

1 (The following was had in chambers on September 30, 2008.
2 For prior transcription, see Volumes I through VII of this
3 transcript.)

4 THE COURT: We've had a preliminary off-the-record
5 conference on the instructions, the Court's proposed
6 instructions, and I'm going to go through these and make sure,
7 I'm going to read the instructions and make sure there is no
8 objections to the following instructions:

9 My understanding there is no objection to the opening
10 instruction, duty to follow instructions, introduction to the
11 charge, the instructions relating to the indictment, no
12 objection to the presumption of innocence, burden of proof,
13 reasonable doubt instruction; caution, consider only the crime
14 charged; counts are separate crimes; evidence defined;
15 evidence, direct and circumstantial inferences; credibility of
16 witnesses; law enforcement witnesses; expert witnesses; on or
17 about. Is that correct? Any objection to any of those
18 preliminary instructions by the government?

19 MR. KUMIEGA: No, your Honor.

20 THE COURT: By the defendant?

21 MR. MARTIN: No, sir.

22 THE COURT: Now, there is a proposed instruction on
23 knowingly defined. Knowingly, deliberate ignorance combined,
24 and then there is one, a separate one, and that one is
25 basically what I understand is the one that has been, is a

1 Tenth Circuit instruction. Then what we've also done under the
2 Court's proposal is to separate knowingly defined from
3 deliberate ignorance. Is there -- my preference is to separate
4 the two and give one on knowingly defined and one on deliberate
5 ignorance.

6 MR. MARTIN: I don't think I have the knowingly, may
7 be I misplaced it. Here it is. Thank you. I'm sorry. I'm
8 with you now.

9 THE COURT: To me, it's a little clearer to give both
10 of the knowingly defined and deliberate ignorance in separate
11 instructions rather on combining them. Is there any objection
12 by the government to that?

13 MR. KUMIEGA: No.

14 THE COURT: Any objection by the defense?

15 MR. MARTIN: Your Honor, for the record, we will
16 object to the giving of the deliberate ignorance instruction.
17 I don't think it applies in this case, but if you're going to
18 give one, I don't object to the way that this one is worded.
19 But I don't think it applies in this case.

20 MR. KUMIEGA: Judge, I think deliberate -- I think the
21 Court might have to specify which counts you want to have the
22 deliberate ignorance instruction to be applied for.

23 THE COURT: I don't see any real need to set forth the
24 separate counts. What counts would -- I don't see a need to do
25 that.

1 LAW CLERK: Your proposal didn't separate it out per
2 count.

3 MR. KUMIEGA: The reason I advanced that was because
4 of the Count No. 2 of the indictment, regarding the storage
5 facility. That was the only reason I brought that forward. If
6 he was going to say that --

7 THE COURT: I think you can use it in argument if you
8 want.

9 MR. KUMIEGA: Yes, sir.

10 THE COURT: But I don't see we need to set it out as
11 it relates to certain counts.

12 MR. KUMIEGA: Yes, sir.

13 THE COURT: Okay. No objection to the actual or
14 constructive -- so I'm going to overrule the defendant's
15 objection and give the separate deliberate ignorance
16 instruction. No objection to the actual or constructive
17 possession, no objection to proof of intent. I understand on
18 the Court's proposed similar acts there is an objection, is
19 that correct, by the defendant?

20 MR. MARTIN: That is correct, your Honor. We would
21 ask the Court, similar to the instruction sometimes given when
22 a defendant didn't testify you can give an instruction on --
23 the defendant can request an instruction that the jury should
24 draw no inference from his failure to testify, or you cannot --
25 give that instruction based on what the defendant -- we would

1 rather the Court not draw attention to the fact of similar acts
2 and object to giving that instruction.

3 THE COURT: Mr. Kumi ega.

4 MR. KUMI EGA: I think the instruction, your Honor,
5 embodies the law and is appropriate.

6 THE COURT: Well, I feel that because of all of the
7 evidence that's introduced in this case relating to an awful of
8 lot of evidence relating to factors that he's not charged with
9 other evidence, I feel that it's appropriate to give it, that
10 it is an appropriate instruction.

