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1 (The following was had on September 29th, 2008. For prior
2 transcription, see Volumes I through VI of this transcript.)

3 THE COURT: Case number CR-2008-41, United States
4 versus Larry Douglas Friesen. Counsel ready to proceed on
5 their Daubert hearing?

6 MR. KUMIEGA: Yes, your Honor. Good morning. Ed
7 Kumioga with the United States, and we're ready to proceed.

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

9 THE COURT: Mr. Martin, I think you had concluded your
10 witness's testimony earlier, but I know since then he's done
11 some additional testings, I assume, over the weekend; is that
12 correct?

13 MR. MARTIN: He was able to do further examination
14 last night, your Honor.

15 THE COURT: Okay. So do you want to put him back on
16 the stand and --

17 MR. MARTIN: I can very briefly.

18 THE COURT: -- have him testify about that
19 examination?

20 MR. MARTIN: Sure.

21 MR. KUMIEGA: Your Honor, Mr. Howard Kong from ATF
22 forensics is here. I would like to have him sit in here since
23 he's a rebuttal witness.

24 THE COURT: Sure.

25 MR. KUMIEGA: He's also, your --

1 THE COURT: You're going to need to speak up, Mr.
2 Kumi ega. I have picked up something over the weekend, so I
3 would encourage you not to have bench conferences, and I can't
4 hear. I'm all plugged up here.

5 MR. KUMI EGA: As I was saying, your Honor, Mr. Kong is
6 going to be a rebuttal witness; I would like to have him sit in
7 the courtroom. Also he completed a report, made an analysis of
8 the two tubes that were brought into court on Friday by Mr.
9 Savage, and as soon as Mr. Savage takes the stand I'll give a
10 copy of that report to Mr. Mack Martin.

11 THE COURT: All right.

12 Mr. Savage, you're under the same oath that you gave when
13 you began your testimony Wednesday, I guess it was.

14 THE WITNESS: Yes, your Honor.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. MARTIN:

17 Q. Mr. Savage, after you testified last week, you flew back
18 home and then came back in last night about eight o'clock. Did
19 you perform further examination of the Government's Exhibit
20 3.16 last night?

21 A. Yes, I did.

22 Q. And based upon your examination last night, you took
23 several photographs; did you not?

24 A. Yes, I did.

25 MR. MARTIN: And, your Honor, for the record, I

1 previously provided Mr. Kumi ega, I don't remember the number,
2 but several additional photographs from last night.

3 Q. (By Mr. Martin) What did your further examination
4 establish, if you wouldn't mind?

5 A. There was no markings inside of the trigger housing on
6 the tube, and it also established that those were indeed
7 socket-head cap screws, number 10 in size.

8 Q. And socket-head cap screws, what is significant about
9 that?

10 A. Well, they are different from rivets. It's a threaded
11 screw.

12 Q. As a matter of fact, that's a distinction relating to a
13 Sten III, is it not, sir?

14 A. Yes.

15 Q. I'm showing you what's been marked for identification
16 purposes as Defendant's Exhibit 112, sir. Can you tell me what
17 112 is?

18 MR. KUMI EGA: Your Honor, to which the United States
19 is going to object. Mr. Mack Martin did have the courtesy to
20 show me that three minutes ago. He told me it was going to be
21 used for demonstrative purposes for closing argument, now I
22 understand it's going to be evidence in the case, and I've
23 never seen this before until two minutes ago.

24 THE COURT: Well, I'm not going to admit it, but I'll
25 hear some testimony on it. I don't even know what it is, so --

1 Q. (By Mr. Martin) What is Defendant's Exhibit 112?

2 A. It's the front end of a Sten Mark III.

3 Q. And you heard the testimony of the witnesses about, in
4 particular, I believe, the government's expert witness, Mr.
5 Kong, about this particular firearm, Government's Exhibit 3.16
6 looking like or being characterized as a Sten III. Is that
7 correct, sir?

8 A. That is correct.

9 Q. And I'm going to hand you Government's Exhibit 3.16 and
10 ask you if there's any characteristics unique or distinctions
11 between those two barrel lengths.

12 A. If you put them side by side you can see two differences
13 right off the bat. This tube right here does not have a seam
14 running across the top of it like the Mark III does.

15 Q. Right.

16 A. And it uses rivets in the Mark III, and where this tube
17 is assembled with socket-head cap screws.

18 Q. And are two -- I take it one is a tube and one is a flat
19 piece of metal; is that right?

20 A. Well, this one was formed by a flat piece of metal that
21 was wrapped around a mandrel and welded across the top, where
22 this is made from a piece of seamless mechanical tubing.

23 Q. Okay, sir. And what other distinctions or
24 characteristics did you find on your examination yesterday,
25 last night?

1 A. That the firearm's condition seems to degrade every time
2 I examine it. This has bent up even more and is now starting
3 to crack.

4 Q. Would you say what is this is for the record?

5 A. The shell deflector.

6 Q. Okay.

7 A. And the retaining cap for the main spring housing is now
8 missing an ear on one side and was freshly broken.

9 Q. Okay, sir. Other than that, anything about your
10 examination this weekend change any of the conclusion you
11 testified about last Friday?

12 A. No, sir.

13 MR. MARTIN: Nothing further, your Honor.

14 THE COURT: Mr. Kumi ega.

15 MR. KUMI EGA: Judge, I apologize. I'm looking for the
16 first report that Mr. Savage -- here.

17 CROSS-EXAMINATION

18 BY MR. KUMI EGA:

19 Q. You know, Mr. Savage, it's my understanding you proffered
20 -- you're going to proffer yourself today to the Court as an
21 expert; is that correct?

22 A. Yes, sir.

23 Q. All right. And before I explore in particular your
24 expertise, what areas of the firearm are you going to testify
25 about, please?

1 A. Pardon me?

2 Q. What areas of the firearm are you going to testify about?

3 A. About its design characteristics.

4 Q. Okay. Let's go one by one. So I just want to know how
5 extensive or how broad your universe of expertise extends to.
6 Okay?

7 A. My expertise extends to firearms manufacture and firearms
8 design, sir.

9 Q. Okay. Manufacture and design?

10 A. Yes.

11 Q. Okay. Now, according to your report, the first report
12 that you floated, you are also going to testify to your
13 expertise in paint; is that correct?

14 A. My experience with paint as a --

15 Q. Excuse me. Your expertise in paint; is that yes or no?

16 A. Does my report say expertise in paint?

17 Q. Yes, it does.

18 A. It says I have experience with painting as a
19 manufacturer, sir.

20 Q. Okay. So you're going to testify to your expertise in
21 paint as a manufacturer?

22 A. I didn't say that. You're putting words into my mouth.

23 Q. Tell the Court, you said here --

24 A. As a manufacturer, I use paint and coatings daily when I
25 work on firearms.

1 Q. Okay.

2 A. I have personal experience with paint and coatings.

3 Q. Okay. Paint and coatings. Okay. You also talked about,
4 in your same report, about the presence of welded magazine
5 housings and rivets; is that correct?

6 A. That is correct.

7 Q. All right. And what expertise do you have in welding and
8 magazine rivets, please?

9 A. Magazine rivets?

10 Q. Or rivets or magazine welds for making firearms, please?

11 A. Well, as a manufacturer, I weld metal.

12 Q. Okay.

13 A. And as a manufacturer, I use rivets as well as
14 socket-head cap screws.

15 Q. Okay. And the next part of your expertise goes into the
16 area of polishing and abrasives; is that correct?

17 A. I have lots of experience in polishing and abrasives as a
18 firearms manufacturer.

19 Q. Okay. And would it be fair to say in your first report,
20 that's what your first report refers to, expertise in paint,
21 welds, metal, welds, and rivets, and polish and abrasives; is
22 that correct?

23 A. It addresses those issues from personal experience. I
24 don't believe I use the word "expertise."

25 Q. Then let me ask you this: If you're not an expert in

1 this, what are you doing here?

2 A. I'm a manufacturer of firearms and I know --

3 Q. Okay.

4 A. -- the physical characteristics of what you're talking
5 about because I use it every day.

6 Q. Let me ask you this: You have a license to manufacture
7 guns?

8 A. Yes, I do.

9 Q. Okay. And did you pass a test to manufacture guns?

10 A. No. There's no test.

11 Q. Right. I can even get a manufacturer's license to make
12 guns; is that correct?

13 A. If you qualify.

14 Q. No. I go to ATF and I can get a license to do that?

15 A. If you --

16 Q. Yes or no?

17 A. If you qualify --

18 Q. Yes or no?

19 THE COURT: Mr. Kumi ega, let him answer.

20 THE WITNESS: There are some restrictions. You have
21 to go through a background test and everything. Could he if he
22 could go through and pass the qualifications; yes, he could.

23 Q. (By Mr. Kumi ega) Right. There are no qualifications.
24 You just pay the tax and you get the stamp to make guns; is
25 that correct?

1 A. Yes, sir.

2 Q. Okay.

3 A. If you want to eat, though, you've got to be able to
4 produce something people want.

5 Q. If I want to make a gun I can just go pay the tax and
6 manufacture a machine gun, is that right, or manufacture guns;
7 is that correct?

8 A. If --

9 Q. Yes or no?

10 A. The license doesn't give you the ability. If you know
11 how to manufacture a gun and you have a license, yes, you can
12 lawfully do that with a license.

13 Q. That's not the point, Mr. Savage. Any Joe off the street
14 --

15 THE COURT: Let's move on, Mr. Kumi ega.

16 Q. (By Mr. Kumi ega) Now, in your second report that you
17 floated, this is the day of your, the first examination, what
18 is the purpose of your second report? What is this, in your
19 expertise, what does it show to the Court?

20 A. Shows my observations and measurements based on my
21 examination.

22 Q. All right. And what were the findings, please?

23 A. My findings are -- show me that that is an Erb II that
24 was incomplete, and then completed by a second person, and it
25 looks to be a Mark II-S tube that Mr. Erb discussed during his

1 testimony.

2 Q. Okay. What else did your report say?

3 A. It says quite a bit. My report says that -- talks about
4 dimensions and the halos or rings that were found around the
5 socket-head cap screws, and goes through my observations.

6 Q. All right. So what are your findings in your second
7 report, please?

8 A. That is a -- my findings are -- is that that is an Erb II
9 that was completed by a second person at a later date.

10 Q. All right. Let me do this now: What is your background,
11 sir, to make you qualified to manufacture firearms?

12 A. I have actually manufactured and designed firearms. I
13 design firearms for other larger manufacturers for money so I
14 can eat. I also have had the background in manufacturing and
15 manufacturing machines.

16 Q. Okay. Now, let me ask you this: Do you have any formal
17 education in this area?

18 A. No. There is no firearms design university in this
19 country. You would have to go outside the confines of the
20 United States.

21 Q. Okay. Have you gone to gunsmithing school?

22 A. I have studied under gunsmiths.

23 Q. Have you gone to gunsmithing school?

24 A. No, I haven't.

25 Q. Have you received a certificate from any gunsmithing

1 school ?

2 A. No, I have not.

3 Q. All right. Who have you studied under, please?

4 A. Let's see. That would be The Cop Shop in Monroe,
5 Michigan for a while.

6 Q. For how long, please?

7 A. A couple of years.

8 Q. Were you there full-time?

9 A. No.

10 Q. Can you tell the Court about The Cop Shop, when you were
11 out there and what you learned, please?

12 A. Refinishing and repair of firearms.

13 Q. So it's somewhat like a gunsmithing school?

14 A. No, it's a retail establishment.

15 Q. Okay. It's a store?

16 A. Of course.

17 Q. All right. So what did you learn there, please?

18 A. Firearms repair and refinishing.

19 Q. I thought it was a store. It's not a gunsmithing shop?

20 A. In order to learn the craft, like any other craft, you
21 work along somebody who has more knowledge than you and you
22 learn the techniques and you gain your experience. There's
23 another company --

24 Q. From -- let's finish with The Cop Shop. How long were
25 you up there and the dates and times, please?

1 A. I don't remember. It was near 15 years ago.

2 Q. Okay. Fifteen years ago. And how many times did you
3 visit up there, sir?

4 A. I -- I have no way of giving you that information.

5 Q. Okay. So you were there maybe on an occasion; is that
6 what you're telling the Court?

7 A. Two to three times a week. Yeah.

8 Q. For how long, please?

9 A. As I said, a year or two.

10 Q. For a year or two you would fly from Georgia up there two
11 or three times a week?

12 A. No, sir. No, sir.

13 Q. Can you give us a straight answer and tell the Court
14 about The Cop Shop?

15 A. I take exception to that. I've given you straight
16 answers. How dare you.

17 THE COURT: Mr. Kumi ega, Mr. Savage, let's just ask a
18 question, and let him have time to answer it, Mr. Kumi ega, and
19 then ask the next one. Let's don't get in a battle back and
20 forth.

21 THE WITNESS: I was born in Monroe, Michigan. Around
22 1993, '94, I moved to Mississippi. From Mississippi, I moved
23 to Georgia right around 1999, I believe.

24 Q. (By Mr. Kumi ega) Okay. When did you go, again, to The
25 Cop Shop, how many times?

1 A. I believe I answered you.

2 MR. KUMI EGA: Your Honor, can you ask the witness to
3 answer the question?

4 THE COURT: Answer the question, Mr. Savage.

5 THE WITNESS: To the best of my ability, I believe it
6 was three or four times a week, as I stated before, and I don't
7 recall. I didn't track the dates.

8 Q. (By Mr. Kumi ega) Three or four times a week for what
9 period of time?

10 A. A year and a half to two years.

11 Q. Were you employed by them?

12 A. When you say was I employed --

13 Q. Were you employed by The Cop Shop?

14 A. No. I was working under their gunsmi thing I learning my
15 experience there.

16 Q. Okay. Were they a business that could confer a
17 gunsmi thing degree or some type of certi fi cate?

18 A. No, they were not.

19 Q. Okay. And you did this for two or three years?

20 A. Approximately two years, as I said before.

21 Q. Oh, two years. Okay. And what were you doing for a
22 living at that point, please?

23 A. Working as a journeyman machine bui lder.

24 Q. Okay. For who?

25 A. I believe it was Ci sco, Incorporated.

1 Q. Is this a food corporation?

2 A. No, it's not.

3 Q. What is it, please.

4 A. They make coil conversion systems, die feeders, die
5 stackers. They make the machines that make cars.

6 Q. Okay. So while you were employed making, I guess, stuff
7 for cars, you had a sideline of going to The Cop Shop; is that
8 correct?

9 A. That is correct.

10 Q. Okay. So you would not spend eight hours a day, you
11 would just go there every once in a while; is that correct?

12 A. That is correct.

13 Q. And what years, Mr. Savage, were you there, please?

14 A. I don't recall.

15 Q. It's kind of important to show your background. Do you
16 have a resume?

17 A. Yes, I do.

18 Q. Is The Cop Shop in your resume?

19 A. No, it's not.

20 Q. Okay. Do you remember, again, what years you were there?

21 A. I don't recall.

22 Q. Okay. What's the next significant thing you learned in
23 your process of being a designer of firearms, please?

24 A. I worked at a place called The Lock Shop in Columbus,
25 Mississippi.

1 Q. The Lock Shop?

2 A. The Lock Shop.

3 Q. And what is that, please?

4 A. It was a firearms store.

5 Q. All right. And what did you do for them?

6 A. Locksmithing and gun repair.

7 Q. You fixed guns?

8 A. Yes, I did.

9 Q. And who taught you to do that?

10 A. I -- based on my experience I had learned since the 8th
11 grade on, and I was able -- I knew how to reparkerize and
12 repair firearms, and continued on at that point.

13 Q. Did you have the assistance of a master gunsmith person
14 as mentor to help you?

15 A. No, I did not.

16 Q. All right. So how do you know, sir, the accuracy of your
17 work?

18 A. The guns worked when I was through.

19 Q. How do you know the accuracy of the work, other than the
20 fact a bullet can come out of a barrel?

21 A. Because the guns functioned when I was through.

22 Q. All right. And that gives you some type of expertise in
23 the case today?

24 A. Yes, it does.

25 Q. All right. After The Lock Shop -- how long were you

1 there, please?

2 A. Approximately two, two and a half years.

3 Q. Excuse me?

4 A. Approximately two to two and a half years.

5 Q. Okay. And can you tell me what years you were there,
6 please?

7 A. Would have been 1995 through maybe '97.

8 Q. Okay.

9 A. Approximately.

10 Q. And did you leave on good terms with that owner?

11 A. They closed.

12 Q. They closed?

13 THE COURT: Mr. Kumi ega, we've only got 15 minutes
14 left, so we need to move on.

15 Q. (By Mr. Kumi ega) Let me ask you about certain biases you
16 have. Mr. Savage, you have been interviewed several times by
17 different organizations that have a bias towards the ATF; is
18 that correct?

19 MR. MARTIN: Your Honor, I don't know how that would
20 go to his qualifications as an expert in this case.

21 THE COURT: Let's stick with qualifications, Mr.
22 Kumi ega.

23 MR. KUMI EGA: Can I not explore his bias to show that
24 he has an agenda, he's not here testifying as an expert, he's
25 testifying as an agenda person?

1 THE COURT: Let's do it very quickly.

2 Q. (By Mr. Kumi ega) Have you been interviewed by people who
3 have a bias towards the ATF?

4 A. I wouldn't know if they have a bias.

5 Q. Have you been part of some documentary showing how the
6 Bureau of Alcohol, Tobacco, & Firearms has been destroying the
7 rights of civilians here in the United States?

8 A. I did take part in two documentaries.

9 Q. Can you tell the Court about those, please?

10 A. One was called BATF Fails the Test.

11 Q. Yes. And when was that made, please?

12 A. Approximately 2003, 2004.

13 Q. Okay. And the purpose of that documentary, please?

14 A. Was to show the lack of a testing method by Firearms
15 Technology Branch.

16 Q. Okay. And how did you participate in that film, please?

17 A. I was a technical adviser on a case, United States v.
18 Glover.

19 Q. I asked you how you participated in the film, please.

20 A. I was a technical adviser in U.S. v. Glover. The film
21 wasn't made as a documentary, it was a video that was taken
22 during a field test at the Carabus County Sheriff's Department
23 during a field-test of firearm that was purportedly a machine
24 gun. It turned out to be a malfunctioning firearm.

25 Q. And you made a documentary showing --

1 A. No, I did not.

2 Q. Okay. Did you make another documentary called The Gang?

3 A. I never made a documentary, sir.

4 Q. Were you participated or interviewed for a documentary?

5 A. Yes, I was.

6 Q. All right. Tell us about your other documentary, please.

7 A. My other documentary. You keep referring to it as mine.

8 I don't understand. What would you like to know about it?

9 THE COURT: Mr. Kumi ega, he never made the
10 documentary, I understand he participated in it, so just ask
11 about his participation. It's not his documentary.

12 Q. (By Mr. Kumi ega) Did you participate in a documentary,
13 please?

14 A. Yes, I did.

15 Q. And the name the documentary was The Gang; is that
16 correct?

17 A. That is correct?

18 Q. What participation did you have in that?

19 A. I was interviewed.

20 Q. And what did you say in your interviewed?

21 A. That right after a federal trial that I was present at
22 that the ATF reconsidered one of my lawful products to be a
23 machine gun retroactively, after the fact.

24 Q. All right. And what was -- and the purpose of the
25 documentary then, please?

1 A. Was to raise awareness of the lack of a firearm testing
2 procedure at Firearms Technology Branch. To date, they don't
3 have a written testing procedure when they test firearms.

4 Q. Now, you have asked a congressman in Georgia to sponsor
5 some type of testing regime, is that correct, a protocol that
6 you asked for ATF to test?

7 MR. MARTIN: Your Honor, I don't know what this has to
8 do with his expertise.

9 THE COURT: Be overruled.

10 Q. (By Mr. Kumiega) You have contacted a congressman in
11 Georgia to sponsor a bill about testing procedures for ATF; is
12 that correct?

13 A. That is correct.

14 Q. And what procedures would you like to see ATF do?

15 A. I would like them to videotape all tests and
16 examinations, just like you did me on the sly the other night.

17 Q. Right. And by the way, in your reports and testing did
18 you videotape yourself?

19 A. Did I? No, I did not.

20 Q. Why not?

21 A. Because you don't.

22 Q. Excuse me?

23 A. The ATF doesn't test theirs, or doesn't videotape theirs.

24 Q. Okay. Now, looking at your resume, sir, there is no
25 mention of The Cop Shop in your resume; is that correct?

1 A. Yes, si r.

2 Q. There is?

3 THE COURT: He said that's correct.

4 MR. KUMIEGA: I thought he said yes, si r.

5 THE COURT: He did. You asked if it was correct and
6 he said yes, si r.

7 Q. (By Mr. Kumi ega) The Lock Shop -- excuse me -- The Cop
8 Shop is not mentioned in your resume; is that right?

9 A. Correct.

10 Q. Okay. And The Lock Shop is not mentioned in your resume;
11 is that correct?

12 A. That's correct.

13 Q. All right. What is the next area of expertise you've
14 learned as you got into manufacturing guns?

15 A. The next one would probably be the design of the Bren
16 Mark II semi-automatic rifle.

17 Q. All right. And did you design that firearm?

18 A. Yes, I did.

19 Q. And you did this based on your expertise or your learning
20 ability at The Cop Shop and The Lock Shop; is that correct?

21 A. And other places, and going to manufacturers and going to
22 people who have machine gun collections.

23 Q. Okay. What manufactures have you gone to, or schools,
24 please?

25 A. Pardon me?

1 Q. Have you gone to any manufacturing schools?

2 A. No, I have not.

3 Q. You haven't gone to my armorer's schools?

4 A. No, sir.

5 Q. You haven't gone to any gunsmithing schools, as you said,
6 with manufacturers; is that correct?

7 A. No, sir. I've taken no maintenance courses.

8 Q. All right. Now, the barrels that you presented for the
9 Court the other day, can you read those exhibit numbers into
10 the record, please?

11 A. Those aren't barrels.

12 Q. The tubes.

13 A. Exhibit 110 and Exhibit 111.

14 Q. All right. And you were trying to do what with those
15 tubes, please?

16 A. I was trying to establish if the tube on the Exhibit 3.16
17 was stamped as you guys allege it was.

18 Q. All right. And obviously, you have to compare the tube
19 that's in the machine gun in Exhibit 3.16 with the hardness
20 with your defense exhibits; is that correct? They have to be
21 somewhat similar; is that correct?

22 A. I based it off what Mr. Erb had said. He said he used
23 seamless mechanical tubing, so that's what I got, seamless
24 mechanical tubing.

25 Q. Do you understand that the government's contention is

1 this is not an Erb machine gun? You understand that?

2 A. I understand that, but you're incorrect.

3 Q. All right. Let me ask you this: Did you compare, did
4 you make an actual comparison between the firearm Government's
5 Exhibit 3.16 and your tubes?

6 A. I was not able to.

7 Q. So you do not know, sir, I mean, because you're really
8 mixing apples and oranges because you have no idea what the
9 hardness of the machine gun in front of you is compared to the
10 tubes that you brought --

11 A. Seamless --

12 Q. Let me finish. -- brought to Court today; is that true?

13 A. No, that's not.

14 Q. Well, can you explain to the Court how you did the right
15 protocols to make some type of expert opinion on your work?

16 A. Seamless mechanical tubing otherwise noted would be mild
17 steel. So I went and asked for seamless mechanical tubing, had
18 the ID spun down to size so it was comparable, and then did my
19 test.

20 Q. The point is, you don't know if Government's Exhibit 3.16
21 is seamless mechanical tubing; is that correct?

22 A. There's no seam inside. Yes, I do know it's seamless.

23 Q. How do you know that?

24 A. Because I could -- I took a picture, I looked, I
25 observed, I examined. There would be a seam inside.

1 Q. All right. And you're saying those tubes are the same
2 hardness of the Government's Exhibit 3.16?

3 A. They should be the same approximate hardness.

4 Q. All right.

5 A. I did not have a Rockwell C scale machine to test it.

6 Q. Okay. And wouldn't that have been appropriate then to do
7 that?

8 A. You guys aren't going to let me take that, you wouldn't
9 let me take it out of your interrogation chamber. How in the
10 world could I get it to a Rockwell C scale machine.

11 Q. Sir, you never asked. Is that right, you never asked?

12 A. Yes, sir. I never asked.

13 Q. Okay. And when you -- the purpose of the test then was
14 to make sure that the serial number on Government's Exhibit
15 3.16 was comparable to the serial numbers that you placed on
16 your defense exhibits; is that correct?

17 A. No, that's not correct.

18 Q. Okay.

19 A. The purpose of the test was to see whether or not
20 seamless mechanical tubing, when struck with a die, would dent
21 or crush.

22 Q. All right. And your conclusion, please?

23 A. It does.

24 Q. All right. And what force did you use, please?

25 A. I hammer-blow to stamp in the impression.

1 Q. Okay. And how do you know in Government's Exhibit 3.16
2 you used the same force?

3 A. How did the government know when they stamped flat plate
4 instead of tubing?

5 Q. I'm asking you the question, Mr. Savage.

6 A. It's unmeasurable. I'm sorry.

7 Q. It's unmeasurable?

8 A. It's unmeasurable.

9 Q. So you just kind of did it the way you felt like, there
10 is no way to measure the force you used for the serial numbers
11 that you placed on the tubes; is that correct?

12 A. There's no way -- if you have enough force to form an
13 impression, then you have enough force to dent the tube.

14 Q. Okay. What dies did you use, please?

15 A. Quarter-inch.

16 Q. Do you have them with you?

17 A. Yes, I do.

18 Q. Have you not presented them to the Court or myself?

19 A. You didn't ask.

20 Q. Okay. But you do have them with you?

21 A. Yes, sir.

22 Q. Can you get them, please?

23 A. Sure.

24 Q. Now, you talked about the underlying support, the
25 mandrel; is that correct?

1 A. Yes.

2 Q. Okay. You need an underlying support so the tube doesn't
3 become distorted or dented; is that correct?

4 A. That's correct.

5 Q. Would a stop and bolt, sir, inside of machine gun be
6 somewhat equivalent to a mandrel --

7 A. No.

8 Q. -- and absorb the force? Why not, please?

9 A. Because it's of a smaller size. You have to have
10 clearance in a machine gun between the bolt and the ID of the
11 tube, because, otherwise, if it were the same size, it would be
12 an interference fit. You wouldn't be able to cock the gun, and
13 then if the gun got any dirt, got heated in any way, due to
14 thermal expansion, you're going to have problems and the gun is
15 going to lock up. That particular bolt happens to be, I
16 believe by memory, about 20-, 25-thousandths undersize. Either
17 way, the tube would have dented at least 20- to 25-thousandths.

18 Q. And can you compare the deep impression of the serial
19 number on Government's Exhibit 3.16 with your tube, your tubes,
20 please? Do they appear to be roughly similar, or are they
21 different?

22 A. They appear to be roughly similar.

23 Q. Okay. But you're not sure, your just eye-balling it; is
24 that correct?

25 A. That is correct.

1 Q. You never took measurements to show the depth of the
2 serial number and the tube; is that right?

3 A. That is correct?

4 Q. So how do you know, sir, that they are roughly equal?

5 A. An educated guess.

6 Q. Based on what?

7 A. My experience.

8 Q. Experience of doing what?

9 A. Stamping serial numbers.

10 Q. Okay. How many guns have you manufactured in your
11 career, please, that were approved by ATF and are in the stream
12 of commerce?

13 A. I'm going to take a guess here because I don't have my
14 A&D book, but I'm going to say approximately 200 to 250.

15 Q. Okay. Now, you say you are -- you are the owner and
16 operator of a concern called Historic Arms Limited Corporation;
17 is that correct?

18 A. Historic Arms, LLC.

19 Q. What does "LLC" mean, please?

20 A. Limited liability corporation.

21 Q. Okay. And do you have a partner?

22 A. Yes, I do.

23 Q. Who is that?

24 A. That would be my wife.

25 Q. Is she also a gunsmith?

1 A. No, she's not.

2 Q. Does she have basically -- does she have a formal
3 education in gunsmithing or manufacturing?

4 A. She has nothing to do with gunsmithing or manufacturing,
5 she handles the financial end and the books.

6 Q. Okay. So you're basically a one-man show; is that
7 correct?

8 A. That is correct.

9 Q. How do you know, sir, do you have anybody looking over
10 your work, do you have any protocols like peer review of the
11 work that you do?

12 A. My peers are the industry and they've paid me to design
13 and build firearms. Typically only one or two prototypes, but
14 it's the design work.

15 Q. All right.

16 A. It's the nuts and bolts of it.

17 Q. All right. For instance, sir, you have a list of firearm
18 systems that you designed and a list of firearms that you
19 manufactured -- well, list of firearms that you designed, is
20 that correct, on your resume?

21 A. That's correct.

22 Q. All right. What firearms, sir, in your designs have
23 actually gone into production?

24 A. The Bren Mark II, the RPD --

25 Q. Please go slow. The Bren Mark II. That's the first one

1 in your resume?

2 A. Yes.

3 Q. Okay. What else, please?

4 A. The RPD. Actually, the design was stolen by another
5 company and they are running with it. The SGM, or the SG
6 series.

7 Q. SGMSA; is that right?

8 A. SGMSA, that's stand for SGMB semi-automatic.

9 Q. Okay.

10 A. The 971 Sport Rifle is currently still in production.

11 Q. Okay.

12 A. The Mag 58 semi-automatic is currently in production by
13 Ohio Ordnance.

14 Q. Okay.

15 A. And there are several that have started to go into
16 production and then stopped, just due to economics or whatnot.

17 Q. All right. Out of these guns that have been manufactured
18 or being manufactured, how many have actually have been
19 produced?

20 A. As far as by the other manufacturers?

21 Q. Yes. The Bren Mark II SA?

22 A. I have no means of getting that information.

23 Q. Okay. Do you get a royalty for the manufacture of each
24 firearm?

25 A. No. I'm paid flat rate up front.

1 Q. Could you tell the Court how much you got paid for your
2 design, please?

3 A. I can go down by the numbers. I believe it was \$30,000
4 for the RPD, SGMB --

5 Q. Sir, would you go a little slower please so I can check.

6 A. Pardon me.

7 Q. For the Bren Mark II SA you got paid \$30,000 for that
8 design?

9 A. No. RPD.

10 Q. Let's start with the Bren Mark II that you said was in
11 production. How much money did you get paid?

12 A. I'm currently in production as well as another
13 production. I'm not receiving any royalty or any money from
14 that, other than my production.

15 Q. So you're not getting any money for that; is that right?
16 What's the next one, you said RPD SA; is that correct?

17 A. That is correct.

18 Q. Is that currently in production?

19 A. I believe they are tooling up for it, essentially. That,
20 and the SG series.

21 Q. How much money have you got paid for that, sir?

22 A. I think it was 30 or \$40,000 for the design.

23 Q. All right. How long ago, please?

24 A. A year ago, year and a half.

25 Q. You got paid full cash value of 30 to \$40,000?

- 1 A. Yes, sir.
- 2 Q. Okay. And the SGMB?
- 3 A. That's part of that deal with Sentry, that and the RPD.
- 4 Q. Oh, it's together?
- 5 A. Yes.
- 6 Q. Okay. And the 971 Sports Rifle?
- 7 A. That was \$10,000.
- 8 Q. Okay. And when did you get paid for that, please?
- 9 A. Approximately four or five years ago.
- 10 Q. Okay. And you don't know how many are in production?
- 11 A. They are beyond 500, I know that, because they did a
- 12 change-out.
- 13 Q. And what other stuff that's currently in production that
- 14 you designed?
- 15 A. The Mag 58 is currently in production by Ohio Ordnance,
- 16 and that one paid \$70,000.
- 17 Q. What year did you get \$70,000, please?
- 18 A. A couple years ago.
- 19 Q. What year?
- 20 A. I believe it was two years ago.
- 21 Q. So '06?
- 22 A. Sounds about right.
- 23 Q. And you got a full check for \$70,000?
- 24 A. Yes, sir.
- 25 Q. Okay. Now, you said you had expertise in Erb Sten

1 machine guns; is that correct?

2 A. I said I had experience with them.

3 Q. Okay. Can you tell the Court what experience you have
4 with Erb machine guns, please?

5 A. Knob Creek is a big machine gun shoot, it happens twice
6 yearly. And occasionally, as these 400-some-odd guns are going
7 off at once, there are breakdowns and people need repairs. And
8 I have provided repairs for people, typically very simple, main
9 spring breaking, end cap, that type of thing. I've also shot
10 them.

11 Q. So how many Erb guns did you repair so you're familiar
12 with them?

13 A. I have no way of knowing.

14 Q. So then how can you tell the Court you have expertise in
15 the Erb machine gun, please?

16 A. I told the Court that I have experience with them?

17 Q. Okay. What experience do you have? The Court wants to
18 know.

19 A. I just gave it to you.

20 Q. You don't remember seeing any Erb guns at these shoots?

21 A. That's not what I said at all.

22 Q. What did you say, please?

23 A. I said that I've seen them at these shoots and I have had
24 to at least repair, at least two of them. Pretty minor
25 repairs. Usually it's a spring or pin breaking. There's not

1 much that can go wrong with them. The tube itself doesn't
2 malfunction. It's usually the 60-year-old internal parts that
3 fracture or break.

4 Q. So you're telling the Court, based on two gunsmi thing,
5 fundamental gunsmi thing repairs, you've become an expert in Erb
6 IIs?

7 A. I've had the opportunity to look on the inside of them,
8 how they were machined.

9 Q. How did you do that?

10 A. You've got to take them apart to fix them, Mr. Kumi ega.

11 Q. You've got to take apart the trigger housing, you said
12 these were minor repairs; is that correct?

13 A. Yes, just minor repairs. Sometimes trigger housing and
14 sometimes the bolt and main spring have to come out. It all
15 depends on the nature of the repair.

16 Q. Right. So the point is, from your examination of two Erb
17 machine guns, you have been an expert now in Erb IIs?

18 A. And I've also examined all the evidence that was put up
19 here in the trial and was able to compare that with what I've
20 seen in my examination Friday on the 19th.

21 Q. So the two machine guns -- so what type of Erb machine
22 guns did you examine?

23 A. Mark IIs.

24 Q. How do you know they were Mark IIs?

25 A. Because they had the removable barrel. They weren't a

1 Mark II-S, which is an integrally suppressed model.

2 Q. You know Mr. Erb manufactured more than Mark IIs; is that
3 correct?

4 A. Yes, he did.

5 Q. Okay. And just out of happenstance, at your Knob Creek
6 Shootout, you examined two Erb machine guns; is that correct?

7 A. That is true.

8 Q. And said you have examined the other guns, the bookend
9 guns that were placed in evidence?

10 A. I was able to observe what was put up on the -- on your
11 monitors.

12 Q. Okay. So you didn't actually have hands-on observation,
13 just what you saw on the monitors; is that correct?

14 A. That is correct.

15 Q. That makes you an expert again; is that correct?

16 A. I didn't say that.

17 Q. Okay. Then you can't -- if you're not an expert about
18 Erb guns, how could you talk about them?

19 A. I'm an expert on manufacturing firearms and how firearms
20 are designed, sir.

21 Q. All right. And here we have -- and you're asking the
22 judge to allow you to testify to your forensic observations
23 about a Sten Mark II machine gun, not about its manufacturing
24 or design; is that correct?

25 A. Actually, that's not correct. Has to do with this:

1 It's been my experience that when you stamp a tube, it crushes,
2 it dents.

3 Q. Okay. Let me ask you this, Mr. Savage: Where in your
4 report does it say, in your conclusions, please, I haven't seen
5 a report that has your conclusions regarding --

6 A. You were only given a rough draft. It was done on the
7 fly. We didn't even get the material for this until just
8 before I was called up.

9 Q. Mr. Savage, I just have two reports from you.

10 A. Yes.

11 Q. Right. And there is no reports from you regarding your
12 analysis of the tube; is that correct?

13 A. That's incorrect.

14 Q. Can you show us, please, your reports?

15 A. This one here, which was, I believe the one you're
16 discussing, Examination of Sten Serial Number E683, from front
17 to back, talks about my analysis of the tubes and my
18 measurements.

