alarm bells never went off in my head. There was nothing  
20 wrong as far as I was concerned. If there had been anything  
21 wrong, as soon as I found the serial number, I would have  
22 called the ATF. What I did know is that they did not see the  
23 E683 when they were there. They did see this other number that  
24 is a serial number but it has absolutely nothing to do with  
25 this gun.

1 Q. Okay.

2 A. And to say -- if you want to classify where I am I guess  
3 that I am mildly interested in where it is.

4 Q. You're mildly interested where your serial number is on a  
5 machine gun?

6 A. Yes, sir.

7 Q. Not totally consumed, not concerned, but mildly  
8 interested?

9 A. Yes, sir. I knew that this was the gun that I had gotten  
10 shipped to me with the paperwork. It had never been out of my  
11 possession. I wasn't concerned about it because I knew this  
12 was mine.

13 Q. All right. The inspectors leave, and you have the gun  
14 with you?

15 A. Yes, sir.

16 Q. They didn't take the Sten machine gun?

17 A. Correct.

18 Q. When did you start, when did -- when did you look in the  
19 magnifying glass to find the serial number?

20 A. If my memory is correct, I believe I found my --

21 Q. You can use the pointer.

22 A. Sorry. I apologize. I think I found the acquisitions  
23 and dispositions record book maybe the night before this  
24 (indicating), and I think maybe on this day here I called and  
25 said I'll have it for you by tomorrow. And the only reason

1 that I'm saying that is I know it wasn't the 20th, but I know I  
2 called Ms. Rowden one day and she came out the next. So that's  
3 why I am supposing that on the 25th I found it, on the 26th  
4 that I called her, but I'm not positive about this, but on the  
5 26th that I called her, told her that I would have it for her  
6 the next day --

7 Q. You're not talking about the machine gun, you're talking  
8 about your record books?

9 A. I'm talking about my record book. Yes, sir.

10 Q. Okay.

11 A. And fished it out that evening and gave it back to her on  
12 -- gave it to her on the 27th when she would have come in the  
13 morning. That's my recollection. I may have the dates off by  
14 a few days.

15 Q. But before the inspection ended, you found, through the  
16 magnifying glass, the serial number?

17 A. Before 3/4/03, yes, sir.

18 Q. Okay. Was anybody with you when you found the serial  
19 number?

20 A. Yes, sir.

21 Q. Who?

22 A. Zella Holder.

23 Q. Zella Holder. Who is Zella Holder?

24 A. Zella Holder is a friend of mine.

25 Q. All right. What does she do for a living?

- 1 A. She creates stained glass windows.
- 2 Q. All right. And were you dating her?
- 3 A. No, sir.
- 4 Q. All right. How long have you known her?
- 5 A. Twenty years.
- 6 Q. All right. Have you represented her in any lawsuits?
- 7 A. Yes, sir.
- 8 Q. What type of lawsuits?
- 9 A. There was an eminent domain lawsuit, she has some
- 10 property that she has trailer houses on and I've helped her in
- 11 some property issues in reference to tenants there, and I've
- 12 helped her out in reference to her children some.
- 13 Q. Okay. And this is over the course of how many years?
- 14 A. Since '87.
- 15 Q. Okay. So you find the serial number and Ms. Holder is
- 16 with you?
- 17 A. I had found the serial number by the time Ms. Holder got
- 18 to my house.
- 19 Q. Okay. And you found it by the aid of that big magnifying
- 20 glass?
- 21 A. Yes, sir.
- 22 Q. Okay. What did you see when you looked into it, Mr.
- 23 Friesen?
- 24 A. I don't understand your question.
- 25 Q. Tell the jury what you saw.

1 A. I saw this area here (indicating) and there were very  
2 faint indentions in the solid black paint. None of this was  
3 scraped up at the time, this was all solid black paint, and I  
4 saw very faint indentions over the E683.

5 Q. Okay. This must have been a very meticulous examination;  
6 is that correct?

7 A. I had to look for it for a little while to find the  
8 numbers. Yes, sir.

9 Q. In fact, you examined every inch of the gun looking for  
10 the number?

11 A. No. Because -- I didn't -- it was in the last place that  
12 I looked, but I didn't have to look over that much of the gun.

13 Q. So how long did it take you to find it?

14 A. I don't know for sure. My recollection would be maybe  
15 15, 20 minutes.

16 Q. All right. Fifteen or 20 minute under the magnifying  
17 glass?

18 A. Yes, sir.

19 Q. And Ms. Holder is with you?

20 A. No, sir.

21 Q. You're by yourself? She's not there yet?

22 A. She's not there yet.

23 Q. Okay. So you find it and obviously you immediately call  
24 the ATF inspectors and say, hey, I found the serial number?

25 A. No, sir.

1 Q. You didn't?

2 A. No, sir?

3 Q. Why not?

4 A. Because it wasn't a deal.

5 Q. It wasn't a deal?

6 A. That's correct.

7 Q. What do you mean by that?

8 A. When they were doing the inventory compliance inspection,  
9 as I said, it came down, as I've already repeated two or three  
10 times, and they weren't very excited -- they weren't excited  
11 about it at all, and so I wasn't excited about it. If I had  
12 thought that it was important I would have called them. I  
13 called them on everything else.

14 Q. All right. That somewhat contradicts the testimony of  
15 the two inspectors the last couple days. Do you remember that?

16 A. Yes, sir.

17 Q. Okay. In fact, it's diametrically opposed --  
18 diametrically against what they said; is that right?

19 A. I wouldn't classify it that way, but I'm not going to  
20 argue with you about it.

21 Q. Classify it.

22 A. I think there are some similarities and some differences.  
23 They testified that they looked for it longer than I remember  
24 that they looked for it. If it had been an illegal gun they  
25 would have taken it.

1 Q. But you know that's not true.

2 A. No, sir.

3 MR. MARTIN: Your Honor, I object to that.

4 THE COURT: Will be overruled.

5 Q. (By Mr. Kumi ega) You know that's not true, Mr. Friesen.

6 A. No, sir.

7 Q. They are not law enforcement, they are administrative --

8 THE COURT: He says he doesn't know.

9 MR. KUMI EGA: All right.

10 Q. (By Mr. Kumi ega) Then if there was no concern to you,  
11 why did you go downstairs and spend 20 minute of your life  
12 looking for a serial number?

13 A. Because I thought it was the prudent thing to do.

14 Q. And you found it?

15 A. Yes, sir.

16 Q. And the prudent thing to do was call the inspectors?

17 A. In retrospect, I certainly wish I would have.

18 Q. Well, I understand that, but the prudent thing to do  
19 would have been call them immediately; is that not correct?

20 A. Yes, sir. I believe it would have been.

21 Q. All right. Now, you had opportunities later on during  
22 the search warrant to again do the prudent thing to do; is that  
23 right?

24 A. I don't know what you're talking about.

25 Q. You could have told somebody about finding the serial

1 number.

2 A. I did.

3 Q. Who?

4 A. I told Mr. Knopp.

5 Q. The testimony of Mr. Knopp is different.

6 A. I told him that the number was on it, that the girls  
7 missed it.

8 Q. Right. But they didn't, because you couldn't even find  
9 it.

10 A. I didn't look for it that day, but that doesn't change  
11 the fact that even if I had, I may have missed it at the same  
12 time. I'm not faulting their eyes, I'm just saying that the  
13 serial number was on it when it was in their hands, and I told  
14 him that.