11 You have no objection to the instruction as written, Mr.
12 Martin, for the defendant, it's only even giving it?

13 MR. MARTIN: That is correct, your Honor. If it's
14 given, I don't have a specific objection that there is
15 something wrong with the wording or something. That's correct.

16 THE COURT: I'll overrule that objection. I think
17 it's appropriate in this case.

18 No objection to each element must be established, no
19 objection to the elements for Count 1, no objection to Count 2
20 elements, no objection to Count 3 elements, no objection to
21 Count 4 elements, no objection to Count 5 elements; is that
22 correct? Any objection to any of those?

23 MR. KUMI EGA: No, sir.

24 THE COURT: Any objection, since we've added the
25 language on the end of Count 5, any objection, Mr. Martin?

1 MR. MARTIN: No, sir.

2 THE COURT: Okay. The defendant has proposed an
3 instruction of an alternative defense, which is tied to the
4 false representation. I understand the government objects to
5 the giving of that, Mr. Kumi ega.

6 MR. KUMI EGA: Yes, your Honor. These are not lesser
7 included offenses, they are the 1001 stand alone, and he's not
8 being charge with any misdemeanor bad record violation.

9 THE COURT: And Mr. Martin.

10 MR. MARTIN: Our position, your Honor, is at least as
11 to Count 3, and I would say it applies to all, but in
12 particular as to Count 3, he's charged with having completed
13 and presented ATF Form 4s containing false statements, which is
14 almost identical to what 18 USC 924(a)(3)(A) prohibits.

15 THE COURT: Well, it would appear to me that based
16 upon the evidence that he could have been charged with these
17 under 924, but that he was charged under 1001, which to me make
18 these applicable to the case and the charges related. It's not
19 a lesser included, I don't believe. I know you've cited a
20 couple of cases relating to that, Mr. Martin.

21 MR. MARTIN: Yes.

22 THE COURT: Do you have what those cases are for the
23 record?

24 MR. MARTIN: I don't have my requested instructions,
25 your Honor.

1 THE COURT: Okay.

2 MR. MARTIN: But they are in my jury instructions.

3 THE COURT: But they are in your requested jury
4 instructions?

5 MR. MARTIN: Yes, sir.

6 THE COURT: As I say, I think under prosecutorial
7 decision he could have been charged under that, but he wasn't,
8 so I don't feel that it fits the charges and the evidence based
9 on those charges, so I'm going to decline to give the
10 affirmative defense and the false representation as it relates
11 to 924(a).

12 The Court also does not feel the affirmative defense that
13 the Sten nine millimeter seized from his residence traveled in
14 interstate commerce. From my understanding of the recent
15 cases, and the Supreme Court's interpretation of the, of
16 interstate commerce in some other cases that that would not be
17 applicable in this case. It also seems there is no question if
18 the Sten gun is the one that the defendant claims it is, then
19 there was evidence, of course, that it did travel in interstate
20 commerce from the records that were introduced and the
21 witnesses that were introduced. Of course, if it's the one the
22 government claims it is and not the one that, not the Sten gun
23 that was manufactured by Erb, then it would appear if I gave
24 it, why, if the government proved their case he couldn't be
25 convicted even if the government proved its case. So it seems

1 a little contradictory to the case, and I don't think it's the
2 law. So I will not give that instruction and overrule that.

3 The last one is the requested instruction on affirmative
4 defense based on attorney's lawful duty to protect the
5 confidences, property, and information of all clients. And I
6 understand the government objects to that, or if the Court
7 gives it, has a proposed additional instruction or substitute
8 instruction.