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

20 THE COURT: Mr. Martin, do you have witnesses that
21 will get us through the morning?

22 MR. MARTIN: I intended on him being my first witness,
23 your Honor. I do not have enough witnesses to get us through
24 this morning without him.

25 THE COURT: What other witnesses do you have

1 available?

2 MR. MARTIN: May I look in the hall a minute, your
3 Honor?

4 THE COURT: Yes.

5 (Brief pause)

6 MR. MARTIN: Your Honor, at the current time I only
7 have one witness here, and in all candor, I intended on that
8 being my last witness. For strategic purposes, I wanted to end
9 with that witness.

10 THE COURT: How much longer, Mr. Kumi ega?

11 MR. KUMI EGA: I think, maybe five or ten more minutes.

12 THE COURT: Okay.

13 MR. KUMI EGA: Your Honor, may I approach?

14 THE COURT: Yes.

15 Q. (By Mr. Kumi ega) Mr. Savage, you talk about the
16 examination of the Sten E683; is that correct?

17 A. Yes.

18 Q. Where in that report --

19 THE COURT: I can't hear you, Mr. Kumi ega.

20 MR. KUMI EGA: Sorry, your Honor.

21 THE COURT: Go back to the podium.

22 Q. (By Mr. Kumi ega) Mr. Savage, where in that report, where
23 in that report does it talk about your analysis of the two
24 tubes, please?

25 A. It doesn't, because they weren't completed yet.

1 THE COURT: Have you supplemented your report to give
2 the analysis of these two tubes?

3 THE WITNESS: No, I have not.

4 Q. (By Mr. Kumi ega) And why not, si r?

5 A. It's been a rather busy couple of weeks.

6 Q. Okay. When did you perform those tests, please?

7 A. I believe that would have been done ei ther Monday or
8 Tuesday morning at the rear porch of Friesen Law Offi ce.

9 Q. Okay. And did anybody aid you in those tests?

10 A. No.

11 Q. You just did it by yoursel f?

12 A. Yes.

13 Q. And how long did it take to conduct those tests, please?

14 A. Approxim ately a hal f hour.

15 Q. And wi thin that hal f hour period of time -- do you have
16 raw notes on that test?

17 A. No. I had those.

18 Q. That's it. So your tests comprise of you being on the
19 back porch of Mr. Friesen's law firm and getting some type of
20 tubes and pounding in a serial number. Is that what you're
21 telling the Court?

22 A. Yes, si r. That's precisely what I'm telling the Court.

23 Q. And how come you didn't generate a report right after you
24 conducted the test, please?

25 A. Because I was in the courtroom.

1 Q. How about after the Court, after the day's testimony
2 concluded, how come you did not generate a report?

3 A. I didn't know you were going to want one. I figured the
4 tubes would speak for themselves.

5 Q. Mr. Savage, you testified you said as an expert prior to
6 that; is that correct?

7 A. I have testified as an expert prior to that.

8 Q. And didn't the other courts require you to do an
9 extensive report of your testings procedures?

10 A. No.

11 Q. They did not?

12 A. They did not.

13 Q. Okay. Let me ask you this, Mr. Savage: Is it possible
14 to put an impression on a tube without denting the tube or
15 deforming the tube?

16 A. Well, if the metal is soft enough to take an impression,
17 then it's soft enough to dent.

18 Q. Okay. But the question is: Is it possible to put an
19 impression on a tube without deforming the tube?

20 A. If you use a mandrel.

21 Q. Even without a mandrel?

22 A. Are we talking about impression or engraving?

23 Q. Well, how about both? Let's talk about both.

24 A. You could do it engraving, but you wouldn't be able to do
25 it with an impression, because unbacked up 16th-inch wall would

1 dent.

2 Q. You were sitting in the courtroom during the testimony of
3 this trial; is that correct?

4 A. Yes, sir.

5 Q. And you understand that Mr. Kong testified that there was
6 some type of engraving marks in Government's Exhibit 3.16; is
7 that correct?

8 A. Actually, he never testified that there was any engraving
9 marks. I believe he used the word "scribing."

10 Q. There were scribing marks. Is that basically the same?

11 A. No.

12 Q. What's the difference, please?

13 A. Engraving is done with a turning tool bit.

14 Q. And scribing?

15 A. Scribing is just a scratch.

16 Q. Okay. So is it possible, again, to put an impression on
17 a tube without deforming it?

18 A. Not in my experience.

19 Q. Okay. And the forces that you used, sir, in each tube,
20 are they the same?

21 A. Yes. I used the same size hammer.

22 Q. Okay. What's the difference between one of the two
23 tubes? What's the purpose of having two tubes?

24 A. Multiple strikes.

25 Q. One is multiple strikes --

1 A. One is two strikes, one is just one strike. But multiple
2 strikes was discussed during testimony, also in Mr. Kong's
3 report.

4 Q. Going back to the Erb machine guns, since you only
5 examined two, said in your report that an unknown person opened
6 the magazine well; is that correct?

7 A. That is correct. The appearances of the tube show that
8 whoever machined all the openings excepting the mag well did it
9 with a fairly high degree of skill. The only opening that
10 shows rather an amateurish lesser skill level would be the mag
11 well opening, and the welding technique used to attach the mag
12 well is, by all appearances, the same welding technique that
13 was used to attach the trigger housing.

14 Q. You also said, sir, that an unknown person put the Sten
15 serial number E683 on that firearm; is that correct?

16 A. No. That's not correct.

17 Q. Can you please read the fifth paragraph for the Court?

18 A. "By appearances of the differing techniques used,
19 the completed Sten serial number E683 was constructed
20 in two separate steps by two different persons.
21 First, the receiver manufactured by Charles Erb, who
22 machined all openings of the receiver except for the
23 magazine well opening, then by an unknown person who opened
24 the magazine well opening, completed construction of Sten
25 serial number E683."

- 1 Q. Stop right there. The last phrase, it says:
2 "Then by an unknown person who opened the magazine
3 well opening and completed construction of Sten serial
4 number E683."
5 Is that correct?
- 6 A. I was identifying the firearm, not the serial number.
- 7 Q. Excuse me? Read that sentence again, please.
- 8 A. "By appearances and the differing techniques used,
9 the completed Sten serial number E683 was constructed
10 in two separate steps by two different persons.
11 First, the receiver manufactured by Charles Erb, who
12 machined all openings of the receiver except for the
13 magazine opening, then by a unknown person who opened
14 the magazine opening and completed construction of
15 Sten serial number E683."
- 16 Q. Are you telling the Court that serial number E683 is a
17 Charles Erb serial number?
- 18 A. E683 is a Charles Erb serial number. I know that by
19 looking at the documents.
- 20 Q. By looking at the documents?
- 21 A. Yes.
- 22 Q. Okay. Not by examining the gun itself?
- 23 A. Yes. By looking at the gun itself.
- 24 Q. All right. Tell the Court how you know that's a Charles
25 Erb Sten serial number on that firearm.

1 A. How do I know that it's his serial number?

2 Q. Yes.

3 A. I don't, but it looks a whole lot like. There is no way
4 for anybody to know for a great degree of certainty, because at
5 any point in time, I mean, this thing is 22 years old.
6 Somebody could have polished it out, somebody could have
7 remarked it. Several of the exhibits that were shown during
8 court were remarked and obviously not remarked by Charles Erb.
9 One with a line stand and one was, as he put it, was a
10 billboard, and he said he didn't mark it. It's very common for
11 people who have a 22-year-old gun, where marks start to erode,
12 to remark them to make sure if erosion happens there's still
13 identifying serial number and manufacturer's information on it.

14 Q. Mr. Savage, how do you explain to the Court how the two
15 bookend serial numbers by Mr. Erb are so vastly different from
16 the serial number that you examined?

17 A. How do you explain to the Court where the one that's in
18 the trigger housing looks almost similar to it?

19 MR. KUMIEGA: Your Honor, can you ask him to answer
20 the question.

21 THE COURT: You need to answer the question as asked.

22 THE WITNESS: The bookend numbers could be completed
23 at same the time. There's other ones that show that this was
24 done at a time and stamped by differing people. It doesn't
25 mean he went number by number when he assembled them. There

1 were all thrown in a pile in a shelf, as he put it, and they
2 would just pull down one and complete it.

3 Q. (By Mr. Kumi ega) So you're saying to the Court you
4 really have no way of knowing who made that, who put the serial
5 number on that firearm; is that correct?

6 A. I have no way of knowing? I have -- no, sir, I don't.

7 Q. It's possible Mr. Friesen could have put that serial
8 number on the gun; is that correct?

9 A. It's possible the man in the moon could have, it's
10 possible you could have. There's no way with any great degree
11 of certainty that anybody can tell you who put that serial
12 number on.

13 Q. And you talked about your experience with paint; is that
14 correct?

15 A. Yes.

16 Q. All right. Do you manufacture guns, just the whole
17 firearm or just the tubes or receivers?

18 A. Sometimes a little bit of both.

19 Q. Okay. And do you place serial numbers on those firearms?

20 A. Yes, I do.

21 Q. And do you place serial numbers before they are painted?

22 A. Most times.

23 Q. Most times. So would it be fair to say that your
24 experience with paint, after a serial number is then placed on
25 it, is really not extensive?

1 A. No. That would be incorrect, because I mark weapons and
2 have had to sometimes put an historical marking on the weapon
3 after it was already painted and coated because of a customer
4 request. So --

5 Q. So one customer request?

6 A. No. Several.

7 Q. How many?

8 A. Thirty or 40. I don't have my records in front of me.
9 So -- but that's an educated guess.

10 Q. And you said your shop is in Georgia; is that correct?

11 A. That is correct?

12 Q. And where is it located?

13 A. 1486 Cherry Road in Franklin, Georgia.

14 Q. And can you describe the equipment you have in your shop,
15 please, for the Court?

16 A. I've got a vertical mill, I've got a 48-inch-by-16 lathe,
17 I've got a welding table, and I've got two assembly benches,
18 blasting cabinet, parkerizing tanks, baking ovens for phenolic
19 resin finish. That's -- that's most of the major equipment.

20 Q. Regarding the paint, sir, did you conduct tests, like Mr.
21 Kong and Sarah Walbridge, to say how the paint was embedded or
22 not embedded in the serial number?

23 A. Actually, yes, I did.

24 Q. Okay. And did you bring the results of those tests to
25 the Court?

1 A. The results of the test or the actual samples?

2 Q. The actual samples.

3 A. Yes, I did.

4 Q. Did you? Are they here today?

5 A. Yes, I did. Yes, they are.

6 Q. Okay. And may I have them so I can show them to Mr.
7 Kong?

8 A. I don't have a problem with it.

9 MR. MARTIN: I have no clue where they are. Where are
10 they?

11 THE WITNESS: Should be in that box.

12 MR. MARTIN: We've provided them to them, I just don't
13 know where they are. If we need to stop -- may I approach,
14 your Honor?

15 THE COURT: Yes.

16 MR. MARTIN: While we're here, your Honor, I believe
17 I've asked for their samples last Friday and was told they
18 would be made available today.

19 MR. KUMIEGA: I don't believe I remember saying that.

20 MR. MARTIN: It's on the record.

21 MR. KUMIEGA: Mack, you know if you asked for it I
22 would give them.

23 MR. MARTIN: He was supposed to bring them back, Mr.
24 Kong was supposed to bring them back, as I recall.

25 MR. KUMIEGA: I don't remember that, your Honor.

1 THE WITNESS: There's several in here. These are very
2 similar to what Mr. Kong performed.

3 Q. (By Mr. Kumi ega) And your use of abrasives, Mr. Savage.
4 You have extensive use of abrasives in your work?

5 A. Yes.

6 Q. For what reason, please?

7 A. For refi ni shi ng.

8 Q. So it's not for manufacturing or designing fi rearms --
9 let me finish -- it's not for manufacturing fi rearms, it's for
10 another area that you work with; is that correct?

11 A. No, that's not correct.

12 Q. So you use abrasives for manufacturing and desi gni ng
13 fi rearms?

14 A. Yes, I do.

15 Q. In what way, please?

16 A. Well, if you want the finish on the gun to be right you
17 have to use abrasives, especially if you're smoothing out rough
18 edges, getting the gun cleaned up for final finish. And we
19 also buff and polish.

20 Q. Same question for solvents. Do you use solvents for
21 manufacturing and desi gni ng?

22 A. Yes. Acetone and methyl ethyl ketone, to be speci fi c.

23 Q. Anything else?

24 A. Anything else in the way of solvents?

25 Q. Yes, si r.

1 A. Those are the two primary ones that I use.

2 Q. All right. There's been testimony that Mr. Friesen put
3 some type of charcoal paint on Government's Exhibit 3.16; is
4 that correct?

5 A. Yes. That is correct.

6 Q. Okay. Is that consistent with charcoal paint?

7 A. You mean barbecue paint, high-temperature paint?

8 Q. Yes.

9 A. Yes.

10 Q. How do you know that?

11 A. Because it's extremely brittle.

12 Q. Right. So that would have -- what does that mean, what
13 does that tell you?

14 A. High enamel content, I would image. You don't want
15 anything in there in the way of plastics because it will get
16 hot and burn off.

17 Q. All right. What's the typical type of paint you would
18 put on a machine gun if it's going to produce a lot of heat as
19 it fires multiple rounds?

20 A. Barbecue paint or high-temperature, header paint for a
21 car. I personally don't like paint, I like phenolic resin,
22 because it's far more resilient.

23 Q. So you're saying that when you put charcoal paint on a
24 firearm for heat purposes that paint is going to be brittle and
25 flake off?

1 A. It's going to be brittle. Yes.

2 Q. How many layers of paint are on that gun?

3 A. I've heard that there's one, but I see evidence right now
4 by the naked eye that looks like there's a second layer of
5 paint.

6 Q. How do you know that?

7 A. Because of the differing colors.

8 Q. The different colors of the paint?

9 A. Yeah. If you come here I'll show it to you.

10 Q. Well, let me ask you this: Did you write a report of
11 that?

12 A. No.

13 Q. This is just a new observation?

14 A. No.

15 Q. So you were going to testify to this the whole time
16 without writing a report and generating a report? Is that what
17 you're telling the Court?

18 A. I wasn't going to testify about it at all. You brought
19 it up.

20 Q. Well, the point is, you were not going to mention that at
21 all, but now you are?

22 A. I have no plan on it. I mean, it really doesn't have
23 anything to do with my testimony.

24 Q. Wouldn't it be fair to say, sir, you did not do a
25 comprehensive report on this gun; is that right?

1 A. My report was focused on the techniques used to
2 manufacture this firearm.

3 Q. All right.

4 A. And the techniques used to stamp a number into this
5 firearm.

6 Q. All right. And obviously, in your report, Examination of
7 Sten Serial Number E683, there is no mention of the experiment
8 that you performed in the back of Mr. Friesen's law office; is
9 that correct? Yes or no, sir.

10 A. That is correct.

11 Q. All right. And there is also no mention now that you
12 found a second layer of paint on that gun in any of those
13 reports; is that correct? Yes or no. Yes or no, sir?

14 A. Restate the question so I can understand it clearly.
15 You're confusing.

16 Q. Mr. Savage, there is no mention in any report that's
17 saying there was two layers of paint, black paint on
18 Government's Exhibit 3.16?

19 A. That is correct.

20 Q. All right. So is there anything else that you're going
21 to testify to that you've not advanced a report regarding?

22 A. No. And the only reason this wasn't in the report is the
23 report was done on the fly to get it to you, and it was before
24 I was able to perform a test, because when you talked about
25 comparing apples to oranges, flat plate to round tube is about

1 as far apart as you can get. And they used flat plate and I
2 tried to replicate it and got very similar results. Even their
3 pictures don't show -- what they testified to doesn't make
4 sense. And I knew the dynamics of what happens when you stamp
5 a tube.

6 Q. You heard the testimony of Ms. Walbridge and Mr. Kong
7 about how people would have peer-review of their documentation
8 to ensure the reliability of their forensic testimony in court;
9 is that correct?

10 A. Well, they didn't put it that way, but I did hear them
11 talk about peer review. Yes, Mr. Kumi ega.

12 Q. Did anybody review your work, sir?

13 A. Anybody?

14 Q. Yes.

15 A. Yes. I believe that the defense attorney did.

16 Q. Okay. And besides the defense attorney, somebody else
17 that has your equivalent level of expertise, anybody else
18 review your work?

19 A. Yes, actually.

20 Q. Who is that?

21 A. That would be Professor Ed Shaughnessy of Duke University
22 School of Engineering.

23 Q. And Professor Ed Shaughnessy from Duke University?

24 A. Yes.

25 Q. And he actually reviewed your work for today's --

- 1 A. I went over everything with Professory Shaughnessy to
2 make sure that I didn't miss anything.
- 3 Q. Okay. And when did you do that, please?
- 4 A. Last week.
- 5 Q. Okay. Last week?
- 6 A. Last week.
- 7 Q. Did you do that by phone or in person?
- 8 A. By phone.
- 9 Q. Did you show him the reports?
- 10 A. I believe I emailed him a copy of the report and I also
11 gave him a copy of the transcript of the first part of my
12 Daubert.
- 13 Q. Okay. And he's a professor of what, please?
- 14 A. Mechanical engineering.
- 15 Q. He's not a gunsmith?
- 16 A. No.
- 17 Q. Okay. Mechanical engineering. You said you did this
18 about a week ago?
- 19 A. It was sometime last week.
- 20 Q. And how many minutes was your interview with him, please?
- 21 A. I didn't put a clock on it.
- 22 Q. Okay. Let me ask you this: You're also being charged --
23 you're charging Mr. Friesen for your testimony today?
- 24 A. Yes, I am.
- 25 Q. And what is your hourly rate, please?

1 A. While I'm not getting anything done in my shop I charge
2 him what my shop typically takes in per day.

3 Q. And that would be?

4 A. About 1500 a day.

5 Q. Okay.

6 MR. KUMIEGA: Your Honor, I'll be finished in a
7 second.

8 Q. (By Mr. Kumi ega) Sir, isn't it true that Professor
9 Shaughnessy is not an expert in mechanical engineering?

10 A. He's a PE, professional engineer, and he's got a Ph.D. in
11 mechanical engineering. If you want to be specific, I believe
12 he teaches fluid dynamics or something like that. But it is
13 true, he is an engineer, a mechanical engineer.

14 Q. Right. But his specialty is fluid dynamics, not
15 mechanical engineering; is that correct? He teaches those
16 courses at Duke University?

17 A. He teaches those courses at Duke, but he's also a PE.

18 Q. A PE?

19 A. Professional engineer. You have to take a test, you're
20 certified by the government.

21 Q. Same type of test you took, right?

22 A. Pardon me?

23 Q. Same type of test you took?

24 A. Did I ever say I was a PE, Mr. Kumi ega?

25 MR. KUMIEGA: Nothing further, your Honor.

1 THE COURT: Thank you, Mr. Savage. You may retake
2 your seat.

3 We'll bring the jury up and -- take about a ten-minute
4 recess and I'll make my ruling before I bring the jury up.

5 We'll take about a ten-minute recess.

6 (A recess was had, after which the following was had in
7 open court:)

8 THE COURT: First of all, I would just say that while
9 the Court has some concern about a supplemental report not
10 being provided as it relates to the tubes, and I've expressed
11 some concern about the lack of underlying reports being
12 submitted by both the government and the defendant as it
13 relates to their experts prior to trial, the Court feels that
14 there was enough testimony relating to Mr. Savage's experiment
15 with the tubes on Wednesday before the tubes were sent to Mr.
16 Kong for his own testing, and that the government was on
17 sufficient notice as to the methodology used to and how Mr.
18 Savage had conducted that test.

19 Also I would recall Mrs. Walbridge's testimony about,
20 which was, I think somewhat similar in that basically there was
21 no examination of the metal that she used in conducting her
22 tests. And so the Court is going to allow that testimony as it
23 relates to the tubes.

24 I am concerned a little bit about several questions such
25 as relating to paint and such as serial number, who put the

1 serial number on and everything, and I don't -- it's not my
2 understanding from reading the reports and from earlier
3 testimony on direct that Mr. Savage intended to even testify on
4 those matters but only responded upon your cross-examination,
5 Mr. Kumi ega. So, and as he stated in his further examination,
6 he can't testify as to who put the serial number on. And so
7 there should be no expert testimony that he has any knowledge
8 whether he knows the serial number was put on originally or
9 later or who put it on.

10 MR. KUMI EGA: Your Honor, may I ask Mr. Savage, if he
11 knows if Mr. Erb put the serial number on the firearm?

12 THE COURT: You can ask him whatever you want to, but
13 he can't give any expert opinion as to who did it. But you can
14 ask him whatever you want.

15 While Mr. Savage's expertise is from his own practical
16 experience in dealing with painting and coating and placing
17 serial numbers and polishes and abrasive, the Court feels that
18 that does give him some expertise in those areas, and will
19 allow him to under the Daubert -- I do find he's qualified
20 under the requirements of Daubert, and that his testimony would
21 assist the triers of fact in this matter.

22 As I stated, however, there is some caution in that he's
23 not to testify on matters that are either not in his report on
24 matters that he did not intend on testifying and Mr. Kumi ega
25 has brought them out on cross-examination about the two layers

1 of paint and things like that, because I think he's done no
2 testing on that, and my understanding from his own testimony he
3 was not intending on testifying about that, but simply answered
4 Mr. Kumi ega's questions.

5 MR. MARTIN: Your Honor, I believe he will testify
6 about the impact of stamping on painted material. He did that
7 last Friday.

8 THE COURT: No. No. I said he could testify on that.

9 MR. MARTIN: Okay.

10 THE COURT: So the Court will qualify and finds Mr.
11 Savage qualified to testify as set forth.

12 Are you ready to have the jury brought up?

13 MR. MARTIN: May I have just a moment?

14 (Brief pause)

15 MR. MARTIN: Yes, your Honor.

16 THE COURT: Mr. Kumi ega, has Mr. Kong provided any
17 supplemental report on his rebuttal testimony?

18 MR. KUMI EGA: Yes. I've turned that over to Mr.
19 Martin, your Honor.

20 MR. MARTIN: I'm sorry?

21 MR. KUMI EGA: You got that.

22 MR. MARTIN: I got Mr. Kong's report, your Honor, just
23 when Mr. Kumi ega said he was going to give it to me, when Mr.
24 Savage got on the stand.

25 Your Honor, last Friday I provided Mr. Kumi ega several

1 photographs of firearms which have been marked as Defendant's
2 Exhibit 113 -- 113, a series of 113, and a series of 114 and
3 115 exhibits, which I believe Mr. Savage will testify are
4 firearms that he looked at that indicate what firearms look
5 like after they have been painted and been stamped. And I
6 think Mr. Kumiaga may want -- I'm going to offer them through
7 Mr. Savage, these photographs. And I think Mr. Kumiaga might
8 want to take it up now before the jury gets here.

9 THE COURT: Let me mention one other thing I didn't
10 mention. I heard -- I didn't hear really sufficient testimony
11 that Mr. Savage is an expert on the Erb machine gun. Two minor
12 repairs at a gun show I don't think qualify him necessarily as
13 an expert on the Erb machine gun itself, or any -- he can
14 testify as, I guess, he can testify generally about machine
15 guns and his knowledge of those, but I didn't find any specific
16 qualifications of him to testify about the Erb machine gun as
17 opposed to others other than his own observations as it relates
18 to any machine gun. And I think that those, I think there was
19 testimony earlier about the differences in those two machine
20 guns, about one being the seamed -- you had lengthy testimony
21 with regarding the differences, didn't you, Mr. Kumiaga?

22 MR. KUMIAGA: Yes, your Honor. I think it goes
23 basically to the length of the tube. I'm not sure what purpose
24 Mr. Martin is going to use that exhibit.

25 THE COURT: What I heard him testify to was about it

1 being a single unit or wrapped around with the rivets and so
2 forth, and I think there was extensive testimony about that
3 earlier.

4 MR. MARTIN: My client -- not my client, your Honor.
5 Mr. Savage, I believe, your Honor, will use Defendant's Exhibit
6 112, which is the front end of a Sten III, showing that it's a
7 flat piece of metal put together and welded at the top, and
8 that it has rivets here, and use that to note the distinctions
9 between the --

10 THE COURT: Wasn't there extensive testimony about
11 that difference earlier? You don't dispute the difference, do
12 you, Mr. Kumi ega?

13 MR. KUMI EGA: No, your Honor.

14 MR. MARTIN: Their expert, your Honor, has
15 characterized this as Sten III. It's our position that this is
16 a Sten III, Defendant's Exhibit 112, because it has those
17 unique characteristics about it. This, I believe my witness
18 will testify that in his opinion this is more consistent with,
19 I may get the terminology right --

20 THE COURT: A Sten II.

21 MR. MARTIN: A Sten II-S, I believe is what it's
22 called. I believe they added -- I believe it was actually a
23 Sten II-S; is that correct? Yes. This will be the only thing
24 I intend to ask him about as relates specifically to Stens,
25 Defendant's Exhibit 112.

1 THE COURT: Okay. And what's the objection?

2 MR. KUMIEGA: I didn't see -- I don't know if it's
3 going to be a demonstrative exhibit or an actual exhibit. I'm
4 not sure for what purpose Mr. Martin is going to introduce it,
5 nor did he give me notice about it being introduced until
6 minutes before this hearing.

7 THE COURT: I guess the purpose is to show the
8 difference in the guns, right?

9 MR. MARTIN: Correct. Correct.

10 THE COURT: Okay. And what about the pictures?

11 MR. KUMIEGA: I'm sorry, your Honor?

12 THE COURT: The pictures. Do you have an objection to
13 the pictures, Mr. Kumi ega?

14 MR. KUMIEGA: I'm not sure what the relevance of the
15 pictures are, your Honor, regarding the Sten, the serial number
16 based on 3.16.

17 MR. MARTIN: I believe, your Honor, that Mr. Kong
18 testified that he's -- on the government's case in chief he
19 gave me names of several firearms that he's familiar with that
20 actually are stamped prior to painting. And I believe these
21 are photographs of some of those very guns that have been
22 stamped after painting. And it's obvious from reviewing the
23 photographs, and my expert will testify to that and point out
24 that the very guns Mr. Kong testified about has, that are
25 consistent with being stamped prior to painting are stamped

1 after. It kind of serves two purposes. Number one, it shows
2 what they look like, and number two, it rebuts the testimony of
3 Mr. Kong.

4 MR. KUMI EGA: Your Honor, the government's position is
5 by looking at the photographs, and this is my consultation with
6 Mr. Kong, you cannot tell at what phase the serial number was
7 put on unless you actually call the manufacturer and ask.
8 These are totally different techniques.

9 THE COURT: You're going to have Mr. Kong rebut, so --

10 MR. KUMI EGA: Yes.

11 THE COURT: -- he can testify.

12 MR. KUMI EGA: Yes, your Honor. May I approach the
13 bench regarding one issue, your Honor?

14 THE COURT: Okay. If you are not afraid of getting
15 too close to me.

16 MR. KUMI EGA: Federal judge germs are okay, your
17 Honor.

18 THE COURT: My staff doesn't agree with that, nor Ms.
19 Ring.

20 (The following was had at the bench, out of the hearing of
21 the jury:)

22 MR. KUMI EGA: Your Honor, prior to -- my understanding
23 is Zella Holder is going to testify in this case.

24 THE COURT: Who?

25 MR. KUMI EGA: Zella Holder. The person that

1 apparently watched, or alleges that she watched Mr. Friesen
2 either cover up the serial number or uncover it. I tried to
3 talk to her outside; she refuses to talk to me. I wanted to
4 find out if she has a criminal history. I was there with Mr.
5 Knopp and she refused to answer those questions. I was
6 wondering if I have latitude on cross-examination of Ms. Holder
7 when she takes the stand regarding those issues. She's had
8 some brushes, but I think the documentation is somewhat old,
9 and I'm not sure --

10 THE COURT: I don't think you can get into it unless
11 you've got some proof.

12 MR. KUMI EGA: Okay.

13 MR. MARTIN: I'm not aware of any, your Honor. I know
14 years ago there was something about a minor -- but that's it.

15 THE COURT: Unless you've got documentation.

16 MR. KUMI EGA: Okay.

17 (The jury was brought into court.)

18 THE COURT: Case Number CR-2008-41-L, United States of
19 America versus Larry Douglas Friesen. Are parties ready to
20 proceed?

21 MR. KUMI EGA: Yes, your Honor.

22 MR. MARTIN: Yes, sir.

23 THE COURT: Welcome back, Ladies and gentlemen of the
24 jury. I hope you've had a good long weekend and ready to get
25 back to work.

1 Mr. Anderson, I picked up not only your cough, but a whole
2 lot more than your cough, so I'm a little stopped up and I
3 won't -- I'll try not to spread any of these germs to any of
4 you.

5 So with that, Mr. Martin, you may call your next witness.

6 MR. MARTIN: Your Honor, we would call Lennis Savage
7 to the stand.

8 THE COURT: Mr. Savage, if you would come forward and
9 raise your right hand to be sworn, please.

10 (Witness sworn)

11 THE COURT: Again, ladies and gentlemen of the jury, I
12 tell you I apologize. We've been here since nine working on
13 this case and thought we could finish it by ten but didn't
14 quite finish all of the issues.

15 You may proceed, Mr. Martin.

16 MR. MARTIN: Thank you, your Honor.

17 LENNIS SAVAGE,

18 called as a witness, having been duly sworn, testifies as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. MARTIN:

22 Q. Would you introduce yourself to the ladies and gentlemen
23 of the jury?

24 A. My name is Len Savage, and I own a company with my wife
25 called Historic Arms, LLC, where we design and build firearms.

1 Q. Let me ask you, sir: Tell the ladies and gentlemen of
2 the jury a little bit about your background.

3 A. Well, I have a federal firearms license as a manufacturer
4 called a Type 07. I also hold a Special Occupational Taxpayer
5 Stamp which means that I can manufacture NFA items: Silencers,
6 machine guns, short-barreled rifles, short-barreled shotguns,
7 everything just underneath destructive devices.

8 Q. All right, sir. With that background, do you have any
9 experience in the area of machine guns?

10 A. I do. I've designed several machine guns as well as
11 semi-automatic firearms. I repair machine guns from time to
12 time, specifically the pre-'86 stuff that's starting to wear
13 out. And I also work on caliber conversion systems from time
14 to time for lawfully possessed machine guns.

15 Q. What was that last part?

16 A. Caliber conversion systems.

17 Q. What is that?

18 A. It's kind of like a drop-in that allows a machine gun
19 that shoots a real expensive round to shoot a cheaper round.
20 Make it more economical.

21 Q. All right, sir. And you have certain licenses that have
22 been issued by the ATF; is that correct?

23 A. Yes, sir.

24 Q. And those are?

25 A. The federal firearm license we discussed, an 07

1 manufacturer's license, which allows me to manufacture and
2 sell firearms to the general public, and as well as the
3 Special Occupational Tax Stamp.

4 Q. Let me ask you, sir: How long have you been involved in
5 firearms?

6 A. Since about the eighth grade when I built my first one in
7 shop class.

8 Q. Not to be presumptuous, how many years would that be,
9 approximately?

10 A. About 20, 22 years.

11 Q. All right, sir. And let me ask you: Would it be a fair
12 statement that you're fairly familiar with the operation of
13 machine guns?

14 A. Yes.

15 Q. All right. Have you performed any research or
16 development or worked with any manufacturers relating to
17 firearms, sir?

18 A. Yes, I have.

19 Q. Would you tell us who those are and what it might be?

20 A. I've designed firearms for other much larger
21 manufacturers, did the research and development, got the design
22 that the customer wanted, and then sought ATF approval through
23 Firearms Technology Branch to verify they were compliant with
24 all the laws. So I don't miss any here, RPB of Atlanta.

25 Q. Is that a manufacturer?

1 A. Yes.

2 Q. Okay. I'm sorry.

3 A. And specifically, the gun I designed for them was the 971
4 Sport Rifle, then and Masterpiece Arms. It was a joint project
5 between the two. Century Arms International, I designed a
6 couple of firearms for them, the RPD semi-automatic and the SG
7 series. They are an historic machine gun that we figured out
8 to make a closed bolt semi-automatic so people could own a
9 working piece of his inventory. Ohio Ordnance Works, I
10 designed the Mag 58 semi-automatic. The Mag 58 is pretty much
11 the same gun as the USM 240 that is right now being fielded by
12 our Army, but I figured out a way to make it semi-automatic so
13 that when you only pull the trigger it will only shoot once
14 until you release the trigger and pull it again. And Calico
15 Light Weapons Systems. I had designed a Calico upper for the
16 Mac series machine guns. Calico is kind of unique. It's a
17 spacy-looking gun that has a helical feed magazine that feeds
18 from the top in a spiral and it holds between 50 and 100 rounds
19 of ammunition.

20 Q. All right. Was that all of them?

21 A. No. That's a good chunk of them.

22 Q. All right, sir. Let me ask you this: Over your years of
23 experience, background, and training with firearms, have you
24 been involved in any type of publication, written articles or
25 documentaries about any of the type work you've performed, sir?

1 A. Several.

2 Q. Can you tell us a little bit about that?

3 A. Some of my gun designs have been in some magazines where
4 they've been featured for being the first ever semi-automatic
5 version. The Bren was published in Small Arms Review, the RPD,
6 and, you know, several others. An occasionally I've wrote an
7 article, and I was involved in a couple of documentaries having
8 to do with urging the ATF to adopt some written testing
9 standards.

10 Q. Have you ever had the opportunity to, sir, to serve as a
11 technical adviser or expert witness in court before?

12 A. Yes, I have.

13 Q. On how many occasions?

14 A. Five or six occasions, and I've qualified as an expert
15 witness in two previous federal court districts: One in
16 Seattle, Washington and one in Milwaukee, Wisconsin.

17 Q. Let me ask you, sir: Are you -- have you applied serial
18 numbers to a firearm?

19 A. Yes, I have.

20 Q. And let me ask you: Based on your experience and
21 background and having done that, are you familiar with what
22 happens to metal when it's stamped?

23 A. Yes, I am familiar with that.

24 Q. All right. Have you ever had to restore markings to
25 firearms?

1 A. Yes, I have. Some of the guns we do are, like I said,
2 working pieces of history. We actually use pieces of the
3 original historic gun, and over time markings become worn. And
4 so I've had to restore the markings or replicate them for
5 people who are wanting a very specific date code or
6 manufacturer's proof mark.

7 Q. Let me ask you, sir, in particular: In this particular
8 case, have you been given the opportunity to examine, measure,
9 photograph, or whatever, what's been previously introduced as
10 Government's Exhibit 3.16?

11 A. Yes, I have.

12 Q. And is that in front of you, sir?

13 A. Yes.

14 Q. Okay. And based upon that, sir -- well, first of all,
15 tell us what you did.

16 A. Well, during my examination, I, of course, looked it
17 over, the tube, from front to back, looking for any other marks
18 or any other tell-tales. A lot of times, when a mark gets
19 washed out due to use or rust, sometimes you can see just a
20 corner of it. You're looking for 90-degree angles or circles.
21 I didn't see that. And then the next thing I did was I
22 measured the outside diameter of the tube in several locations
23 throughout the length of the receiver, as well as the thickness
24 of the tube that the receiver is made from.

25 Q. All right, sir. And did you perform any kind of

1 measurements or anything?

2 A. Like I had told you, yes. We measured the thickness of
3 the tube, and the measurement of the outside with a set of
4 micrometers to verify that the tube was straight and true and
5 not bent.

6 Q. What is a micrometer?

7 A. A micrometer, more specifically, a micrometer caliper
8 measures in thousandths of an inch. The particular one I used
9 actually will give you a half of a thousandths of an inch, or
10 five-ten-thousandths. That's how accurate it is.

11 Q. I'm going to hand you for demonstrative purposes a
12 toolbox with a kit in it. Would you tell us what that is?

13 A. That's a micrometer caliber.

14 Q. Just show us briefly, on the end of 3.16, end of the
15 barrel, what you did.

16 A. Well, turn it on, you make sure it's zeroed. And it's
17 placed on the receiver, then you close the jaws, make sure that
18 you're square, it's tight and you take your measurement.

19 Q. And you performed that measurement in numerous different
20 places?

21 A. Yes, I did.

22 Q. Okay, sir. I'm going to ask you if you would to look at
23 what's in front of you, I believe, it's an exhibit book,
24 defendant's exhibit book there on the your left. I'll come get
25 that device. 116. Do you see 116, sir?