15 Q. The testimony from Mr. Knopp, and you can correct me if  
16 I'm wrong, is that you said the girls were in a hurry and they  
17 missed the serial number.

18 A. Yes, sir.

19 Q. That's not true.

20 A. That's my recollection of what happened, sir.

21 Q. Okay. All right. So you find the number through the  
22 magnifying glass, and you attempt to do what next?

23 A. I attempt to take off some of the paint.

24 Q. All right. Is the number in the same condition as when  
25 you found it?

1 A. Right now?

2 Q. Is it the same goofy configuration?

3 A. If by "goofy" you mean up and down.

4 Q. Up and down, all over the place.

5 A. Yes, sir. The serial numbers themselves have not been  
6 moved.

7 Q. Same serial number?

8 A. Same serial number, same placement.

9 Q. Your testimony is that you never added anything on, you  
10 never pounded it in, used a point or anything like that, you  
11 just recovered the numbers?

12 A. Not quite.

13 Q. All right. Okay.

14 A. I did use a point in terms of a nail punch on the rag  
15 that I had to attempt to take out a little bit of the paint  
16 that was inside these numbers, so I don't want to represent to  
17 you that I didn't use a point at all. I did use a nail punch  
18 to try to take some of the paint out of the numbers. Other  
19 than that, if you're asking me if I put any impressions into  
20 this, the answer is absolutely not.

21 Q. The only part of the firearm you used, I guess -- what  
22 did you use, please, to get out the serial number?

23 A. Some kind of paint remover and just an old shop rag.

24 Q. All right. Acetone?

25 A. I don't have a clue.

- 1 Q. You have no clue?
- 2 A. No clue.
- 3 Q. You've blued guns before; is that correct?
- 4 A. Yes, I have blued some guns.
- 5 Q. And you blued a lot of guns; is that right?
- 6 A. Three or four maybe.
- 7 Q. Did you do it in your residence or at your office?
- 8 A. It would have all been done at my residence, sir.
- 9 Q. You have a blueing tub to do that?
- 10 A. No, sir.
- 11 Q. How do you blue a gun?
- 12 A. How do I personally or how is it supposed to be done
- 13 properly?
- 14 Q. Both.
- 15 A. To do it properly you need to strip off all of the old
- 16 paint, preferably, or all of the old covering, whatever it is,
- 17 preferably like with something like a sandblaster. Make sure
- 18 you don't get any of the -- any solvents or any even any skin
- 19 on the metal parts, and then immerse it into a blueing
- 20 solution, and then take it out and have it cured, is my
- 21 understanding of the proper way to do that.
- 22 Q. Okay. You didn't follow -- you did it a different way?
- 23 A. Correct.
- 24 Q. Okay. Were these your personal firearms or your business
- 25 firearms?

1 A. Personal firearms.

2 Q. So you diminished the value of your personal firearms by  
3 doing it in an inappropriate way?

4 A. No, sir. The only guns that I would have done that to  
5 would have been older guns. I enjoy trying to refurbish older  
6 guns, and I wouldn't have done it to any gun that didn't need  
7 it.

8 So for example, I know I did one shotgun at the same time  
9 that I did this (indicating). For that it was a gun that I was  
10 going to be using. And I took off all the old paint, cleaned  
11 it up with alcohol, let it dry, and then there is a cold  
12 blueing solution that you can put on that you put on with  
13 cotton, a big cotton swab or something, and you just put it on  
14 and you wipe it off. The problem with that is you don't get  
15 nearly as even a coat as if you're immersing it.

16 Q. Mr. Friesen, you're somewhat -- I know your earlier  
17 testimony but listening to you now, you're somewhat kind of an  
18 aficionado, or you know something about guns; is that right?  
19 Not just shooting them, but how to restore them?

20 A. I have watched a lot of my friends do it the way it's  
21 supposed to be done. I don't know a lot about fixing them.

22 Q. Okay. Now, you find this and then you're trying to bring  
23 the serial number out, right?

24 A. Trying to take the paint off so it shows more.

25 Q. Okay. And that Sten gun is the same Sten gun you got

1 from Alabama in '96, right?

2 A. This is the same gun that I got in February 26th, 1996.

3 Q. And you have no recollection of the serial number when it  
4 came from the, I guess from the postman and you opened it up  
5 and said here is my little baby Sten machine gun?

6 A. I don't understand your question. I'm sorry.

7 Q. The question is: Did you match the paperwork with the  
8 Sten machine gun and you found the serial number when you got  
9 it back in '96?

10 A. I am sure that I did.

11 Q. Okay. And you testified you hardly used the gun at all,  
12 only for a prop, you never shot it?

13 A. I can't say for sure that I never shot it, but I have no  
14 recollection of ever shooting this. That is correct.

15 Q. And you're explaining that you can't find the serial  
16 number not because it's rusted over, but because the paint is  
17 over it; is that correct?

18 A. At which time?

19 Q. When you were looking for it under the magnifying glass.

20 A. After the compliance inspection?

21 Q. No, during the compliance inspection.

22 A. I'm sorry. Maybe I'm missing something here. I'm not  
23 trying --

24 Q. Maybe I'm missing something here.

25 THE COURT: Just ask a question.

1 Q. (By Mr. Kumi ega) Was there rust on the gun?

2 A. During the compliance inspection?

3 Q. No. When you looked at it in the magnifying glass  
4 looking for the serial number.

5 A. After the compliance inspection?

6 Q. You said that during the compliance inspection you found  
7 the serial number.

8 A. If I did, I misspoke. Let me restate what I said.

9 Q. Okay.

10 A. First off, just to clarify for me, are you talking about  
11 the compliance inspection going from 2/19/03 to 3/4/03?

12 Q. Yes.

13 A. Okay. If that's the definition of it, then I believe  
14 that during that period of time, probably around the 29th --  
15 well, couldn't be the 29th -- would have been around the 1st of  
16 March, probably is the approximate date of when I took some of  
17 the paint off so that the serial number was clearer.

18 Q. You took the paint off, there was no rust?

19 A. The rust had been taken care of back in 2000, 2001.

20 Q. Okay. I didn't know that.

21 A. I'm sorry. Maybe I explained something wrong.

22 Q. You covered, you covered the serial number up in 2001?

23 A. Yes, sir. Approximately.

24 Q. Okay. And how did you do that?

25 A. After I had moved my safe to the house, to the new house

1 that I was living in, a couple years after that, roughly 2000,  
2 2001, is when I noticed that some of the guns were rusting.  
3 That's when I made the modifications to the safe setup that I  
4 had, and that's when I took the -- I sent off for that DVD, or  
5 VCR or whatever it was, so that I could learn how to  
6 disassemble it because it came with absolutely no instructions.  
7 I took it apart, I used rust remover, and I buffed the rest of  
8 the rough -- excuse me -- rust off. And at that point is when  
9 I spray-painted it, and at that point is when I obviously  
10 covered the serial number on the gun.

11 Q. Okay. This is back in 2001?

12 A. 2000, 2001, somewhere in that time frame.

13 Q. And what type of paint did you use?

14 A. I used the kind of paint that you would use, like, on a  
15 charcoaler, the flat black nonreflective. And the reason, the  
16 sole reasoning for that was that they are supposed to be good  
17 up to, like, 1200 degrees or something, because I went looking  
18 for a can somewhat like it just the other day just to see it.  
19 And so I used something that was heat-resistant to paint it  
20 flat black.