9 Mr. Kumi ega, what's your objection to this instruction?

10 MR. KUMI EGA: Well, your Honor, it's, from the
11 government's belief and what from Mr. Vann has said, that's not
12 the law, and there is really no evidence that was presented
13 during the -- I honestly don't remember if he said it was
14 attorney/client privilege, but I did show you the transcript
15 that Ms. Ring was kind enough to produce for us the last couple
16 of days that I don't remember any mention of that, and that's
17 certainly not the law. You can't hide behind that shield, and
18 I think Title 18 924, and the CFRs connected with that are
19 clear if he has a place of business, and that was Lobo Arms,
20 that he has to disclose all firearms, either that he acquired
21 or that he receives; and, therefore, I think it's inapplicable,
22 your Honor.

23 THE COURT: Mr. Martin.

24 MR. MARTIN: Your Honor, for the record, I have
25 modified this instruction just so that we're clear that I have

1 stricken the language that says, I can't read it, but I've
2 taken out the language about his personal firearms.

3 THE COURT: Or his personal firearms.

4 MR. MARTIN: I drew through mine and couldn't read it.
5 With that taken out, your Honor, as we discussed earlier, this
6 is the defendant's theory of the case instruction basically as
7 it relates to Count 2, I believe, about storage locations, that
8 he has an absolute right and duty under the law to protect
9 property, information, and confidences of his clients, and this
10 is based upon an interpretation of the Code of Professional
11 Responsibility that imposes a duty on an attorney to protect
12 that property and those confidences, or that information. And
13 based upon that, as our theory of the case instruction, we
14 think it is an appropriate statement of the law.

15 THE COURT: Well, the evidence that I heard was that
16 the clients' guns that were stored at various times in the safe
17 in the hidden area behind the bookshelf either fell into one of
18 two categories. One was a client's gun who in a divorce case
19 had the defendant's private investigator come pick up some guns
20 at her house because she feared for safety during a rather
21 contentious divorce case. And those were stored at some point
22 in the safe in the hidden area. And the others were several
23 clients who owed, who the defendant, Mr. Friesen, represented
24 in various legal matters and would pay their fee by giving him
25 guns to hold until they could get cash. So it was something

1 dealing with their fee arrangement rather than confidential
2 client/attorney privilege. I don't really think the privilege
3 applies, but even if there was an issue of that, or Mr. Friesen
4 felt there was, that what he's being charged is not disclosing
5 a storage area, or where he normally or on occasion stored
6 guns. And obviously from the evidence that I heard was, there
7 was a hidden area in his office and a safe -- that contained a
8 gun safe but appeared to be a normal storage area for not only
9 maybe perhaps clients' guns but also for his own personal
10 weapons, according to the testimony of some of his own
11 employees. What was stored there on this particular date no
12 one knows for sure. But I think that this does not fit what I
13 understand the counts that he's charged with or the evidence.
14 And whether he actually at some point had to disclose clients'
15 guns or not would appear to be a collateral issue that could
16 have been addressed if he had shown them the storage area,
17 which wasn't some isolated one-time place that a gun had been
18 put, but evidently was a, from what I heard the evidence, was a
19 place where, according to his, some of his own employees and I
20 think even the defendant, he kept personal guns at various
21 times.

22 So I don't feel that that is an appropriate instruction to
23 give and I'm going to overrule the request.

24 Any objection to the verdict instruction?

25 MR. MARTIN: No, your Honor.

1 MR. KUMI EGA: No, your Honor.

2 THE COURT: Therefore, tied to that, I feel no need to
3 give the instruction that the government has requested relating
4 to that same subject matter that was in your brief.

5 MR. KUMI EGA: Oh, I agree, your Honor. Yes, sir.

6 THE COURT: Any objection to the punishment, caution
7 punishment instruction?

8 MR. KUMI EGA: No, your Honor.

9 THE COURT: Mr. Martin?

10 MR. MARTIN: No, sir. I'm sorry.

11 THE COURT: Any objection to the closing instruction?

12 MR. MARTIN: No, sir.

13 THE COURT: Mr. Kumi ega?

14 MR. KUMI EGA: No, sir.

15 THE COURT: Any objection to the verdict form?

16 MR. KUMI EGA: No, sir.

17 THE COURT: And special interrogatory Count 4 form?

18 MR. KUMI EGA: No objection, your Honor.

19 MR. MARTIN: No, sir.

20 THE COURT: Any other requested instructions by the
21 government that the Court has not given that you want to make a
22 record on, Mr. Kumi ega?