1 A. No, I don't.

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

3 THE COURT: Yes.

4 MR. MARTIN: If I might approach, your Honor.

5 THE COURT: You may approach.

6 Q. (By Mr. Martin) I'm going to hand you, and if you'll
7 look at the back of that, is that 116, sir?

8 A. Yes, it is.

9 Q. And would you tell us, first of all, that's a photograph,
10 is it not, sir?

11 A. Yes, it is.

12 Q. Who took that picture?

13 A. I did.

14 Q. Would you tell us what's depicted in that picture?

15 A. The Exhibit 3.16 in a state of disassembly typically
16 called field-stripped.

17 Q. Is that how it was presented for you for your
18 examination, sir?

19 A. Yes, sir.

20 MR. MARTIN: Your Honor, I move for introduction of
21 Defendant's Exhibit 116.

22 MR. KUMIEGA: No objection, your Honor.

23 THE COURT: Will be admitted.

24 Q. (By Mr. Martin) And as a matter of fact, if you would,
25 sir, in front of you are 116 through 128. If you would look at

1 all those, I'm going to ask you a series of questions about
2 those, then I'll come back to them individually.

3 A. Okay.

4 Q. And who took those pictures?

5 A. I did.

6 Q. And would you tell us, without going into each one of
7 them, are those all photographs of the firearm, sir?

8 A. Of this firearm right here. Yes, sir.

9 Q. And were those photographs taken during the course of one
10 of your examinations of the firearm?

11 A. Yes, sir.

12 MR. MARTIN: Your Honor, I would move for introduction
13 of 117 through 128.

14 MR. KUMIEGA: No objection, your Honor.

15 THE COURT: Will be admitted.

16 Q. (By Mr. Martin) All right, sir. And if you would, sir,
17 this is photograph 116, is it not, sir?

18 A. Yes, it is.

19 Q. All right, sir. And this was the photograph of the
20 firearm when you first saw it; is that right?

21 A. That's correct.

22 Q. And this photograph, it was taken at the, I don't want to
23 say headquarters, but it was at the ATF office?

24 A. Yes. ATF field office here in Oklahoma City.

25 Q. All right, sir. And you also took what's already been

1 introduced as Defendant's Exhibit 117. I'm going to show you
2 that, sir, and ask you what is depicted, although there is some
3 glare there, what is depicted in that photograph and why you
4 took it.

5 A. Well, there's a picture of the micrometer caliper that I
6 used to do my measurements.

7 Q. That's this device right here?

8 A. Yes.

9 Q. Okay.

10 A. And there's red evidence tape just a little bit above
11 that was removed so we could measure the tube's outside
12 diameter as accurately as we could. And if you notice ejection
13 port and the cocking slot.

14 Q. Where is that? Is that this item right here
15 (indicating)?

16 A. No. It's right next to it, a little bit to the left.
17 Right there.

18 Q. That's the ejection port?

19 A. That's the ejection port. And if you notice, it's
20 machined cleanly, and you can see a radius in the corners that
21 it appears that this was done on a milling machine and done
22 very neatly. The same goes for the cocking slot. Everything
23 is very machined uniformly. It has been done with a degree of
24 precision.

25 Q. All right, sir. Defendant's Exhibit 118. Can you see

1 that, sir?

2 A. Not on the monitor because of the glare, but I do have
3 it.

4 Q. Is this another photograph, sir?

5 A. It is.

6 Q. And when you took this photograph what were you trying to
7 encase within the photograph?

8 A. Well, right across the serial number --

9 Q. Let me see if I can get that. Is this the serial number
10 right in this area?

11 A. Yes. Bring it down a little bit where the glare will
12 maybe come off. It's not working.

13 Q. Right there? Over here?

14 A. Still a pretty good glare.

15 Q. That's the area we're talking about?

16 A. Yes. In the photograph that's in front of me, I can see
17 it clearer than the monitor, there's a couple of spots where
18 paint was removed. And this happened when I was using my
19 calipers to measure the diameter of the tubes directly across
20 the top of the serial number and found out that the paint was
21 rather brittle and it came off during my examination and my
22 measurement.

23 Q. All right, sir. And you measured over the serial number?

24 A. Yes, I did.

25 Q. Okay. And I'll come back to that in a moment.

1 Government's Exhibit 119, can you see that, sir?

2 A. Yes, I can.

3 Q. And what was the purpose of this photograph, sir?

4 A. Well, it shows a little greater detail of the machined
5 cuts of the cocking slot and the ejection port and the neatness
6 of them.

7 Q. All right, sir. I'm going to put on here what's 120,
8 sir, and ask you if you can see that.

9 A. Again, not on the monitor, but in front of me.

10 Q. What is it a picture of?

11 A. It's a picture of the magazine opening. What's
12 significant about it --

13 Q. And on the picture here, what is the magazine opening?

14 A. The magazine opening is --

15 Q. Is that this area here (indicating)?

16 A. Yes. If you notice, there's kind of a flap that goes
17 over the magazine well or housing which latches the ammunition
18 magazine into the gun and retains it while the gun is
19 operating. And if you notice, it's done far cruder than the
20 rest of the tube.

21 Q. Can you show us that with the Sten? Actually, take the
22 gun there and show us.

23 A. Sure. And the reason for the photograph was to show the
24 differences, because this is done very neatly (indicating),
25 this is done very neatly and precisely, and this particular

1 opening was done very crudely. And it looks like it was done
2 by a different person who took the time to machine this so
3 precisely.

4 Q. Okay. And in the photograph, there is some type -- what
5 are these things here, if you can see?

6 A. These are cap screws, end cap screws, number ten cap
7 screws. And they are a threaded screw that -- there's threads
8 that have been tabbed into the interior bushing, and possibly
9 even part of the outer tube, and they are used to attach the
10 forward barrel bushing and the rear barrel bushing as well as
11 the shell deflector right here to the gun.

12 Q. Okay. I'm also going to put out Defendant's Exhibit 121,
13 sir. Can you see that? You have the photograph in front of
14 you?

15 A. Yes, I do.

16 Q. And what was your purpose for taking that picture?

17 A. Well --

18 Q. Again, using the firearm since it's a little more --

19 A. If you notice, the welding here and right here
20 (indicating), as well as right here, that attach the trigger
21 housing on both sides, are very similar, very crude. There's
22 flux and porosity, or little holes, pin holes in the weld, that
23 looks like this was done probably by a stick welder or standard
24 arc welder.

25 Q. And is that in Exhibit 122, is that what this is a

1 close-up of here, right here, this weld?

2 A. Yes.

3 Q. Okay. And again, sir, Exhibit 123, what were you trying
4 to capture in photograph 123?

5 A. Well, there was red evidence tape on top of the receiver
6 just in front of the rear sight.

7 Q. Is that this here, if you see it on the monitor?

8 A. Yes. And both myself and Agent Knopp were using our
9 thumbnail to try to remove a little bit of it so that I could
10 get as close of measurement as I could, as well as I wanted to
11 verify that underneath the tape there wasn't any markings or
12 impressions. Some of the paint came up with the red tape, I
13 mean, just, it was on there pretty good.

14 Q. And Exhibit 124, again, another photograph of the red
15 tape?

16 A. Yes. Another photograph of the red tape, but also if you
17 look on the inside of the receiver, you'll see a nice neat
18 90-degree machined cut for the retaining latch that holds the
19 main spring and main spring housing in place when the gun is
20 assembled. It's what keeps all the guts in it.

21 Q. Are you talking about right here (indicating)?

22 A. Yes.

23 Q. That 90-degree angle?

24 A. Yes. Again, very neatly, very precisely machined as
25 compared to the mag well opening. As a matter of fact, the gun

1 in its entirety, excepting the mag well opening, was machined
2 very precisely.

3 Q. All right, sir. Let me ask you: Relating to the
4 Defendant's Exhibit 125, do you see that, sir?

5 A. Yes.

6 Q. In particular, what were you trying to focus on in this
7 picture?

8 A. If you go over by the socket-head cap screws.

9 Q. Right there?

10 A. Back up a little bit. Bring it back into focus. All
11 right. You'll see halos, or little rings in the finish on the
12 gun.

13 Q. Are you talking about in this area here?

14 A. Yes. What it shows to me is at some time that firearm
15 has been exposed to solvent and it's leaching out from
16 underneath the heads of the screws.

17 MR. KUMIEGA: Objection, your Honor. No foundation
18 for that statement.

19 THE COURT: Be sustained. Lay some foundation.

20 Q. (By Mr. Martin) Let me ask you, sir: Have you used in
21 the past in your years of experience, training, and background,
22 have you ever used solvents on firearms?

23 A. When I build a firearm, yes. We use a couple of
24 different solvents in my shop: Methyl ethyl ketone and acetone
25 to break down coatings, paint, to get grease off before you

1 apply a coating. It's happened to me before and I've had to
2 refinish the gun, because what will happen is that if I don't
3 get all the solvent out, you apply the finish to the gun, and
4 it could be days later or weeks later it forms a halo as
5 whatever is leaching out starts attacking the paint.

6 Q. So have you seen from your background and experience
7 these types of halos like are depicted in this photograph, and
8 I've got some others here?

9 A. Yes.

10 Q. Let me show you what's been introduced as Defendant's
11 Exhibit 126, see if that's a better one.

12 A. You can see it real good, especially on the bottom.

13 Q. That area there (indicating)?

14 A. Yeah. And you can see where the paint is starting to
15 come off right there.

16 Q. You've noticed this in the past after you've applied a
17 solvent, and then what happens?

18 A. Well, if you don't have all the solvent out when you put
19 a finish on a gun what ends up happening is the stuff leaches
20 out and it attacks the finish on the gun and it leaves a
21 distinctive ring around the screw as it leaches out.

22 Q. All right, sir. And you characterized this as what, now?
23 What does this --

24 A. We nickname it a halo just because it almost always forms
25 a perfect ring. It's kind of a lighter colored, you can --

1 it's just a distinctive change in the finish.

2 Q. And based upon your experience, background, training in
3 this area, if someone had recently removed, say, for example,
4 removed paint or buffed the gun, cleaned the gun up, used some
5 type of solvent and then painted it, would this halo effect
6 that you've talked about around these cap screws appear if all
7 the solvent hadn't been removed?

8 A. Yes. If there was anything underneath the screws that
9 was applied during the refinishing process, it could leach out,
10 and that's precisely what it looks like.

11 Q. All right, sir. And so in your opinion would these halo
12 effects be consistent with the use of some form of solvent at
13 some time on this firearm, sir?

14 A. At some time.

15 Q. All right, sir. Now, I believe you testified, sir --
16 well, let me show you what's already been introduced as
17 Government's Exhibit 127, sir. Let me back that out. Can you
18 see 127, sir?

19 A. I can.

20 Q. And I'm going to ask you a question, sir. When you took
21 this picture, were you looking for any types of depressions or
22 anything in this firearm?

23 A. This was -- this looks like a picture I took. You said
24 Government's.

25 Q. I'm sorry. Yes.

1 A. Yes. The reason I took this picture at this angle, you
2 can see approximately half of the serial number on the top
3 edge, you can just start to see it.

4 Q. Up here (indicating)?

5 A. Yes. And that was to look at the edge of the tube.

6 Q. So you're looking right here right on top of the serial
7 number?

8 A. Yes.

9 Q. Let me put it up. Right up here?

10 A. Right there. And what I'm looking for is a nice clean
11 straight edge versus something that's dimpled or dented.

12 Q. All right.

13 A. And it was nice and straight.

14 Q. Here's 128, and here's another photograph that you took.
15 What are we looking at here?

16 A. We're looking at the inside of the machine gun receiver
17 from the rear looking forward. The hole in the center with the
18 little pointy thing, that's actually the barrel. That thing
19 pointing out to the side is actually the ejector. It's the
20 part that kicks the spent casing out of the gun. But the
21 purpose of the photograph is, looking down towards the bottom
22 interior going forward, I don't see any bumps. Just like I
23 didn't see a dent on the outside. This is one-sixteenth-inch
24 thick steel and I was looking for distortions or dimples or
25 dents in the tube.

1 Q. Let me ask you, sir: After your examination looking for
2 dimples or dents in the tube, did you perform some type of an
3 independent test of your own relating to serial numbers?

4 A. Yes, I did.

5 Q. In front of you, sir, there are two pipes or tubes, are
6 there not, sir?

7 A. Yes.

8 Q. Would you read the numbers off of them?

9 A. All right. One is marked Defendant's Exhibit 110, and
10 the second one is marked Defendant's Exhibit 111.

11 Q. Okay. And let me ask you: As far as thickness, size,
12 how do they compare to Government's Exhibit 3.16, the tube of
13 that gun?

14 A. Very close. During my examination I had, like I said,
15 measured the outside diameter of the tube, as well as the
16 inside, and as well as the wall thickness, so that this tube
17 here that we've got and had actually turned down so it would be
18 close, absolutely as close as possible, so that when I did my
19 test it would be as similar to the tube that makes up the
20 firearm.

21 Q. All right. And what is 110, sir? Is it a piece of tube?

22 A. It's a piece of mechanical tubing, seamless mechanical
23 tubing.

24 Q. And how did you know what type of mechanical tubing to
25 obtain?

1 A. Mr. Erb said that he used seamless mechanical tubing in
2 the construction of his Sten tubes.

3 Q. Did you perform some type of experiment on --

4 MR. MARTIN: Your Honor, I'll move introduction of
5 Defendant's Exhibit 110 and 111.

6 MR. KUMIEGA: To which we object for previous reasons,
7 your Honor.

8 THE COURT: Will be overruled. Will be admitted.

9 MR. MARTIN: May I approach briefly, your Honor?

10 THE COURT: Yes.

11 Q. (By Mr. Martin) First, I am going to ask you, I'm going
12 to ask you to look at 110, sir, and tell us, did you perform
13 some type of an experiment on Defendant's Exhibit No. 110?

14 A. I did.

15 Q. What did you do?

16 A. Well, on 110, I actually stamped a sample number into it
17 and actually struck it twice to try to replicate what I saw on
18 3.16.

19 Q. And did you use -- did you use some die, sir?

20 A. Yes. Some die stamps with numbers. Sure did.

21 Q. And do these appear to be those die stamps you used?

22 A. Yes. Those are it.

23 Q. And can you tell us by looking at those where they came
24 from, when they were manufactured, the die stamps?

25 A. It looks that they were manufactured 7/12 of 2007, and it

1 states on there "quarter-inch heavy duty figure stamp set."

2 Q. Are those the ones you used?

3 A. Yes.

4 Q. Let me ask you, sir: Likewise, with Defendant's Exhibit
5 111, did you also conduct an experiment as relates to that
6 exhibit?

7 A. I did. 111, I only struck once, kind of moderate blow.
8 It didn't actually leave the entire figure.

9 Q. All right. And after you did that, sir, did you notice
10 anything different -- here's Defendant's Exhibit 127, you
11 testified you were looking at this area right here where the
12 serial number is. Did you see anything different about
13 Government's Exhibit 3.16, the firearm, and your exhibit?

14 A. Yes. When I had measured across the serial numbers and I
15 had taken some paint off, I was paying attention to the
16 roundness and the squareness of the tube. When we replicate
17 the experiment, you can see the dimples or the dents, because
18 if you strike an unsupported thin wall tube, if you're striking
19 it hard enough to put in an impression with the character,
20 you're striking it hard enough to dent it. It forms a dimple.
21 You can see on the single strike just a wave effect, and when
22 you measure it, I believe it's about 20-thousandths of an inch
23 in depression. And when you double strike it to simulate the
24 multiple strikes, it's now approximately 40-thousandths deep
25 and you can really start to see the distortion of the dents.

1 If you look inside you can see the bumps, if you look down the
2 tube. And you can actually feel them with your finger.

3 Q. All right. And can you feel and see bumps or dents in
4 Government's Exhibit 3.16, sir?

5 A. Not at all. As a matter of fact, it was almost precise.
6 I mean, it was within a thousandths or two.

7 Q. And based on your training, background, and expertise,
8 sir, why would Government's Exhibit 3.16 not have the same
9 dents as our experimental tubes?

10 A. When you manufacture a tubular receiver, even a square
11 one, for that matter, when you stamp in a serial number on
12 something that's thin-walled, if you don't have a mandrel --

13 Q. What's a mandrel?

14 A. A mandrel is a precision tool that goes into a tube that
15 fills up the void so it's supported inside so there is no
16 hollow spaces, so that when you strike a die against it, it
17 doesn't dent.

18 Q. And you were saying you use a mandrel on Government's
19 Exhibit 3.16 because -- and how does that change how it
20 compares to Defendant's 110 and 111?

21 A. Well, these two were struck without a mandrel. A mandrel
22 is something primarily a manufacturer uses. It's just not
23 something that is common knowledge, you wouldn't know unless
24 you were striking serial numbers into stuff on a regular basis.
25 As a matter of fact, I don't even believe the ATF brought it up

1 in any of their reports.

2 Q. Go ahead. I'm sorry.

3 A. But when you look at this and it's so smooth and it
4 doesn't have the dimples in it, Mr. Erb testified that when he
5 manufactured these he had a mandrel. And it would make sense,
6 that's what manufacturers would have, so that when you strike
7 the number in, you're not dimpling and denting them, the tube,
8 because a bolt has got to ride back and forth in this and
9 function, and if it's got bumps in it, it's going to jam up and
10 it just won't work. And not only that, people aren't going to
11 want it. I mean --

12 MR. MARTIN: Your Honor, may I publish to the jury 110
13 and 111?

14 THE COURT: Yes.

15 MR. MARTIN: If I just -- could I just follow-up with
16 the Sten?

17 MR. KUMIEGA: Your Honor, to which we object until
18 I've had an opportunity to cross-examine Mr. Savage regarding
19 it.

20 THE COURT: Okay. Why don't we wait.

21 MR. MARTIN: All right, sir.

22 THE COURT: I think that's what we did on Mr.
23 Kumi ega's exhi bi ts.

24 Q. (By Mr. Martin) If I were to look at this, I will see
25 what you're saying, some type of indentation, which is not

1 present in this picture, right?

2 A. That is correct?

3 Q. And if I were -- and I'm holding 110 in my hand, which
4 is, is that the double strike?

5 A. It is.

6 Q. Okay. Is the same true for 111?

7 A. Yes.

8 Q. To look at it right on top of the, where the serial
9 numbers are?

10 A. Yes.

11 Q. Okay. And in this particular case, if your finger is
12 long enough you can actually stick them in there and feel the
13 indentation; is that right?

14 A. Yes.

15 Q. All right, sir. And likewise, sir, as relates to the
16 stamps, you heard Mr. Kong and Ms. Walbridge testify about --
17 testify about firearms that were stamped before or after they
18 had been coated, correct?

19 A. I believe it was Mr. Kong.

20 Q. Okay, sir. And you were present during his testimony,
21 were you not, sir?

22 A. Yes, I was.

23 Q. Okay. Are you familiar with some of the type firearms
24 that he used as examples that are --

25 A. I am familiar with the examples he brought up. He also

1 just said no manufacturer does that.

2 Q. Well, after he testified, did you conduct some further
3 examination of your own relating to the manufacture of firearms
4 and stamping prior to and before coating?

5 A. Well, it wasn't an examination, per se. I went to the
6 local gun shop and started to look at guns.

7 Q. All right, sir.

8 A. And cite how many different examples that showed that
9 they do indeed mark guns after they painted or coated
10 regularly.

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

12 THE COURT: Yes.

13 Q. (By Mr. Martin) I'm going to show you what's been marked
14 for identification purposes as Defendant's Exhibits 313.1,
15 313.2, 313.3, 314.1, 315.1, and 315.2, and ask you, sir, if you
16 are familiar with those photographs.

17 A. Yes, I am. I took them.

18 Q. All right, sir. And those particular photographs, sir,
19 what do they depict?

20 A. They depict a firearm with the serial number put in after
21 it was complete and the finish was applied.

22 Q. And is that more than one firearm or multiple?

23 A. There is actually three differing firearms here, a couple
24 of pictures each.

25 Q. And are these firearms that you went out and found at

1 manufacturers?

2 A. They were offered for sale at H&H Gun Range.

3 Q. All right.

4 MR. MARTIN: Your Honor, move for introduction of
5 313.1 through 315.2.

6 MR. KUMIEGA: No objection, your Honor.

7 THE COURT: Will be admitted.

8 Q. (By Mr. Martin) All right, sir. I'm going to show you
9 what's been marked and introduced as 313.1, sir. Can you see
10 that?

11 A. Yes, I can.

12 Q. What is that?

13 A. That's an overall view of a Benelli shotgun, I believe.

14 Q. All right, sir. And 313.2. Is that a photograph of the
15 same one?

16 A. Yes, that's focused in on the receiver of the firearm.

17 Q. All right, sir. And I'm trying to -- let me back out
18 just a little bit. What is the -- can you see this area right
19 here (indicating), sir?

20 A. Yes. That's the serial number.

21 Q. And can you tell us, sir, from the photograph it may be
22 better, but can you tell, sir, from examination and in this
23 photograph, was that firearm stamped before or after it was
24 coated?

25 A. After. And I think the next one is far more -- there we

1 go.

2 Q. This is 113.3.

3 A. Yeah. And it was clearly marked after the coating was
4 applied.

5 Q. All right, sir. I'm also going to show you 114.2. Did
6 you take that photograph, sir?

7 A. Yes, I did.

8 Q. And that is a --

9 A. A rifle, and I believe that's also a Benelli.

10 Q. And here's another photograph. Is that of the same
11 rifle, sir?

12 A. Yes. That's focused in on the receiver.

13 Q. That's 114.1. And this area here, what is my finger on?

14 A. The serial number.

15 Q. What does that picture depict as relating to when the
16 serial number was placed --

17 THE COURT: Excuse me, Mr. Martin.

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

19 THE COURT: Just for the record's sake, you've
20 introduced them as one number and you're referring to them as
21 another number. So we need to make sure there is a
22 clarification, Ms. Youngberg informs me.

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

24 THE COURT: I think they were introduced as 313.

25 MR. MARTIN: I meant to introduce them -- let me read

1 the numbers for the record. 113.1, 114, and 115. If I used 3
2 I was mistaken, and I apologize.

3 THE COURT: Okay.

4 MR. MARTIN: Your Honor, I apologize.

5 Q. (By Mr. Martin) I was on 115.1, I believe. And can you
6 see that, sir?

7 A. Yes.

8 Q. And do you know what that is?

9 A. That's an H&K rifle.

10 Q. All right, sir. In particular, there's a, some type of a
11 marking. Let me see if I can zoom in on that.

12 A. Yeah. That was applied after finish.

13 Q. All right. Another example of the serial number being
14 applied after finish, sir?

15 A. Yes.

16 Q. All right, sir. Now, have you been involved in the
17 application, I believe you testified, of serial numbers before
18 and after finish yourself, sir?

19 A. Yes.

20 Q. Okay. And based upon your training, background,
21 experience, and years of doing this, you've seen the
22 government's exhibit, have you not, sir?

23 A. Yes.

24 Q. And you performed some of your own independent stamping
25 on painted and unpainted material, did you not, sir?

1 A. Yes, I did.

2 Q. And what did your examination determine as to the impact
3 of stamping after a tube has been painted?

4 A. If you stamp metal that's got a coating on it and
5 painted, you're crushing metal downward, it's pushing out
6 sideways and it was, Mr. Kong testified it also welds up and
7 it leaves, you can feel it. It's raised on the edges. Paint,
8 when it's stuck to something, then crushed, doesn't stick to
9 it, it flakes off. As a matter of fact, I think the government
10 had a -- Mr. Kong had some photographs, I think it was Bates
11 number 1702, and that's very typical of a stamp after finish
12 has been applied. It's very bright, and the paint doesn't like
13 to stick to it because the metal that's underneath, remember
14 the paint is just on top. When you crush what's underneath it,
15 think of a car wreck, if you smash into another car where it
16 impacts something paint comes off. I mean, yeah, there could
17 be transference, but it doesn't stick. It's broken loose from
18 how it's stuck to the metal.

19 And when -- he had the photo micrograph, or the
20 microscopic photograph. You could clearly see the paint down
21 inside the groove, and the raised edges on the outside were
22 bright. If you look real close at the serial number you can
23 see it, down inside it's still got paint. My experience of
24 working on firearms, that's -- it certainly appears to be
25 mechanically removed either by rubbing, if a person wanted to

1 try to clean up the serial number, a rounded punch, when I say,
2 like a nail set, something blunted, and you sit there and just
3 keep rubbing with a rag. And just the raised portions that
4 weld up when you stamp it is what wears off first, not the
5 stuff down deep in the groove. I've never been able to get
6 paint to stick down in a groove after I've stamped metal
7 because it's crushed, it either flakes up and sticks to the die
8 when you pull the die back out because it's no longer stuck to
9 the metal you're stamping, or it's just gone. It just doesn't
10 stick to it anymore because the metal has been disrupted, it's
11 been crushed.

12 MR. MARTIN: May I approach?

13 THE COURT: Yes.

14 Q. (By Mr. Martin) You're referring to Mr. Kong's exhibits.
15 I've got in my hand the government's exhibit book. Would you
16 show me which one?

17 A. I'm referring to this one here, 1706. That shows it as
18 well.

19 Q. Referring to what number?

20 MR. MARTIN: If we could see Government's Exhibit 9.
21 I think it's the photo on page 9. Exhibit 9 but it's a photo,
22 page 9, photo number 9. I'm sorry. The bottom. Thank you.

23 Q. (By Mr. Martin) Mr. Savage, is this the photograph you
24 were talking about, sir?

25 A. Yes, it is.

1 Q. Okay. And what points were you pointing out?

2 A. If you look up here in this 6 character you'll see that
3 deep in the groove, because if you look at these, they are
4 V-shaped, and when they stamp into a piece of metal they leave
5 a V-shaped groove. Deep in the V, you did have paint, but if
6 you look on the edges, it's worn off, it's widened. And best
7 way to describe it is if you have a, kind of a cross-section
8 and somebody's got a rounded implement and they are rubbing it
9 trying to clean up, get the paint off, the only thing that
10 you're going to take off is the paint on either edge of the
11 cavity. And given how it's kind of spread out, I would guess
12 it was done with something that was either coated with a rag or
13 a rag. It's been my experience because I've had to do it. And
14 it leaves the paint on the inside, but only scrubs the outside
15 of the material off, because when you compare it to this
16 photograph -- I don't know if you've got the number, Bates
17 stamp 1702.

18 Q. Go ahead and tell me.

19 A. It's Mr. Kong's test where he had stamped on painted
20 metal. Same thing, my independent tests looked very similar.
21 You'll notice it's clean, it's bright, and it's bright all the
22 way down into the groove. You can see little flecks of paint
23 that was broken loose during the stamping process, but you
24 don't see uniform paint in the bottom of the groove. It just
25 -- they don't look the same. My tests did the same thing, and

1 this just looks like somebody's mechanically removed it.

2 MR. MARTIN: Just a moment. I need to figure out
3 which exhibit he was looking at.

4 If we could see Exhibit 10, Bates 1891, if that helps.

5 Q. (By Mr. Martin) What portion of that are you referring
6 to, Mr. Savage?

7 A. The upper portion of that page. Right there by the
8 numbers. If you look right there, you don't see any paint at
9 the bottom of the valley of that V-shaped groove. There is no
10 paint right there. You see flecks of paint that have been
11 disrupted, broken off due to the crushing and the impact of the
12 stamp, but you don't see any paint in the bottom of the groove.
13 It doesn't look at all like the previous photograph.

14 Q. Okay, sir. And let me ask you, sir: Based upon your
15 examinations, not only of a coated tube, but your testing on
16 the Defendant's Exhibits 110 and 111, were you able to form an
17 opinion as to whether or not the serial number that is depicted
18 on Government's Exhibit 3.16 was placed on it before or after
19 the manufacturer process, sir?

20 A. My opinion is before.

21 Q. And why is that, sir?

22 A. Well, the reason is that it was obviously done with a
23 mandrel on the inside of the receiver tube, and Mr. Erb did say
24 that he did use mandrels. And my experience with stamping
25 firearms, what you see is paint in the bottoms of the grooves

1 and you don't get that when you stamp painted metal. There
2 might be particles of paint that hang on the edge, but when you
3 crush metal and it's got paint on it, that paint is coming off.

4 Q. And have you ever in your years of experience stamped or
5 placed a serial number on a tube without using a -- or
6 forgetting to use a mandrel?

7 A. Yes, sir. And I ended up destroying the receiver, then
8 attempting to repair it later.

9 Q. All right.

10 A. I found that out through bitter experience.

11 Q. All right, sir.

12 MR. MARTIN: Nothing further, your Honor.

13 THE COURT: You may cross-examine.

14 MR. KUMIEGA: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. KUMIEGA:

17 Q. Mr. Savage, before I go into your presentation today, I
18 would like to talk something about your background if I could.
19 Now, you said you are the owner and operator of something
20 called Historic Arms Limited; is that correct?

21 A. Historic Arms, LLC.

22 Q. What does that stand for, please?

23 A. Limited liability corporation.

24 Q. When did you start that concern, please?

25 A. Formed the company in 2001, and I believe got my FFL in

1 2002, if I remember correctly.

2 Q. Okay. And when did you get your license to manufacture
3 firearms?

4 A. That's my FFL. Is that what -- I believe that was the,
5 was 2002 is when I got my federal firearms license.

6 Q. That's both to manufacture and sell?

7 A. Yes.

8 Q. Okay. So you've been doing this approximately six, eight
9 years, six years or something; is that correct?

10 A. As a manufacturer. Yes.

11 Q. Have you ever -- do you have a license to deal firearms?

12 A. I don't need one. As a manufacturer, an 07 can do
13 everything that a dealer can do.

14 Q. Okay. So you've been doing this for you said six years;
15 is that correct?

16 A. As the licensee. Yes.

17 Q. Yes. Okay. And prior to that, do you have any formal
18 education in manufacturing or firearms or gunsmithing?

19 A. Formal -- I have no -- I did not go to school for
20 firearms manufacturing. No, I did not.

21 Q. Did you ever go to school for gunsmithing?

22 A. No, sir. I actually learned by doing.

23 Q. This is all self-taught; is that correct?

24 A. And working underneath other individuals.

25 Q. Okay. And let me ask you this: How old are you, please?

1 A. I'm 41.

2 Q. Okay. And Historic Arms is the first time you had a
3 business to manufacture firearms?

4 A. Yes, sir.

5 Q. Okay. Now, prior to that, I want to ask you about where
6 you got your experience to start manufacturing firearms. Okay?

7 A. Okay.

8 Q. And my understanding, the first time you had a job with
9 firearms was something called The Cop Shop in Monroe, Michigan;
10 is that correct?

11 A. Yes. I learned how to do repairs and some refinishing
12 techniques, like parkerizing.

13 Q. Parkerizing is basically to put something on the tube or
14 the firearm, coating; is that correct?

15 A. Yes. Phosphate.

16 Q. How long did it take you to learn that?

17 A. Not long. It's a very simple process. As I testified
18 before, my interest -- the first firearm I ever built was in
19 eighth grade shop class.

20 Q. I imagine you still have that, right?

21 A. No. It caused quite a stir at the school, but, no, I
22 don't have it any longer.

23 Q. I imagine. So you were living in Monroe, Michigan, and
24 you were working for the place called The Cop Shop; is that
25 right?

1 A. Yeah. Yes, sir.

2 Q. From what years, please?

3 A. I don't recall the years. I believe it was prior to '94,
4 '95, because that's when I moved to Columbus, Mississippi.

5 Q. Okay. And in 1994 and '95, how old are you, please?

6 A. I'm 41.

7 Q. No. How old are you back in 1994 and '95?

8 A. Twenty-six, 27, I believe. You're asking me to do math
9 on the fly here.

10 Q. Okay. So you say about 27 years old?

11 A. Well, approximately.

12 Q. Okay. And you also said in one of the hearings that you
13 worked as a machinist; is that correct?

14 A. No, sir. I don't believe I ever told you I worked as a
15 machinist.

16 Q. Something called Cisco Coil or something?

17 A. No, sir. As a journeyman machine builder. I used to
18 build machines for a living. Cisco, Incorporated built coil
19 conversion systems. They take the coil steel, straighten it,
20 chops it to size, feeds it into a die, the die comes down, you
21 know, a door, a trunk, a hood of a car is punched out and then
22 there's stackers that would stack it up. I learned how to
23 build machines and a gun is a relatively simple machine
24 compared to some of the other things I've built.

25 Q. So you're saying that the Sten in front of you is

1 basically a relatively simple machine?

2 A. Yes, sir.

3 Q. Okay. Like all machine guns are relatively simple; is
4 that right?

5 A. Oh, there are some that are far more complicated.

6 Q. Okay. So from that time you worked at The Cop Shop, and
7 that's a concern for selling firearms; is that correct?

8 A. It was a retail establishment. I used to help out with
9 repairs, and I also that's where I got to learn some of the
10 techniques for firearms repair.

11 Q. So you were working there full-time or part-time?

12 A. Part-time.

13 Q. While you were building machines; is that right?

14 A. Yes, sir.

15 Q. And how many years did you worked at the Cop Shop in
16 Monroe, Michigan?

17 A. A couple of years, approximately. I don't have the exact
18 dates in front of me. It was just one of the first times I
19 actually was there inside the establishment and not just doing
20 it in my basement.

21 Q. Okay. So the reason I'm asking these questions, your
22 background is relatively light until you start working for
23 Historic Arms. I just want to get your background here. Is
24 that not correct?

25 A. What part?

1 Q. You do not include your background prior to working for
2 Historic Arms?

3 A. No, I didn't do an intensive background on that. I
4 wanted to keep it under two pages.

5 Q. Okay. And let me ask you this: After you went from The
6 Cop Shop you went to something called The Lock Shop in
7 Mississippi; is that correct?

8 A. Yes. Columbus, Mississippi called The Lock Shop.

9 Q. What kind of store was that?

10 A. It was firearms, as well as locksmithing, and we actually
11 worked on wheel lock, wheel lock, match lock, older guns, plus
12 the newer ones, plus locksmithing. Again, a firearm is a very
13 relatively simple machine, and so is a lock. And if you can
14 work on the small mechanisms in a firearm, you can work on the
15 small mechanisms in a lock. So I used to repair firearms
16 there, refinish them.

17 Q. And what years, sir, Mr. Savage, were you there, please?

18 A. I believe that would be '95 through about '97. That's
19 just approximate.

20 Q. Okay. And from '97 to when you started your company, to
21 2001, what job did you have?

22 A. Fabrication, industrial fabricator. Just machine
23 building. There's always a need for somebody there to either
24 refurbish a machine or to build a machine.

25 Q. And when you were working in this refabrication arena,

1 were you working on firearms?

2 A. Occasionally, on my own time, certainly. I was working
3 on my first semi-automatic design, the Bren Mark II
4 semi-automatic.

5 Q. But that was not part of your actual work experience, it
6 was your hobby; is that right?

7 A. Yes, sir. Yes, sir.

8 Q. So you were working you said full-time, but you have a
9 hope, sideline for firearms; is that correct?

10 A. I think my wife would call it a passion, but, yes.

11 Q. Okay. And then it morphed into your actual business in
12 2001; is that correct?

13 A. Yes, sir.

14 Q. Now, my understanding to get a federal firearms license
15 to manufacture, you don't have to pass any specific test, all
16 you have to do is pay the fee and you would get the right to
17 manufacture guns; is that correct?

18 A. Well --

19 Q. Yes or no, sir.

20 A. -- you do have to be qualified but, yes, essentially that
21 is correct. There is no skill provision that you have to pass
22 by the United States government.

23 Q. Right. So I can go down tomorrow and get a license as
24 long as I pass the background check, and I can build a gun; is
25 that correct?

1 A. If you know how.

2 Q. Right. But I can -- but the government can let me do it,
3 all I need is just to pass the background test?

4 A. Sure.

5 Q. So you do not pass any, like I said, proficiency test
6 other than your own handiwork; is that correct?

7 A. Well, if I want to eat, I've got to pass the proficiency
8 test of be able to have a salable product.

9 Q. Okay. Then you started in 2001; is that correct?

10 A. That's when the company was formed. We formed a limited
11 liability corporation to try to isolate -- a bunch of
12 litigation goes on and at that time there was a lots of
13 lawsuits against manufacturers. My wife and I discussed it and
14 she wanted me -- we decided to form an LLC to make sure if
15 somebody sued us we wouldn't lose our home and everything.