21 Q. Okay. And after you finished, was it spray paint or just  
22 a brush?

23 A. Spray paint, sir.

24 Q. You did the whole gun?

25 A. I don't believe that I did this part (indicating). I

1 think at the time I had a steel pistol grip on it, and I don't  
2 think I did either one of these. I think I just did this  
3 portion.

4 Q. Mr. Friesen, why would you not do the whole gun, only  
5 part of it, even just for aesthetic reasons?

6 A. Well, because this (indicating) wasn't on it at the time.  
7 This was not on it. It was separate from it. This was the  
8 only part that was a unit at that point.

9 Q. Okay. After you did that one little portion of the gun?

10 A. No. I did every place there where was rust, and there  
11 was rust -- the finish was really bad when I got it, and there  
12 was rust off and on through the whole gun.

13 Q. You didn't polish the gun, you just pulled off the rust  
14 in spots with an abrasive?

15 A. No, sir.

16 Q. Tell us about that.

17 A. I had some rust remover, some kind of liquid rust  
18 remover, and after that I have a polisher, kind of a buffer  
19 polisher that you can put some kind of rubbing compound on that  
20 I went over it to take off the rest of it. I don't know how to  
21 work with metal very well.

22 Q. All right. So you did this on your own?

23 A. Yes, sir. I can't take it to anybody, it's illegal.

24 Q. Well, you can take it to a gunsmith.

25 A. But I can't leave it there.

1 Q. If you do the proper paperwork you can take it to a  
2 gunsmith.

3 A. You're absolutely right, sir. I apologize.

4 Q. You didn't do the proper paperwork, you disregarded it?

5 A. I did not send it out to be done.

6 Q. You did it by yourself in your residence?

7 A. In where?

8 Q. In your residence?

9 A. Yes, sir.

10 Q. Anybody watch you do it?

11 A. Not that I recall.

12 Q. Any instructions on how to do that?

13 A. What do you mean?

14 Q. Is there instructions? You said you're not well-versed  
15 in this type of metal work. Was there a booklet or a video or  
16 something to aid you?

17 A. I have some videos at home that I have watched to get  
18 some general ideas of working with guns. That's why I did it  
19 the way I did it.

20 Q. Okay.

21 A. I'm not saying it's the right way. It obviously wasn't  
22 the right way.

23 Q. All right. It begs the question then: After you  
24 finished it could you see your serial number?

25 A. I don't believe I did.

1 Q. Then why not?

2 A. My goal at the time was to get rid of the rust.

3 Q. Mr. Friesen, you're covering up the serial number, you  
4 know the serial number is the DNA of the gun.

5 A. If you want to call it that, yes, sir.

6 Q. Well, it is, isn't it?

7 A. I knew that this was the same gun that I had purchased  
8 that had been shipped to me.

9 Q. Mr. Friesen, you covered up the serial number?

10 A. Yes, sir, I did.

11 Q. You did it on purpose; is that right?

12 A. No, sir. Absolutely not.

13 Q. All right. And this happened now in 2003?

14 A. I believe 2000 to 2001, if I'm guessing. But it's just a  
15 guess.

16 Q. Two years before the inspection of the, by the compliance  
17 people?

18 A. Yes, sir.

19 Q. Okay.

20 A. Roughly.

21 Q. Okay. And when they asked you to point out the serial  
22 number, you didn't remember and say, oh, my gosh, I painted  
23 over it?

24 A. I can't answer that question the way you asked it,  
25 because I don't remember them asking me to point out the serial

1 number.

2 Q. All right. In truth and fact, Mr. Friesen, on the 19th,  
3 after the inspectors couldn't find the serial number, you went  
4 somewhere and placed serial numbers on there, because you can't  
5 find your other Sten Mark II machine gun; is that true?

6 A. That's absolutely not true, sir.

7 Q. You loaned out your silencer; is that correct?

8 A. To the Edmond Police Department, yes, sir.

9 Q. Could you not have loaned out your machine gun and you  
10 couldn't get it back in time?

11 A. Absolutely not. There is no chance.

12 Q. Why not? You loaned out the silencer without proper  
13 paperwork.

14 A. I checked it out on my NFA A&D records book, and it was  
15 checked out to a police department, a police officer for a  
16 police department.

17 Q. My understanding is that your A&D book, when you gave it  
18 to the inspectors, were -- they're a mess.

19 A. We're talking about two different records here, sir.

20 Q. All right.

21 A. We're talking about the difference between NFA records  
22 and A&D records, FFL records.

23 Q. Guns records are gun records. One is a different  
24 category because one is an automatic weapon and the other ones  
25 are for your buying and selling. That's for your personal

1 di sposition; is that correct?

2 A. I had them set up in two separate books in two separate  
3 places, sir.

4 Q. You didn't keep them together?

5 A. No, sir.

6 Q. All right. All right. The 19th, or I'm not exactly sure  
7 when, but you now are trying to recover the serial number from  
8 the stuff you painted over, right?

9 A. Yes, sir.

10 Q. You didn't tell anybody that, you didn't tell the  
11 inspectors?

12 A. No, sir.

13 Q. You never told Mr. Knopp?

14 A. No, sir.

15 Q. Okay. And tell us how you did that. You don't remember  
16 what --

17 A. I don't remember what solvent I used.

18 Q. How long did it take you to do that?

19 A. Seven, eight minutes.

20 Q. Seven or eight minutes? That's all?

21 A. Yes, sir.

22 Q. And Ms. Holder assisted you?

23 A. She didn't assist me. She was just sitting there  
24 talking, discussing ideas about the stained glass for the  
25 house.

1 Q. Okay. You recover the serial number, and do you do any  
2 other cosmetic work on the firearm?

3 A. No, sir.

4 Q. Okay. You don't remember how much that firearm, you paid  
5 for it; is that right?

6 A. I don't.

7 Q. Do you have any idea what it's worth today?

8 A. Just from what I've heard the testimony here today.

9 Q. But you try to sell it later on to get it out of your  
10 hands back in February of '04, is that right, of '04?

11 A. Once again, I can't answer the question the way you asked  
12 it.

13 Q. You tried to sell it in '04, that Sten gun?

14 A. Yes, sir.

15 Q. Not your other two machine guns, just that Sten gun; is  
16 that right?

17 A. No, sir.

18 Q. Okay. You're going to sell the Micro Uzi, right?

19 A. The Micro Uzi.

20 Q. What about your Cobray?

21 A. No, sir.

22 Q. Okay. Now, after you recover the serial number, what do  
23 you do with the gun?

24 A. Put it in the safe.

25 Q. Which one?

1 A. My home residence safe.

2 Q. Okay. And you remember Ms. McGrew at the exit interview  
3 asking you about an Armor vault, or, excuse me, asking you  
4 about where you kept your other guns in your office?

5 A. No, sir.

6 Q. You don't remember that? That's Count 2 of the  
7 indictment. You don't remember that?

8 A. I know what Count 2 of the indictment is.

9 Q. Okay.

10 A. I had disclosed the location of the six SKS guns on the  
11 original date of the inspection, 2/19; however, it would have  
12 been difficult to go there where they were without getting  
13 extremely dirty. When they came back, they made the  
14 appointment to come back to look at the specific serial numbers  
15 on the SKSes, and they were dressed in jeans at that time when  
16 they took those serial numbers down.

17 Q. By the way, whatever happened to the Gatling gun, the SKS  
18 assault rifles? Who did you sell them to or where are they at?

19 A. They are now at H&H Gun Range.

20 Q. You sold them to H&H?

21 A. I did not sell them to H&H. I don't know whether H&H has  
22 sold them yet. When there is a gun I no longer want, instead  
23 of having people come over to my house and look at guns, I give  
24 them to them and they take a commission for selling them.