23 MR. KUMI EGA: No, your Honor. However, I want to tell
24 the Court that I want to go back to my office and think about
25 asking the Court to possibly remove the deliberate ignorance

1 instruction, and out of abundance of caution I would like to
2 talk to somebody. I just want to think about that, your Honor.

3 LAW CLERK: We'll have to make all our copies after
4 they are numbered, so it would be important to know whether
5 that should be in or out.

6 THE COURT: We've got to start making copies right
7 now. We have to number them and then make all the copies and
8 everything. So if you leave one out we would have to do it all
9 again.

10 MR. KUMIEGA: Could I have about 15 minutes?

11 THE COURT: Okay.

12 MR. KUMIEGA: I did a case called US versus McConnell
13 a couple years ago, your Honor, in front of Judge
14 Miles-LaGrange, and that very issue came up, and out of an
15 abundance of caution, I want to make sure my theory is correct.

16 THE COURT: Okay. So about 15 minutes you can get
17 back over there?

18 MR. KUMIEGA: I'm going to run back and call you.

19 THE COURT: Any other --

20 MR. KUMIEGA: No, sir.

21 THE COURT: Mr. Martin, any other requested
22 instructions not given that the Court hasn't ruled on or any
23 other matters that you want to make a record on?

24 MR. MARTIN: No, sir. Can Ed just call? I don't need
25 to be here for that, do I?

1 THE COURT: Well, if he changes his mind we need to --

2 MR. MARTIN: If he wants it withdrawn, that's fine
3 with me because I object to it.

4 THE COURT: Oh, okay.

5 Mr. Kumi ega, your discussion is whether you want it
6 withdrawn or not?

7 MR. KUMI EGA: Oh, yes.

8 MR. MARTIN: So if he wants it withdrawn --

9 THE COURT: If you tell us you want to withdraw it,
10 Mr. Martin objected to it, so we'll just withdraw it, we don't
11 need to reconvene. Let us know.

12 (The following was had in open court, with the presence of
13 the jury:)

14 THE COURT: Counsel approach.

15 (The following was had at the bench, out of the hearing of
16 the jury:)

17 THE COURT: I'm just going to ask if counsel will
18 waive or the court reporter transcribing my instructions.
19 There is a recording backup; is that right?

20 COURT REPORTER: Yes.

21 THE COURT: And they normally use that or use the
22 written. But because of a fairly recent case, does counsel
23 waive or care whether she takes down each word?

24 MR. MARTIN: Your Honor, we would waive it so long as
25 if something occurs and we need to approach --

1 THE COURT: Or anything that happens or if I misread
2 an instruction, it's usually -- I've got people reading along
3 with me to call it to my attention, so --

4 MR. KUMI EGA: We also waive, your Honor.

5 THE COURT: Okay. And there is a recording backup,
6 which many courts, that is the court reporter.

7 MR. KUMI EGA: Your Honor, is it possible after you
8 read the instructions I can take a two-minute break so I can go
9 to the bathroom?

10 THE COURT: When?

11 MR. KUMI EGA: Right after I finish my opening, if
12 that's possible, because I've been drinking a lot of coffee.

13 THE COURT: Okay.

14 MR. MARTIN: Judge, for the record, as I understand it
15 we have now removed deliberate ignorance; is that correct?

16 THE COURT: Yes.

17 MR. MARTIN: Okay.

18 THE COURT: With no objection, it's taken care of.

19 MR. KUMI EGA: Yes, sir.

20 (The following was had in open court:)

21 THE COURT: Case number CR-2008-41-L, the United
22 States of America versus Larry Douglas Friesen. Are the
23 parties ready to proceed?