16 Q. And you said -- on previous testimony you said your wife
17 basically keeps the books; is that correct?

18 A. She does. She handles the financial end of my company.
19 Partners in life, partners in business.

20 Q. Do you also have a partner that aids you in building the
21 firearms?

22 A. No, I don't.

23 Q. Okay. So when you started in 2001, basically you were
24 self-taught from working at The Lock Shop and The Cop Shop; is
25 that correct?

1 A. And other places, but essentially, yes.

2 Q. All right. What other places, please?

3 A. Well, going to gun shows, talking with the owners,
4 letting them disassemble and examine, buying part sets. Where
5 the government allows part sets to come into the United States,
6 you can't import the receiver of a machine gun, so what they do
7 is they have to be destroyed to government specifications.
8 Usually it's saw-cut or flame-cut, and you can examine and you
9 can figure out how the mechanism works, how the trigger
10 mechanism works because they don't have to destroy that, and
11 try to figure out a way to work a disconnecter, to make sure it
12 only fires one shot per function of the trigger, trying to
13 figure out a way to make it fire from a closed bolt. Although
14 not part of the regulation, the ATF does mandate a
15 semi-automatic be closed-bolt in nature due to the fact that an
16 open-bolt gun would be more apt to malfunction and go full-auto
17 or be readily converted by somebody in the criminal world.

18 Q. Now, during this period of time, starting in 2001/2002,
19 you purchased the shop and it's in Georgia; is that correct?

20 A. That is correct, sir.

21 Q. Whereabouts, sir?

22 A. In Franklin, Georgia.

23 Q. And do you have -- let me ask you this: Do you have any
24 government contracts to build machine guns?

25 A. No, sir.

1 Q. So you don't build machine guns, you basically refurbish
2 them; is that correct?

3 A. No, that's incorrect. As a designer, I have designed a
4 couple of different machine guns seeking a military contract,
5 either trying to fill a niche. My son is in the Army and he
6 had told me they had a problem with trying to get good fire
7 power in the cab of one of the fuel trucks. So we had designed
8 a short squat little unit with just a ridiculous rate of fire
9 to be as much a psychological weapon as a weapon that would hit
10 what you're aiming at.

11 There's another one we call The Enforcer Carbine. It was
12 specifically designed for dynamic entries on drug houses, and
13 we never got any interest. So we were always looking to
14 develop a new product, to fill a niche and help out law
15 enforcement and the military.

16 Q. My understanding is in the United States of America,
17 after May of 1986, you can't manufacture any more machine guns
18 for civilian use; is that correct?

19 A. You're incorrect, sir.

20 Q. Can you tell us about that, please?

21 A. A manufacturer can manufacture, a licensed manufacture
22 can manufacture a machine gun in seeking research and
23 development, but I'm restricted as to who I can transfer it to.
24 I can only transfer that firearm to law enforcement or
25 military. What you're talking about is a change in ATF policy

1 over the last six weeks or so, but I have manufactured several,
2 they have been put on the NFRTR, and they also have been signed
3 and returned to me, so they were made lawfully. But I am
4 restricted as to who I can transfer them to.

5 Q. Okay. And you said that you have extensive work, you
6 testified, in refurbishing machine guns; is that correct?

7 A. Yes. I do refurbish machine guns and I have done it
8 extensively. All of the civilian-owned machine guns were made
9 prior to May 19, 1986. They are all 22 years old, they've all
10 been shot several times. You might find some what we call
11 hangar queens, some that had been put up, but for the most
12 part, because of the nature of machine guns and the rate of
13 fire, they beat themselves up and are forever having to be
14 repaired, just like a hot rod would always have to be in the
15 garage getting a tune-up.

16 Q. Now, during when you were working for Historical Arms or
17 being Historical Arms you started work -- you made some
18 documentaries; is that correct?

19 A. No, I didn't. That is incorrect.

20 Q. Okay. There was some testimony about documentaries. Did
21 you aid or were you interviewed for certain documentaries?

22 A. I was interviewed in one, and the first documentary was
23 actually a video of a field test which I participated, along
24 with some members of the ATF.

25 Q. All right. And the name of -- can you name the two

1 documentar ies you were involved in, please?

2 A. Sure. The first one, which is a documented error, was
3 called BATF Fails the Test.

4 Q. What year was that made, please?

5 A. I believe 2003, 2004.

6 Q. And the second one?

7 A. Was called The Gang.

8 Q. What year was that made, please?

9 A. Right around 2004, 2005.

10 Q. What role, sir, did you have in both of these
11 documentar ies?

12 A. The first one, I was an expert, asked as an manufacturer
13 to come and do an examination on a firearm. Turned out to be a
14 FN FAL semi-automatic that had malfunctioned, it had a broken
15 firing pin spring. The ATF had charged a man with illegal
16 possession of a machine gun, and right on tape the ATF claimed
17 we didn't even take it apart. When we dismantled the gun,
18 found the broken part, found out why it had failed. And the
19 tape was used, in part, to try to urge the government to try to
20 pass legislation to force the ATF to either video-document
21 their testing exams, and to adopt a written testing policy,
22 because at that time Firearms Technology Branch did not have a
23 written testing procedure, it was devised on a case-by-case
24 basis.

25 Q. All right. And the purpose of your documentary or your

1 aid, your help in the documentary The Gang, what is that?

2 A. The Gang? The Gang is an historic rundown on the ATF.
3 It does certainly focus on some mistakes and errors by the ATF.

4 Q. Okay. Would it be fair to say that you testify
5 exclusively as an expert against ATF?

6 A. Pardon me? No. That would be absolutely incorrect, sir.

7 Q. Can you explain that?

8 A. Sure. I'm asked all the time to be an expert in federal
9 cases. The most recent one I turned town was out of Nashville.
10 I was sent all the information by the defense counsel, I
11 reviewed it, and quite frankly, the gentleman who possessed
12 that firearm possessed a machine gun, and the ATF got it right.

13 Q. Okay.

14 A. And I refused to be part of the case because the guy was
15 absolutely violent.

16 Q. Okay. And -- but the cases you've testified against, the
17 cases, criminal cases that you've testified in, were basically
18 as an expert against the ATF experts; is that correct?

19 A. I only --

20 Q. Yes or no, sir?

21 A. Pardon me?

22 Q. You testified in other cases that I have here in your
23 resume, you testified as an expert for the defense; is that
24 correct?

25 A. Yes. Yes. There's been a mistake or the only time I

1 would testify is if I can document the mistake.

2 Q. And you said you're part of some legislation to, or
3 trying to get some legislation about documenting certain
4 testing procedures that ATF is supposed to do; is that correct?

5 A. I did help author a piece of legislation, HR 1791, called
6 The Fairness in Firearms Testing Act, and that is to get some
7 basic procedures, and if we can't get basic procedures, then
8 let's do it all on video and so everybody can see what happens.
9 If rural cops can run with a dash cam, why can't a federal law
10 enforcement agency video their testing exams. Very simple.

11 Q. Let me ask you this: Did you videotape your exam for
12 your presentation today?

13 A. No, I did not.

14 Q. Okay.

15 A. But I'm not federal law enforcement.

16 Q. Okay. You are an expert; is that correct?

17 A. Yes, sir. I have qualified as an expert witness.

18 Q. Okay. Now, the first matter that you talked about was
19 the examination of the Sten 3.16, and you said the degree of
20 precision regarding the ejection port; is that correct?

21 THE COURT: Mr. Kumi ega, before we get into that, if
22 you're through with the background it would be a good breaking
23 point.

24 MR. KUMI EGA: Yes, sir.

25 THE COURT: We'll recess until 1:15, and I will remind

1 you of the same admonitions that I've given you each time we've
2 taken a break. So leave your notebooks there and we'll be in
3 recess until 1:15.

4 All rise while the jury exits.

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

7 THE COURT: We're in recess.

8 (A recess was had, after which the following was had in
9 open court:)

10 THE COURT: Mr. Kumi ega, you may continue.

11 MR. KUMI EGA: Thank you, your Honor.

12 Q. (By Mr. Kumi ega) Mr. Savage, when you started Historical
13 Arms then the only formal -- well, first of all, you didn't
14 have any formal background or training to start your company;
15 is that correct?

16 A. I don't understand.

17 Q. You are self-taught; is that right?

18 A. Yes. Through experience.

19 Q. Yes. And did you have any people mentoring you when you
20 were working at The Cop Shop or The Lock Shop?

21 A. Yes, actually.

22 Q. Were these master gunsmiths?

23 A. No, sir.

24 Q. All right. How did you then learn, how are you able,
25 sir, to start your company as Historic Arms, please?

1 A. The same way Samuel Colt and John Browning did, by doing
2 it. They didn't have any formal training either.

3 Q. Okay. So you just basically learned on your own; is that
4 correct?

5 A. Yes, sir.

6 Q. All right. And you said you went to college; is that
7 right?

8 A. I've had college courses, I don't have a college degree.

9 Q. Yes. And what college courses did you take? Anything to
10 help you in your business?

11 A. Well, sure. Math and drafting, things of that nature.
12 Some chemistry, one semester of chemistry.

13 Q. All right. And what school did you go to?

14 A. Monroe County Community College.

15 Q. And did you get an associate's degree?

16 A. I said I didn't have any degree.

17 Q. All right. How many hours did you earn, please?

18 A. I honestly don't recall. That was 20-some years ago.

19 Q. Okay. All right. So you start in 2001, and you
20 basically, your expertise lies in manufacturing and designing
21 firearms; is that correct?

22 A. That is correct.

23 Q. All right. And today you're bringing forensic, your
24 forensic expertise to the jury; is that right?

25 A. Yes, sir.

1 Q. All right. And the forensic expertise is based on the
2 scientific method; is that correct?

3 A. Yes.

4 Q. What is the scientific method, please?

5 A. The scientific method is you have a hypothesis or an
6 educated guess on what goes on, and you follow steps to verify
7 that what you're doing is repeatable, and you allow somebody
8 else to repeat it if necessary, but --

9 Q. Repeatability is then one of the keys; is that correct?

10 A. It is.

11 Q. All right. Are there any other keys that you would have
12 to do as you advance forensic testimony today besides
13 repeatability?

14 A. You keep talking about forensic -- I'm not a forensic
15 technician. I'm a gunmaker and gun designer.

16 Q. Okay. Government's Exhibit 3.16 in front of you.

17 A. Yes.

18 Q. You said this is a Sten Mark II SA; is that correct?

19 A. No. No, that is not correct.

20 Q. What kind of gun is that, please?

21 A. It appears to be a Sten Mark II-S tube that was completed
22 with Sten Mark III components.

23 Q. Okay. So it has -- it's a mixture of --

24 A. It's a mixture.

25 Q. Okay. It's a hybrid?

1 A. Yes, sir.

2 Q. So it's not a pure Sten Mark II machine gun; is that
3 correct?

4 A. That is correct.

5 Q. Okay. And would the -- the tube length of that machine
6 gun is more characteristic of a Mark III than a Sten Mark II;
7 is that correct?

8 A. Actually, that's incorrect. It's more characteristic of
9 what Mr. Erb described is he had some Sten Mark II tubes that
10 he left extra length on so he could integrally suppress them at
11 a later date.

12 Q. When did he testify to that?

13 A. During his testimony. He said that the government had
14 come and seized some tubes years after this particular tube had
15 transferred to R.J. and then had passed through several hands.
16 He talked about it during a compliance inspection.

17 Q. All right. Why does it have characteristics of a Mark
18 III?

19 A. Because it used -- the person who assembled the tube used
20 Mark III components.

21 Q. All right. And the tube is longer than it should be; is
22 that correct?

23 A. For a Mark II or a Mark III or a Mark II-S?

24 Q. For a Mark II.

25 A. Yes, it is.

1 Q. Okay. Let me ask you this: Your overall impression of
2 that firearm, what would it be, please?

3 A. My overall impression of that firearm is that it's an Erb
4 Mark II-S tube built with Sten Mark III parts.

5 Q. All right. Why did Mr. Kemmerer testify that looks like
6 a garage gun?

7 A. Because of this opening here is far cruder than the rest
8 of the openings because of the poor welding during final
9 assembly for this portion here and this portion there
10 (indicating). It looks like the gun was built in two different
11 steps, once as tube and then completed by a different person at
12 a later date with a different skill set.

13 Q. Okay. Did you look at E682 and E685?

14 A. I saw them from the back of the room and I saw what you
15 had up there. Do you have them available? I would be happy to
16 look.

17 Q. Sir, wouldn't it have been prudent to look at those
18 firearms before you make a decision regarding that Sten machine
19 gun?

20 A. In what way?

21 Q. Well, how could you make a comparison? How do you know
22 that's an Erb II?

23 A. I'm basing that on the pictures that were shown in the
24 courtroom, the testimony that I heard, and my observation here.

25 Q. All right. Do you see those exhibits?

1 A. Yes.

2 Q. Is that 6 and 7?

3 A. Let me see. Yes, Exhibit 6.0 and Exhibit 7.0.

4 Q. All right. Government's Exhibit No. 6. What serial
5 number does that have, please?

6 A. E682.

7 Q. All right. And Government's Exhibit No. 7?

8 A. E685.

9 Q. All right. Would it be fair to say the serial numbers on
10 those two firearms are radically different from Government's
11 Exhibit 3.16? Yes or no.

12 A. They are all radically different from one another. I
13 haven't seen any consistency in any of the Erb guns shown.

14 Q. Are you telling the jury that Government's Exhibits 6 and
15 7 are not consistent in serial number quality?

16 A. Serial number quality? Well, they are marked in
17 different locations, and one appears to be used -- the Es are
18 definitely different. They used different stamps. They are
19 not consistent. No.

20 Q. They are not consistent?

21 A. No, they are not.

22 Q. And how do you know that? You can just tell by looking?

23 A. Sure. I would be happy to show you. One uses an E that
24 is straight, and the other uses an English type of E that is
25 hooked and bending towards the center.

1 MR. KUMI EGA: Your Honor, may I approach the witness?

2 THE COURT: Yes.

3 THE WITNESS: Right here, take a look at the E, how it
4 downturns toward the center, and then look at E in there. It's
5 just straight.

6 Q. (By Mr. Kumi ega) You don't see the upturn in
7 Government's Exhibit No. 7?

8 A. No. Actually, there's a character in the center. There
9 is no upturn.

10 Q. How would you characterize the E683 in Government's
11 Exhibit 3.16?

12 A. Different size and different location.

13 Q. All right. And how are they different, please?

14 A. With what regard? To font? Size?

15 Q. Everything, sir.

16 A. I haven't seen a consistently marked Erb gun since I've
17 been here. They are all marked with different sizes, different
18 fonts, and in different places.

19 Q. You're not testifying that you're an expert in Erb guns;
20 is that correct? Yes or no.

21 A. No, sir. I'm testifying about my observations since I've
22 been here.

23 Q. All right. Now, you testified in those tubes in front of
24 you --

25 A. Yes.

1 Q. -- that you put serial numbers on those tubes; is that
2 correct?

3 A. That is correct.

4 Q. And how did you do that, please?

5 A. I used a hammer and these stamps.

6 Q. Okay. And where did you do that at, please?

7 A. I did that over at Mr. Friesen's law firm.

8 Q. How long ago, please?

9 A. Last Tuesday, I believe.

10 Q. All right. And the purpose of that experiment was to do
11 what, please?

12 A. To see whether or not the tube of approximate size and
13 shape deformed or dented when you struck it with a character.

14 Q. All right. Are those two tubes, your exhibits, are they
15 from the same lot or from the same pipe or same tube?

16 A. Yes.

17 Q. All right. Where did you buy those at, please?

18 A. I made a couple of calls, and I gave the dimensions. I
19 couldn't even tell you the name of the company.

20 Q. Okay. And how did you come up with a similar length for
21 Government's Exhibit 3.16, please, the same type of tube?

22 A. Based on Mr. Erb's testimony. He said he used seamless
23 mechanical tubing, and that's what I sought out was seamless
24 mechanical tubing of the same size and dimension.

25 Q. And did you use some type of, I guess, thickness

1 instrument to determine hardness to make sure that the tubing
2 is similar to Government's Exhibit 3.16?

3 A. Well, a device to measure thickness doesn't measure
4 hardness. You would need a Rockwell C scale, or there's
5 several other scales that measure hardness, but hardness wasn't
6 an issue in any of the government's reports, and I didn't take
7 issue at it either. Seamless mechanical tubing is typically
8 mild steel.

9 Q. And you performed some scientific tests on Government's
10 Exhibit 3.16; is that correct?

11 A. When you say "scientific tests" I don't follow.

12 Q. Okay. What tests did you perform on Government's Exhibit
13 3.16?

14 A. I measured the outside diameter, the inside diameter, the
15 thickness, took photographs, disassembled.

16 Q. Anything else?

17 A. I may have missed a thing or two.

18 Q. Okay. You said you used a micrometer?

19 A. Yes. A measuring instrument.

20 Q. All right. And you were trying to measure for what
21 purpose, please?

22 A. Size and dimension.

23 Q. All right. And the size and dimension of that tube is
24 similar to your exhibits?

25 A. Yes.

1 Q. All right.

2 A. Similar.

3 Q. Now, during the process, sir, you made a scratch on the
4 serial number; is that correct?

5 A. Yeah. The paint was brittle.

6 Q. All right.

7 A. Which also leads me to believe that if you were to --

8 Q. Let me finish.

9 A. I'm sorry.

10 Q. You left a scratch on it; is that correct?

11 A. Yes, I did scratch it during measurement.

12 Q. And how -- the length of that scratch, how long is it?

13 A. There are two scratches here.

14 Q. The scratch you did, sir.

15 A. There's two scratches here that I made that the
16 approximate length is near a quarter of an inch.

17 Q. All right.

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

19 THE COURT: You may approach.

20 THE WITNESS: Here and here (indicating).

21 Q. (By Mr. Kumi ega) Did you make that scratch for any
22 scientific purposes?

23 A. No. I made that scratch during my measurement.

24 Q. It was an accident?

25 A. Yes, sir. It was entity incidental.

1 Q. And the scratch goes, stops, and another scratch occurs;
2 is that correct?

3 A. Yes. As I was moving my micrometer.

4 Q. Right. Could you not see you made a scratch from the
5 first time you left a marking?

6 A. I was watching the readout of the micrometer to see if
7 there was any deviation in the diameter of the tube as I
8 measured across the face of the serial number.

9 Q. Does that concern you, sir, that you would make a scratch
10 over the most important part of the government's exhibit?

11 A. Of course it concerns me, but it was not done
12 intentionally. But it did show me how brittle the paint was
13 and doesn't support stamping and painting to be able to stay in
14 the grooves of the stamp mark.

15 Q. Let's talk about that. The testimony is that Mr. Friesen
16 refurbished the gun in the year 2000; is that correct?

17 A. I believe that was his testimony.

18 Q. Right. The gun is approximately, with that paint on it,
19 approximately eight years old; is that correct?

20 A. By testimony, approximately. Yes.

21 Q. Would it be fair to say that the wear and tear on
22 Government's Exhibit 3.16 is pretty extreme?

23 A. That's relative, but, yes, there is wear and tear on that
24 firearm.

25 Q. And some of the testimony from Mr. Friesen is that he

1 hardly used that firearm at all, doesn't remember shooting it
2 and used it as a prop. Do you remember that testimony?

3 A. Yes, I do.

4 Q. All right. How do you account for such wear and tear on
5 that gun if the gun was refurbished, supposedly, according to
6 his testimony in the year 2000, some eight years ago?

7 A. Well, according to your photographs this gun looked a
8 whole lot better when you guys first got it, and I've seen the
9 condition of this gun degrade over the last two days, or last
10 two weeks.

11 Q. All right. You're not answering the question, sir. The
12 gun was refurbished in the year 2000, approximately?

13 A. Uh-huh.

14 Q. It looks like it was well worn; is that correct?

15 A. Yes, it does.

16 Q. How do you explain that then if the gun was hardly ever
17 used?

18 A. As I stated, the photographs that were taken when the gun
19 was taken into custody was in a far better shape than what the
20 gun looks like now, and it appears that the ATF has been rather
21 abusive with it.

22 Q. So just like you making the mistake with the scratch
23 mark?

24 A. Sure, or throwing it in the safe or dropping it or
25 banging it against the table.

1 Q. Okay. Now, going back to your supposed test, you said
2 that in your tubes you took them outside Friesen's law office.
3 Was that on the porch?

4 A. It was.

5 Q. And did anybody watch you do this?

6 A. No, sir.

7 Q. All right. And you put serial numbers on that tube; is
8 that correct?

9 A. Yes. I actually set a piece of steel down because I
10 didn't want to bounce it against wood to use as an anvil, and I
11 just stamped the tubes. That is correct.

12 Q. All right. And how can we replicate that test, please?

13 A. If you like, I can do it for you right here right now.

14 Q. I don't want to know -- how can Mr. Howard, Mr. Kong,
15 excuse me, how would he be able to replicate the test if you
16 never advanced any reports on this, please?

17 A. He could buy tubing of the same approximate diameter and
18 size, get a new set of dies, and strike his own set of tubes.

19 Q. Let me ask you this: What force did you use to put those
20 serial numbers on?

21 A. I believe I used a 12-ounce hammer and I tried to give
22 just enough of a strike to leave most of the impression. I
23 think it's -- the 111, you'll see that you didn't even get a
24 complete character strike. I was trying to replicate what I
25 saw in E683.

1 Q. Okay. You used a hammer. How was the government able to
2 replicate your use of force on the serial numbers?

3 A. They can swing a hammer.

4 Q. How can we replicate your use of force on how to put the
5 serial number on the tube?

6 A. They can swing a hammer.

7 Q. Mr. Savage, you're not answering the question. How much
8 force did you use, sir, to put serial numbers on that tube?
9 One of pound of pressure? Three pounds of pressure? Can you
10 explain that to the jury, please?

11 A. Sure. I've put lots of serial numbers in and I know the
12 approximate amount of swing in a hammer to leave an impression
13 of a stamp. You're asking me to quantify it in foot pounds,
14 I'm sorry, I had no way of measuring it.

15 Q. All right. Isn't that the whole purpose of a scientific
16 method to replicate your test? Yes or no, sir.

17 A. I misunderstand you.

18 Q. How do we replicate your test, sir, if you don't even
19 know how much force you put on those tubes?

20 A. You can swing a hammer.

21 Q. Sir, how do we know how hard you swung that hammer?

22 A. You could swing the same size and weight hammer, compare
23 my test with your test, and when you reach the appropriate
24 depth, then you would know you were hitting it with the proper
25 amount of force.

1 Q. Again, have you looked at Government's Exhibit 3.16,
2 those serial numbers?

3 A. Yes, I have.

4 Q. Doesn't the depth look a little bit different from the
5 depth in your test?

6 A. This is a pretty close approximation. Remember, I didn't
7 have the access of this test, or of this particular firearm
8 when I did this test. I had to use photographs because you
9 guys maintained custody of the firearm. I could not do a
10 side-by-side comparison with them right next to one another.

11 Q. Isn't it true, sir, you never requested that from the
12 government; is that correct?

13 A. That is correct.

14 Q. All right. And you have never advanced any reports about
15 your scientific methods, is that correct, regarding those very
16 tests?

17 A. Regarding the tubes, that is correct.

18 Q. All right. Why not?

19 A. Time constraints.

20 Q. All right. How long did it take you to do that test,
21 please?

22 A. About a half hour.

23 Q. And that was last week?

24 A. That was last Tuesday, I believe.

25 Q. Okay.

1 A. Before court.

2 Q. Now, you used no mandrel inside the -- your tubes; is
3 that correct?

4 A. That is correct.

5 Q. Okay. And a mandrel you said is a precision instrument;
6 is that correct?

7 A. It goes in and it's got to fit tight so that tube doesn't
8 distort when you apply a serial number.

9 Q. Basically, it's just a sleeve that fits, some type of
10 steel sleeve that fits inside the tube; is that correct?

11 A. It's not a sleeve, it's usually solid. It can be made
12 out of aluminum, can be made out of brass. it's just to prevent
13 tube deformation.

14 Q. Okay. And is it possible to strike the tube in such a
15 way to leave a slight scratch instead of deforming it if you
16 wanted to put a serial number on it?

17 A. Are we talking about applying a serial number or a
18 scratch?

19 Q. Well, both.

20 A. Well, of course, it's possible to scratch something
21 without striking a serial number and without a mandrel, but if
22 the material is soft enough to have tool still leave an
23 impression, and then it's soft enough to deform, Unless it's
24 backed up with something.

25 Q. Right. But again, you're comparing apples and oranges

1 because you don't know what the hardness or strength
2 Government's Exhibit 3.16 compared to your exhibits is; is that
3 correct?

4 A. I know what Mr. Erb says, but if you want to talk about
5 apples and oranges, you guys did flat plates, I did round tube.
6 That sounds more like apples to oranges than tubes to tubes.

7 Q. What are you talking about?

8 A. When your people did your tests they used flat plate. I
9 used a round tube.

10 Q. All right. You're talking about the paint inside the --

11 A. Yes.

12 Q. Okay.

13 A. Yes. They would have gotten an entirely different --
14 they would have discovered this if they had used tubes instead
15 of flat plates. That's apples and oranges.

16 Q. Okay. So is it fair to say, sir, that the government
17 cannot replicate your tests?

18 A. No, that's not fair to say.

19 Q. Okay. We have to use a hammer. What kind of hammer did
20 you use, how many -- what did it weigh?

21 A. Would you like to see it I believe it's 12-ounce
22 ball-peen. I have it in my bag.

23 Q. Did you record how you struck the tube?

24 A. No, I did not.

25 Q. And again, you don't know how much force you used; is

1 that correct?

2 A. Through experience I know how much force it takes to
3 apply an impressed serial number. If you look right here
4 (indicating), it is very similar to what you see there because
5 you didn't get a complete character impression. It is a very
6 close approximation.

7 Q. All right. Now, this test that you did, amongst others,
8 part of the scientific method to replicate the test you have to
9 have some kind of peer review where people can actually
10 duplicate the test; is that correct?

11 A. You don't have to, but it is certainly, if -- part of the
12 scientific method is to be able to replicate results.

13 Q. All right. And did you have some peer review regarding
14 this test?

15 A. No, sir.

16 Q. You did this on your own?

17 A. Yes, sir.

18 Q. Okay. Now, you struck Government's Exhibit, excuse me,
19 Defendant's Exhibit 110 twice, and then you struck your
20 exhibit, Defendant's Exhibit 111, once; is that right?

21 A. Yes, sir.

22 Q. All right. And do you know how many multiple strikes are
23 on Government's Exhibit 3.16?

24 A. According to the microscopic photo, it looked like
25 several. I stopped at two just due to the fact the tube that

1 the deviation -- the tube was denting so bad it became obvious
2 to me that had to have been done with a mandrel and I stopped,
3 because every time I struck the tube it was denting back
4 20-thousandths of an inch.

5 Q. Would you look at Government's Exhibit No. 9, photograph
6 8, please. This is contained in 3.16 the Sten Mark III, or
7 characters of the Sten Mark III; is that correct?

8 A. Yes, sir.

9 Q. Would it be fair to say there are more than two types of
10 stamps, impressions on that?

11 A. Oh, yes, sir.

12 Q. There's multiple stamped impressions; is that correct?

13 A. Yes, sir.

14 Q. Okay. And then it says here, "Arrows indicates presence
15 of scribing prior to stamping"; is that correct?

16 A. That's what it says.

17 Q. All right. Do you see scribing in Government's Exhibit
18 682 and 685?

19 A. Are we talking on serial numbers or over the whole length
20 of the receiver tube?

21 Q. The serial number, please.

22 A. Actually, it looks like it may very well be a scribe or a
23 stamp over the E.

24 Q. Uh-huh.

25 A. And then there's a Y behind that.

1 Q. Uh-huh.

2 A. I do not see any -- well, yes, I do see some scratches.

3 Q. Let's look at the other exhibit, No. 7 or 6, please.

4 A. No, I do not.

5 Q. Okay. Now, the test that you did you said that you
6 painted a surface, then you stamped on it; is that correct?

7 A. That is correct. I tried to replicate what was in the
8 report that was supplied during discovery.

9 Q. And you're saying that if you have a flat surface or a
10 surface and there's paint on it, if you put a stamp on it it's
11 not going to leave any paint inside the grooves of the serial
12 number; is that correct?

13 A. I didn't say any paint. I'm saying, when the crushed
14 metal gets distorted underneath, the paint comes loose.

15 Q. Okay.

16 A. When you whack your car door into something, does paint
17 come off the edge of your car door? There is paint removed
18 when you die-stamp painted metal. I've done it enough,
19 typically the centers and just like your photographs that were
20 shown to me earlier, my results were pretty much the same, but
21 it doesn't look like anything that exhibit you just showed on
22 the screen.

23 Q. Let me ask you this did: You use a microscope, sir, to
24 see if there was any paint inside the groove? Yes or no.

25 A. Which groove?

1 Q. Of the serial number of your experiment

2 A. The serial number of the gun? I didn't stamp the serial
3 number. Are you talking about my test that I did on flat
4 plate?

5 Q. Yes.

6 A. I used a magnifying glass. There was small flecks, but
7 they weren't attached to anything.

8 Q. So you're saying Mr. Kong is totally wrong on his
9 experiment?

10 A. No. I don't doubt his science, I just doubt his
11 conclusion.

12 Q. All right. And what's wrong with his conclusion, please?

13 A. His conclusion is that this had to have been painted and
14 then stamped, and I disagree with his conclusion.

15 Q. Okay. You said you brought the paint -- do you have the
16 flat tests with you, is that correct, the actual black stamps?

17 A. Do we have them here?

18 Q. I don't know. This is your exhibit.

19 A. What do you mean you don't know? Didn't you look at them
20 earlier?

21 Q. Do you have them with you?

22 A. I don't, but they are here.

23 Q. Let me ask you this: Have you had any experts or someone
24 else also look at your results?

25 A. No, I did not.

1 Q. Why not?

2 A. I didn't see any need. I didn't know it was going to be
3 an issue.

4 Q. You performed a test and you didn't know it was going to
5 be an issue, sir?

6 A. Well, they didn't show me their plates either.

7 Q. Did you ask for them?

8 A. Actually, I do believe defense counsel did.

9 Q. Did he really? And did you see --

10 MR. MARTIN: Your Honor, I'm going to object.

11 THE COURT: That will be sustained.

12 Q. (By Mr. Kumi ega) All right. The solvents, you said that
13 you detected presence of solvents in Government's Exhibit 3.16;
14 is that correct?

15 A. That's incorrect. I didn't say I detected presence, I
16 said that I had noticed halos, which typically happen when you
17 use solvent.

18 Q. And are there any other explanations for the presence of
19 halos?

20 A. Oil could be one, but the problem is, underneath the
21 socket-head cap screws, when I backed them off and looked, they
22 were rusty. If they were oil, oil would have stayed under
23 there and the metal would have stayed shiny. Typically,
24 solvents, because it strips all of the oil off, allows it to
25 rust. And there was a lot of rust underneath the heads of the

1 screws.

2 Q. Is it possible that the firearm could have used something
3 commonly known your business as Loctite and it leached?

4 A. It could have.

5 Q. All right.

6 A. But the --

7 Q. First of all, what is Loctite, please?

8 A. It's used to lock the threads on screws.

9 Q. All right.

10 A. It's typically applied as a liquid to the threads of a
11 screw, you run it in, and you would want to -- if you're
12 assembling a gun with any screws you would certainly not want
13 the screws to back out while you're shooting the gun, that
14 could be disastrous. There was what looked like thread lock or
15 some type, whether it was Loctite brand or not, because it
16 wasn't green, blue or red, which is typically what Loctite is,
17 this was a whitish powder, but the threads were rather tight.

18 Mr. Friesen testified I think you said 2002 is when he
19 refinished it. The Loctite powder was pretty degraded,
20 probably put in some years ago. Would it leach out years
21 later? No, because it turns hard. If it stayed as a liquid,
22 then the screws wouldn't lock.

23 Q. All right. You're not telling the Court how old that
24 firearm is, are you?

25 A. I have no way of knowing that, sir.

1 Q. Okay. Now, you said that the magazine well of
2 Government's Exhibit 3.16 was very crudely made; is that
3 correct?

4 A. No. I said the magazine well opening was crudely made.
5 The magazine well was probably made in Great Britain 60-plus
6 years ago, but the opening was crudely made. Yes.

7 Q. All right. When you say "crudely made" can you tell the
8 jury what you mean by that? How was it made, please?

9 A. It looks like it was cut this way (demonstrating) and
10 then cut this way, and then cut down the center, and then
11 peeled back either with a pair of pliers or with heat, I can't
12 really tell, and then just slipped over the mag well, and then
13 crudely welded on. But when you compare it to the rest of the
14 openings that are machined into it, which are fairly precise,
15 this is the only opening that was crudely made on the firearm.

16 Q. So somebody actually pinched back the tube, right, and
17 then -- for the -- for the magazine well to be inserted; is
18 that correct?

19 A. That is correct. It was not machined out like the rest
20 of the gun.

21 Q. Okay. And that would make it very different from the two
22 firearms in front of you; is that correct?

23 A. It would -- it would depend on the choice of the person
24 doing the final assembly.

25 Q. No, the point is, it's very different from the two

1 firearms in front of you; is that correct?

2 A. Oh, yes, sir.

3 Q. Right. Because those are machined and that's pinched
4 back; is that correct?

5 A. That is correct.

6 Q. All right. What are the differences that you see between
7 Government's Exhibit 6 and 7 and Government's Exhibit 3.16,
8 please?

9 A. Is there something specific you're wanting?

10 Q. You're the expert, you tell me, please.

11 A. Okay. This appears to be made from a tube a little bit
12 longer in length.

13 Q. And is more characteristic of a Mark III, correct?

14 A. Or Mark II-S.

15 Q. Right.

16 A. It all depends on what the person decided to do when they
17 did the final assembly.

18 Q. All right. What else, please?

19 A. This is more of a Mark II as far as not being a hybrid.
20 It does, typically has a pivoting mag well, everything is nice
21 and machined, there is a barrel bushing welding in front that
22 allows the threaded barrel nut for the removal of the barrel.
23 And actually the machining of these and the cocking slot area
24 look to be very close. But this one, the two other
25 government's exhibits are made from a true Mark II part set

1 when the tube was completed, where this one appears to be made
2 with a Mark III part set. The parts are somewhat
3 interchangeable. I would suppose that the person who received
4 this tube realized that it was made of a different spec than a
5 standard Mark II, found it far easier to complete it with a
6 Mark III part set.

7 Q. You were present during the testimony of everybody in the
8 last six days; is that correct?

9 A. No, not everyone.

10 Q. Who did you miss?

11 A. Some of Mr. Friesen's testimony and some people after
12 that.

13 Q. All right. You were present during the testimony of Mr.
14 Erb?

15 A. Yes.

16 Q. Present during the testimony of Mr. Kemmerer from
17 Florida?

18 A. Yes.

19 Q. Present during the testimony of Mr. Davenport from
20 Alabama?

21 A. Yes.

22 Q. Both Mr. Davenport and Mr. Kemmerer disparaged that gun
23 that we introduced saying it was a garage gun; is that correct?

24 A. I believe one of them termed it as a garage gun.

25 Q. All right.

1 A. But I didn't hear anybody say they made it or didn't make
2 it.

3 Q. All right.

4 A. They said they weren't sure because they received tubes
5 in varying degrees of completion.

6 Q. Didn't Mr. Kemmerer testify he would have never passed on
7 a gun like that because he never saw a gun like that before?

8 A. That would be easy to say now. He did say that.

9 Q. He did say that. And Mr. Erb said that was not his work;
10 is that correct?

11 A. Mr. Erb also said that other one wasn't his work that we
12 know is.

13 Q. Which one --

14 A. The one that only had a cocking slot, which was shown up
15 on the screen that --

16 Q. That's just a photograph; is that correct?

17 A. But from a photograph I can see that the machining wasn't
18 complete, and he testified he machined all the openings in his
19 guns before he sold them and that obviously --

20 Q. And Mr. Savage, do you remember the serial number on that
21 cocking device or that firearm?

22 A. I do not.

23 Q. In fact, would it be a fair representation it looks like
24 -- more like Government's Exhibit 6 and 7 than Government's
25 Exhibit 3.16?