25 Q. Okay. H&H, that's the one on I-40, right?

- 1 A. Yes, sir.
- 2 Q. By which street? I-40 and what's the cross street?
- 3 A. Meridian, I think, would be a cross street.
- 4 Q. Can they sell NFA firearms?
- 5 A. They can now; they didn't use to.
- 6 Q. Okay.
- 7 A. But the SKS setup is not an NFA firearm.
- 8 Q. All right. Now, Ms. McGrew asked you about where you
- 9 store your firearms in your place of business where you sell
- 10 guns?
- 11 A. No, sir.
- 12 Q. She didn't?
- 13 A. No, sir.
- 14 Q. What does she ask?
- 15 A. She asked me if I had guns in any other locations.
- 16 Q. And you said the stuff on the second floor; is that
- 17 right?
- 18 A. She went through the places that we had disclosed guns,
- 19 that we had found the guns and looked at them, and she said do
- 20 you have any other places which you store guns, and I said no.
- 21 Q. All right. You did not tell the inspector about the gun
- 22 vault behind the hidden library bookshelves on the first floor
- 23 of Lobo Arms, your law office?
- 24 A. I did not.
- 25 Q. Why not?

1 A. There were none of my guns in there, my personal guns,  
2 nor were there any Lobo Arms guns in there.

3 Q. There were guns in there though; is that right?

4 A. Not on the 19th. There was on the 4th, but not on the  
5 19th.

6 Q. How do you know there was guns in there on the 19th but  
7 not on the 4th?

8 A. Because on the 20th --

9 Q. Of February?

10 A. -- of February, Jim Foster came to me and told me that he  
11 wondered if he had got me in trouble, and I say why. As it  
12 turns out, a couple months earlier, a client of ours had asked  
13 him to go to her residence because she was afraid of her  
14 husband. She lived in Nichols Hills, he went to the Nichols  
15 Hills --

16 Q. Is that Anita Johnson?

17 A. Annette Johnson.

18 Q. Annette Johnson?

19 A. Yes, sir.

20 Q. And that's happening here (indicating)?

21 A. Yes.

22 Q. Okay. Continue.

23 A. He went to the Nichols Hills Police Department, got a  
24 Nichols Hills police officer, went over to her residence,  
25 picked up the guns, I think also escorted her to a couple of

1 places, I'm not sure, and brought the guns back. I wasn't  
2 there when he came back and he put the guns in a safe in his  
3 building which is to the immediate south and west of my  
4 building. On the 20th, when we were talking about that, he  
5 thought he had gotten me in trouble because he had a couple of  
6 guns that the office was supposed to have that he had forgotten  
7 about and didn't bring over.

8 Q. Okay. This happened on the 20th of February 2003?

9 A. Yes. So he brought them over, we went into the safe on  
10 that day, there were no other guns on the 19th. We put Annette  
11 Johnson's two guns in there on the 20th of February.

12 Q. All right. Let me ask you this: Did you use the secret  
13 Armor gun safe to store some of your personal guns, anybody's  
14 guns during the time you were an FFL?

15 A. The only guns that were -- sorry. Yes is the answer to  
16 your question.

17 Q. You kept -- it's a gun safe; is that right?

18 A. It is -- it's a safe. It can be used for guns. It  
19 certainly has hooks on the front door.

20 Q. It's a gun safe?

21 A. I'm not arguing with you.

22 Q. You put guns in a gun safe, right?

23 A. Among other things.

24 Q. Right. So you kept some of your firearms, personal,  
25 business, whatever, client firearms, in the Armor vault behind

1 the bookshelf: Yes or no, Mr. Friesen?

2 A. Including all those categories you're asking, the answer  
3 is yes.

4 Q. All right. All right. So at this point, when the  
5 inspector asks you on March 4th, you're not telling Ms. McGrew  
6 about differentiations of guns in your mind, you're just saying  
7 there ain't no other guns in my business, Lobo Arms, only on  
8 the second floor; is that correct?

9 A. Not exactly.

10 Q. Okay. Explain that, please.

11 A. During the time I was an FFL dealer I never kept personal  
12 guns in the secret room on the first floor of my office. The  
13 only guns --

14 Q. Why not?

15 A. Because I couldn't.

16 Q. Unless they're segregated?

17 A. Well, no, I couldn't have even segregated them over at  
18 the office, because the office was the location of the  
19 business, so I couldn't even have segregated them there because  
20 it was the business. Any firearm, personal firearms that I  
21 would have had there would have had to have been disclosed  
22 because it was the business address.

23 Q. Okay. You kept the majority of your firearms in the  
24 off-site location at the residence?

25 A. At my residence. Yes, sir.

1 Q. All right. So when the inspector asked you on March the  
2 4th if you keep guns other than the second floor, you did not  
3 reveal that to her; is that correct?

4 A. The question that she asked me was do you have any guns  
5 anywhere else here?

6 Q. Other than the second floor?

7 A. I don't remember her saying second floor, but she did  
8 enumerate the various places that we had found guns --

9 Q. All right.

10 A. -- in the office, which was all on the second floor.

11 Q. All right.

12 A. And I told her no, I did not. I had neither personal  
13 guns nor business guns anywhere else on -- in that office.

14 Q. Did she ask you four times?

15 A. I remember her asking me once. I'm not saying she  
16 didn't, I just remember her asking me once. Those were client  
17 guns only in there.

18 Q. But in truth and fact, there were guns in there?

19 A. There were guns in there, client guns in there after the  
20 20th of February.

21 Q. All right. And she asked you in March?

22 A. About where I had my guns.

23 Q. She asked you -- well, she asked you in March and you  
24 said there were guns in there on the 20th?

25 A. She asked me do you have guns, do I, Doug Friesen,

1 individually, and as Lobo Arms have, guns anywhere else.

2 Q. Okay. Now, during this period after they examine the  
3 firearm, the Sten, you took it back to your residence. That's  
4 right?

5 A. After the 19th sometime.

6 Q. Okay. Now, the next event on the chart is you tried to  
7 sell the gun six months later or something? Less than that,  
8 right?

9 A. Close to a year later, but I think in February '04 and  
10 the inspection was in February of '03, but I believe that Mr.  
11 Bugg, Dr. Bugg called me late November, maybe early December of  
12 '03.

13 Q. And then you tried to work out a deal to sell the guns,  
14 sell the Sten machine gun, the Micro Uzi, and the silencer?

15 A. For the Micro Uzi.

16 Q. All right. Between March '03 and the search warrant 18  
17 months later, you're using your hidden room to keep guns,  
18 right?

19 A. Yes, sir.

20 Q. Okay. What type of guns are you using, please?

21 A. Until I relinquished my FFL, the only guns that were in  
22 there were client guns. I have looked at the list -- when the  
23 search warrant was executed they confiscated all of the guns in  
24 the safe at the office. Maybe one or two of those is mine, I'm  
25 not sure. The vast majority of the guns that were there are

1 client guns.