24 MR. KUMI EGA: United States is ready, your Honor.

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

1 THE COURT: Members of the jury, good afternoon. As I
2 told you last night, you've now heard all the evidence in the
3 case, but there are two very important parts of the case left.
4 One is my instructions on the law that I'm getting ready to
5 read to you, and secondly are the closing arguments of the
6 attorneys.

7 Now, as I read the instructions, I'm going to have Ms.
8 Williams pass out a copy of the instructions to you, to each of
9 you, and I would ask two things. One, this is simply to aid.
10 Sometimes it's easier to understand something if you're reading
11 it while you're listening at the same time. But two things:
12 Do not read ahead of me if you're a fast reader; and secondly,
13 is do not linger over an instruction that I've already read
14 when I'm moving on to another instruction; and thirdly, I would
15 just tell you that you're not going to have to commit all this
16 to memory in that I will let you take your copies of the
17 instructions into the jury room with you during your
18 deliberations if you need to refer to them. So you won't have
19 to just do it from memory.

20 Ms. Williams, if you would hand out the copies.

21 Please don't start reading until I start. Does everyone
22 have a copy?

23 (Instructions read by the Court)

24 THE COURT: I would then ask counsel, first of all,
25 other than the record made in chambers on the instructions, are

1 there any objections to the instructions or substitutions or
2 additions as read by the Court?

3 MR. KUMIEGA: No, your Honor.

4 THE COURT: Mr. Martin.

5 MR. MARTIN: No, sir.

6 THE COURT: Are there any objections to the verdict
7 form?

8 MR. KUMIEGA: No.

9 MR. MARTIN: No, sir.

10 THE COURT: Ladies and gentlemen of the jury, the
11 attorneys will now be allowed to make their closing arguments.
12 As I told you in the instructions, what the lawyers say is not
13 evidence, but it is intended to assist you in recalling that
14 evidence and suggest certain inferences you may wish to draw
15 from the evidence. You're not bound by what they say or the
16 inference they want you to draw. Indeed, it is your
17 recollection of the evidence and inference that you wish to
18 draw that control.

19 Because the government has the burden of proof, it has the
20 right to both open and close the closing argument. Counsel for
21 the government, Mr. KumiEga, will make the main part of his
22 argument, and then Mr. Martin on behalf of Mr. Friesen will
23 make his entire closing argument, and then Mr. KumiEga will
24 again get to make his concluding or rebuttal argument.

25 Now, there is a light I mentioned to you I think at the

1 beginning on the podium, and that's because we put a time limit
2 on the attorneys and their argument, and that's simply to
3 assist them in knowing when their time is about up and time is
4 up. You're to pay no attention to it, it's simply a signal for
5 them.

6 Mr. Kumi ega, are you ready?

7 MR. KUMI EGA: Yes, sir.

8 THE COURT: You may proceed.

9 MR. KUMI EGA: If it please the Court, Ladies and
10 gentlemen of the jury, Counsel .

11 First of all, I want to thank the jury for your close
12 attention during this, I guess an ordeal, it's almost eight
13 days, and I've noticed you've been taking notes and paying
14 very, very close attention to the testimony on the witness
15 stand and as the exhibits were being brought in and everything
16 that was going on here in the courtroom. We thank you for you
17 being such a profound and deliberate jury listening to the
18 evidence that was being presented.

19 Jury duty is really a celebration of democracy. Having a
20 jury of citizens from this area makes us different from most
21 countries around the world, and this is a thing that keeps
22 America free. And, you know, it's trite to hear different
23 expressions about freedom, but one of the things I heard years
24 ago when I started doing this is that there are three things
25 that keep America free: The ballot box, the jury box because

1 the buck stops here and you're the final arbiter between the
2 weight of the United States and the defendant, and the last
3 thing -- and the last thing, and now unfortunately what's going
4 on today, is the ammunition box. And that is what keeps
5 America free. And, again, we thank you for coming here today
6 and listening to the testimony.