1 A. That would be a fair representation.

2 Q. All right.

3 A. But there were others that looked almost nearly identical
4 to those markings.

5 Q. Oh, really? Which ones were those, please?

6 A. The one that was marked inside of the trigger housing. I
7 don't recall the serial number by heart.

8 Q. Okay. Now, you testified that, in a car wreck, paint
9 cannot be transferred because it would flake off; is that
10 correct?

11 A. No, I didn't say that.

12 Q. What did you say, please?

13 A. I said if you ding your car, if you've ever dented your
14 car, paint comes off. If I were to stamp your car with this,
15 the paint would come off. But again, now we're getting to
16 extremes. Yes, paint can transfer in an automobile accident.

17 Q. All right. And you can find that by using a microscope;
18 is that correct?

19 A. Sometimes even by the naked eye.

20 Q. Right. But especially by a microscope; is that correct?

21 A. I don't know.

22 Q. Now, the type of tools you used to conduct these
23 scientific experiments were a hammer, a micrometer, and a
24 magnifying glass; is that correct?

25 A. That, and then punches, but, yes, essentially.

1 Q. Any other sophisticated devices you used?

2 A. No, sir. Not that I'm aware of.

3 Q. Okay. Now, you're being paid for your testimony today;
4 is that correct?

5 A. Yes, sir. While I'm here my business is at a standstill.

6 Q. Can you tell the jury how much you're getting paid for
7 your testimony?

8 A. \$1,500 a day.

9 Q. Plus expenses?

10 A. Yes.

11 Q. All right. And how much has your meter been running
12 since you came to Oklahoma City?

13 A. How many days have I been present in court?

14 Q. I don't know.

15 A. You don't?

16 Q. No.

17 A. Approximate, if I was going to do mental arithmetic here,
18 maybe it's cost a total of \$16,000 while I've been out here the
19 last two weeks, is what I charged counsel, plus or minus.

20 Q. Mr. Savage, it's possible to put a serial number on a
21 firearm if you strike it slightly or lightly; is that correct?

22 A. Is it possible to put a serial number on a firearm if you
23 strike it lightly?

24 Q. Yes.

25 A. Certainly.

1 Q. Okay.

2 A. You might not be able to read it. You might not get a
3 complete character impression. But anything is possible.

4 Q. All right. So if you can do that with just the right
5 amount of force, it still would be a valid serial number; is
6 that correct?

7 A. The federal law for the --

8 Q. I'm talking about the firearm that's in front of you
9 today.

10 A. You said valid serial number, means it has to be a
11 minimum of three-thousandths in depth.

12 Q. How long ago did that come into operation?

13 A. Approximately 2004.

14 Q. But the point is, if you strike a firearm lightly enough,
15 depending on the hardness of the tube, it's possible to put a
16 serial number on there without making, creating a dimple; is
17 that correct?

18 A. If the metal is soft enough to take an impression from
19 tool steel, if you don't put a mandrel behind it or back it up
20 with something, it's going to deviate. It's just a matter of
21 quantifying that or measuring how deep is the dent going to be.

22 Q. All right. Speaking of quantifying it, did you ever
23 quantify the dimple or deviation in Defendant's Exhibit 111 and
24 -- 110 and 111?

25 A. Yes, I did.

1 Q. How did you do that?

2 A. With a micrometer.

3 Q. All right. And what is the deviation?

4 A. The dent was approximately 20, 25-thousandths in this,
5 and the dent in the one that I struck twice was approximately
6 40 or 42-thousandths, if I remember. But approximately
7 20-thousandths of an inch.

8 Q. All right. However, you never put that in any report; is
9 that correct?

10 A. No, sir.

11 THE COURT: Excuse me, Mr. Kumi ega. I don't know
12 whether he said no, sir, that's not correct, or no, sir, he
13 never put it in a report.

14 THE WITNESS: No, I never put it in a report.

15 Q. (By Mr. Kumi ega) All right. So your most important
16 test, Mr. Savage, is being conducted at the back of Mr.
17 Friesen's law office on the porch with those tubes wielding a
18 hammer?

19 A. I don't know if that's -- you're calling it my most
20 important test. I think that it's -- what's most important is
21 all of my observations.

22 Q. Let's talk about the other observations. What other
23 observations are important to you?

24 A. The photograph that you made under the microscope, and
25 comparing it to the other photograph of a stamped number over

1 paint done by the government. They do not look similar, and
2 it's -- they look different.

3 Q. Let me ask you this: You testified that under the halo,
4 or the halo by the rivets is an indication to you there was
5 solvent used; is that correct?

6 A. Yes. Something that disrupted the paint and it's rusty
7 underneath.

8 Q. All right. And you also testified there could be
9 something called Loctite, is that right, you're not sure?

10 A. I'm not sure.

11 Q. Okay.

12 A. I've never experienced rust with Loctite. It's usually a
13 plastic and seal, but there was rust underneath, so I really
14 doubt that it was Loctite.

15 Q. Did you see any indication of solvent on the serial
16 number in question, E683?

17 A. No, sir. I didn't have any way -- I didn't run a
18 chemical test. I couldn't tell you if there was solvent used
19 on that or not.

20 Q. It would have been important for you to do that; is that
21 correct?

22 A. Well, not really.

23 Q. Really? You were present during the testimony of Sarah
24 Walbridge?

25 A. Yes.

1 Q. She testified there was no known solvent used on E683; is
2 that correct?

3 A. She based that on --

4 Q. Yes or no. Yes or no.

5 A. I'm sorry. Ask that again and I'll try to give you a yes
6 or no, if I can.

7 Q. Mr. Savage --

8 A. Yes, sir.

9 Q. -- you found no other indication of solvents used by the
10 serial numbers E683 on Government's Exhibit 3.16?

11 A. I did not test it for solvents.

12 Q. Okay. You did not test it for solvents. But you
13 observed and now you think you could be wrong that the halo
14 effect was the result of a solvent?

15 MR. MARTIN: Your Honor, I object. I don't think he
16 said he thinks he now could be wrong.

17 THE COURT: Objection will be overruled.

18 THE WITNESS: I don't believe it was Loctite causing
19 the halos. No.

20 Q. (By Mr. Kumienga) You're not sure anymore?

21 A. I didn't say -- I didn't say I wasn't sure. I've never
22 seen, through my experience of building guns, Loctite ever
23 cause rust, ever. There was rust underneath the screw caps. I
24 do not believe that it was caused by Loctite, I believe it was
25 caused by a solvent of some sort leaching out from underneath

1 of the caps.

2 Q. Solvent is basically acetone?

3 A. Acetone, methyl ethyl ketone. There's some called xylene
4 that don't evaporate as fast. I don't know what type of
5 solvent was used. I do know that the gun was refinished and
6 the halos, in my experience when I build guns, are caused by
7 stuff leaching out from underneath. Loctite becomes a solvent
8 -- becomes a solid when a thread locks. It doesn't leach out
9 once it was set.

10 Q. Solvent evaporates, doesn't it?

11 A. Yes, sir. Solvent evaporates.

12 Q. All right. Now, you said you never tested around the
13 serial number; is that correct?

14 A. That is correct.

15 Q. You heard Mr. Friesen's testimony that he painted over
16 the serial number; is that correct?

17 A. That is correct.

18 Q. And then later on used a solvent to make it appear; is
19 that correct?

20 A. I believe he said that he had scrubbed at it with
21 something on the -- with a rag on the end with a solvent he
22 didn't know.

23 Q. Right. So you never tested for that solvent; is that
24 correct?

25 A. No, sir, I did not.

1 Q. Okay. Is it fair to say, sir, that the serial number is
2 really the DNA of the firearm?

3 A. DNA may be a bit overblown, but that's how you're able to
4 track, tracking a firearm is done by the serial number and the
5 manufacturer's mark and, you know, could be several other
6 things. But for lack of a better term, sure, I'll go along
7 with that.

8 Q. Okay. And in your work it would be, you would
9 scrupulously avoid covering up a serial number in your job; is
10 that correct?

11 A. When you say scrupulously avoid covering up how?

12 Q. You would not cover up a serial number, would you?

13 A. Not intentionally. Would I paint them or coat them?
14 Sure.

15 Q. But you would make sure somebody is able to see them; is
16 that correct?

17 A. Yes. There's actually been some of the times where I've
18 had to restore a firearm where, indeed, the serial number was
19 covered up with paint and you're trying to uncover it and
20 remove the paint from it.

21 Q. Right. But you did not do one knowingly; is that
22 correct? You would not cover up a serial number knowingly?

23 A. You keep saying "covered up." Would I paint one or would
24 I cover it up with what?

25 Q. Would you paint over a serial number?

1 A. I do every day.

2 Q. So nobody can see it?

3 A. No. I didn't say that. I said -- you asked me did I
4 ever paint a serial number. Every gun I build. Yes.

5 Q. You paint over it but you still can see it; is that
6 correct?

7 A. Yes.

8 Q. Okay. The serial number needs to be visible?

9 A. Yes. But it only needs to be three-thousandths of an
10 inch deep.

11 Q. I understand. But let me ask you this: The serial
12 number needs to be visible; is that correct?

13 A. Yes.

14 Q. And it needs to be placed on the tube of the firearm; is
15 that correct?

16 A. Depending if it's a tubular receiver, yes.

17 Q. Okay. Now, you also testified that you took some firearm
18 pictures at H&H Gun Range down here at I-40 and, is it
19 Meridian, I think?

20 A. Yes, sir. It was H&H Gun Range right off I-40.

21 Q. And the purpose of your testimony was to say that guns
22 are not always stamped first, they can be painted, then
23 stamped; is that correct?

24 A. The serial number can be applied after the firearm has
25 gone through the coating or painting process. Yes.

1 Q. Would it be fair to say that H -- the -- so you took
2 pictures of a Benelli type firearm; is that correct?

3 A. Yes, that's correct.

4 Q. And that's a high-dollar shotgun; is that correct?

5 A. About 1,600 bucks.

6 Q. And H&K machine gun, or H&K assault weapon?

7 A. An H&K rifle.

8 Q. A rifle?

9 A. An assault weapon, I don't believe it was full auto.

10 Q. And you don't know what process was used; is that
11 correct?

12 A. No, sir. I examined approximately 20 firearms that day.
13 Everything down from the inexpensive Taurus on up to the
14 high-dollar H&Ks, and there were several that the serial number
15 was applied after the coating was applied to the firearm.

16 Q. Would it be fair -- so you don't know if they use a laser
17 process or a certain type of mold or anything radically
18 different from the way Erb put his stamps on his gun back in
19 1986?

20 A. Actually, I saw several different processes.

21 Q. All right. And what processes did you see?

22 A. One was done with a dot matrix engraver, which is like a
23 needle gun that goes back and forth, like this, (demonstrating)
24 almost like a tattoo, so it's a series of dots that engraves
25 the serial number, maybe some other information. I saw one

1 that was definitely engraved. There's a couple that possibly
2 have been lasered, I didn't have a way of determining it, and
3 they weren't about to let me tear apart a bunch of \$1,600 guns
4 to get a better look. So I just documented what I saw that
5 definitely these were applied after the coating.

6 Q. How do you document that?

7 A. With photographs.

8 Q. Again, no written reports?

9 A. No, sir.

10 Q. Mr. Savage, you testified that you were part of a, I
11 guess a documentary about something called The Gang; is that
12 correct?

13 A. That was the name of the documentary. Yes.

14 Q. And you participated in the, I guess the making of that
15 documentary; is that correct?

16 A. No.

17 Q. All right. What was your relationship to The Gang about
18 The Gang?

19 A. I was interviewed.

20 Q. All right. So you were in that documentary?

21 A. Yes, I was.

22 Q. And how long is that documentary, please?

23 A. I don't recall.

24 Q. Well, did you get paid for it?

25 A. No, I didn't.

1 Q. All right. So you contributed your time to it?

2 A. Yes.

3 Q. All right. And what did you say in the documentary,
4 please?

5 A. My interview had to do with the lack of testing
6 standards, written testing standards with Firearms Technology
7 Branch. And an individual who no longer works at ATF who had
8 decided to punish me for coming to federal court --

9 Q. Who is that?

10 A. Sterling Nixon.

11 Q. So you made the documentary because you have an axe to
12 grind against another person in ATF?

13 A. No, sir. It had nothing to do with that. It had to do
14 with trying to raise awareness in some of the issues ATF was
15 having. I had addressed it and ATF management, offered to sit
16 and talk with them, offer suggestions, and they had refused and
17 I was approached if I wanted to be interviewed for this
18 documentary, and I agreed.

19 Q. How many minutes were you on in that documentary, please?

20 A. Maybe four or five minutes total. Not very long.

21 Q. All right. Do you remember the -- have you seen the
22 internet flyer from JF -- excuse me, JPF0 Productions?

23 A. Possibly. I mean --

24 Q. All right.

25 MR. KUMIEGA: May I approach, your Honor?

1 THE COURT: You may approach.

2 THE WITNESS: I believe I've seen it before.

3 Q. (By Mr. Kumi ega) All right. And what is that, please?

4 A. You just said it was a flyer for the documentary.

5 Q. And it tells about the documentary; is that correct?

6 A. Certainly appears to.

7 Q. And who is JFPO, please?

8 A. Jews for the Preservation of Firearms Ownership.

9 Q. And what -- what group is that? What do they profess,
10 please?

11 MR. MARTIN: Your Honor, may we approach? Your Honor,
12 I object to this line of questioning.

13 THE COURT: Will be overruled.

14 Q. (By Mr. Kumi ega) What is it, please?

15 A. What is the organization?

16 Q. Yes.

17 A. They are wanting the government, specifically the ATF, to
18 follow the same set of rules everybody else has to follow.

19 Q. It's more than that, is that not true, please?

20 A. In what way?

21 Q. Well, are you a member of that organization?

22 A. Actually, no.

23 Q. Have you been interviewed by that organization on more
24 than one occasion?

25 A. Yes, I have.

1 Q. You've been interviewed on the radio also; is that
2 correct?

3 A. By several different radio shows.

4 Q. Yes. A person name Aaron Zelman?

5 A. A person named Aaron Zelman. Yes. He's, I guess, the
6 executive person in charge of Jews for the Preservation of
7 Firearms Ownership.

8 Q. And basically, what that organization wants to do is make
9 sure that there are no firearm laws in this country; is that
10 correct?

11 A. No. Actually, they brought up a very good historic fact
12 is that Senator Dodd, who introduced the Gun Control Act in
13 1968, was a prosecutor in Neuremburg, and he asked the Library
14 of Congress to word-for-word transcribe the Nazi gun law, and
15 that is almost word-for-word what the Gun Control Act is based
16 on.

17 Q. Can you hand me that, please? Can you read that, please,
18 starting with "documents"?

19 MR. MARTIN: Your Honor, I don't even have a copy of
20 what he's reading.

21 THE COURT: Have you furnished a copy to Mr. Martin?

22 MR. KUMIEGA: I have not.

23 THE COURT: Let's furnish him a copy before you
24 question the witness.

25 MR. KUMIEGA: Can I have a three-minute break to make

1 copies?

2 THE COURT: Okay.

3 Ladies and gentlemen of the jury, we'll just stand at ease
4 for a few minutes while -- have you got other questions you
5 could be asking, and you can go back to this, Mr. Kumi ega?

6 MR. KUMI EGA: I'm getting ready to wrap up, your
7 Honor.

8 THE COURT: Okay.

9 (Brief pause)

10 THE COURT: Mr. Kumi ega, do you have other questions
11 you can be asking not on this particular matter that's being
12 copied?

13 MR. KUMI EGA: Yes, your Honor.

14 THE COURT: Let's proceed.

15 Q. (By Mr. Kumi ega) Mr. Savage, when your summary of
16 testimony on your first report you generated the first time you
17 did a, did an analysis -- do you have that with you?

18 A. Yes, I do.

19 Q. Page 2, second paragraph from the bottom. Do you see
20 that?

21 A. Yes.

22 Q. Now --

23 THE COURT: If you would give a copy to Mr. Martin,
24 please.

25 Q. (By Mr. Kumi ega) Second paragraph from the bottom.

1 A. Yes, sir.

2 Q. Talks about that certain evidence from former ATF owners
3 should be unworthy of consideration; is that correct?

4 A. ATF owners.

5 Q. ATF -- well, read that photograph for the jury, please.

6 A. "The fact that the ATF interviewed former owners
7 of the firearm is unworthy of consideration, because
8 any of the former owners who might have modified or
9 changed anything has a very substantial motivation
10 not to tell the ATF because they would be facing
11 federal charges by the ATF, as evidenced against Mr.
12 Friesen."

13 Q. Okay. Now, this is not a scientific observation; is that
14 correct?

15 A. No, sir. But --

16 Q. Yes or no, it's not a --

17 A. No, sir.

18 Q. This is basically your opinion of ATF prosecutions around
19 the country; is that correct? Yes or no, sir.

20 A. It's not based on ATF prosecutions, it's based on --

21 Q. Mr. Savage, answer the question. This is not a
22 scientific observation?

23 A. It is not a scientific observation.

24 Q. It's an opinion; is that correct?

25 A. Yes, sir.

1 Q. Okay. And it's opinion because you are an expert for Mr.
2 Friesen, would it be fair to say you're not a dispassionate or
3 a neutral observer in this case? Yes or no, sir?

4 A. Not anymore. I'm definitely passionate about this. Yes.

5 Q. Okay. So you're going to call the facts against the
6 government to suit your agenda?

7 A. Sir, are you saying that I would lie? It would be wrong.

8 Q. Okay.

9 A. Facts are facts.

10 Q. Okay. Then why would you put an observation in here
11 that's not considered a scientific observation, please?

12 A. It's an observation. I never claimed it to be a
13 scientific observation. My observation with people who have to
14 deal with when the ATF comes a-calling are usually scared to
15 death. I know I was when they came to my shop.

16 Q. Okay. Now, your report talks about -- you mention paint,
17 you mention a welded magazine, you mention the wear and tear on
18 machine guns that are 22 years old, you mention surfaces and
19 abrasives, and then you throw this gratuitous comment about an
20 opinion; is that correct?

21 A. I don't know that I would call it gratuitous, but the
22 bottom line is they do have a substantial reason to not say
23 that they are the ones who actually finished or completed that.
24 The simple fact of the matter is if somebody else is under
25 indictment they would have a great motivation to keep their

1 mouth shut.

2 Q. So the point is that when the United States brought in
3 Government's 6 and 7, the owners of E682 and E685, they were
4 subject to cross-examination; is that correct?

5 A. Yes, sir.

6 Q. All right. And when the tube was flashed on the screen,
7 the government can't cross-examine the photograph; is that
8 correct?

9 A. No, sir.

10 Q. All right. Now, let me show you this --

11 THE COURT: Excuse me. When you ask a question and
12 then say "correct" and he gives an answer yes or no, I don't
13 know whether he saying yes or no to "correct" or yes or no to
14 the question, Mr. Kumi ega. So it's still very confusing.
15 Reask the question.

16 MR. KUMI EGA: May I approach the witness?

17 THE COURT: Reask that question first.

18 Q. (By Mr. Kumi ega) When the government -- the defense
19 flashed their photograph of that, I guess that tube --

20 A. The registered tube with only the single machining in it?
21 Yes.

22 Q. Since nobody sponsored it in here, according to you from
23 your statement --

24 MR. MARTIN: Your Honor, I object to that question,
25 your Honor. It was sponsored by the government and my exhibit.

1 MR. KUMI EGA: Judge --

2 THE COURT: Which exhibit are we talking about?

3 MR. MARTIN: The 20-something exhibits that I
4 introduced through Agent Knopp that were government's
5 photographs.

6 THE COURT: So restate your question. They've been
7 admitted, so restate your question, and do it in a question
8 form, Mr. Kumi ega, rather than saying "correct" after a
9 statement.

10 MR. KUMI EGA: Yes, your Honor.

11 Q. (By Mr. Kumi ega) According to your paragraph here, your
12 gratuitous paragraph in one of your reports, you said it's very
13 difficult to trust the bonafides of a person who owns a firearm
14 because of ATF action; is that correct?

15 A. That's not what that paragraph says at all.

16 Q. What does that paragraph say?

17 A. It says that if the ATF interviewed the former owners of
18 this firearm, they would have a substantial motivation to not
19 say, yeah, I did this, because they see somebody under
20 indictment and they don't -- they would have a motivation.
21 They don't want to be there under indictment. That's human
22 nature.

23 Q. So without the firearm being presented, it's difficult to
24 explain what the photograph portrays; is that correct?

25 A. Not at all.

1 Q. Really?

2 A. Either the photograph portrays a tube that was not
3 machined completely by Mr. Charles Erb --

4 Q. Sir, how do you know it's Mr. Erb's gun?

5 A. The one that was on -- because he said so.

6 Q. No, he didn't, sir.

7 A. Well, all right. It was marked -- you told me so,
8 because it said something along the lines --

9 Q. Mr. Savage, answer the question.

10 A. I thought I did.

11 Q. I don't think you did.

12 A. Ask it again and I'll do my best, sir.

13 MR. KUMIEGA: Your Honor, may I approach the witness
14 with this?

15 THE COURT: Yes.

16 Q. (By Mr. Kumi ega) This is entitled about The Gang; is
17 that correct?

18 A. Yes, it is.

19 Q. And you said you have seen this before?

20 A. I believe I have.

21 Q. And this is part of the documentary that you were
22 involved in?

23 A. I don't know that it's part of the documentary, I believe
24 it's a trailer or a, just a quick description of what the
25 documentary is about.

1 Q. Okay. And you said you went four or five minutes you
2 were being interviewed?

3 A. I am in there for four or five minutes, I believe.

4 Q. How long is the documentary?

5 A. I want to say an hour and 45 minutes, somewhere around
6 there approximately. About the length of a movie.

7 Q. And third from the bottom talks about documents revealing
8 the shameful Nazi connection; is that correct?

9 A. Yes, sir, that's correct.

10 Q. And you subscribe to that; is that correct?

11 A. I don't necessarily subscribe --

12 MR. MARTIN: Your Honor, I object to the question.

13 THE COURT: Be overruled.

14 Q. (By Mr. Kumiaga) You subscribe to that? Yes or no, sir.

15 A. It's not a yes or no. You're asking me if I subscribe to
16 everything that this particular organization does. I told you
17 I'm not a member. I've been interviewed by them, I've been on
18 their TV show. It's historic fact that Senator Dodd asked the
19 Library of Congress to translate the Nazi gun law and that
20 there's a book out and page by page, section by section, they
21 are extremely similar, almost identical. And that's historic
22 fact. That's not my opinion, that's fact.

23 Q. Okay. And the second one from the bottom, can you read
24 that, please?

25 A. "A top agency executive openly admits to a policy of

1 lying to the public."

2 Q. Do you subscribe to that?

3 A. I have actually seen Mr. Busey's roll-call training
4 video. He did. He actually told them that even though they
5 knew the NFRTR was only 49 to 51 correct when they go to court,
6 they are to testify that it's a hundred percent correct. And
7 it was an ATF training video shown approximately in 1995.
8 Again, it's fact, it's not whether I subscribe to it.

9 Q. And the last one, do you subscribe to the last
10 presentation there?

11 A. That an attorney tells you ten things you must do and not
12 do when a government agent comes to your home? That's in the
13 film.

14 Q. And the very bold words at the very top, sir?

15 A. "If you own, buy, build, collect, or sell or use a
16 firearm, this tax-funded agency is quickly becoming
17 your worst enemy."

18 Q. And you believe that too; is that correct?

19 A. No, not necessarily. I think that they need to have some
20 written standards, and I think that the agency shouldn't be
21 scrapped, but it certainly needs some overhaul.

22 Q. Now, as part of your expertise, to drum up business, you
23 advertise on the internet; is that correct?

24 A. That's incorrect.

25 Q. Do you tell people on the internet that you're Mr. Savage

1 and that I'm here to help you against the government in my
2 expert -- with my expertise?

3 A. No. That is absolutely incorrect. I don't have any
4 website or any advertisement anywhere on the internet.

5 Q. Now, Mr. Savage, you also said that you had an interview
6 with a person named Aaron Zelman; is that correct?

7 A. And I've had an interview with G. Gordon Liddy and Larry
8 Pratt of Gun Owners of America, Michael Dukes of Firearms
9 Friday, several others. You seem to have a --

10 THE COURT: Just answer the question, Mr. Savage.
11 Don't make additional comments.

12 THE WITNESS: Yes, I have had an interview with him.

13 Q. (By Mr. Kumi ega) In your document, in your interview,
14 it's going to be on the second to the last page, fourth
15 paragraph from the bottom, do you remember, Mr. Savage, talking
16 in this interview with Mr. Zelman, do you remember when this
17 was, please, by the way?

18 A. No. If you would like to show it to me.

19 MR. KUMI EGA: May I approach, your Honor?

20 THE COURT: Yes.

21 Q. (By Mr. Kumi ega) Are you familiar with the interview?

22 A. Yes. And I also am familiar with telling Aaron Zelman
23 that this was redacted somewhat and not completely accurate.
24 But anyway.

25 Q. When was that interview conducted?

1 A. I'm guessing this was 2004, '5-ish. I've actually had
2 several interviews with him and others.

3 Q. And this is the president, or what connection does he
4 have with the JFPL, please?

5 A. JPFO?

6 Q. Yeah. The name of the group again?

7 A. Jews for the Preservation of Firearms Ownership.

8 Q. And his connection to that group?

9 A. I believe that he's the executive in charge of it.

10 Q. Okay. And in that interview, sir, did you espouse the
11 platform of abolishing ATF so the Department of Commerce can
12 examine firearms?

13 A. We explored what could be done in that interview, and
14 that was that did we really need a federal gun police since we
15 have FBI for federal crimes. I think the question was asked
16 did I think -- would the Department of Commerce be better to
17 regulate firearms since they regulate commerce in everything
18 else. So I vaguely remember what you're saying. Again, you
19 took it away from me, but I do remember. Yes.

20 Q. Okay. So part of your agenda, sir, is that you really
21 want to do away with ATF; is that correct?

22 A. No. That's not correct.

23 Q. All right. Part of your agenda is to do away with ATF?

24 A. You keep saying an agenda. I want the ATF Firearms
25 Technology Branch to get written standards, so as a

1 manufacturer, when I send something in to them I know to what
2 standard they are going to test it. I don't know that at this
3 point and I would like them to change that. And at this point
4 it's my understanding they are actually working on written
5 testing standards.

6 Q. And, again, when you performed your tests, you had no
7 standards, you had nobody review it, and you never wrote any
8 reports; is that correct? Yes or no.

9 A. You keep saying "yes or no." You keep mixing metaphors
10 here. When I design a firearm, yes, I do use standards and
11 methods. When I did my tests here, it was fluid. When I
12 discovered that there was no dents on here, I wanted to find
13 out if I got dent on a similar tube. So you're kind of mixing
14 it up. So what is it you want to know?

15 Q. What I want to know is your bias, sir. Do you have a
16 bias against ATF?

17 A. I don't have a bias. I want them to do what's truthful,
18 I want them to do what's right, I want them to have a written
19 set of protocols and procedures for manufacturers. When you
20 talk about a bias, if that's a bias for me, wanting them to
21 have a written set of standards, then, yes, if that's you're
22 calling a bias, calling for change, reform.

23 MR. KUMIEGA: I have nothing further, your Honor.

24 THE COURT: You may redirect.

25 MR. MARTIN: Yes, sir.

1 REDI RECT EXAMI NATION

2 BY MR. MARTIN:

3 Q. During cross-exami nation, Mr. Kumi ega asked you about the
4 distinctions between the Sten II and the Sten III and a Sten
5 II-S. Do you recall that, sir?

6 A. Yes, I do.

7 Q. In front of you I believe is what's been marked for
8 identi fication purposes as Defendant's Exhi bi t 112. Do you see
9 that, sir?

10 A. Yes.

11 Q. Would you tell us what that is?

12 A. It's the front end of a Sten Mark III.

13 Q. All right. And does that accurately represent what a
14 Sten Mark III would look like, sir?

15 A. Yes, it does.

16 MR. MARTIN: Your Honor, I'll move for introduction of
17 Defendant's Exhi bi t 112.

18 MR. KUMI EGA: No obj ecti on.

19 THE COURT: Will be -- did you say no obj ecti on?

20 MR. KUMI EGA: Yes, sir.

21 THE COURT: Will be admi tted.

22 Q. (By Mr. Martin) And could you briefly hold that up and
23 Government's Exhi bi t 3.16 and point out the distinctions
24 between those two exhi bits, sir?

25 A. Well, this (indicating) was made out of a piece of flat

1 plate or wound around a mandrel, pinched together and welded
2 across the top. And this is made out of a piece of seamless
3 mechanical tubing. This uses rivets to permanently affix the
4 barrel and bushings in. This uses socket-head cap screws.

5 That's the primary differences between these two.

6 Q. All right, sir. And are the barrels alike or --

7 A. They appear to be, although this barrel is loose, and
8 this one is tight.

9 Q. Okay. And also, sir, let me ask you: One of the
10 scientific methods you employed in this case -- you heard the
11 testimony, did you not, of Sarah Waldrop, didn't you, sir?

12 A. Yes, I did.

13 Q. And -- Walbridge. I apologize. About visual comparison.
14 Did you do that in this case?

15 A. Yes. She did and so did I.

16 Q. Okay. And many of conclusions you reached in this case
17 were based upon that scientific method, were they not, sir?

18 A. Yes.

19 Q. And do you recall the photographs that she had of the
20 painting of the Sten so you can tell it was a single coat of
21 paint?

22 A. Yes. I remember her photograph.

23 Q. Well, do you recall her testimony about that?

24 A. Yes.

25 Q. There are no photographs, are there?

1 A. No. She only has the photographs of the serial number
2 area and --

3 Q. All right, sir. And let me ask you this: You were given
4 reports in this case from me for preparation for trial, were
5 you not, sir?

6 A. Yes, sir.

7 Q. As a matter of fact, when was it that you received the
8 majority of the reports of the scientific tests that the
9 government conducted in this case?

10 A. Just a few weeks prior to trial.

11 Q. And as a matter of fact, let me ask you, sir: Relating
12 to the Government's Exhibit 3.16, the Sten up there, that --
13 did you take a measurement as to the tube and the bolt that is
14 in that tube, sir?

15 A. Yes, I did.

16 Q. And did you note any distinctions in those measurements?

17 A. Yes. The bottom has --

18 MR. KUMIEGA: Objection, your Honor. Not part of
19 direct testimony. It's a whole different field.

20 THE COURT: You mean not part of the cross?

21 MR. KUMIEGA: I'm sorry. Not part of the cross nor
22 was it brought up during direct.

23 MR. MARTIN: Yes, it was, your Honor. I talked to him
24 about the tube and the measurements and the --

25 MR. KUMIEGA: Not about the bolt, and it was not part

1 of the cross-exami nati on.

2 THE COURT: I di dn' t hear anything on cross about i t.

3 MR. MARTIN: I don' t know what -- I can' t remember all
4 of Mr. Kumi ega' s cross, your Honor. I' ve got a very brief
5 poi nt here on thi s.

6 MR. KUMI EGA: Which we object, your Honor.

7 THE COURT: Counsel approach.

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

10 THE COURT: I don' t remember hi m going i nto any of
11 that.

12 MR. KUMI EGA: I di dn' t.

13 MR. MARTIN: I' ve just been given by the government
14 the report, your Honor, thi s morni ng about Mr. Kong' s
15 testi mony, and he' s going to get on the stand and offer
16 testi mony.

17 THE COURT: Then you can cross-exami ne hi m.

18 MR. KUMI EGA: It' s rebuttal, Judge.

19 THE COURT: I di dn' t hear anything i n cross --

20 MR. MARTIN: Okay.

21 THE COURT: -- about i t.

22 MR. MARTIN: Very wel l.

23 THE COURT: You can cross-exami ne Mr. Kong.

24 MR. MARTIN: It' s -- never mi nd.

25 (The fol lowi ng was had i n open court, wi thi n the hearing

1 of the jury:)

2 Q. (By Mr. Martin) Now, the -- the -- you were asked on
3 cross-exami nation about how Government's Exhi bi t 3.16, I guess,
4 has changed in looks over a period of time. Do you recall that
5 testimony, sir?

6 A. Yes.

7 Q. Okay. And have you seen evidence of what's occurred to
8 that gun to cause it to be damaged or lose paint or whatever?

9 A. Yes, I have.

10 Q. Okay. As a matter of fact, when you conducted your
11 tests, your examination of that gun, did you come to find out
12 later that you were videotaped?

13 A. I found out after the fact; it was done without my
14 knowl edge.

15 Q. Okay. So you didn't know that the ATF would be
16 videotaping you when you were examining that gun?

17 A. No, I did not.

18 Q. And were you ultimately provided a copy of that?

19 A. Yes, I was.

20 Q. And at the conclusion of that, does it show any
21 indication as to the proper or improper handling of that gun?

22 A. About the last 30 seconds of the DVD, after I had stepped
23 out of the room that we examined it, Agent Knopp was attempting
24 to assemble the fi rearm. We were on our way to the elevator to
25 go down, and he had gotten the bol t stuck, and he started

1 striking this right here, I didn't have the butt stock on, but
2 he started striking the bottom down against the table in the
3 room that we examined trying to get the bolt out.

4 Q. And what happens after that?

5 A. It just -- they cut off the tape. We didn't get to see
6 what else he did.

7 Q. All right, sir. And based on the photographs you've
8 seen, you have seen of how the gun looked when it was seized
9 and how the gun looks today, how would you compare those?

10 A. Severely worn compared to when it was first taken into
11 custody. It wasn't nearly as scratched up.

12 MR. KUMIEGA: Objection, your Honor. No foundation.

13 THE COURT: Will be sustained.

14 Q. (By Mr. Martin) Did you -- when you looked at the
15 photographs, how did they appear?

16 A. The photographs that were taken right after the gun was
17 taken into custody and the photographs that I took when I did
18 my examination, the gun was far more scratched up, beat up,
19 parts of it were bent, and looked like it just kept getting
20 thrown around, either thrown into a vault or in a box or on the
21 floor.

22 Q. All right. Now, you, I believe, were asked by Mr.
23 Kumi ega about government -- excuse me -- Exhibit 45, were you
24 not, sir?

25 MR. MARTIN: Could we put that up?

1 Q. (By Mr. Martin) Can you see that on the monitor, sir?

2 A. Yes, I can.

3 Q. And you heard the testimony that was a photograph taken
4 by the ATF, have you not, sir?

5 A. Yes, I did.

6 Q. And this is the tube you were talking -- that you were
7 testifying about that was missing all the cut-outs?

8 A. Yes. It doesn't have the complete cocking slot cut-out,
9 just has a slot.

10 Q. Okay. And you've also -- were asked on cross-examination
11 about other photographs that were taken by the ATF.

12 MR. MARTIN: In particular, could we go to Defendant's
13 Exhibit 52, the second picture?

14 Q. (By Mr. Martin) Do you recall seeing this picture, sir?

15 A. Yes.

16 Q. Is there anything unusual about this photograph, Exhibit
17 52, that draws your attention, sir?

18 A. Yeah. It sure looks a lot like this, the tube that made
19 this.

20 Q. Is that -- what? In what way?

21 A. If you look at the tube, the only thing that's different
22 really is two things. One, this has all the machine cut-outs,
23 and two, it looks long enough to actually be a proper Mark III.
24 It's actually a little longer than this, just without measuring
25 it it appears to be approximately an inch or two longer than

1 the tube on this. But if that's Mr. Erb holding that and
2 that's one of Mr. Erb's tubes, it sure does look hauntingly
3 familiar to this particular tube that made this firearm.

4 MR. MARTIN: Can we go back one?

5 Q. (By Mr. Martin) This is the picture in front of that in
6 Exhibit 52. Do you see that, sir?

7 A. Yes.

8 Q. Big distinction? What would you characterize the
9 distinction between those two tubes?

10 A. Length only.

11 Q. Okay.

12 MR. MARTIN: Go back to the other one.

13 Q. (By Mr. Martin) All right, sir.

14 MR. MARTIN: And if I might approach.

15 THE COURT: Yes.

16 Q. (By Mr. Martin) Defendant's Exhibit 110 and 111 are the
17 two tubes that you performed your experiments on, correct, sir?