2 Q. Okay. Did you -- your client guns, how did you enter the  
3 client guns? Is there a file?

4 A. In their individual -- in the clients' individual files.

5 Q. Some of the guns were payment for services rendered?

6 A. I think there was one gun in there that may have been  
7 payment for services rendered.

8 Q. Okay. Now, on June 10, 2004, agents come to your house  
9 to do the search warrant; is that right?

10 A. House and residence. Yes. I'm sorry. House and office.  
11 Yes, sir.

12 Q. We flashed Government's Exhibit 3.2. Let's look at 3.3,  
13 please. Do you see that, sir?

14 A. Yes, sir.

15 Q. That's the machine gun, right?

16 A. That is the Sten, the front of the Sten machine gun, this  
17 part right here (indicating).

18 Q. Any protective covering over it so no more rust gets on  
19 it?

20 A. It won't rust anymore. There is the -- none of the guns  
21 are rusting because there is this (indicating) closing it off,  
22 and if you, you can just barely make it out, but you see back  
23 here this line? That line there, you can see it better in the,  
24 in the photos, but that line is the electric cord that's  
25 running down from which I have attached all of the, all of the

1 dehumidifiers, if you will.

2 Q. All right.

3 A. You can see it a lot better on the small screen than you  
4 can up there. It's really visible here. And, in fact, on the  
5 small picture here, you can actually see the dehumidifier  
6 that's in there. If you want me to point it out I can.

7 Q. Sure.

8 MR. KUMIEGA: Your Honor, may he leave the bench?

9 THE WITNESS: May I, your Honor?

10 THE COURT: Yes.

11 THE WITNESS: Right here is the cord that is running  
12 down that I have the dehumidifiers on, and right here is the  
13 front end, you can see this golden thing here. That's the  
14 dehumidifier that I put in there. I've got one there  
15 (indicating), you can see this one here. This is the one on  
16 the second shelf here, and there's one at the very base. Both  
17 this and this are dehumidifiers that are connected, all three  
18 were plugged into this extension cord.

19 Q. (By Mr. Kumienga) Let look at Government's Exhibit 3.4,  
20 please. That's a real good picture of the dehumidifier.

21 A. This strip here -- that strip is the extension cord.

22 Q. This is the dehumidifier?

23 A. Yes, sir.

24 Q. This is your machine gun?

25 A. Yes, sir.

1 Q. Okay.

2 A. That's the Sten. Next to it is the Micro Uzi on top of  
3 it.

4 Q. Right here (indicating), right?

5 A. Yes, sir.

6 Q. And where is your Cobray machine gun?

7 A. It's not in that picture.

8 Q. All right. Is it in the vault?

9 A. Yes, sir.

10 Q. Okay. Now, Government's Exhibit 3.1 is a video, a VHS  
11 tape on how to build the Sten Mark II or Mark V machine gun  
12 from a kit; is that correct? 3.1?

13 A. If that's the number, then that's the number, sir.

14 Q. When did you get that, sir?

15 A. I don't recall.

16 Q. Okay. Again, why did you want it?

17 A. So I could take the Sten apart and take care of the rust  
18 that was on it.

19 Q. You said the rust was where, now, on that machine gun?

20 A. A little bit of everywhere.

21 Q. Explain where everywhere was, please.

22 A. There were parts -- there was rust showing up all over  
23 the receiver, there was some on this part (indicating), and  
24 there was some on this part. This is the magazine well and I  
25 guess this would be called the trigger housing or something.

1 But there was rust on all of this.

2 Q. Anywhere else?

3 A. Pretty much everywhere. I don't remember there being,  
4 there could have been some, but I don't remember there being  
5 any on internal parts.

6 Q. All right. You were saying that you never, you never  
7 examined it for rust inside the gun?

8 A. Certainly I did, sir.

9 Q. All right. And did you find rust inside the gun?

10 A. Yes, sir.

11 Q. And you got the Sten gun when, please, I mean, the tape  
12 when?

13 A. I don't know. Sometime before I tore this apart.

14 Q. You needed the Sten VHS tape so you can break down your  
15 gun and refurbish it?

16 A. I like to have instructions on how to do that. It's not  
17 a weapon that I'm familiar -- a firearm that I'm familiar with.  
18 I was afraid if I took it apart I wouldn't get it back together  
19 right.

20 Q. You take it apart using the VHS tape?

21 A. Yes, sir.

22 Q. That's when you said in '03 you fixed the rust; is that  
23 right?

24 A. I believe I said somewhere around 2000, 2001. Somewhere  
25 in that time frame.

1 Q. And you did fix rust spots inside the gun?

2 A. I'm sure I did.

3 Q. You don't remember?

4 A. There was rust all over it, on the inside and the  
5 outside.

6 Q. All right. If you look at the inside of the barrel, Mr.  
7 Friesen, what condition would you say it's in?

8 A. Inside of the barrel?

9 Q. Yeah.

10 A. Appears to be a little dirty, but other than that it's  
11 not too bad.

12 Q. Is that your handiwork inside there by taking out the  
13 rust?

14 A. I don't remember the inside of the barrel itself having  
15 any rust.

16 Q. Okay. Government's Exhibit 3.13 are documents and  
17 instructions for making a machine gun?

18 A. Yes, sir.

19 Q. Okay. They appear to be kind of old; is that right?

20 A. I would imagine.

21 Q. Okay. When did you get them, please?

22 A. If I recall the documents, if we're talking about the  
23 same set of documents, I believe those documents go to the  
24 MK11.

25 Q. Okay.

1 A. And I would have gotten them sometime around the same  
2 time that I purchased my MK11.

3 Q. It's '95 or '94?

4 A. '94, '95 time frame.

5 Q. That's when you took the gun to Arizona and learned about  
6 machine gun firing?

7 A. I purchased it sometime before that, but yes, sir.

8 Q. Do you know where the serial number on the MK11 is?

9 A. I don't have a clue.

10 Q. You don't?

11 A. No, sir.

12 Q. Do you know where the serial number on the Cobray is at?

13 A. On what?

14 Q. The Cobray, your other machine gun.

15 A. The MK11 and the Cobray are the same thing.

16 Q. What's the name of the other gun?

17 A. Uzi.

18 Q. All right. Do you know where the serial number on that  
19 firearm is?

20 A. No, sir.

21 Q. Okay. You have the appropriate paperwork for it, though,  
22 right?

23 A. Absolutely. Well, no, sir. I'm sorry. No, I don't.

24 MR. KUMIEGA: Can we show Government's Exhibit 3.13,  
25 please?

1 Q. (By Mr. Kumi ega) Do you know what that is, sir?

2 A. No, sir.

3 Q. You haven't seen that before?

4 A. I didn't say that, I just don't know what it is.

5 Q. It was found in your residence, excuse me, in your --  
6 yeah, in your residence.

7 A. Okay.

8 Q. It's your item, if you know what it is.

9 A. No.

10 MR. KUMI EGA: Can we get to page 10, please.

11 Q. (By Mr. Kumi ega) Mr. Friesen, this was found in your  
12 residence.

13 A. Yes, sir.

14 Q. Do you know what that is?

15 A. Yes, sir.

16 Q. What is it?

17 A. Those are parts lists for a semi-automatic MK11, and a  
18 full automatic MK11.

19 Q. Okay. And you had an MK11; is that right?

20 A. I have both a semi-automatic and a full-auto.

21 Q. Semi here and automatic. When did you compile this?

22 A. When?

23 Q. Yeah.

24 A. Shortly before the search.

25 Q. Okay. Before -- just before the search in '04?

1 A. Sometime fairly close before then. Yes, sir.

2 Q. Okay. And for what reason?

3 A. I had heard that -- I had been to the annual big gun  
4 show, the gun trade show. It was down -- I don't remember -- I  
5 don't remember what year, but I had been down there, and they  
6 indicated that they thought that RPB, which is the company that  
7 made these, was probably going to go out of business.