7 Now, as you heard the Court say, there are five counts of
8 the indictment. Mr. Friesen is charged in five counts. In
9 summary, Count 1 is lies to the inspectors on February 19,
10 2003; second is lies to Haley McGrew, the inspector, on March
11 4th, 2003; the transfer of a firearm that Mr. Bugg wants to buy
12 to Washington, lying about that; fourth is a lie to Agent Knopp
13 on the day of the search warrant on June 10, 2004; and last
14 count is possession of an unregistered machine gun.

15 Now, as you listen to the evidence, and as you listen to
16 the evidence, and as you deliberate today, the government is
17 going to urge you to use your good-old Oklahoma common sense as
18 you deliberate, because amongst you all as 12 people sitting
19 here you have hundreds of years of life experience between you
20 all, and use that life experience, use how things really
21 operate in the real, in the real world, not some type of
22 academic exercise, not some type of rarefied thinking, but
23 common sense, the way things are in the world. And there's a
24 jury instruction to that, and that jury instruction says:

25 "An inference is a conclusion that reason and common

1 sense may lead you to draw from facts which have been
2 provided. By permitting some reasonable inferences,
3 you may make deductions, reach conclusions that
4 reason and common sense lead you to draw from the
5 facts which have been established by the testimony."

6 So use your common sense when you deliberate.

7 Now, the government's thesis or position in the case is
8 this: On February 19, Mr. Friesen, a gun enthusiast, a lawyer,
9 a firearms dealer, one time having a special license to sell
10 machine guns, and some people say he's an expert, during a
11 routine compliance inspection on that day, he could not find,
12 for whatever reason, his registered Sten II, Mark II machine
13 gun, and at that point furnished an unregistered Sten II, Mark
14 III machine gun without a serial number to the compliance
15 inspectors. He knowingly pointed out a part number to the
16 inspectors.

17 Knowing his mistake, knowing that mistake, he immediately
18 placed the appropriate serial number on the unregistered
19 machine gun, and he did it quickly. It's like an elf at
20 Christmas just before Santa is getting ready to take off. He's
21 down there in the basement putting something on there because
22 he doesn't know if ATF is coming in the next day. That's why
23 the serial number is in such a haphazard manner. And he does
24 that, and it's just like Mr. Friesen loaning out that silencer
25 to the police officer, Hunter, he can't find it, he can't get

1 it back in time, but he's got a Sten Mark III machine gun
2 unregistered to him, and he shows it to the inspectors. And
3 the government's case is based on several things. The science
4 supports us, the manufacturer supports us, and the
5 investigators supports us. And the government's case is like a
6 stool. We have the inspectors as one leg, the manufacturer and
7 the wholesalers, we have the paperwork, we have the forensics,
8 and then we have the witnesses.

9 But first of all, in summary, I want to say this, this is
10 what the testimony of the inspector says: One of the firearms
11 was a Sten nine millimeter machine gun. Inspector Rowden
12 carefully examined the Sten without disassembling it, and the
13 only number that could be located was a D number which was on
14 the magazine well. Inspector Rowden gave the Sten machine gun
15 to Inspector McGrew for examination. The only number she could
16 locate on the Sten gun was a D number also on the magazine
17 well. Mr. Friesen, at Lobo Arms, was simultaneously being --
18 was examining the machine gun, and he could not find the serial
19 number on that machine gun either, but he pointed out the part
20 number as being the serial number for that gun. And the
21 testimony is that the inspectors took their time on it, they
22 did it individually, they didn't do it collectively, they gave
23 it to Mr. Friesen and Mr. Friesen could not find that part
24 number because it was never there, the serial number was never
25 there, and he only pointed out the part number.