18 A. Yes, sir.

19 Q. One of them has two strikes, that's 110?

20 A. Correct.

21 Q. Verify that for me, please.

22 A. Yes.

23 Q. And 111 was only struck once; is that right?

24 A. That's correct.

25 Q. And when you were measuring those tubes across the top

1 and measuring Government's Exhibit 3.16 over the serial number
2 where someone would have hit it, tell the ladies and gentlemen
3 what you were looking for.

4 A. What I was looking for is dents or a dimple formed from
5 striking the die on the tube.

6 Q. And did you find that in 3.16?

7 A. No.

8 Q. And did you find that in 110 or 111?

9 A. Both of them.

10 Q. Okay, sir.

11 MR. MARTIN: Again, your Honor, I would ask the Court
12 to allow those exhibits, along with 3.16, to be published to
13 the jury. I have no further questions.

14 THE COURT: Any other recross?

15 MR. KUMI EGA: Yes, your Honor, regarding new material
16 in Mr. Martin brought it.

17 THE COURT: I sustained your objection.

18 MR. KUMI EGA: Regarding the video, your Honor.

19 THE COURT: Excuse me?

20 MR. KUMI EGA: The video. He brought up new
21 information for the United States to explore.

22 THE COURT: Okay.

23 RECCROSS-EXAMINATION

24 BY MR. KUMI EGA:

25 Q. Mr. Savage, after you damaged the tube, and you said you

1 did it inadvertently; is that correct?

2 A. I never said I damaged the tube; I said I scratched the
3 paint.

4 Q. Okay. You damaged it?

5 A. No. I scratched it.

6 THE COURT: Let's move on.

7 Q. (By Mr. Kumi ega) You scratched the paint over the serial
8 number?

9 A. Yes, I did.

10 Q. And you said -- what was the length of that, please?

11 A. Looks like two of them about a quarter-inch long or about
12 the same width as the jaws of my micrometer.

13 Q. You said you did that inadvertently; is that correct?

14 A. That's correct.

15 Q. And can you again show the jury how you did that, please?

16 A. Would you like me to use a micrometer or would you like
17 me to use my imagination?

18 Q. How about use the micrometer and show the jury how you
19 did it.

20 A. Sure. I would be happy to.

21 MR. MARTIN: Your Honor, I didn't go over this. I
22 thought he was going to go over something that I had brought
23 up.

24 MR. KUMI EGA: He went over the videotape, your Honor.
25 That's why the United States video -- we had a videotape

1 because of his methods of --

2 THE COURT: Why don't we get into why you videoed it
3 and you can ask -- I don't think that he went into any of the
4 -- what I heard was he just went into that the United States
5 videoed it.

6 Q. (By Mr. Kumi ega) And you knew the second time you
7 examined the gun you were going to be videotaped; is that
8 correct?

9 A. I didn't know, but I strongly suspected, and I also made
10 my intentions known that I really didn't like it. I felt it
11 was a violation of my civil rights.

12 Q. And why would that be?

13 A. Because I have the right to privacy. If I wasn't being
14 detained or arrested, what right did the ATF have to videotape
15 me?

16 Q. Mr. Savage, you're an expert; is that correct?

17 A. Yes, I am.

18 Q. And you were doing scientific tests?

19 A. I was -- I was not doing scientific tests yesterday, no,
20 sir. I was actually doing some observations and some
21 photographs of some areas of the gun I could not disassemble
22 the first go-round.

23 Q. In fact, on the videotape the first time, you are
24 scratching the gun?

25 A. I did scratch the gun. Yes, sir.

1 Q. All right. Okay. And again, can you show us how you did
2 that, please, with the micrometer?

3 MR. MARTIN: Again, your Honor --

4 THE COURT: Will be sustained.

5 MR. KUMIEGA: Okay.

6 Q. (By Mr. Kumi ega) Now, one of the exhibits that were
7 flashed, Defendant's Exhibit 52, do you see a serial number on
8 that?

9 A. No, I do not.

10 Q. And you believe that's Mr. Erb; is that correct?

11 A. According to the ROIs that are accompanying that, that is
12 one of Mr. Erb's tubes. I can't tell you if that is Mr. Erb or
13 not.

14 Q. Okay.

15 MR. KUMIEGA: Your Honor, if I can have a second.

16 THE COURT: Yes.

17 (Brief pause)

18 MR. KUMIEGA: Nothing further.

19 THE COURT: Anything else, Mr. Martin?

20 MR. MARTIN: Just like to publish the tubes, your
21 Honor.

22 THE COURT: Okay.

23 MR. MARTIN: If I haven't, I was told I hadn't
24 introduced 110 and 111, I thought I had, your Honor.

25 THE COURT: I thought they were.

1 MR. MARTIN: I thought they were.

2 THE COURT: Mr. Bostic, if you could come up and hand
3 the --

4 MR. MARTIN: Could we do all three?

5 THE COURT: Let Mr. Bostic do it.

6 (The exhibits were displayed to the jury.)

7 THE COURT: Can Mr. Savage be excused?

8 MR. MARTIN: He may be excused, your Honor.

9 THE COURT: Mr. Savage, you may be excused.

10 While they are doing that, counsel approach, please.

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

13 THE COURT: You have one more witness?

14 MR. MARTIN: I have two very short ones.

15 THE COURT: Okay. I think we'll take a break then for
16 about 20 minutes.

17 MR. KUMIEGA: Now, your Honor?

18 THE COURT: Excuse me?

19 MR. KUMIEGA: When do you want to do that?

20 THE COURT: As soon as they get through looking. And
21 then you're going to call rebuttal?

22 MR. KUMIEGA: Yes, sir.

23 THE COURT: Who is that? Mr. Kong?

24 MR. KUMIEGA: Mr. Knopp, Mr. Kong, Tim Kelley.

25 THE COURT: What's Mr. Knopp's testimony?

1 MR. KUMI EGA: About the No. 52.

2 THE COURT: No. 52?

3 MR. KUMI EGA: Defendant's Exhibit No. 52, that Mack
4 just flashed on the screen, and also about banging the gun.
5 Tim Kelley is going to talk about that the gun is in
6 substantially the same or similar shape as when he seized it
7 back in 2004, talk about his interview with Terri LeMaster.

8 MR. MARTIN: Terri Dennis.

9 MR. KUMI EGA: LeMaster.

10 MR. MARTIN: She's your witness, she's not my witness.

11 MR. KUMI EGA: Doesn't matter. I can impeach my own
12 witness.

13 MR. MARTIN: In rebuttal?

14 MR. KUMI EGA: Yes.

15 THE COURT: What?

16 MR. KUMI EGA: To say the interview was not
17 contentious, it was very nice, no good guy/bad guy. It was a
18 very easy-going interview. There are four people: Myself,
19 Delbert Knopp, my secretary, and her, and it was a very
20 easy-going interview.

21 MR. MARTIN: It's rebuttal, not their own evidence of
22 that's what happened in his case in chief.

23 THE COURT: What else?

24 MR. KUMI EGA: She's not really my witness. We had to
25 give her use immunity, and under Rule 607 I can impeach my own

1 witness. A witness is a witness.

2 THE COURT: So what else?

3 MR. KUMIEGA: Then one more -- I can't remember. It's
4 on my list, your Honor. One more short, but I can't remember.

5 THE COURT: So you'll finish it today?

6 MR. KUMIEGA: Very close, your Honor.

7 THE COURT: I'll think about the Terri LeMaster. I
8 would have to review her testimony. I didn't hear her say
9 anything about how contentious it was.

10 MR. KUMIEGA: She said it was very contentious, very
11 aggressive, I think is the word she used.

12 THE COURT: So what relevance does that have?

13 MR. KUMIEGA: Just shows she has motive.

14 THE COURT: For what?

15 MR. KUMIEGA: To lie.

16 THE COURT: I didn't even hear any of her testimony
17 that was relevant to either side.

18 MR. KUMIEGA: There was. The relevance of her
19 testimony was that she saw Mr. Friesen with a machine gun prior
20 to him -- the Sten machine gun prior to him lawfully having one
21 in 1996, and dated it by the Oklahoma City bombing.

22 THE COURT: She testified to that?

23 MR. KUMIEGA: Yes, sir.

24 MR. MARTIN: In his case in chief, Judge. That was
25 not rebuttal.

1 MR. KUMI EGA: It is rebuttal. She's -- under 607.
2 She did a 180 on me.

3 THE COURT: You didn't ask her about the report.

4 MR. KUMI EGA: Yes, I did, your Honor.

5 THE COURT: I'm going to have to review her testimony.
6 I didn't hear any of that, Mr. Kumi ega. I didn't hear that you
7 ever tried to declare her a hostile witness or rebut --

8 MR. KUMI EGA: Judge, the reason --

9 THE COURT: -- brought up her reports in her
10 exami nation.

11 MR. KUMI EGA: Yes. You know, I honestly do not
12 remember, but I remember --

13 THE COURT: I don't remember that.

14 MR. KUMI EGA: There was an affi davi t from Mr. Friesen
15 that she acknowl edged si gni ng.

16 THE COURT: Well, there wasn't anything hostile about
17 that.

18 MR. KUMI EGA: That's why we had to give her use
19 communi ty. She refused to testi fy for the government.

20 THE COURT: I know. But I didn't hear any of her
21 testi mony that was refuted by you in anything. Maybe I
22 mi sunderstood.

23 MR. KUMI EGA: She said it was contentious when in
24 truth and fact it was not.

25 THE COURT: I didn't hear any of her testi mony that

1 you rebutted with some prior statements or anything.

2 MR. KUMI EGA: I honestly don't remember.

3 THE COURT: I'll review her testimony.

4 MR. KUMI EGA: I know she said that, your Honor.

5 (The following was had in open court:)

6 THE COURT: Ladies and gentlemen, we're not through
7 yet. Take your time.

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

10 MR. MARTIN: I would like to object at the appropriate
11 time to some of the rebuttal, your Honor. We can do it now or
12 we can do it --

13 THE COURT: Rebuttal is not going to be reiteration of
14 your case in chief.

15 MR. KUMI EGA: No. Of course not.

16 THE COURT: I can understand Mr. Kong. But what is
17 the other? Mr. Knopp?

18 MR. KUMI EGA: Mr. Knopp on the photograph that was not
19 part of the E series, and Mr. Knopp, I guess, banging on the
20 machine gun. I would like to talk to Mr. Knopp regarding that.
21 And as I say, regarding Tim Kelley on the preservation of the
22 firearm, that it's in the same condition that it was back when
23 he seized it.

24 THE COURT: Did he not testify to that?

25 MR. KUMI EGA: Excuse me?

1 THE COURT: Did he not testify to that on direct?

2 MR. KUMI EGA: No. He never testified on direct, your
3 Honor.

4 THE COURT: Did anybody testify to that fact?

5 MR. KUMI EGA: Yes. The girls that -- Inspector McGrew
6 and Inspector Rowden.

7 THE COURT: So why would it be rebuttal?

8 MR. KUMI EGA: Because they are making a big deal.

9 THE COURT: I understand that. He's just disagreeing
10 with what your direct was.

11 MR. KUMI EGA: Exactly.

12 THE COURT: It's not rebuttal to reissue your direct.

13 MR. KUMI EGA: The person who has actually the
14 preservation of the evidence, Mr. Kelley, was in charge of the
15 chain of custody. He can testify the gun is in substantially
16 the same shape, nothing has really changed.

17 THE COURT: Didn't your two -- did you have that
18 testimony in your direct?

19 MR. KUMI EGA: I believe I did.

20 THE COURT: So why would that be rebuttal?

21 MR. KUMI EGA: Because they are attacking it.

22 THE COURT: They can attack your direct.

23 MR. KUMI EGA: That's what the purpose of rebuttal is.
24 I can rebut what they are saying, their testimony.

25 THE COURT: But you already rebutted it. You already

1 testified about it. You can't retry your whole case.

2 MR. KUMIEGA: I'm not retrying my whole case. I'm
3 just making the point that the gun was the same, your Honor.

4 (The following was had in open court:)

5 THE COURT: Are we through now?

6 We'll take our afternoon break for about 20 minutes.

7 Remember the admonitions that I've given you before.

8 All rise while the jury exits.

9 (The jury exits the courtroom.)

10 (Court stood in recess, after which the following was had
11 in open court:)

12 THE COURT: Mr. Martin, call your next witness.

13 MR. MARTIN: James Foster, your Honor.

14 JAMES FOSTER,

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

17 DIRECT EXAMINATION

18 BY MR. MARTIN:

19 Q. Introduce yourself to the jury, please.

20 A. My name is James E. Foster. I go by Jim.

21 Q. All right, sir. And what is your profession or
22 occupation?

23 A. I'm a private investigator.

24 Q. And who do you work for?

25 A. I work for the Law Offices of Doug Friesen.

1 Q. And prior to that, what did you do, sir?

2 A. I worked for the state of Oklahoma. I retired from
3 there, I was supervisor of computer operations at the
4 University Health Sciences Center.

5 Q. All right, sir. And how long have you known Douglas
6 Friesen?

7 A. I don't know. Seventeen, 19 years.

8 Q. Okay, sir. And let me ask you, sir: During your time of
9 employment with the law office, among your duties did you have
10 the occasion to travel to a residence in Northwest Oklahoma
11 City of Annette Johnson?

12 A. Yes, sir.

13 Q. Would you tell the ladies and gentlemen of the jury about
14 that, please?

15 A. Mr. Friesen was representing Ms. Johnson in a divorce
16 case. She had some firearms that were her husband's, and
17 wanted them out of the house. Doug asked me to go out and get
18 them. I drove out by the Nichols Hills police and asked the
19 dispatcher if she can have a police officer come to the house
20 while I was getting the guns. I drove on over to Ms. Johnson's
21 house, the Nichols Hills police were there when I arrived.
22 Went inside, Ms. Johnson was getting some clothes, her clothes,
23 and she had two children, I think a son and a daughter.

24 Q. Why was she getting clothes, sir?

25 A. I'm sorry?

1 Q. Why was she getting clothes?

2 A. They were moving out.

3 Q. Go ahead. I'm sorry.

4 A. The -- she showed me where the guns were. I brought them
5 down. One was a Beretta 92F, which is a military firearm. I
6 don't remember what the other one was. They were both in
7 boxes. I opened the boxes, checked magazines for ammunition,
8 checked the chamber, make sure there wasn't a round of
9 ammunition in it. Both of them were -- didn't have any
10 ammunition. Packed them up, went outside and waited for Mrs.
11 Johnson. She made a couple of trips with clothes. She asked
12 me if I would follow her out, she was going to pick her
13 children up, they went to school at Christ the King. And I
14 said, sure, I'll be happy to. Went back out, thanked the
15 officer for his time, followed Ms. Johnson to the school. She
16 picked up her children, and I went back to the office.

17 Q. And where were the firearms when you got back to the
18 office? Where were the firearms when you first got back?

19 A. They were in the car.

20 Q. Okay. What did you do with them?

21 A. Doug's car was not there.

22 Q. Was not where, sir?

23 A. At the office, at his office.

24 Q. All right.

25 A. And I own an antique shop next door to Doug's. I bought

1 the property there and my wife and I had an antique shop there.
2 So Doug wasn't there, and I don't have the key to the safe in
3 the library. So I took it into my shop and put them in my
4 safe.

5 Q. When you say "them" what do you mean, sir?

6 A. The two firearms.

7 Q. Okay. And do you recall approximately what time frame
8 this was?

9 A. No, sir, I don't. I think it was January.

10 Q. All right. All right. In relation -- are you familiar
11 with a compliance inspection, sir?

12 A. Yes, sir.

13 Q. In relation to the compliance inspection, and I'll
14 represent to you that occurred February 19, 2003, would it have
15 been before or after?

16 A. That I picked up the firearms?

17 Q. Yes, sir.

18 A. It was before I picked them up. I'm sorry. I picked up
19 the firearms before the compliance inspection.

20 Q. And I believe you testified you put them in your safe?

21 A. Yes, sir.

22 Q. When was the next time you saw those firearms?

23 A. After the firearms, or the compliance inspection, that
24 evening I left the office probably 5:00 or so, drove home, my
25 wife and I had dinner, and all the sudden I realized that they

1 did not see two firearms, because I had them over in my safe,
2 and I thought that I had gotten Doug in trouble. I called him
3 and apologized. I said Doug, I'm sorry. I don't -- I have two
4 guns that I picked up from Mrs. Johnson over in the safe. And
5 I said, what do we do? Do you need to call them in the
6 morning? And he said, no, they are not my firearms. He said,
7 bring them over in the morning.

8 MR. KUMIEGA: Objection to hearsay, your Honor.

9 THE WITNESS: I'm sorry.

10 THE COURT: Be overruled.

11 Q. (By Mr. Martin) Okay. After you called Doug, what did
12 you do the next day?

13 A. I got there maybe 8:15 or so, and I called over to Doug's
14 office.

15 Q. This is the day after the compliance inspection?

16 A. Yes, sir.

17 Q. Okay.

18 A. And told Doug I have the firearms. He said bring them on
19 over, and I said okay. So I went over and I came in through
20 the back door and the kitchen area goes into the library, and
21 Doug was already in there.

22 Q. In where, sir?

23 A. There's a bookcase, or a, it's a library, and from the
24 floor to the ceiling. And Doug has his books in there and some
25 things.

1 Q. Is there a safe behind those books?

2 A. Yes, sir.

3 Q. Okay. And did you all do something with respect to those
4 guns, those two firearms that you got from Ms. Johnson and that
5 safe?

6 A. Yes. Doug was already in there, and I apologized again,
7 and he said don't worry about it, and he took the guns, and he
8 checked them to make sure there wasn't any ammunition, same
9 thing I had done, and I think I remember saying I checked them
10 and he said I know you did. But it's proper any time you get a
11 firearm, you check to make sure -- it's always the unloaded gun
12 that kills someone.

13 Q. Did you -- when you were standing there with Doug, did
14 you look inside that safe, sir?

15 A. I saw inside the safe.

16 Q. Prior to those two -- those two firearms -- well, were
17 there any firearms in that safe?

18 A. No, sir. There was a -- as I recall there was a VCR
19 tape, some papers, and then on the bottom of the safe there was
20 an accordion type folder.

21 Q. All right.

22 A. And there were some files in there that I think were from
23 the office.

24 Q. And where were those firearms placed then?

25 A. I think Doug, he put them down on the floor.

1 Q. Inside the safe or in the secret room?

2 A. No. Inside the safe.

3 Q. Okay, sir. So they were in the safe?

4 A. Yes, sir.

5 Q. All right. Now --

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

7 (Brief pause)

8 MR. MARTIN: Nothing further.

9 THE COURT: Any cross-examination?

10 MR. KUMI EGA: Yes, your Honor.

11 CROSS-EXAMINATION

12 BY MR. KUMI EGA:

13 Q. Good afternoon, Mr. Foster.

14 A. Afternoon, sir.

15 Q. Now, you have been a friend of Doug Friesen's for many
16 years; is that correct?

17 A. Probably, as I said, 18, 19 years.

18 Q. And you have worked exclusively for him as a private
19 investigator; is that correct?

20 A. That is correct.

21 Q. And from what time frame, please?

22 A. 1994 until 2002.

23 Q. Okay. And that was on retainer for Mr. Friesen?

24 A. At first, when I first went to work for Mr. Friesen, I
25 was paid regular salary. I was a salaried employee.

1 Q. This is '94 to '02?

2 A. Well, half that.

3 Q. Okay.

4 A. I was a salaried employee. Sometime in, I think, early
5 2000 I was changed over to a contract employee and paid with,
6 well, paid with check and everything, but it all went on a
7 1099.

8 Q. Okay. And so from that period of time to currently,
9 what's the nature of your business relationship with Mr.
10 Friesen?

11 A. In 1999, I had a total knee operation. I had a blood
12 clot and they thought part of it had broke off and gone to my
13 brain. I still would go down to the office. And in 2002, I
14 was diagnosed with cancer, neuroendocrine carcinoma. And by
15 2003, I wasn't working anymore, just trying to heal up and
16 everything. Everything is fine now. I'm in remission and have
17 been. And --

18 Q. All right. So are you currently -- what's the nature of
19 your business relationship with Mr. Friesen as we sit here
20 today?

21 A. I'm not sure of the time frame, but after the chemo,
22 radiation and everything, was there at my house, and stayed
23 there, I didn't go out much, and I was seeing a psychologist.

24 Q. Mr. Foster --

25 A. I'm sorry.

1 Q. The question I'm asking you today is: What's the nature
2 of your business relationship with Mr. Friesen?

3 A. I go down to the shop, run errands, do some filings, and
4 things like that.

5 Q. You still office at the business; is that correct?

6 A. Well, I have an office in two places.

7 Q. Okay. Do you have an office at Mr. Friesen's law office?

8 A. Yes.

9 Q. Okay. And you're one of his best friends; is that
10 correct?

11 A. I like to think so. Yes, sir.

12 Q. Okay. And as you said, the nature of the relationship
13 goes back to 1994; is that correct?

14 A. Yes, sir.

15 Q. And you were present, as you testified, when the
16 compliance inspection occurred on February 19, '03; is that
17 right?

18 A. Yes, sir.

19 Q. Okay. And you just testified that you received some guns
20 from Annette Johnson just prior to that in December of '03 or
21 January -- excuse me -- of '02?

22 A. Yes, sir.

23 Q. And Mr. Friesen told you to get those guns and bring them
24 to the office; is that right?

25 A. Yes, sir.

1 Q. Okay. And you said that you thought you got Doug in
2 trouble; is that right?

3 A. That is correct.

4 Q. And you knew about the compliance inspection?

5 A. Yes, sir.

6 Q. And did you tell him, Mr. Friesen, I think I got you in
7 trouble, on the day inspectors knocked on the door?

8 A. Yes, sir.

9 Q. All right. And again, what did you tell him? Why do you
10 think you got him in trouble?

11 A. Because I had two firearms which Doug was holding that I
12 had them over at my shop.

13 Q. Your shop at -- you own an antique store; is that
14 correct?

15 A. Yes, sir.

16 Q. So you had them at your store?

17 A. Yes, sir.

18 Q. On the 19th of February?

19 A. Yes, sir.

20 Q. The day of the compliance inspection?

21 A. Yes, sir.

22 Q. And why do you think you got him in trouble?

23 A. I thought that they had to see guns.

24 Q. Okay. And after you had your talk with Mr. Friesen, what
25 did you do about the guns?

1 A. I brought them over to him.

2 Q. Okay.

3 A. He said they didn't need to see those, they were client
4 guns.

5 Q. That's on the next day?

6 A. The 20th. Yes, sir.

7 Q. Okay. So on March 3rd, excuse me, on March 4th, 2003,
8 the guns were in Mr. Friesen's hidden room; is that right?

9 A. They were in the library and in the safe room.

10 Q. All right. The hidden room in the back, behind the
11 bookshelf?

12 A. Yes, sir.

13 Q. Okay. Now, you're familiar with that hidden room; is
14 that correct?

15 A. Yes, sir.

16 Q. And was used to -- for what purpose?

17 A. Mr. Friesen has a considerable amount of artwork that
18 he's purchased over the years.

19 Q. Okay.

20 A. He kept -- the artwork that's not on the walls he kept
21 back there. He also had a safe back there for clients.

22 Q. And you were working for Mr. Friesen when that safe, or
23 that hidden room was installed; is that correct?

24 A. Yes, sir.

25 Q. You know Mr. Nelson, John Nelson?

1 A. Yes, sir.

2 Q. He's also a good friend of Mr. Friesen's; is that
3 correct?

4 A. Yes, sir.

5 Q. All right. And you were aware that Mr. Friesen would
6 store certain items in that, behind the book shelves?

7 A. Yes, sir.

8 Q. Okay. Who had access to that room?

9 A. Of course, Doug had access, I think the key was either
10 kept at the front desk, Nicki would keep the key, or Tiffany
11 had the key in her closet where he keeps other keys.

12 MR. KUMIEGA: Can we look at Government's Exhibit 2.1,
13 please.

14 Q. (By Mr. Kumi ega) That's the gun vault behind the
15 bookshelf; is that right?

16 A. Yes, sir.

17 Q. All right. And in there was firearms; is that correct?

18 A. You mean the day after the compliance inspection?

19 Q. No. At all. All the time.

20 A. No. Not all the time.

21 Q. Not all the time. How do you know that, sir?

22 A. Well, I don't think Mr. Friesen kept guns in it.

23 Q. How do you know that?

24 A. Well, he kept all those guns at the house. The safe that
25 was in, behind the library --

1 Q. You heard the testimony, do you know Annette -- well, you
2 testified about Annette Johnson. Do you know about Ms. Long?
3 Do you know her, Catherine Long?

4 A. Oh, yes, sir. She was a secretary.

5 Q. Okay. And Julie Ann White?

6 A. Yes.

7 Q. And who was she, please?

8 A. She was -- I think her title was office manager.

9 Q. Okay. Now, they had access to that vault, didn't they,
10 or that hidden room?

11 A. Catherine probably did. I apologize for the time frames.
12 Catherine worked there before the compliance inspection, I
13 think.

14 Q. Okay. And she testified that there were always guns in
15 that vault.

16 MR. MARTIN: Your Honor, I object to the
17 mischaracterization.

18 THE COURT: Will be sustained. The Rule has been
19 invoked and so one witness isn't necessarily supposed to know
20 what other witnesses have testified to, Mr. Kumiaga.

21 Q. (By Mr. Kumiaga) If other witnesses said --

22 THE COURT: Mr. Kumiaga, I just sustained the
23 objection.

24 MR. KUMIAGA: I thought it was regarding -- I
25 apologize, your Honor.

1 Q. (By Mr. Kumi ega) So you're saying there were never any
2 guns in that vault?

3 A. I can't say never.

4 Q. Okay. Now, you remember testifying in front of a grand
5 jury?

6 A. Yes, sir.

7 Q. Regarding one of these very issues; is that correct?

8 A. Yes, sir.

9 Q. And during that grand jury testimony, you explained how
10 you brought Ms. Johnson's guns to the law office; is that
11 correct?

12 A. That is correct.

13 Q. All right. And you at one time -- well, who put them in
14 the safe then when the government found it during the
15 inspection, or the search warrant?

16 A. I'm sorry, who --

17 Q. How did the firearms get in the secret room?

18 A. I have no idea. I suppose Doug probably put them in
19 there.

20 Q. So on the 19th of February 2003, you told Mr. Friesen
21 that I have Annette Johnson's guns?

22 A. Yes, sir.

23 Q. And later -- and did you give them to Doug?

24 A. I gave them to him the next morning.

25 Q. So on the 20th you gave them to him?

1 A. Yes, sir.

2 Q. So do you know where they were from the 20th of February
3 2003, to the time the search warrant was done June 10th, 2004?

4 A. I assume they were in the safe.

5 Q. Okay.

6 A. That's where Mr. Friesen had put them.

7 Q. Okay. So when Mr. Friesen was interviewed by Inspector
8 McGrew on March 4th, 2003, regarding firearms in the office --

9 A. Yes, sir.

10 Q. Are you following me?

11 A. I think so. Yes, sir.

12 Q. He knew that there were guns --

13 MR. MARTIN: Again, your Honor, he's going into
14 testimony of another witness.

15 MR. KUMIEGA: I'm not, your Honor. I'm asking him a
16 question about when the search warrant occurred, when the --
17 when Ms. McGrew had the opportunity to talk to Mr. Friesen, and
18 Mr. Foster knowing when the gun was finally placed in the safe.

19 THE COURT: Just ask him if he knows when the gun was
20 finally placed in the safe.

21 Q. (By Mr. Kumi ega) Do you know when the gun was finally
22 placed in the safe?

23 A. The day after the compliance inspection.

24 Q. On the 20th, right?

25 A. Yes, sir.

1 Q. The second day of the compliance inspection?

2 A. I don't know if it was the second day of the compliance
3 inspection. But --

4 Q. On the 20th?

5 A. I gave Mr. Friesen those guns on the 20th.

6 Q. And did you watch him put them somewhere?

7 A. He put them on the floor of the safe, on top of each
8 other.

9 Q. Okay. On the 20th. So when Ms. McGrew interviewed Mr.
10 Friesen on March 4th, 2003 --

11 MR. MARTIN: Your Honor, again, I'll object. We're
12 going into testimony of another witness. He doesn't know that.

13 MR. KUMI EGA: Of course, he does, your Honor.

14 THE COURT: I guess he knows when Ms. McGrew came
15 back.

16 MR. KUMI EGA: Yes.

17 Q. (By Mr. Kumi ega) When Ms. McGrew interviewed Mr. Friesen
18 on March 4th, 2003 --

19 MR. MARTIN: Your Honor, I don't think --

20 THE COURT: I don't know that he knows that. Lay some
21 foundation about if he knows.

22 MR. KUMI EGA: Okay.

23 Q. (By Mr. Kumi ega) The inspection ended March 4th, 2003.
24 Do you know about that, roughly?

25 A. No. Not really.

1 Q. Do you know the inspection lasted a couple of days, at
2 least a week or two?

3 A. No, sir.

4 Q. You don't know about that?

5 A. No. I thought they were there that one day. Now, they
6 came back and picked up a -- I think they call it the FFL,
7 Doug's records.

8 Q. All right. You were officing at the building during that
9 period of time; is that correct?

10 A. Yes, sir.

11 Q. And you were watching the inspectors come and go for a
12 period of time of about ten days; is that correct?

13 A. No. I saw them the day of the compliance inspection.

14 Q. Okay. You knew -- you were helping or did you know Mr.
15 Friesen was looking for some business records or gun records?

16 A. Yes.

17 Q. All right. Did you help him?

18 A. No, sir.

19 Q. Okay. Did you know that the inspectors were looking for
20 gun records?

21 A. Doug mentioned it, I suppose, the next day or something
22 like that.

23 Q. Okay. So you don't know when the inspection concluded?

24 A. No, sir.

25 Q. Okay. But if the inspection concluded on March the 4th,

1 2003, where were the guns? Where were Annette Johnson's
2 firearms?

3 MR. MARTIN: Your Honor --

4 MR. KUMIEGA: If he knows, your Honor.

5 THE COURT: He said he doesn't know when the
6 inspection was completed. If he can testify he knew where they
7 were on March 4th.

8 Q. (By Mr. Kumi ega) Do you know Where they were on March
9 4th, 2003?

10 A. I gave them to Mr. Friesen the day after the inspection.

11 Q. And you watched him --

12 A. Put them in the safe.

13 Q. -- put them in the safe? Good enough.

14 Now, you said that you're very good friends with Mr.
15 Friesen?

16 A. Yes, sir.

17 Q. And did you know about his machine guns?

18 A. One of these, I take it?

19 Q. Excuse me?

20 A. The Sten machine gun.

21 Q. You were familiar with it?

22 A. No, sir.

23 Q. You never were familiar with him owning a Sten machine
24 gun?

25 A. I knew he had several machine guns.

1 Q. How did you know that?

2 A. I suppose he told me.

3 Q. Right. Did you know about his silencers?

4 A. I knew he had silencers also.

5 Q. And did you know about his extensive firearms collection?

6 A. No.

7 Q. You didn't know about that?

8 A. I mean, Mr. Friesen has firearms. I don't know that it
9 was a collection.

10 Q. All right. Did you know he had a firearms -- that he had
11 a license to sell firearms?

12 A. Yes, sir. That, I knew.

13 Q. Did you know at one time he had a license to sell machine
14 guns, silencers, sawed-off shotguns?

15 A. That, I knew also.

16 Q. Okay. Were you present when Mr. Hunter, or Mrs. Hunter
17 brought back the silencer?

18 A. Yes.

19 Q. Tell us about your involvement in that, please.

20 A. Apparently, Doug had given Bobby Hunter, who is an Edmond
21 police officer, a silencer to use for testing and evaluation.
22 During the compliance inspection, Mr. Friesen asked me if I
23 would call Mr. Hunter and bring the silencer back, that the
24 ladies that were doing the inspection needed to see the
25 silencer. I called Mr. Hunter and couldn't get ahold of him.

1 I called Mrs. Hunter and explained that Mr. Hunter had a
2 silencer, and that they were having a compliance inspection and
3 the inspectors needed to see it. She says, okay, let me go --
4 I suppose she either went to the police department or out to
5 the range, picked up the silencer, and brought it to up to the
6 office.

7 Q. All right. She brought it to you; is that correct?

8 A. Yes.

9 Q. All right. And what did you do with the silencer?

10 A. I don't remember if Doug was there or not. If he was
11 there, I gave it to him. If he wasn't in, I put it on his
12 desk.

13 Q. Did you consider Mr. Friesen an expert with firearms?

14 A. How do you mean "expert"?

15 Q. Well, the same question I asked you in the grand jury.
16 Do you consider him an expert in firearms? Just the common
17 terms.

18 A. He's knowledgeable. Yes.

19 Q. All right. He's more than knowledgeable; is that
20 correct?

21 A. I don't know about that.

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

23 THE COURT: Yes.

24 MR. MARTIN: Can you tell us what page you're on?

25 MR. KUMIEGA: Yes. Grand jury testimony, page 24,

1 starting at line 20.

2 Q. (By Mr. Kumi ega) Can you read that to yourself, sir?
3 Does that refresh your recollection of what you said in the
4 grand jury?

5 A. Yeah. I mean, would you like me to read it?

6 Q. No. No. Does that -- I'm going to ask you from the
7 podium, does that refresh your recollection what you told the
8 grand jury?

9 A. Yes.

10 Q. Okay. Now, the question again is: Is Mr. Friesen
11 somewhat of an expert in firearms?

12 A. There again, I don't think I said anything like that in
13 those -- that paragraph and the sentence following it. I think
14 he -- it was a hobby, he was a gun enthusiast. Did I say an
15 expert witness there?

16 MR. KUMI EGA: Your Honor, may I approach the witness
17 again? I would like to have him look at page 25.

18 THE COURT: Why don't you just ask if he testified to
19 that in the grand jury.

20 Q. (By Mr. Kumi ega) Mr. Foster, did you say that:

21 "I'm going to ask you this question: I mean, is this
22 his hobby, he's kind of a gun enthusiast?"

23 And you said:

24 "Right."

25 And the question was:

1 "He's a lawyer. Would it be fair to say he knows all
2 the regulations and all the rules and procedures in
3 either selling, buying, or possessing firearms?"

4 Do you remember how you answered?

5 A. Yes, sir. I think, if I'm not mistaken, I replied in the
6 affirmative on that.

7 Q. Right. And then the next question was:

8 "In fact, he's a self-proclaimed expert, would that
9 be fair to say?"

10 Do you remember your answer?

11 A. No, sir.

12 Q. Your answer is:

13 "I don't know if he would classify himself as an
14 expert."

15 My next question, though:

16 "Well, you would, though, wouldn't you?"

17 And you said:

18 "Yeah."

19 A. Okay.

20 Q. All right. So for buying, selling, and knowing the
21 regulations of firearms you would consider him an expert as you
22 testified in January 24th, 2008; is that correct?

23 A. That would be correct.

24 Q. Okay. All right. And let me ask you this: Do you
25 remember when the government did the search warrant on June 10,

1 2004?

2 A. I was not there that day.

3 Q. Okay. Did you talk to Mr. Friesen about the search
4 warrant on that day, or after that day?

5 A. Probably after that day.

6 Q. All right. And did you have conversations about the
7 government seizing Government's Exhibit 3.16, the Sten machine
8 gun?

9 A. Yes.

10 Q. Now, again, you're still really good friends with him; is
11 that not correct?

12 A. Yes, sir.

13 Q. And did he tell you why the government seized the
14 firearm?

15 A. No.

16 Q. He never did?

17 A. No.

18 Q. Okay.

19 A. He said that they took the Sten, they took other guns.

20 Q. And you never asked him why and he never explained why
21 the United States went to his law office and took his machine
22 gun?