8 Q. Okay. So you were getting these spare parts?

9 A. These are spare parts.

10 Q. Mr. Friesen --

11 A. Sorry.

12 Q. No, that's okay. I'm thirsty too.

13 The gun that's on the witness stand, is that basically in  
14 the same condition that when the government seized it in June  
15 2004?

16 A. The paint was a lot better and reflector was not bent  
17 over, but in terms of the configuration, it is the same as when  
18 they seized it.

19 Q. What is different about the paint?

20 A. The paint that is approximately right here (indicating)  
21 that you can see that's just solid black is about the way this  
22 entire gun looked when it was seized.

23 Q. Okay. You heard the testimony of the inspectors on the  
24 first day of trial?

25 A. Yes, sir.

1 Q. Okay. And on the day of the search warrant, they found  
2 12 firearms in your vault; is that right?

3 A. At the office?

4 Q. Right.

5 A. Yes, sir.

6 Q. Okay. And one of the firearms was Annette Johnson's  
7 firearm; is that right?

8 A. Two of the firearms that were there are firearms I, that  
9 Jim picked up from Annette Johnson.

10 Q. All these guns here, did you sell all -- I mean, these  
11 firearms that we have, you can account for each one of them,  
12 where they came from?

13 A. I believe so.

14 Q. Can you? And --

15 A. I mean, I can't as I sit here today.

16 Q. Okay.

17 A. But I believe that we have records at the office for  
18 where each one of them goes, where we got them from.

19 Q. And would it be a fair statement, sir, that when the  
20 inspectors came out on 19th of February '03, that your records  
21 were a mess?

22 A. There are two sets of records. The NFA records were  
23 together and were nice and neat. The other records, my federal  
24 firearms records were, the book was extremely dirty. The  
25 records inside it were in order.

1 Q. Okay.

2 A. The records inside it were in order, in chronological  
3 order, everything was numbered. I don't know what they  
4 consider to be a mess, but even from the copies that you have  
5 given us, everything correlates, everything is numbered in  
6 there.

7 Q. Well, the inspectors testified that they couldn't match  
8 your records with the hands-on inventory. Do you remember the  
9 testimony of Ms. Rowden and the summary chart?

10 A. Yes, sir.

11 Q. Right. Is that not true?

12 A. She was inaccurate in attempting to match them up.

13 Q. The point is on March 4th, when they did the inspection,  
14 they concluded it, you didn't have the guns, you didn't show  
15 them those firearms; is that correct?

16 A. The firearms that were owned by Lobo Arms, the four  
17 firearms owned by Lobo Arms that she said she couldn't find,  
18 there are 4473s in that booklet for three of them. The fourth  
19 one, the Remington 700 rifle that is actually .308 caliber that  
20 she wrote it down .309, had been sold to CLEET, and the  
21 paperwork is in there reflecting the sale of that firearm to  
22 CLEET. So all four of the guns owned by Lobo Arms were  
23 accounted for and in that booklet, sir.

24 Q. That's not the booklet you gave them, because their  
25 testimony was the book, the A&D book was incomplete, you left

1 out the whole disposition side of the book.

2 A. No, sir.

3 Q. You didn't?

4 A. No, sir.

5 Q. Okay.

6 A. And the 4473s were in that booklet anyway to be matched  
7 up.

8 Q. Okay.

9 A. They just missed them.

10 THE COURT: Counsel approach.

11 (The following was had at the bench, out of the hearing of  
12 the jury:)

13 THE COURT: It's five o'clock. I was thinking about  
14 quitting, but I would like to quit at a normal time. How much  
15 longer do you anticipate?

16 MR. KUMI EGA: I think I'm almost done.

17 THE COURT: What is almost done?

18 MR. KUMI EGA: Two minutes, a minute.

19 THE COURT: Okay.

20 MR. KUMI EGA: Very short.

21 THE COURT: Okay.

22 MR. MARTIN: Very short.

23 THE COURT: I would like to do it. I've got to get  
24 home pretty quick.

25 MR. MARTIN: Okay.

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

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

4 THE COURT: You may redirect.

5 MR. MARTIN: Briefly, your Honor.

6 REDI RECT EXAMI NATION

7 BY MR. MARTIN:

8 Q. Mr. Friesen, after the firearm was seized from you, did  
9 the ATF attempt to forfeit that firearm?

10 A. Yes, sir.

11 Q. And did -- let me ask you quickly to look at Exhibit No.  
12 53.

13 MR. KUMIEGA: Objection. It's not part of the direct  
14 testimony, your Honor. This is new information.

15 MR. MARTIN: He's had this exhibit.

16 THE COURT: It's beyond the scope, isn't it?

17 MR. MARTIN: I forgot to go into it on direct, your  
18 Honor. It's just an exhibit that they had and knew about and I  
19 was trying to get it introduced.

20 THE COURT: We're probably going to get into a whole  
21 new subject, but I don't see it as relevant. What's the  
22 relevance?

23 MR. MARTIN: It's the firearm, that firearm right  
24 there, your Honor.

25 THE COURT: But what's the relevance?

1 MR. MARTIN: Well, I can go on without it, your Honor.  
2 That's fine.  
3 Q. (By Mr. Martin) Let me ask you, Mr. Friesen, if you  
4 would look at Exhibit 30 in the defendant's book there.  
5 A. Yes, sir.  
6 Q. And Exhibit 31.  
7 A. Yes, sir.  
8 Q. Do those depict the holes that you were talking about in  
9 that safe in the basement?  
10 A. Exhibit 30 does.  
11 Q. And what does 31 depict?  
12 A. Thirty-one is the hole and the extension cord covered up  
13 with camouflage duct tape.  
14 Q. And that's where the heat elements that are in that  
15 basement, in your safe in the basement, right?  
16 A. Yes, sir.  
17 MR. MARTIN: Move introduction of Defendant's 30 and  
18 31.  
19 MR. KUMIEGA: We're not going to object.  
20 THE COURT: Will be admitted.  
21 Q. (By Mr. Martin) These are those exhibits that we're  
22 talking about that show, this is 30 that shows the hole in the  
23 top of the safe that you said dropped it in there?  
24 A. Yes, sir.  
25 Q. After you put it in, Exhibit 31 shows where you taped it

1 up?

2 A. Yes, sir.

3 Q. Okay. And I think the government made reference to the  
4 fact that you did not have --

5 MR. MARTIN: If we could flip up Government's Exhibit  
6 3.5.

7 Q. (By Mr. Martin) In this picture, sir, you can't see that  
8 magnifying glass, can you?

9 A. I can't be for sure. There is some white thing over here  
10 (indicating), but I don't know whether that's it or not.

11 Q. Okay.

12 MR. MARTIN: Can we have 3.7, please, Government's  
13 Exhibit?

14 Q. (By Mr. Martin) I'm going to ask you, sir, do you see an  
15 item --

16 MR. MARTIN: Could we focus in on this area right here  
17 where that horn is?

18 Q. (By Mr. Martin) You see that horn I'm pointing at?

19 A. Yes, sir.

20 Q. Okay. There's something blocking part of that view. Do  
21 you see that, sir?

22 A. That is the lamp.

23 Q. And this is the picture that was taken the day of the  
24 search warrant, isn't it, sir?

25 A. Yes, sir.

1 Q. And this portion right up here above the horn, is that  
2 the lens you were looking through?

3 A. Yes, sir.

4 Q. And what's that arm hanging down in front of that horn?

5 A. That would have been one of the -- there's two arms and  
6 then there's one, and that is them.

7 Q. So with the red pointer show us where the lens is on that  
8 photograph.

9 A. This is the cover of the lens (indicating). The light is  
10 on the outside and the lens is right in the middle of it.

11 Q. Okay, sir. Thank you.

12 I believe you testified that you don't have the paperwork  
13 for any automatic weapons right now, do you?

14 A. I do not.

15 Q. Who has that paperwork?

16 A. The ATF.

17 Q. And when did they get that paperwork?

18 A. They took all of my Class 3 paperwork at the search, and  
19 I haven't had any of it or saw it, viewed any of it since.

20 Q. All right. So you don't have any of that paperwork now?

21 A. No, sir.

22 Q. All right. And on February 19th, 2003, when the  
23 inspectors left, were you more concerned about a Sten or more  
24 concerned about getting your A&D records?

25 A. I was much more concerned about getting the A&D records.

1 Q. Okay. What did the inspectors make, what were they more  
2 concerned about, and what did they make you feel they were more  
3 concerned about?

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

5 Q. (By Mr. Martin) What did they talk to you more about?

6 MR. MARTIN: I'll rephrase the question.

7 THE COURT: Be overruled.

8 THE WITNESS: They told me that I had to get them my  
9 A&D records, and I knew I did. They were within their legal  
10 rights to demand those, and I knew I had to produce those.

11 Q. (By Mr. Martin) Okay. And if they demanded that you  
12 provide them that Sten gun, would you have done it?

13 A. Yes.

14 Q. Mr. Kumi ega briefly asked about a list of your friends.  
15 Do you recall them?

16 A. Yes, sir.

17 Q. McIntyre and who else? Kingery?

18 A. McIntyre, Kingery, Evans, Hunter. There's --

19 Q. Let me ask you this question: What do every one of those  
20 people have in common?

21 A. They are all retired law enforcement at some level.  
22 Larry Kingery has been a Secret Service agent, is retired from  
23 the Secret Service. Glen McIntyre has been chief firearms  
24 instructor for the state of Oklahoma. He retired a couple of  
25 years ago, but he was the head firearms instructor for the

1 state of Oklahoma for 20 years; before that, he worked at  
2 Edmond. Joe Evans retired from Edmond Police Department, I  
3 believe. He's a lifetime -- he's a career police officer.  
4 There's Tom Bratt, who is a deputy sheriff or undersheriff now  
5 in one of the outlying counties. Bobby Hunter has been a  
6 police officer ever since I've known him for the Edmond Police  
7 Department. Janet Ingram, who is a very dear friend of mine,  
8 used to work at the Norman Police Department, not as an officer  
9 but in an administrative position. Ever since I have known her  
10 she's either been the business administrator or right now she's  
11 second in charge at CLEET. Virtually all of my close friends  
12 are law enforcement.

13 Q. After February 19th, 2003, Mr. Kumi ega's definition of  
14 the inspection is it went from the 19th to the 4th, after the  
15 19th, did any ATF inspector ever ask you about that Sten?

16 A. No, sir.

17 MR. MARTIN: Nothing further.

18 THE COURT: Any redirect, Mr. Kumi ega?

19 MR. KUMI EGA: One question.

20 RECCROSS-EXAMINATION

21 BY MR. KUMI EGA:

22 Q. Some of your friends, sir, they are not all law  
23 enforcement officers; is that correct?

24 A. No, sir. My statement was virtually all of my best  
25 friends are law enforcement.

1 Q. Mr. Friesen, I'm going to ask you again: Some of your  
2 best friends are not law enforcement officers; is that correct?

3 A. That's correct.

4 Q. Okay. Some of your clients, excluding law enforcement --

5 THE COURT: Excuse me, Counsel. I don't see any  
6 relevance to any of this.

7 MR. KUMI EGA: Okay. I'll withdraw the question.

8 THE COURT: His friends are not on trial here.

9 MR. KUMI EGA: Exactly, your Honor.

10 THE COURT: I don't see any relevance to it.

11 MR. MARTIN: Nothing further.

12 THE COURT: Mr. Friesen, you may step down.

13 THE WITNESS: Thank you, your Honor.

14 THE COURT: Something tells me this is a good breaking  
15 point for the day.

16 Ladies and gentlemen of the jury, as I told you, we're  
17 going to give you a couple days off so you can get back to work  
18 or mow the yard or whatever it is you need to do at home or  
19 business. It's very important to the parties and your fellow  
20 jurors to again remember that you're not to discuss this case  
21 with anyone or allow anyone to discuss it with you or to reach  
22 any conclusions until you've heard all the evidence and I've  
23 instructed you on the law.

24 With that, we'll reconvene at 10 a.m. on Monday morning.  
25 Leave your notebooks there, Ms. Youngberg will pick them up and

1 Lock them up until Monday morning.

2 Enjoy the next few days and we'll see you on Monday  
3 morning.

4 JUROR: You had said before Monday was most likely  
5 going to be the last day for planning purposes. Is Monday  
6 going to be the last day or is it open to few --

7 THE COURT: The attorneys keep telling me that last  
8 week was our last day or early this week. So from what I  
9 understand, the evidence will be completed on Monday. Now, I  
10 don't know what can happen in the next few days, but I'm  
11 planning on the evidence, because I'm starting another trial on  
12 Tuesday. And I've told the attorneys that for several days.  
13 Now, we do have to do instructions, and that's going to take a  
14 little time to meet with the attorneys and we'll begin to work  
15 on these now. But we do have to instruct you on the law, and I  
16 have to meet with the attorneys and work out those instructions  
17 at the end of the trial because I don't know what all is going  
18 to be applicable at this point until I hear the evidence. And  
19 then I give you those instructions and we have closing  
20 arguments and then you deliberate.

21 So even if we finish the trial Monday, you could still be  
22 in your -- probably be toward the very end of the day. So I  
23 would not plan on anything Tuesday.

24 JUROR: Okay.

25 THE COURT: I'M going to ask the attorneys to try to

1 stay focused on the issues in this case and we can finish the  
2 evidence Monday and hopefully get you instructed and get it  
3 submitted to you.

4 Yes, sir, Mr. Cooper.

5 JUROR: Did you say what time on Monday?

6 THE COURT: Ten o'clock. I've got some brief matters  
7 I'm trying to take care of over the lunch hour and before trial  
8 or after trial and we've got an evidentiary issue that cannot  
9 be -- we can't address until Monday morning. So we're going to  
10 address that before trial Monday morning. So any other  
11 procedural questions?

12 (Jurors indicate negatively)

13 THE COURT: Okay. Everybody have a good weekend.  
14 We'll see you Monday morning at ten.

15 All rise while the jury exits.

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

18 THE COURT: Mr. Martin, how many other witnesses other  
19 than your expert do you intend on calling Monday?

20 MR. MARTIN: If I may find my witness list, your  
21 Honor; I'm doing this by memory. It's four or five that I  
22 would anticipate would be rather short witnesses, 15, 20  
23 minutes.

24 THE COURT: Okay.

25 MR. MARTIN: Obviously the expert. But if Mr. Kumi ega

1 will work with me we'll make that one 20 minutes.

2 THE COURT: Well, Mr. KumiEGA, why don't you work with  
3 him, see if you can get that worked out.

4 MR. KUMIEGA: I'm going to be on strike, I think.

5 THE COURT: Well, the judge is getting shortly ready  
6 to be on strike on this case, so I'm going to encourage counsel  
7 to -- we've gotten side-tracked on a lot of collateral issues,  
8 both sides have it seems like in this trial, so we need to stay  
9 focused.