23 A. No, sir.

24 Q. Okay. You would visit with him every day; is that
25 correct?

1 A. Yes, si r.

2 Q. And even since the search warrant?

3 A. I 'm sorry?

4 Q. Even since the search warrant in '04, June of '04?

5 A. Yes, si r.

6 Q. Okay. And you still have a busi ness rel ati onshi p wi th
7 hi m?

8 A. Yes, si r.

9 Q. And you still have a very active soci al rel ati onshi p wi th
10 hi m?

11 A. I don't know if you would -- it would be classi fied as an
12 active soci al. We have dinner a group of us maybe every month
13 or two.

14 Q. And during that period of time, did he ever tell you why
15 the Uni ted States seized the serial number and -- or seized the
16 machi ne gun and what hi s concerns are?

17 A. No, si r.

18 MR. KUMI EGA: Nothi ng further.

19 THE WI TNESS: He --

20 Q. (By Mr. Kumi ega) I 'm sorry. You had something to say?

21 A. No.

22 Q. Are you sure?

23 A. Posi ti ve.

24 MR. KUMI EGA: Nothi ng further.

25 THE COURT: Any redi rect?

1 MR. MARTIN: Very briefly.

2 REDI RECT EXAMI NATION

3 BY MR. MARTIN:

4 Q. Doug told you and you told the grand jury pursuant to Mr.

5 Kumi ega' s questi oning that everything about that fi rearm was

6 legal , di dn' t he, si r?

7 A. Yes, si r.

8 MR. MARTIN: Nothi ng further.

9 THE COURT: Thank you, Mr. Foster. You may be

10 excused, and you' re i nstructed to not discuss the testi mony

11 you' ve given here today wi th other persons that may be a

12 wi tness i n thi s matter.

13 Call your next wi tness.

14 MR. MARTIN: Zella Hol der, your Honor.

15 ZELLA HOLDER,

16 called as a wi tness, ha ving been duly sworn, testi fi es as

17 fol l ows:

18 DI RECT EXAMI NATION

19 BY MR. MARTIN:

20 Q. Ms. Hol der, please i ntroduce yoursel f to the l adies and

21 gentlemen of the jury.

22 A. I' m Zella Hol der.

23 Q. And tel l them what do you do for a li ving, what' s your

24 professi on or occupati on?

25 A. I do stained glass. I have a stained glass studi o.

1 Q. And what do you do in that studio?

2 A. We do commission work, teach classes. I have a retail
3 business of which I sell to hobbyists.

4 Q. Okay. Can you see over here?

5 A. Uh-huh.

6 Q. Do you know this -- stand up -- do you know this
7 individual?

8 A. Yes, I do.

9 Q. And who is that?

10 A. Doug Friesen.

11 Q. And how do you know him?

12 A. I first met Doug whenever I had done a commission for
13 someone and they had recommended me to Doug whenever he had
14 told them he had wanted some glass done.

15 Q. How long have you known Doug?

16 A. A good 20 years.

17 Q. All right. Have you ever done any work for him?

18 A. Yes, I have.

19 Q. And what type of work have you done?

20 A. I've done from the stained glass to I've done etching,
21 which one of that is in his office.

22 Q. Are you familiar with Doug's office?

23 A. Yes.

24 Q. And the one on North Classen here?

25 A. Yes.

1 Q. And is any of your work in that office?

2 A. Yes, it is.

3 Q. Okay. Describe for the ladies and gentlemen of the jury
4 some of the type work that you've done in there.

5 A. On the doors, there's four doors with etching of wolves,
6 and then there is an actual stained glass piece hanging in one
7 of the windows.

8 Q. I couldn't hear you.

9 A. It's a stained glass piece hanging in the window.

10 Q. Okay. And not only have you done work at the office,
11 have you done work at other locations for him?

12 A. Yes. In his home.

13 Q. Okay. And let me ask you: Approximately how many pieces
14 of stained glass would you guess you have -- is the right word
15 "commissioned"?

16 A. Yes.

17 Q. Has he commissioned for you?

18 A. Through the time, I couldn't count all of them because
19 he's had me do some for friends for gifts, and right now I'm
20 doing all his cabinet doors and about eight windows in his
21 house. So I don't know. Probably around 20 pieces, at least.

22 Q. Okay. And let me ask you: Are you familiar, relatively
23 familiar with his house where he lives now?

24 A. Yes.

25 Q. On, is it Northwest 17th?

1 A. Yes.

2 Q. And have you ever been there before?

3 A. Oh, yes.

4 Q. Do you recall an occasion when you happened to be in his
5 house when he was working on a firearm?

6 A. Yes.

7 Q. And could you tell the ladies and gentlemen of the jury,
8 first of all, how you remember that particular occasion?

9 A. At that time, I was very, very busy with my stained glass
10 business, and I have a trailer park, and I had just for the
11 first time that I -- which I never tried hard before, but I had
12 filled it with people that do construction work. And I was
13 having to juggle these two jobs because I remember that it was
14 going to be by the 1st of April I was going to be into worrying
15 about mowing and doing all this that I hadn't done before.
16 It's 11 1/2 acres and 50 spaces, so all of that was going to be
17 consuming a lot of my time. So I was there to get things lined
18 out with what he was going to want done, because I knew I
19 wouldn't have a whole lot of time other than that.

20 Q. And did you go to his house?

21 A. Yes.

22 Q. All right. And when you went to his house, what
23 happened?

24 A. I can't remember if I was kind of early or kind of late,
25 but he was in the middle of a project. And I told him, well,

1 go ahead and finish what you're doing, and he said well, just,
2 come downstairs with me.

3 Q. Where did you go?

4 A. We went downstairs into his basement.

5 MR. MARTIN: Can we pull up Government's Exhibit 3.7,
6 please.

7 Q. (By Mr. Martin) Can you see this?

8 A. Yes.

9 Q. And does this look familiar?

10 A. Yes.

11 Q. And what is that?

12 A. It's his little workshop.

13 Q. All right. And can you tell us what occurred while you
14 were in the basement? Let me stop you just a second. Is this
15 in the basement?

16 A. Yes.

17 Q. Now, while you were down there, what happened?

18 A. He was removing some paint from a metal piece. And I
19 asked him what he was doing that for, because I thought it was
20 a good paint job myself, and he said that he was having to
21 verify or find some numbers that was under the paint.

22 Q. What kind of metal piece was it that he was removing
23 paint from?

24 A. It was -- I don't know how you would describe it. It was
25 -- it could have been a car part for what I know. But it was

1 -- it was a piece from a gun.

2 Q. Okay.

3 A. And so he was removing the paint to find these numbers.

4 Q. All right. And did he say -- was he using any type of
5 mechanism to aid him in looking for anything?

6 A. Some kind of solvent.

7 Q. All right. What about light or magnification or anything
8 like that?

9 MR. KUMIEGA: Objection to leading the witness, your
10 Honor.

11 THE COURT: Excuse me. Be sustained.

12 Q. (By Mr. Martin) Besides the solvent, what else was he
13 using?

14 A. He had a magnifying glass that had a light, and --

15 Q. Would you recognize that again if you saw it?

16 A. I might.

17 MR. MARTIN: If we could zoom in right there
18 (indicating).

19 MR. KUMIEGA: Objection to leading again, your Honor,
20 to the diagram.

21 THE COURT: Overruled.

22 Q. (By Mr. Martin) Do you recognize this, if you do, this
23 device right here (indicating)? There's a monitor right next
24 to you if that helps.

25 A. Oh, okay. I see it now. Yes.

1 Q. What is that?

2 A. That is the light.

3 Q. Okay. And what was he doing with that light?

4 A. He was -- it was shining down over the piece, metal
5 piece.

6 Q. Okay. And how was he looking at the metal piece?

7 A. Through the magnifying part.

8 Q. Through the top, the bottom of it, or --

9 A. He was looking through the top.

10 Q. Okay. Is -- where is the light in relation to where he
11 was looking?

12 A. The light -- let me think. I've got two or three of
13 them, so I'm kind of confused in what it looked exactly like.
14 The light was on the top.

15 Q. All right, ma'am. And what did he tell you about what he
16 was doing?

17 A. He said that he was having to find these numbers because
18 of an inspection, he needed to verify the numbers.

19 Q. All right. And how long did you all -- were you down in
20 the basement while he was doing that?

21 A. Fifteen, 20 minutes. Something like that.

22 Q. All right.

23 A. Approximately.

24 Q. And would you recognize the device, the gun part again,
25 whatever it was, if you were shown it?

1 A. I can't say I could do that for positive.

2 Q. Okay. All right. And let me ask you this: After you --
3 well, what brought the -- whatever was going on in the
4 basement, what brought that to a conclusion?

5 A. He had finished finding the numbers, and then that was
6 what he needed to do, and --

7 Q. And what did you all do?

8 A. And then we went on upstairs to finish doing the stained
9 glass thing.

10 Q. All right. And you were there -- what purpose were you
11 there for?

12 A. I was there to go over the stained glass thing with him.

13 Q. Okay.

14 A. That was my reason for my visit.

15 Q. Be fair to say you had nothing to do with the location or
16 work relating to that -- what occurred in the basement?

17 A. No. Oh, no.

18 Q. All right. You had -- did you have any idea what he was
19 going to be doing when you got there? Was he planning on you
20 being there or not?

21 A. I have no idea. I mean, he was just waiting until I
22 could get there.

23 Q. All right. And I believe you testified that you have
24 some, or have a mobile home park; is that right?

25 A. Yes, I do.

1 Q. And does there come a period of time when you become very
2 busy because of that?

3 A. Yes.

4 Q. And approximately when is that?

5 A. I figure starting April the 1st, that that's when things
6 have to get into play for the mowing and different groundwork
7 and the trees and so on.

8 Q. And I guess the reason for that question is, I asked you,
9 did I not, to try to in your mind give me your best guess as to
10 when you may have been at Doug's house?

11 A. Yes.

12 Q. And what did you base that on?

13 A. I based it on that time period because I needed to know,
14 get everything lined out that I was going to have to do with
15 him in preparation because I wouldn't be having a lot of time
16 after that, and that included my weekends. And with the things
17 I would have to order, the drawings I would have to do, because
18 it was going to take me a while, and I would just have to work
19 it in whenever I had time in between the trailer park thing.

20 Q. Would you have had time to go to his house after April
21 1st?

22 A. I could have, but it would have really been working it
23 in.

24 Q. Okay. When you were there on this occasion and in the
25 basement with the light that we've seen, were you pressed for

1 time already, or was this something where you still had time to
2 meet and visit with him?

3 A. Well, I was kind of pressed for time. This was just
4 going ahead and getting this done, a time that both of us had.

5 Q. All right. And how -- when would you characterize, as
6 best you can, when this might have occurred, month-wise?

7 A. It would have been in March, and I am -- it would have
8 had to have been on a Sunday, but it would have probably been
9 at least the middle of March or third week or something like
10 that of March.

11 MR. MARTIN: Thank you, Ms. Holder. Nothing further.

12 THE COURT: You may cross-examine.

13 MR. KUMI EGA: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. KUMI EGA:

16 Q. Now, Ms. Holder you said you have a trailer park and you
17 own a stained glass business; is that correct?

18 A. Yes.

19 Q. Where is your stained glass business located?

20 A. Here in Oklahoma City.

21 Q. What's the address, please?

22 A. 3308 South Walker.

23 Q. And how long have you had it?

24 A. I have had it at that location, I've just been there a
25 year, but I've been in business here in Oklahoma City 13 years.

1 Q. All right. So what's -- prior to moving to South Walker,
2 where did you have your other business at?

3 A. 89th and South Western.

4 Q. And the name of your shop, please?

5 A. Z's stained glass.

6 Q. Were you there for all those 11, 12 years?

7 A. Yes.

8 Q. Okay. And you also have a trailer park; is that correct?

9 A. Yes, I do.

10 Q. Where is that located at, please?

11 A. It's in Luther.

12 Q. And how long have you had that?

13 A. I've had it for 17 years.

14 Q. Okay. And is that how you earn your income, from those
15 two sources?

16 A. Yes.

17 Q. Any other sources of income?

18 A. No.

19 Q. Now, you said you've known Mr. Friesen for approximately
20 20 years?

21 A. Yes.

22 Q. And what's the nature of your relationship with Mr.
23 Friesen?

24 A. We're friends.

25 Q. Okay. Has he ever represented you in any contract

1 disputes or any legal actions?

2 A. Yes.

3 Q. Can you tell us about that, please?

4 A. We -- I have an eminent domain situation pending now.

5 Q. So he currently represents you?

6 A. Yes.

7 Q. What about in the past?

8 A. He has my family, but nothing particularly on me.

9 Q. I didn't understand your answer.

10 A. He's represented my children, tickets and that kind of
11 thing.

12 Q. All right.

13 A. But this is --

14 Q. Besides something other than tickets, what other type of
15 representation for your children?

16 A. I think a DUI. I think that's it.

17 Q. Is that it? And how many children do you have, please?

18 A. Four.

19 Q. Okay. So back in 2003, you went to Mr. Friesen's
20 residence --

21 A. Yes.

22 Q. -- as you just testified?

23 A. Yes.

24 Q. And instead of going to his office you went to his
25 residence; is that right?

1 A. Yes.

2 Q. Why did you go to the residence, not to the office?

3 A. Because this is where the glass work was going to be
4 done, and I measure and --

5 Q. So you were there for business purposes; is that correct?

6 A. Yes.

7 Q. Have you ever been involved with Mr. Friesen socially
8 outside of -- here in Oklahoma City for dinner or visiting at
9 his house?

10 A. We've gone to dinner.

11 Q. How often?

12 A. Sometimes we've gone maybe twice a month, sometimes we
13 don't go to dinner maybe for six months. Just depends on how
14 busy we are.

15 Q. And this is for the 20-year period of time?

16 A. Yes. Uh-huh.

17 Q. So you're more than casual acquaintances, you're friends?

18 A. Yes.

19 Q. Okay. Now, while you were casual acquaintances prior to
20 February of 2003, did you know about Mr. Friesen's gun
21 collection or gun activities?

22 A. No, I really didn't. I knew he hunted, but I never got
23 into guns.

24 Q. Okay. You were not aware about him having a license to
25 sell firearms?

1 A. No.

2 Q. Okay. Did you know about his collection of different
3 kind of, I guess, exotic weapons?

4 A. No. Not really.

5 Q. So you don't know anything about his collection of
6 machine guns or silencers?

7 A. No.

8 Q. Okay. Now, you said that you showed -- showed up there
9 back in March, you think in March of 2003?

10 A. Correct.

11 Q. And you date that by your business activities; is that
12 correct?

13 A. Yes.

14 Q. What was so unusual about meeting Mr. Friesen in the
15 basement and working on the gun that you would remember that?

16 A. Because I was so pressed for time at that particular
17 time. The other thing that I -- that caught my attention on
18 this was because I do a lot of etching from glass to rock to
19 metal and different things, it kind of -- I kind of remembered
20 it because of the paint kind of over the numbers, because when
21 I sign a lot of my commission work I engrave it, and a lot of
22 times I may rub it with paint. And so this was along the same
23 category that he was doing, is one reason I remember it.

24 Q. Okay. So you knocked on the door, he invites you to his
25 house, and he says, come on downstairs with me, I've got to do

1 something. Is that basically it?

2 A. Yes.

3 Q. And you actually watched him do something?

4 A. Yes.

5 Q. And he told you what he was doing?

6 A. He said he was having to find some numbers --

7 Q. Okay.

8 A. -- that had been painted and covered up.

9 Q. All right. Did he tell you who covered up the numbers?

10 A. I'm not sure on that. I think he said he had painted it
11 and as preservative or whatever.

12 Q. Are you just guessing, or are you sure?

13 A. I'm not a hundred percent sure. I don't remember
14 exactly.

15 Q. Okay. Now, let me ask you this: Who first contacted you
16 about your testimony today?

17 A. Doug mentioned it to me.

18 Q. How long ago?

19 A. Maybe two weeks ago.

20 Q. Two weeks ago?

21 A. Two or three weeks ago maybe.

22 Q. And where did that conversation take place?

23 A. I was in his office because of this eminent domain thing
24 we've got going.

25 Q. And under what circumstances did he bring that out,

1 please?

2 A. He asked me if I remembered that instance, and I said,
3 well, I kind of had to think a little bit. And he said, what
4 all do you remember about it?

5 Q. Okay. And this happened just two weeks ago?

6 A. Or three weeks ago maybe.

7 Q. Did you write a report?

8 A. No.

9 Q. So you didn't write down anything and hand it to Mr.
10 Friesen?

11 A. No.

12 Q. Who was there besides Mr. Friesen when he asked you that
13 question?

14 A. We were in his office, no one else.

15 Q. Just you two?

16 A. Yes.

17 Q. Okay. And that's the only time other than your testimony
18 today that you visited with Mr. Friesen about this?

19 A. Let's see. I think we briefly mentioned it afterwards,
20 and he said if we go to court, he said, all you have to do is
21 tell the truth.

22 Q. Okay.

23 A. And that's about it.

24 Q. Okay. Now, you go downstairs, and do you see this
25 device, you called it a car part, but you think it's a gun?

1 A. Yeah. Since you say it is.

2 Q. Can you describe it to the jury, please?

3 A. I don't -- I'm just now looking at these. These are all
4 just kind of foreign to me. What is it you asked, now?

5 Q. Can you describe the gun for the jury that you saw Mr.
6 Friesen work on?

7 A. It was just a part.

8 Q. What do you mean a part? It was not a gun, it was a
9 part?

10 A. Well, it wasn't like a whole gun. Huh. I don't know if
11 I can describe that exactly or not. I remembered a long thing.
12 It was longer than that, I believe, but that wasn't the part
13 that he was working on. Huh. I don't know. It might have
14 been something like -- oh, I don't know. Maybe something like
15 -- no. I don't know exactly.

16 Q. Okay. Ms. Holder, so you go downstairs and you actually
17 see him working on a part?

18 A. Uh-huh. Yes.

19 Q. And then he -- are you curious or are you wanting to do
20 business at that point?

21 A. The guns didn't really, wasn't something I really got
22 into.

23 Q. Okay.

24 A. And I knew he hunted, and I don't know all the kind of
25 guns and stuff that he has for any of that.

1 Q. Okay. When you went downstairs and he was working on it,
2 was he almost completed or did he just -- was he starting?

3 A. Well, he had it set up where -- that he had started
4 working on it. He sort of it had it in a holding pattern so
5 that he could -- and he had everything ready and he started
6 cleaning the spot.

7 Q. How long were you there?

8 A. Fifteen, 20 minutes in the basement.

9 Q. How long did he take to find the serial number? Or did
10 he find the serial number already and was telling you about it?

11 A. No. He found it, and actually I was probably doing more
12 of the talking and everything because I was relating to him
13 because that, that's the kind of thing that I do, and I always
14 teach it or I do it, but I never get to see anybody actually do
15 something like that their self. And he say, well, I can show
16 you.

17 Q. All right. And what did he show you, please?

18 A. There was some numbers or something that showed up.

19 Q. All right. And what did the numbers look like?

20 A. Just engraved, or lightly engraved in the metal.

21 Q. Okay. And did you peer over in the magnifying glass too?

22 A. Yes.

23 Q. Now, Mr. Friesen's basement is in -- how would you
24 describe it?

25 A. It's got a lot of tool stuff --

1 Q. Is it in neat order?

2 A. -- shelves.

3 Q. Is it neat or is it sloppy?

4 A. No. It's neat.

5 Q. Okay. And he told you the reason he's doing this is for
6 what reason, please?

7 A. He had to show the numbers for an inspector.

8 Q. Okay. And did he say what he was going to do once he
9 found the numbers?

10 A. I guess -- I don't know remember, but he probably said
11 that -- well, I assumed that once he found these numbers, then
12 he would show them to the inspector.

13 Q. You assumed that. Did he tell you that?

14 A. He may have.

15 Q. Okay.

16 A. I think possibly he did.

17 Q. Did he seem very concerned that he was looking for the
18 numbers?

19 A. He seemed to know that there was numbers there. It's
20 just going ahead and locating them.

21 Q. Okay. But when you were there he found the numbers
22 already; is that right?

23 A. When I was there, while I was there he was cleaning it.

24 Q. So you weren't there when he was searching around, he had
25 found the numbers already, and then you watched him do

1 something with the numbers?

2 A. No. He finished finding them when I was there.

3 Q. Oh, he was finished?

4 A. No, he wasn't finished. He had started cleaning it, and
5 he finished cleaning it off, and he said, there they are.

6 Q. Okay. Did he say anything about the firearm, where he
7 got it from?

8 A. No. No.

9 Q. Okay. Did he tell you about the nature of this lawsuit?

10 A. No. That it was because of some firearms, and that's
11 about as far as we went.

12 Q. Okay.

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

15 THE COURT: Yes.

16 (Brief pause)

17 Q. (By Mr. Kumi ega) After that incident, and then from '03,
18 around February, March '03, until just recently, was there any
19 other conversation about that gun?

20 A. No.

21 Q. Did you know about a compliance inspection other than
22 what he told you?

23 A. No.

24 Q. Did you know about the search warrant?

25 A. No.

1 Q. But you had -- you've had conversations with him since
2 you saw him with the gun in the basement in February or March
3 of '03?

4 A. Yes. I've had conversations with him since.

5 Q. Did he ever tell you that the government took the firearm
6 back in June of 2004?

7 A. No.

8 Q. Did he ever tell you that he was under indictment by a
9 federal grand jury?

10 A. No.

11 Q. He never told you about the nature of this case or he's
12 being represented by a lawyer?

13 A. That he was represented by a lawyer?

14 Q. Uh-huh.

15 A. Yes. He told me who his lawyer was, and that's who got
16 ahold of me.

17 Q. And when did that lawyer get ahold of you?

18 A. Let's see. I talked to him last Saturday.

19 Q. All right. So for the whole period of time you were
20 unaware of this important thing that was going on in Mr.
21 Friesen's life?

22 A. Yes.

23 Q. Other than the fact that in the meeting upstairs in Mr.
24 Friesen's office several weeks ago, three weeks ago, he said,
25 by the way, Zella, do you remember when I did this and this?

1 A. Yes.

2 Q. And took you a while to remember?

3 A. Yes.

4 Q. Okay. How do you know he's telling the truth, Ms.
5 Holder?

6 MR. MARTIN: Objection.

7 THE COURT: Objection will be sustained.

8 Q. (By Mr. Kumi ega) What was his demeanor like when he
9 found the serial number?

10 A. There it is.

11 Q. And that's it?

12 A. That's all he -- yeah.

13 Q. And then once he found it, what happened next?

14 A. Then he said, well, I've got this done, now we can go
15 ahead and finish up what you've got to do so you can get on.

16 Q. Okay. Did he tell you that he had other activities with
17 the inspectors that he needed to do, like look for records?

18 A. Oh, no. No.

19 Q. Did he ever tell you that ATF is coming back and they
20 want some more stuff from me?

21 A. No.

22 Q. Okay. Do you remember what type of solvent he used?

23 A. No, I don't.

24 Q. Do you remember what type of container it was in?

25 A. I think it was in a can, I think.

1 Q. What kind of can?

2 A. Just a, like, a quart size can.

3 Q. Commercial or --

4 A. Oh, I don't know.

5 Q. Do you remember it was in a can?

6 A. Uh-huh. Because he -- he tilted it to put it on his
7 cloth.

8 Q. And you -- can you describe the can for the jury?

9 A. Just -- it would be a can similar like to a paint thinner
10 can that would be like -- I think it's quart size.

11 Q. Ma'am, did he tell you this was a machine gun?

12 A. I don't think so. No.

13 Q. He didn't tell you what type of gun he was doing this
14 for?

15 A. I don't remember it. No.

16 MR. KUMIEGA: Nothing further, your Honor.

17 THE COURT: Any redirect?

18 MR. MARTIN: No, your Honor.

19 THE COURT: Okay. Ms. Holder, you may be excused, and
20 I would advise you you're not to discuss the testimony you've
21 given here with other persons who may be a witness in this
22 case. You may be excused.

23 MR. MARTIN: Your Honor, may I approach briefly?

24 THE COURT: Yes.

25 (The following was had at the bench, out of the hearing of

1 the jury:)

2 MR. MARTIN: Defense will rest, and we renew our
3 previous motion for directed verdict of acquittal.

4 THE COURT: All right. Rebuttal I've revised -- I'm
5 going to allow you to call Mr. Knopp as it relates that he was
6 pounding the gun or something, and that's it, right?

7 MR. KUMIEGA: Yes.

8 THE COURT: Okay. And I'll let you call Mr. Kelley;
9 is that right?

10 MR. KUMIEGA: Yes, sir.

11 THE COURT: That the gun is in the same condition, and
12 that's it.

13 MR. KUMIEGA: Okay.

14 THE COURT: I can find nothing in Ms. LeMaster's
15 testimony, other than she did say that the meeting was
16 contentious and so forth. So who were you planning on calling
17 to say that the meeting was not contentious?

18 MR. KUMIEGA: Mr. Kelley.

19 THE COURT: So he can testify to that. I found
20 nothing in Ms. LeMaster's where you tried to impeach her or
21 questioned her testimony.

22 MR. KUMIEGA: I was -- other than what I was saying
23 regarding contention, I was not going into anything else.

24 MR. MARTIN: My objection on that, your Honor, is
25 rebuttal is to rebut my case. That's his case. He can do that

1 in his case in chief. He's not rebutting my case with this.
2 Rebuttal is purely to rebut what has been presented in my case
3 and LeMaster's hasn't been mentioned, that I recall.

4 MR. KUMI EGA: According to 607 I can impeach my own
5 witness through rebuttal, that holds calling your witness --

6 THE COURT: What's the purpose of it?

7 MR. KUMI EGA: Show that the government was not
8 overhanded, your Honor, that it was a very nice interview, and
9 then later on she changed her mind.

10 THE COURT: There is nothing in the testimony that she
11 changed her mind on anything.

12 MR. KUMI EGA: Okay. Well, you read it and I haven't.

13 THE COURT: I couldn't find anything and, I wondered
14 why we granted her immunity. There was nothing in the
15 testimony she testified differently or had given any statements
16 or anything.

17 MR. KUMI EGA: Yes, sir.

18 THE COURT: I couldn't find anything. So that's my
19 question, as to why.

20 MR. KUMI EGA: Just show the government was not
21 heavyhanded, it was a very friendly meeting, a long meeting and
22 she went away happy and satisfied with her statements to the
23 ATF. That's it.

24 THE COURT: I don't see any purpose to that.

25 MR. KUMI EGA: Just shows we're not being heavyhanded.

1 She said we were good cop/bad cop.

2 THE COURT: I would say that if she had said something
3 and changed her statements or something else, but there was
4 never any testimony about her changing her testimony, what she
5 had given previous statements to.

6 MR. KUMI EGA: Okay.

7 THE COURT: I couldn't find anything. So I don't see
8 any impeaching in that, or any relevance to it. So I'll allow
9 Mr. Kelley to testify to the condition of the gun, and Mr.
10 Knopp that he didn't find it dented or whatever.

11 MR. KUMI EGA: And Mr. Kong.

12 THE COURT: And Mr. Kong.

13 MR. KUMI EGA: Mr. Kong is going to be a very lengthy
14 witness, your Honor. He'll take an hour or so.

15 MR. MARTIN: On those tubes?

16 MR. KUMI EGA: Now, I gave you the list. It was of the
17 tubes and there was other things there that Mr. Savage
18 testified about.

19 THE COURT: I'm going to let you put on those other
20 two, and then I'm going to limit your conversation with Mr.
21 Kong. His testimony wasn't lengthy. He didn't testify over an
22 hour on his direct.

23 MR. KUMI EGA: Savage, you mean?

24 THE COURT: Okay. So we're going to, we'll talk about
25 it's after -- I'm going to let you put on these other two, then

1 we'll talk about it.

2 (The following was had in open court:)

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

4 MR. MARTIN: Off the record.

5 THE COURT: Yes.

6 (An off-the-record discussion was had at the bench:)

7 THE COURT: Mr. Martin.

8 MR. MARTIN: Yes, sir. Defense rests, your Honor.

9 THE COURT: Any rebuttal?

10 MR. KUMIEGA: Yes, your Honor.

11 THE COURT: Call your first witness.

12 MR. KUMIEGA: Yes, your Honor. The United States
13 would like to call Howard Kong.

14 THE COURT: Mr. Kong, if you'll come forward, please.

15 (Witness sworn)

16 THE COURT: Mr. Kong, you were previously sworn before
17 you gave your testimony at the beginning of this case, and I
18 would remind you you're under the same obligations that you
19 gave when you gave your oath at the beginning of this trial.

20 THE WITNESS: Yes, sir.

21

22

23

24

25

1 HOWARD KONG,
2 recalled as a witness, having been previously sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. KUMIEGA:

6 Q. Mr. Kong, you have analyzed those two tubes in front of
7 you?

8 A. Yes. The one marked Exhibit 110 and 111.

9 Q. All right. And you were present today during the
10 testimony of Mr. Savage; is that correct?

11 A. That's correct.

12 Q. All right. Can you give the -- obviously, you've
13 testified in the past. Did Mr. Savage use a scientific method
14 when he made those markings on those tubes?

15 A. He did not.

16 Q. All right. And what is a scientific method, please,
17 especially for those exhibits, please?

18 A. Well, it's -- the scientific method is a standardized
19 procedure to answer a question or to solve a problem. You
20 would formulate a hypothesis, which is an educated guess at
21 what the answer could be. You would further, by designing a
22 test that would give you the results that can help you answer
23 the question. And after you do your test, you evaluate your
24 results and you would see if that fits your hypothesis or not.
25 If it does not, then you need to figure it out what's wrong,

1 you would have to reevaluate and reformulate your hypothesis,
2 and you may have to refine your testing procedure or your test
3 itself. And you would repeat the steps until you come to your
4 answer.

5 And that did not happen here, and I don't think that's --
6 that's not a -- the results of his test is not valid to draw
7 the conclusions that he did regarding this gun here.

8 Q. Mr. Kong, you generated a two-page, I guess really a
9 page, page and a quarter, or page and an eighth of a report
10 regarding the test Mr. Savage did, or tried to do in this case;
11 is that correct?

12 A. Yes.

13 Q. All right. One of the things that you mentioned is that
14 this test is invalid because of materials. Is that correct?

15 A. Right. He -- Mr. Savage said that the gun was made from
16 mechanical tubes, out of mechanical tubing, out of mild steel.
17 That is an assumption; he doesn't know that. And he just went
18 out and got tubes that are mild steel.

19 Q. All right. And would that make the test invalid just on
20 that criteria alone?

21 A. You have no materials. That's a variable that you have
22 to consider. That would -- that would -- that would put the
23 results in question.

24 Q. All right. The knowingness of the material; is that
25 correct?

1 A. That's correct.

2 Q. You said -- you had testified you had background as a
3 materials engineer at one time; is that correct?

4 A. That's correct. My degree is in materials engineering,
5 and I worked as a materials engineer and metallurgist at the
6 Naval Aviation Depot in Alameda, California for nine years.

7 Q. Mr. Kong, you also said that the hardness of the tubes
8 are important to replicate the test; is that correct?

9 A. Yes.

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

11 A. Yes. The hardness is very important. It's an indication
12 of the strength of the material. The strength of the material
13 is the mechanical property of metals that resist deformation.
14 Again, there was an assumption made that they were similar. No
15 testing was done to determine whether their hardness are the
16 same.

17 Q. Is hardness an indication of the strength of the
18 material?

19 A. Yes, that's correct.

20 Q. Okay. And is that a primary value or variable if you're
21 going to do some kind of test to compare a serial number on one
22 of the firearms and serial number on the tubes?

23 A. If I were -- if I were to perform a test to see if a dent
24 may occur on a tube, that is definitely a variable that I would
25 consider. Again, this variable is unknown in this experiment.

1 Q. Okay. You heard Mr. Savage testify that he did the test
2 behind Mr. Friesen's law office on the porch using a hammer; is
3 that correct?

4 A. Yes, that's correct.

5 Q. And is the application of force, is that important to
6 replicate if you want to do a test that complies or conforms
7 with the scientific --

8 A. Absolutely. The application of force is very critical in
9 determining whether you are exceeding the yield strength of the
10 material or not. Let me explain. Metals will resist
11 deformation and will resist deformation up to a point. Once
12 you exceed that point when you apply a force to it that's
13 greater than its, its yield strength, then it will deform. But
14 if you apply a force to it that's below it, then it will not
15 deform, and you -- and that is a known property of the metal.
16 And in the experiment here, an unknown force was used to make
17 the test marks which dented the tubes.

18 Q. So it's possible, then, if you used a lesser force, there
19 would be no deformation, possibly no deformation?

20 A. Yes. It's possible if you use the force that's less than
21 the yield strength of the material, then it may not dent.

22 Q. Okay. You also in your critique talked about underlying
23 support and a mandrel. Can you tell the jury about that,
24 please?

25 A. Yes. Mr. Savage testified that in order to put an

1 impression in a tube you need to put a mandrel in for support
2 and when you do that you will not get the deformation that you
3 observe here on these tubes. When he did the test on these
4 tubes, there was no support. He just applied the hammer to the
5 punch to it. Now, he's comparing -- he's comparing to the
6 serial numbers that are impressed onto the receiver of this
7 gun. And this receiver has internal components, one of which
8 is called a bolt. It's the big cylindrical heavy piece of
9 metal, and the dimensions of the front and the rear -- back end
10 of the bolt is very similar to the ID of the receiver. That is
11 support. There is an area that has a cut-out --

12 Q. All right.

13 A. -- that could affect, could affect how much support it's
14 getting. But nevertheless, that's support. It's totally
15 different than the experiment that Mr. Savage did.

16 Q. So let me ask you this then: Would a fair question be
17 that the bolt in this instance, on Government's Exhibit 3.16,
18 could be considered like a mandrel?

19 A. Yes. Yes, it definitely can act as a mandrel.

20 Q. Okay. Now, when you looked -- when you looked how Mr.
21 Friesen -- excuse me -- when you look at the firearm, what
22 configuration would the firearm be to put the serial number on
23 the firearm, please?

24 A. I'm not sure what you mean by that. But --

25 Q. How --

1 A. -- if I were to put a serial number on this gun --

2 Q. Well, in the space where there is a purported serial
3 number, how would it be done, please?

4 A. Well, I would lay it down on some kind of flat surface
5 and I would -- I would take the punch and I would hit it with a
6 hammer. And there's only certain positions that this firearm
7 can be set on a level surface, and one of which is like so
8 (demonstrating) with the magazine housing flat with the table.
9 And the serial number right now is basically at twelve o'clock
10 in such a position. And that would be a logical position to
11 apply the hammer and the punch.

12 Q. All right. You also -- in one of your critiques of Mr.
13 Savage's scientific methods, you also talk about another
14 variable regarding the dies that he used; is that correct?

15 A. Yes. That's another variable that he did not consider.
16 A brand-new die would have a sharp cutting edge and that would
17 have a different effect than one that's been used many, many
18 times over. The character on the die, that's the part that
19 makes the impression, may have been rounded off, and the force
20 required to dent the tube may be different.

21 Q. All right. In your discussion you also talked about the
22 halos, what Mr. Savage referred to as halos on Government's
23 Exhibit 3.16; is that correct?

24 A. Yes.

25 Q. And you came to the conclusion, my understanding, that

1 was not solvent; is that right?

2 A. It's very unlikely to be solvent.

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

4 A. Sure. A solvent is a liquid that is used to dissolve
5 something and it evaporates very quickly. The two types of
6 solvents that Mr. Savage mentioned, acetone and methyl ethyl
7 ketone, which is commonly called MEK for the first three
8 letters, evaporate extremely fast. If you were to put, say,
9 like, you know, take an eye-dropper and put ten drops of the
10 solvent on a flat surface, within a minute it would be all
11 gone. That's how quickly they evaporate. In looking at the
12 halos around the fastener holes, it's a perfect circle that's
13 around each one of the fasteners. And as you can see on the
14 gun, the fastener holes go all the way around the tube and each
15 one of those have that perfect halo. And if solvents were
16 coming out of the threads you would not expect it to leach out
17 in an equal manner distance. You set it on the table and the
18 liquid is leaching out it would -- because of gravity it's
19 going to tend to go down and you'll get an uneven glob of
20 reaction with the paint.