10 MR. KUMIEGA: There is an evidentiary issue I would  
11 like to talk to the Court about. I've talked to Mr. Vann who  
12 has contacted the ATF forensic people in California. They'll  
13 need some time to examine the two barrels that were submitted  
14 this morning by Mr. Savage. And what we plan to do to expedite  
15 everything at the end of the day or first thing in the morning,  
16 we're getting an agent to take the two barrels along with the  
17 machine gun and fly it to California, be back Sunday morning or  
18 Saturday night so Mr. Savage can investigate or inspect the  
19 machine gun under proper conditions. However, the barrel is  
20 about this big, maybe five, six inches. And they are going to  
21 take it to a metallurgist, and part of the barrel, the very low  
22 part, might be consumed and will not interfere at all with Mr.  
23 Savage's test, because his test just bears on the 683 number in  
24 the test. And I wonder if I can have the Court's permission to  
25 do that. We do not plan to effect Mr. Savage's testimony, if

1 the Court sees fit to let him testify as an expert, but I just  
2 want to tell the Court for a fair analysis we're going to have  
3 to do some extra work and ATF kindly, the forensic office is  
4 going to work over the weekend to help us out.

5 MR. MARTIN: I don't quite understand what Mr. Kumi ega  
6 is saying. You want use our exhibit, you want to destroy part  
7 of our exhibit?

8 MR. KUMI EGA: Yes.

9 THE COURT: What I understand is your exhibit is this  
10 long, they want to use that much of it (indicating) to a  
11 metallurgist to examine it.

12 MR. MARTIN: They can -- I object.

13 THE COURT: On what grounds?

14 MR. MARTIN: I haven't consumed -- we haven't even got  
15 to inspect that firearm completely yet, and they're wanting  
16 to --

17 THE COURT: Well, that's a different issue, Mr.  
18 Martin. What's the matter -- he cut a piece of pipe this long,  
19 what's the matter with using that much of it? That does not  
20 interfere with any of his markings on it.

21 MR. MARTIN: If it doesn't interfere with his  
22 markings, but for the record I have to object, your Honor.

23 THE COURT: All right. I see as long as there's no  
24 destruction of any of the -- Mr. Savage's markings, I can see  
25 no reason you can't do that.

1 MR. MARTIN: Your Honor, I want the record to reflect  
2 that I have not been provided anything of the government's that  
3 we could run any kind of a metallurgical test on.

4 THE COURT: Well, I think the only thing they've got  
5 is the gun.

6 MR. MARTIN: Well they've got all these plates that  
7 they did all their experiments on that they testified about  
8 that they had exhibits of that Ms. Walbridge used and Mr. Kong.

9 THE COURT: Did you ask for them?

10 MR. MARTIN: Your Honor, all I got was a report.

11 THE COURT: I said did you ask for them?

12 MR. MARTIN: No, sir. I didn't even know they existed  
13 until I got the report in the middle of this trial.

14 THE COURT: But you haven't asked for it.

15 MR. MARTIN: I'm asking now.

16 MR. KUMIEGA: It was not in the middle of trial. The  
17 reports were given before the trial started. I told Mr. Martin  
18 what was going on.

19 THE COURT: We've been through that one.

20 MR. KUMIEGA: Yes, sir.

21 THE COURT: They weren't requested, so the Court had  
22 no -- didn't know they were an issue, Mr. Martin. You will  
23 bring the gun back where Mr. Savage can do some testing on it  
24 Sunday?

25 MR. KUMIEGA: Yes, sir. And I was just informed by

1 Mr. Vann that part of the, those things that the Court worried  
2 about, the little tubes, the big tubes, they are not going to  
3 be consumed. Apparently they are just going to do an  
4 indentation in it toward some innocuous part of the tubes and  
5 they can make an analysis just through an indentation.

6 THE COURT: Just so there is none of what Mr. Savage  
7 did, any of his markings or anything else on it are  
8 compromised.

9 MR. KUMIEGA: Exactly. I agree, your Honor.

10 THE COURT: Mr. Savage is not here, I guess he's left.  
11 Mr. Martin, will you work with Mr. Kumienga and make sure he  
12 knows that he can have some further testing on that weapon on  
13 Sunday?

14 MR. MARTIN: I will contact him, your Honor. He had  
15 to leave town, he'll be back Sunday. I'll contact Mr. Kumienga.

16 THE COURT: And I do have some concern any further  
17 testing -- my understanding is the scratches that were put on  
18 it by the ATF inspector were put on on purpose to test the  
19 paint in part of her testimony, those two scratches.

20 MR. KUMIEGA: That's the testimony of Sarah Walbridge.

21 THE COURT: My understanding is the scratch across the  
22 serial number that Mr. Savage did was an accident.

23 MR. MARTIN: He had to make those measurements.

24 THE COURT: I understand the measurement. But the  
25 scratch was accident, but the other two scratches were put on,

1 were done through the testing on purpose.

2 MR. KUMI EGA: On purpose, yes, sir.

3 THE COURT: But my concern is that no more damage be  
4 done to the serial number itself.

5 MR. MARTIN: Right. It's my understanding, your  
6 Honor, just so the record is clear, that there had to be a  
7 measurement right on top of the serial number.

8 THE COURT: I understand that. I understand why he  
9 did the measurements.

10 Anything further?

11 MR. MARTIN: No, sir.

12 MR. KUMI EGA: No, your Honor.

13 THE COURT: Mr. Kumi ega and Mr. Martin, would it be  
14 helpful to have some kind of a meeting like on Friday or  
15 tomorrow or something with Ms. Williams on proposed  
16 instructions, at least a preliminary meeting?

17 MR. MARTIN: We can -- I'll be happy to visit with her  
18 after court about scheduling something if you want us to,  
19 Judge.

20 THE COURT: So we can at least kind of get started and  
21 see where we are, and she and I have talked about some of them,  
22 and did you provide them a --

23 MR. MARTIN: I've read the proposed instructions,  
24 Judge, and I picked out the ones I like.

25 THE COURT: Both of them?

1 MR. MARTIN: Both of them. And one verdict form  
2 basi cal l y.

3 THE COURT: Well, if you can read over them and maybe  
4 contact, as I say, I'll be out of town for the next two days,  
5 but we talked about some of the issues, and she's been working  
6 on a proposed, and I just think it would speed up things once  
7 we get the evidence over. It would certainly be helpful if we  
8 can maybe have a preliminary meeting at your convenience on  
9 Thursday or Friday.

10 MR. MARTIN: Okay.

11 THE COURT: So get with Ms. Williams.

12 Tell me roughly what time we should start Monday morning  
13 to complete the Daubert hearing before ten o'clock.

14 MR. MARTIN: I've finished my part of it.

15 THE COURT: I understand. I know you don't know what  
16 the tests are or anything. Thirty minutes?

17 MR. KUMIEGA: Thirty minutes, Judge. I think -- I'll  
18 cover the big highlights.

19 THE COURT: I'll just tell you, I get in Sunday night  
20 at midnight, so I'll be in a bad mood Monday morning, so try to  
21 stick to the highlights. We'll convene the hearing at 9:15.

22 MR. KUMIEGA: Have a pleasant trip, your Honor.

23 THE COURT: We're in recess.

24 (Court stood in recess until September 29th, 2008. For  
25 further transcription, see Volume VII of this transcript.)

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## REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

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B. Jeanne Ring, RDR

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