21 So since I see that it's a perfect circle that's on each
22 and every one of those fasteners, it's unlikely that it is
23 caused by the solvent. And again, solvent evaporates very
24 quickly. You have to consider the source of the solvent also,
25 where did it come from. If somebody had, say, wiped on the

1 surface of the tube, okay, that solvent would have an
2 interaction with the paint, and as the solvent is leaking out
3 of the hole, it's going to react to it the same way. You may
4 not see a distinct pattern where you can view it in a halo that
5 Mr. Savage described.

6 Q. Mr. Kong, you were also present when Mr. Savage actually
7 took out the screws or rivets or whatever from the machine gun;
8 is that correct?

9 A. I had an opportunity to look at it after he did.

10 Q. And was there something peculiar about the color that
11 made you think again why it's not a solvent?

12 A. I removed the same two screws that he did, and I looked
13 inside to see what was there. I saw a white powder, I did not
14 see any rust that he testified to.

15 Q. All right. You also were present when he testified about
16 how inaccurate your --

17 A. I'm sorry. I missed that.

18 Q. You were also present in the courtroom sitting behind
19 there when you heard Mr. Savage testify that your test
20 regarding the paint and the serial number was wrongheaded and
21 was wrong. Do you remember that?

22 A. Yes.

23 Q. All right. From listening to his testimony, have you
24 changed your mind about finding paint as you did in
25 Government's Exhibit -- if you can look at Government's Exhibit

1 No. 9.

2 A. No, I have not changed my opinion on that. I've not
3 changed my opinion on that. He was talking about how if you
4 were to stamp metal with paint on it, because of the character
5 of the stamp it would -- it's like a V shape, it would just
6 push all the paint out. Well, like I was saying, if you have
7 an old die, one with rounded edge, and you're hitting it
8 perpendicular to the surface, it will just push the paint in.
9 It won't necessarily take all the paint out.

10 Q. All right. So you used a microscope and you found paint
11 in these grooves; is that correct?

12 A. I -- I examined it with a microscope, and my -- and my
13 co-worker, Sarah Walbridge, did an analysis of the paint in the
14 groove and one adjacent to it.

15 Q. Okay. So here's a main groove and there's several other
16 grooves here; is that correct?

17 A. Yes.

18 Q. Okay. Is that more than two stamps?

19 A. That's definitely more than two stamps.

20 Q. Okay. Mr. Savage also criticized you about your analysis
21 of firearms that were either made when the tube was
22 manufactured, and he brought in photographs from a gun called a
23 Benelli and a gun called a Heckler & Koch, H&K?

24 A. I believe he brought in pictures of two serial numbers on
25 a Benelli, one was a shotgun. I'm not sure what the other one

1 was; it may have been a shotgun also. And then he showed a
2 serial number of an H&K rifle, Heckler & Koch.

3 Q. All right. And would it be fair to say that those
4 manufacturers radically do new, I guess, technology to put
5 serial numbers on firearms?

6 A. I had an opportunity to look at those photographs. They
7 were not stamped on, they were laser-etched, it appeared to me
8 to be laser-etched. Laser -- application of serial number by
9 laser is the latest technology and those, again, are high-end
10 guns, and the mechanism in applying the serial number might be
11 different than stamping. So the manufacturer may have their
12 own reasons why they wanted to coat it first before applying
13 the serial number on there.

14 Q. Is the laser application the newest rage in technology
15 for firearms?

16 A. Yes. It's high-tech.

17 Q. Okay. Now, you also heard testimony about that Sten
18 machine gun being called a Mark II SA, is that correct, or an
19 S?

20 A. I believe Mr. Savage said it was a Mark II-S.

21 Q. All right. And have you determined, can you tell the
22 jury what a Mark II-S is, please, and if that Government's
23 Exhibit 3.16 is a Mark II-S?

24 A. A Mark II-S is a Mark II that's been converted, added,
25 with a silencer added to it, which would give it a longer tube

1 at the end. My understanding is that a Mark II-S and a Mark II
2 have the same barrel length, and that's different than one
3 that's a Mark III. And a Mark II, the difference between a
4 Mark II-S and a Mark II is that the Mark II-S has a silencer.

5 Q. All right. So a Mark II-S is a silenced Sten machine
6 gun; is that correct?

7 A. Yes.

8 Q. And Mr. Savage then, his conclusion would be what, then,
9 on what this gun was built to be?

10 A. If he's saying that this is a Mark II-S, then he's saying
11 this is intended to be one that's built with a silencer.

12 Q. All right. Let me ask you this: You testified before
13 that the Government's Exhibit 3.16 has characteristics of a
14 Mark III; is that correct?

15 A. Yes.

16 Q. Have you changed your conclusions?

17 A. No, I've not.

18 Q. Okay. Now, in your analysis, peer review is probably one
19 of your most important, I guess, fail safes; is that correct?

20 A. Yes. It's a quality control.

21 Q. And what other quality controls do you use when you
22 looked at Mr. Savage's work in this case, please?

23 A. What other quality control did I use?

24 Q. What other quality controls did Mr. Savage -- let me
25 rephrase that. A real scientist, a real gunsmith or gun

1 expert, what quality control issues would he have told the jury
2 about?

3 MR. MARTIN: Your Honor, I object to the nature of the
4 question, "a real scientist." Mr. Kumi ega is assuming that.

5 THE COURT: Be sustained.

6 Q. (By Mr. Kumi ega) Okay. What would an expert do, what
7 quality controls would an expert do, sir, in this case,
8 generally?

9 A. He would have -- there would be parameters. He would --
10 in conducting a test like this, like the tubes, you would want
11 to minimize all the variables that are present. There are just
12 too many ones in this particular test for it to be valid to
13 draw the conclusion that he did. For instance, a very critical
14 variable is the application of the force. There is really no
15 written record of how that was done.

16 Q. Okay.

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

18 THE COURT: You may cross-examine.

19 CROSS-EXAMINATION

20 BY MR. MARTIN:

21 Q. I assume you brought for the jury examples of your tests
22 where you have taken tubes like what's been introduced as
23 Defendant's Exhibit 110 and 111, that don't have dents in them?

24 A. I don't believe that's an accurate test of the question
25 at hand.

1 Q. I assume you've brought for the jury tubes that you've
2 put serial numbers in that don't have dents; is that true?

3 A. Okay. Are you asking me -- I'm not sure what you're
4 asking me.

5 Q. You told the jury --

6 A. Yes. I'm sorry. Go ahead.

7 Q. You told the jury you could do this without putting dents
8 inside on top, like Mr. Savage did. Where are your examples,
9 is my question. Where are your tubes for the jury to see you
10 did that?

11 A. I did not say that's possible -- I did not say that I did
12 that, I said it was possible to do that.

13 Q. Where --

14 A. I did not do the test because --

15 Q. So you assume that's possible, that's what you're telling
16 us, you assume that's possible because you've not done it; is
17 that right?

18 A. I did not do the test because --

19 Q. Do you assume that's possible, sir?

20 A. Yes.

21 Q. Okay.

22 A. It may be possible.

23 Q. It may be possible. Okay. All right. You've never done
24 this and produced what you described for the jury; isn't that
25 true?

1 A. That's correct.

2 Q. And you didn't videotape any of the testing you did, did
3 you, sir?

4 A. It's not in our protocol to do that.

5 Q. Well, Mr. Kumiaga -- well, you were here while my client
6 -- excuse me -- while Mr. Savage testified, were you not?

7 A. Yes, I was.

8 Q. And you heard Mr. Kumiaga ask him about whether or not he
9 videotaped, did you not, sir?

10 A. Yes, I did.

11 Q. And you are telling the ladies and gentlemen of the jury
12 we don't do that either?

13 A. It's not -- it's not in our protocol to do that, and we
14 don't feel that it's necessary, that's why we don't do that.
15 That's why we don't write it into our protocols.

16 Q. We don't do that either, right? We don't videotape,
17 right?

18 A. Who is "we"? We, the forensic science laboratory in San
19 Francisco does not do that?

20 Q. Right. Is that correct?

21 A. That's correct.

22 Q. All right. And as a matter of fact, these were flown out
23 to you Friday, and you had them up until, I guess -- I got them
24 this morning, did I not?

25 A. I don't know when you got them. I can tell you that

1 those were flown out to me on Thursday, and they were returned
2 here late Saturday.

3 Q. Well, you were in the courtroom this morning when you saw
4 me get them, weren't you?

5 A. I saw you get them this morning. Yes, sir.

6 Q. Okay. All right. And so you've had them to work on
7 them, and there's tests to determine the hardness of this,
8 isn't there, sir?

9 A. There's a way to do that. Yes.

10 Q. Did you do that?

11 A. I did not do that.

12 Q. Okay. And you performed some stamping tests, did you
13 not, sir?

14 A. I did not do that.

15 Q. Sarah Walbridge did, right?

16 A. She did some stamping tests regarding to the paint.

17 Q. And what was the hardness of the metal that she used?

18 A. Okay. I don't know the answer to that, because I didn't
19 do the test.

20 Q. Okay.

21 A. And her test involved paint --

22 Q. You don't know the answer, you don't know the hardness;
23 is that correct?

24 MR. KUMIEGA: Objection, your Honor. He's
25 interrupting.

1 THE COURT: Let him finish.

2 THE WITNESS: The hardness is an indication of
3 strength and its ability to resist deformation. Painting is
4 not deforming the metal.

5 Q. (By Mr. Martin) Did -- were you present when Mr. Erb
6 testified?

7 A. I was not.

8 Q. And you weren't present when he talked about the type of
9 tubing?

10 MR. KUMIEGA: Objection, your Honor. He's talking
11 about another witness's testimony.

12 THE COURT: This is an expert who can hear other
13 witnesses. Not subject to the rule, Mr. Kumiega.

14 Q. (By Mr. Martin) You weren't present when he talked about
15 the type of tubing he used to make these receivers out of, were
16 you, sir?

17 A. I was not here. I was not here for that.

18 Q. Okay. And is this mechanical seamless tubing, sir,
19 Defendant's Exhibit 110 and 111?

20 A. Well, there's a number of machine marks on the ID. It
21 could very well be.

22 Q. Okay. Let me ask you, sir: The -- there's an
23 instrument, and I'll get the name of it wrong here, that you
24 can measure the thickness of this pipe.

25 A. Thickness? Are you referring to what Mr. Savage calls a

1 micrometer caliper?

2 Q. All right. And did you measure the pipe in the -- tube,
3 excuse me -- in 3.16?

4 A. The receiver. Yes, I did.

5 Q. Okay. And what is the width of it?

6 A. Outer diameter is about one and a half inches.

7 Q. And that's not anywhere in this report, is it, sir?

8 A. That was -- no, it's not. I didn't specify, I didn't
9 specifically write it in there what that is.

10 Q. And what is the thickness of -- can you get more specific
11 than one and a half inches? Can't you get scientific with me
12 and say it's, like, you know, down to centimeters or whatever?
13 Isn't there a specific measurement?

14 A. I could, but I would have to look at my notes. I
15 don't --

16 Q. Well, did you take the measurement of the bolt?

17 MR. KUMIEGA: Your Honor, could Mr. Kong look at his
18 notes so he can answer the question?

19 MR. MARTIN: I'm moving on, Judge.

20 THE COURT: Yes.

21 Q. (By Mr. Martin) Did you take a measurement of the bolt?

22 A. Yes, I did.

23 Q. And do you know what that is?

24 A. I do.

25 Q. What is it?

1 A. It's about 1.36 inches.

2 Q. Smaller than the tube?

3 A. It's smaller than the OD of the tube. It's also smaller
4 than the ID of the tube also.

5 Q. The bolt, if I might, is this piece right here
6 (indicating), right --

7 A. Yes.

8 Q. -- that I'm moving?

9 A. Yeah. It's the shiny metal that's inside the tube.

10 Q. Okay. And it's obviously loose enough to move within the
11 tube. It's spring-loaded, right?

12 A. Yes, it is. And it's -- you certainly can move it.

13 Q. So it's not so tight that if it was -- that it is a
14 mandrel in and of itself, is it, sir?

15 A. It could act as a mandrel.

16 Q. You know what a mandrel is, sir?

17 A. Yes.

18 Q. It's something that fits so tight that when you hit it
19 you will not bend the tube; isn't that true?

20 A. That's what it's used for. Yes.

21 Q. And it's also used for a Sten III to form the tube,
22 right, as is evidenced in Defendant's Exhibit 112?

23 A. In the manufacturing process to make this tube they may
24 use a mandrel to do that. I don't know that for sure.

25 Q. And the -- do gun manufacturers typically use a loose

1 bol t as a mandrel ?

2 A. No, they do not. They use a bol t as a bol t.

3 Q. Okay. And you testi fied about the locati on of the serial
4 numbers on Governmen t' s Exhi bi t 3.16; is that right?

5 A. Yes.

6 Q. And we don' t know when those serial numbers were put on.
7 Would you agree with that, si r?

8 A. I agree with that.

9 Q. And we don' t know what state that tube or that receiver
10 was in when those serial numbers were put on there, do we, si r?

11 A. We do not know that.

12 Q. We don' t know if it was tube or it was partially put
13 together or not, or completely put together, we have no idea.
14 Would you agree with that?

15 A. Partially put together? You mean the gun itsel f or you
16 mean --

17 Q. Correct.

18 A. No, we don' t know that.

19 Q. All right.

20 A. The tube was probably already a tube.

21 Q. And I believe you testi fied -- I' m sorry. What di d you
22 just say?

23 A. You asked me if the tube was partially put together at
24 the time, and I said, well, I think you' re referring to the
25 gun, the tube is already a tube when the number is put on.

1 Q. And we don't know if it was just a tube when the serial
2 numbers were put on, do we, sir?

3 A. We don't know if it was a tube or if it was already a
4 completely assembled firearm when those numbers were put on.

5 Q. I'm going to show you what's been previously marked as
6 Defendant's Exhibit 129 and 130, and ask you, sir, if you
7 recognize those as photographs of those screws being removed or
8 loosened from the end of Government's Exhibit 3.16.

9 A. Yes. They appear to be that.

10 Q. And those are the halo marks that you were talking about;
11 is that right?

12 A. Those are the halo marks Mr. Savage was talking about.

13 MR. MARTIN: Your Honor, I move to introduction of
14 Defendant's Exhibit 129 and 130.

15 MR. KUMIEGA: No objection, your Honor.

16 THE COURT: Will be admitted.

17 Q. (By Mr. Martin) I believe you just testified that you
18 saw those screws loosened and you actually loosened them
19 yourself, right?

20 A. I did.

21 Q. And I believe you said, after you loosened them, you saw
22 white powder but no rust; is that right?

23 A. That's right.

24 Q. This is Defendant's Exhibit 130. And can you see the,
25 what is that, cotter key right there?

1 A. Looks like an allen wrench on a cap screw.

2 Q. All right. And this is the area that -- that is the cap
3 screw right?

4 A. Yes.

5 Q. And do you not see discoloration and rust in that area,
6 sir?

7 A. That's part of the halo that he was talking about. I was
8 referring to after you take the screw out, you look at the
9 fastener hole, that's the area I was talking about.

10 Q. Are you talking about this area here (indicating)?

11 A. You have to take the screw completely out, and then you
12 look in there.

13 Q. You saw, so --

14 A. I saw white powder, I did not see rust.

15 Q. Okay. This is Defendant's Exhibit 129. And this is kind
16 of a picture of the same area, right?

17 A. Yeah. That was one of the pictures you showed me, right,
18 just a minute ago?

19 Q. Right. One of the other ones?

20 A. Okay.

21 Q. Do you have a photograph with the screw out?

22 A. I do not.

23 Q. You would agree with me that there is rust on that gun
24 and rust by the halo areas?

25 A. You know, I think in my notes I may have mentioned that

1 there were very little rust on this gun. I can take a look at
2 it right now, because the photograph you're showing me is on
3 the surface here and not inside. Yes. Very little rust if
4 any.

5 Q. On the outside of that gun?

6 A. Right. Right here. This is the area that your
7 photograph shows, right in here (indicating).

8 Q. Right.

9 A. I don't see rust. I'm sorry.

10 Q. All right, sir. The -- this gun was seized July [sic]
11 10th, 2004?

12 A. Okay.

13 Q. And you didn't look at this gun for the first time until
14 February 15th, 2008; isn't that true, sir?

15 A. Very close to February 15, 2008. Yes.

16 Q. That is when it was actually received by you?

17 A. By the laboratory. Right. I looked at it maybe a week
18 or two weeks after that.

19 Q. Okay. After my client had already been indicted; isn't
20 that true, sir?

21 A. I did not know when he was indicted.

22 Q. Well, if he was indicted February 5th, 2008, you wouldn't
23 have looked at that gun until after the indictment was
24 returned?

25 A. That would be correct.

1 Q. And relating to the dies that were used on that test, you
2 saw these this morning, didn't you, sir?

3 A. I did.

4 Q. And did you examine those?

5 A. I looked at them for a few minutes. Yes, I did.

6 Q. And they are relatively new dies, aren't they?

7 A. They look like new dies to me.

8 Q. Not, as you testified to, as dies that have been used a
9 lot, right?

10 A. I would not say that they are dies that were used a lot.
11 I would say that they are new dies.

12 Q. New dies?

13 A. Yes.

14 Q. So that part of your conclusion that if they were old
15 dies they would make a bigger indentation with these, that
16 wouldn't apply then, would it?

17 A. It would not apply. But nevertheless, that is a factor
18 that you would consider. Mr. Savage did have those dies
19 available, but he did not have the dies that were used to make
20 the same numbers that were on Exhibit 3.16.

21 Q. And neither does the government?

22 A. No. The government does not either. Correct.

23 Q. And so your tests weren't made with the dies that made
24 3.16, the --

25 A. I do not feel that's an accurate test, therefore, I did

1 not do any tests.

2 Q. And although you testified about you assume you can put
3 serial numbers on seamless metal tubing without bending it,
4 you've never done it, and that's an assumption; isn't that
5 true?

6 A. I've never done that, but according to the material
7 properties, there is -- a material has something called elastic
8 property. When you apply a stress to it, it will stretch a
9 little bit, but if you don't exceed the yield strength of it,
10 and you release the stress, you will go back to the shape it
11 was in. That's resistance to deformation. And sure, there
12 will be stresses that are going to be below this yield point or
13 yield strength, and it's quite possible that you could do that.

14 Q. Tell the ladies and gentlemen of the jury then why you
15 didn't do that and bring that tube for them to see to prove the
16 validity of the point you just made?

17 A. There are so many variables involved in this test that
18 it's not practical to do that.

19 Q. You were in the hearing this morning and you heard how
20 many ounces the hammer was, weren't you, sir?

21 A. I'm sorry?

22 Q. You were in the hearing this morning that was held
23 outside the presence of the jury, correct?

24 A. I was here this morning. Yes, sir.

25 Q. And you heard the type hammer he used?

1 A. Yep.

2 Q. And you heard how he put it on an anvil, or how he put it
3 on a solid surface and how he hit it, did you not, sir?

4 A. I did.

5 Q. And the whole process took ten or 15 seconds, maybe?

6 A. I do not have that information prior to coming here this
7 morning. I did not want to run out to the hardware store and
8 buy the equipment and do it at lunch. That's not the way that
9 we do things.

10 Q. You wait until after somebody has been indicted before
11 you even do any test on the gun?

12 MR. KUMI EGA: Objection, your Honor.

13 THE COURT: Will be sustained.

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

15 THE COURT: Yes.

16 (Brief pause)

17 Q. (By Mr. Martin) Thursday, those tubes were flown out to
18 California, right?

19 A. Yes.

20 Q. And you returned them I think you said Saturday?

21 A. Well, the tubes were returned here on Saturday. I
22 returned them Friday afternoon.

23 Q. All right. Did you perform any tests whatsoever on those
24 tubes?

25 A. I did not.

1 MR. MARTIN: Nothing further.

2 THE COURT: Any redi rect?

3 MR. KUMI EGA: Yes, your Honor.

4 REDI RECT EXAMI NATION

5 BY MR. KUMI EGA:

6 Q. Mr. Kong, you did not perform any hardness tests on those
7 tubes; is that correct?

8 A. I did not.

9 Q. And why not, please?

10 A. Why didn' t I perform the tests on those?

11 Q. Yes.

12 A. I didn't see a need to. I looked at the -- I evaluated
13 the testing that was done on it, and I -- I looked at the gun,
14 and basically the testing does not represent the conditions
15 under which those numbers were put on the gun.

16 Q. Okay. Go ahead.

17 A. Hardness testing is not a standard forensic science
18 laboratory test, it was a metallurgical test.

19 Q. Okay. And you never had the opportunity to look at Mr.
20 Savage's report regarding his tests; is that correct?

21 A. That's correct. I saw a transcript of his testimony, and
22 I believe that was all I saw. I did not see a copy of his
23 report until last night, but the report that I saw did not
24 mention the results of his test or how this test was done.

25 Q. Okay. And you are also testi fying from your analysis

1 there is no rust on that firearm; is that correct?

2 A. Yes. Well, in the area that we were talking about.

3 There might be rust somewhere else on the gun, but -- and even
4 if there was rust there, it's insignificant.

5 MR. KUMIEGA: Nothing further.

6 THE COURT: Thank you, Mr. Kong.

7 MR. MARTIN: May I look at -- may I just briefly your
8 Honor, look at something?

9 THE COURT: Yes.

10 MR. MARTIN: I may have one follow-up question.

11 (Brief pause)

12 MR. MARTIN: Very briefly, your Honor.

13 RECCROSS-EXAMINATION

14 BY MR. MARTIN:

15 Q. Was Government's Exhibit 3.16 also shipped to California?

16 A. Yes, it was.

17 Q. And did you perform any tests on that for hardness for
18 comparison to Defendant's Exhibit 110 or 111?

19 A. I was evaluating the tests that he did. I do not want to
20 go down the road that he did, because that's not a -- it's not
21 the approach to take to do that.

22 Q. Okay. I'm going to ask it again very carefully, because
23 I didn't ask a thing about Mr. Savage.

24 A. Okay.

25 Q. My question was: Did you perform any tests on

1 Government's Exhibit 3.16 to determine the hardness of that
2 tube for comparison to Defendant's Exhibit 110 or 111?

3 MR. KUMIEGA: Objection, asked and answered. Same
4 question.

5 MR. MARTIN: He didn't answer it.

6 MR. KUMIEGA: I believe he did, your Honor.

7 THE COURT: Objection will be overruled.

8 THE WITNESS: Answer it?

9 THE COURT: Yes.

10 THE WITNESS: No, I did not do any tests on that when
11 they came back to me last Friday. I mean, I'm sorry, when they
12 came to me last Thursday.

13 Q. (By Mr. Martin) So we don't know if they are the same
14 hardness or not; isn't that true, sir?

15 A. That is right. We don't know that.

16 MR. MARTIN: Nothing further.

17 THE COURT: Thank you, Mr. Kong. You may be excused.

18 Call your next witness. Any other rebuttal witnesses?

19 MR. KUMIEGA: Yes, your Honor. The state would like
20 to call Tim Kelley.

21

22

23

24

25

1 A. Counter Improvised Explosive Defeat Organization.

2 Q. You have a specialty then with ATF?

3 A. With explosives.

4 Q. And what is that specialty, please?

5 A. Once again, it's dealing with disposal and dealing with
6 explosive -- criminal issues dealing with explosives.

7 Q. All right. You took custody of the Government's Exhibit
8 3.16 back if June 10, 2004; is that right?

9 A. That's correct.

10 Q. Can you hold that up to the jury, please.

11 A. (Complies)

12 Q. Okay. Is that the firearm you sized in your custody on
13 that day?

14 A. That is correct.

15 Q. And you are part of the chain of custody, or you're one
16 of the technicians that preserved the evidence on the day of
17 the search warrant?

18 A. That's correct.

19 Q. All right. And the gun that you now see in front of you
20 on, today's date is September, I guess, 29, 2008, is that gun
21 substantially the same as it was when you seized it back in
22 June of 2004?

23 A. Yes, it is.

24 Q. All right. When you say substantially similar, what do
25 you mean by that, please?

1 A. Obviously, the gun is in the basic condition that it was,
2 though I will note that it has become more scratched as the
3 case has gone on through being handled by witnesses in this
4 case, being handled by the government, being handled by the
5 defense, scratches have come on here. It is basically in the
6 same condition that it was the day in which we seized it.

7 Q. When you talk about the same condition, you're talking
8 about the paint marks, or the lack thereof, on that firearm?

9 A. Prior to testifying, I did review a lot of the
10 photographs of the day that we executed the search warrant. I
11 would classify the gun was not in pristine condition the day
12 that we took this, took this gun, though I will admit that a
13 lot of scratches have come onto the gun in the course of this
14 investigation.

15 Q. All right. Does the photograph do it justice, the day
16 you took them, or your agency took them on June 10, 2004?

17 A. I do not believe they do.

18 Q. You said a lot of scratches. Are you saying the
19 substance of the firearm has been altered?

20 A. No, it hasn't been altered. But I never felt that the
21 photographs that were taken on the day of the search warrant
22 did a real good justice to show some of the scratches on some
23 of the back parts of the gun.

24 Q. All right. So are you -- your testimony is regarding the
25 substantial -- the nature of the firearm. What is it, then,

1 please, from June 10, 2004, to your testimony today?

2 A. I believe it wasn't in pristine condition when we got it
3 and I definitely don't think it is today.

4 Q. Is it the same, though?

5 A. It is the same. Same gun.

6 Q. Same condition?

7 A. Same condition.

8 Q. Other than?

9 A. Other than there is more scratches on it.

10 MR. KUMIEGA: Nothing further, your Honor.

11 THE COURT: Mr. Kumiega, the Court is going to allow
12 you, under 607, to very briefly go into the other matter if you
13 want.

14 MR. MARTIN: Your Honor, could the record note my
15 objection?

16 THE COURT: I will note your objection. It's up to
17 you whether you want to.

18 MR. KUMIEGA: Very briefly, your Honor.

19 THE COURT: Very briefly.

20 MR. KUMIEGA: Yes, sir.

21 Q. (By Mr. Kumiega) You were present during an interview
22 with Ms. LeMaster also known as Ms. Dennis; is that correct?

23 A. That is correct.

24 Q. And where did that interview take place, please?

25 A. Took place at the ATF office.

1 Q. All right. How would you characterize the -- first of
2 all, who was present during that interview, please?

3 A. Myself, you, prosecutor Mr. Kumi ega, Delbert Knopp, and
4 we had Linnette Tarver, the secretary for the U.S. attorney's
5 office there for a short period of time.

6 Q. How long was this meeting, please, or interview?

7 A. I couldn't image it went over an hour.

8 Q. All right. And can you tell the ladies and gentlemen of
9 the jury what type of meeting was it, please?

10 A. It was a fact-finding meeting. It was a non-hostile type
11 of interview. We were looking for facts, looking for dates to
12 just kind of corroborate previous statements and dates
13 involving this case.

14 Q. Was the meeting in any way contentious?

15 A. By that you mean hostile, no. It was not a hostile
16 interview at all.

17 Q. What was Ms. LeMaster's or Ms. Dennis' demeanor during
18 this interview?

19 A. Actually, she was quite helpful. This was the third time
20 in which we had dealt with her. She was very helpful.

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

22 THE COURT: You may cross-examine.

23 CROSS-EXAMINATION

24 BY MR. MARTIN:

25 Q. Agent Kelley, I'm assuming --

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

2 THE COURT: Yes.

3 Q. (By Mr. Martin) This is Government's Exhibit 3.1. What
4 is this portion of the gun, what is that thing there called?

5 A. I don't know the technical term for it, but it's
6 obviously there to deflect some of the casings when they are
7 ejected from the firearm.

8 Q. Okay. A casing deflector or shell deflector or
9 something?

10 A. Sure. Sure.

11 Q. And does it appear to be bent or broken or cracked?

12 A. It is bent.

13 Q. Okay. Does it have -- does it have a crack in it?

14 A. Yes, it appears that.

15 Q. Okay. And you'll agree with me, it was not in that
16 condition when you got it on June 10th?

17 A. That is correct. I reviewed the photographs and it was
18 not bent.

19 Q. As a matter of fact, there's a -- and it wasn't cracked?

20 A. If I was wasn't bent, it wasn't cracked. Yes, that's
21 correct.

22 Q. This is what has been introduced as Defendant's Exhibit
23 37. Can you see this right here, sir, the -- what did you just
24 call that?

25 A. Yes. I do see that.

1 Q. And that purports to be a picture taken on February 14th,
2 2008, by a Gina Kishur. That was some three or four years
3 after the search, wouldn't that be right?

4 A. That would be correct.

5 Q. Okay. And would that accurately represent how that
6 deflector looked then if that date is right in February of
7 2008?

8 A. If you say that photograph was taken, I would agree with
9 that.

10 Q. Okay. And that deflector that you have there is
11 substantially different; wouldn't you agree, sir?

12 A. Yes, I would.

13 Q. And we don't know how it got that way?

14 A. No, I do not.

15 MR. MARTIN: Nothing further.

16 THE COURT: Agent Kelley, you may be excused.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Any other witnesses?

19 MR. KUMIEGA: Agent Knopp, your Honor.

20 THE COURT: Okay. Agent Knopp, you've been previously
21 sworn in this matter, and I would just tell you you're under
22 the same oath that you gave when you gave your previous
23 testimony.

24 THE WITNESS: Yes, sir.

25 THE COURT: You may proceed.

1 MR. KUMI EGA: Thank you, your Honor.
2 DELBERT KNOPP,
3 Recalled as a witness, having been previously sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. KUMI EGA:

7 Q. Agent Knopp, you went out to Mr. Erb's business during
8 the course of this investigation; is that correct?

9 A. Yes. On two separate occasions.

10 Q. And you photographed certain tubes and devices he had out
11 there; is that correct?

12 A. Yes, I did.

13 Q. And he manufactured from your understanding the E series
14 of tubes called the Mark II; is that correct?

15 A. That's correct.

16 Q. And you looked at the birthing document?

17 A. Yes. I had it.

18 Q. Excuse me?

19 A. Yes. I had it.

20 Q. And have you tried to determine where each of the
21 firearms went?

22 A. Yes. We traced some of them down and tried to examine
23 some of them, and we took photographs, that type thing.

24 Q. All right. When you examined a long tube in Mr. Erb's
25 business in, I think it's Fredericktown, Pennsylvania; is that

1 correct?

2 A. Yes.

3 Q. Was that in the stream of commerce back in -- when you
4 did that investigation, I believe, in 2006?

5 A. That was November of 2006. He had several -- a couple of
6 tubes left there, and they were in his business. They had not
7 been sold.

8 Q. Okay. And let me ask you this: You heard testimony
9 about you hitting that machine gun at the conclusion of an
10 interview with Mr. Savage; is that correct?

11 A. That's correct.

12 Q. Did you damage or alter the gun in any way?

13 A. No.

14 Q. Okay. Why did you do that, please?

15 A. When he left I attempted to put the bolt back into the
16 gun and I got it slightly off, and it got stuck.

17 Q. Okay.

18 A. Only way I could get it back out was hit on top of the
19 desk.

20 Q. Did you damage the gun in any way?

21 A. Not that I'm aware of. No.

22 MR. KUMI EGA: Nothing further.

23 THE COURT: You may cross-examine.

24

25

1 CROSS-EXAMINATION

2 BY MR. MARTIN:

3 Q. When mr. Kumi ega was just questioning you, I believe you
4 were testifying about, this is a first picture in 52, this is
5 the second one. Who is standing in that picture that you can't
6 see their face?

7 A. I believe it's Robert Murphy.

8 Q. Is that an ATF agent?

9 A. He's a DEA agent.

10 Q. DEA agent. And did you or someone at your direction take
11 the picture depicted in these?

12 A. I believe I took it.

13 Q. Okay. And those pictures are taken, are they not, at
14 Erb's --

15 A. Yes, they are.

16 Q. -- in Pennsylvania?

17 A. Yes.

18 Q. Is that correct?

19 A. Yes.

20 Q. Okay. And have you seen the -- I'm through with that --
21 have you seen the video at the end of the examination by -- Mr.
22 Savage's was videoed, was he not?

23 A. Yes, he was.

24 Q. Okay. And he didn't know he was being videoed, did he,
25 sir?

1 A. Not the first occasion.

2 Q. All right. And have you seen that video, sir?

3 A. Yes, I have.

4 Q. And at the end of it do you not take the gun and strike
5 it on the desk?

6 A. I didn't see the whole video, I saw portions of it, and I
7 didn't see that part, but, yes, I did strike it on the desk.

8 Q. And his testimony about that was accurate then?

9 A. Yes.

10 Q. How many times did you strike it, sir?

11 A. I can't recall. Probably two times maybe.

12 MR. MARTIN: Nothing further.

13 THE COURT: Thank you, Agent Knopp. You may retake
14 your seat.

15 Anything further, Mr. Kumi ega?

16 MR. KUMI EGA: With that, your Honor, United States has
17 no other witnesses to put on.

18 THE COURT: Government rests?

19 MR. KUMI EGA: Yes.

20 THE COURT: Mr. Martin.

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

22 THE COURT: Yes.

23 (Brief pause)

24 MR. MARTIN: No surrebuttal, your Honor.

25 THE COURT: Defendant rests?

1 MR. MARTIN: Yes, sir.

2 (Brief pause)

3 THE COURT: Ladies and gentlemen of the jury, we're
4 going to recess for this evening. You've now heard all the
5 evidence in this case, but it's very important you not reach
6 any conclusions until you've heard all my instructions on the
7 law and the closing arguments of counsel. We've worked some
8 but we had to wait basically until the evidence was in to know
9 exactly what law applies and so forth. And so the attorneys
10 and I, we're going to work in the morning to work out the
11 instructions and the difference in views on what instructions
12 the Court ought to give, and we're going to work that out. And
13 I'm going to have you come back at one p.m., and we'll then get
14 the case submitted to you with my instructions on the law and
15 the arguments of counsel.

16 With that, again, don't discuss the case with anyone,
17 allow anyone to discuss it with you, as I said, don't reach any
18 conclusions until you've heard my instructions on the law and
19 closing arguments of counsel.

20 Have a good evening, and we'll see you tomorrow afternoon
21 at 1:00.

22 All rise while the jury exits.

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

25 THE COURT: Mr. Martin, you renewed your Rule 29

1 motion at the end of the government's case, and the Court
2 reserved ruling until the rebuttal evidence, and the Court,
3 based upon the standards that the Court has to view the
4 evidence in the light most favorable to the government, or in
5 most favorable light to the person against whom the motion is
6 made, the Court will overrule the Rule 29 motion at this time
7 as to all counts.

8 We need to meet in the morning. I would like to get
9 instructions. Just visiting with Ms. Williams, I guess you did
10 meet briefly with her.

11 MR. MARTIN: Yes, sir, we did.

12 THE COURT: And I understand there's one or two
13 differences of opinion on certain instructions. But --

14 MR. MARTIN: That's a fair characterization, Judge.

15 THE COURT: Okay. But I would like to get all of
16 those ironed out, and I'll visit with her some this evening to
17 see exactly what those major differences are, and so we can get
18 this submitted to the jury at 1:00. So we need to meet at nine
19 a.m. in the morning in chambers.

20 MR. MARTIN: Your Honor, I know it's going to be hard
21 to believe, but I actually have an 8:00 court appearance. If
22 I'm -- I might be here at ten after 9:00, but it's an 8:00
23 municipal court, and I might be a few minutes late. Kendall
24 can be here, she's a lot smarter than me anyway.

25 THE COURT: I mean, I think, I think you're right.

1 MR. MARTIN: I know what you mean, she's smarter.

2 THE COURT: I'm not going to disagree with you, Mr.
3 Martin. So you can be here at 9:00 and we'll try to get
4 started, at least get started and iron out and make sure we
5 know exactly what the differences are.

6 And I hope you get your traffic tickets paid off, Mr.
7 Martin.

8 MR. MARTIN: They are putting me on a payment plan,
9 Judge.

10 THE COURT: With nothing further, we'll be in recess
11 until one p.m. tomorrow. And, counsel, if you can be in
12 chambers about 9:00.

13 (Court stood in recess until September 30, 2008. For
14 further transcription, see Volume VII of this transcript.)

15 * * * * *

16 REPORTER'S CERTIFICATE

17

18 I hereby certify that the foregoing is a correct
19 transcript from the record of the proceedings in the
20 above-entitled matter.

21

22 B. Jeanne Ring, RDR

23

24

25

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