1 Now, Ms. McGrew later on, later on says that -- on March
2 4th says "where do you store your guns," and she goes through
3 all the points where he stores the guns, and Mr. Friesen never
4 discloses the secret room inside the -- inside the bookcase or
5 behind the bookcase in the library. Okay. And I want you to,
6 as you discuss this, contrast the testimony of Mr. Friesen
7 during the course of the trial. Every time he was pressed
8 about certain significant events he had a lapse of memory and
9 kept on saying, I don't recollect, I don't recollect, I don't
10 recollect. The testimony is later on from Mr. Friesen is that
11 after the inspection he goes downstairs, gets a magnifying
12 glass and starts looking for the serial number, and he has to,
13 I guess, use some kind of solvent to bring it out or etch it
14 out, and he never tells anybody, never tells the inspectors
15 about that. And it's even odd, the government's position is
16 it's even odd that at one time back in 2000 he covered up the
17 serial number because but he wanted to get rid of the rust, but
18 never told the inspectors about that. That's odd. Would a
19 reasonable person do that? The government believes not.

20 The gun dealers and the manufacturer. Mr. Erb testified,
21 the manufacturer of the gun, through the Form 2, the birthing
22 form, he said, hey, I made these Sten machine guns, and that
23 machine gun that was introduced, Government's 3.16, was not a
24 gun that he made, and he gave several reasons. And one of the
25 reasons is there ain't no way that's my firearm because that's

1 not even my serial number.

2 He's not the most meticulous person in the world, but the
3 gun in question, 683, and the guns on 682 and 685, the bookend
4 guns, 682, 685, they are my guns, but the gun in question, 683,
5 for all those reasons is not my firearm.

6 Grant Kemmerer, the person who it goes from Erb in Chicago
7 to Grant Kemmerer, and Grant Kemmerer said he's familiar with
8 Erb's work, he said this is not Erb's gun or his serial number.
9 He said it was an odd gun, he called it a garage gun, and he --
10 and that corroborates Mr. Erb. And he transferred it to the
11 person in Alabama. The person in Alabama is Michael Davenport,
12 and Davenport says, hey, I didn't mess with the gun at all, I
13 just shipped it out. But Mr. Davenport says something very
14 interesting. He says, this is something that I do not deal
15 with, it's an odd piece, I don't think I ever saw a gun like
16 that before. And that's the testimony. So the manufacturers
17 support, support that that gun that Mr. Friesen has was never
18 ever registered to him.

19 And when you go back to the jury room, look at the gun,
20 feel the gun, compare the serial number of Government's Exhibit
21 3.16 with the bookend serial numbers of E682 that Erb says that
22 was his and E685 that Erb said that he manufactured.

23 Paperwork. Much to do about the double forms, et cetera,
24 et cetera. Remember the defense attorney called Dr. Fritz
25 Scheurle from the University of Chicago. Well, Dr. Fritz

1 basically agreed with the government's theory of the case that
2 if there -- if somebody sponsors the documents, and we had two
3 people coming to show the guns, 682 and 683, and then we have
4 Erb saying that's not my gun, he would say that's statistically
5 reliable standing alone. And he also concluded, ended with
6 this, and this is concluded from the report:

7 "We did not find evidence that errors in the ATF
8 records caused inappropriate seizure or criminal
9 charges against NFA weapons owners or federal firearms
10 licensees."

11 So this is much to do about nothing, the smoke and mirrors
12 behind the case. He says if you sponsor it it's okay, we have
13 witnesses to sponsor it, and he says even their own report
14 concludes there was never a problem at all, ever, ever, ever,
15 with NFA documents. So again, look at the bookend serial
16 number, look at the pedigree, look at the birthing documents,
17 and they all start with Erb to Chicago, to Miami, Florida, Mr.
18 Kemmerer, and to Mr. Davenport and then they're disbursed out.
19 But Mr. Friesen got the gun from Davenport in Alabama back in
20 February of 1996.

21 The forensics. Remember, the government's position is
22 that the serial number is the DNA of the case. They are one
23 and the same. You can't tell the firearm without a serial
24 number. And Mr. Kong and Ms. Walbridge testified for the
25 United States government, and Mr. Kong said two things. He

1 says that there are multiple stamps on the serial number, and
2 that's going to be exhibit, Government's Exhibit 9, photograph
3 8, if we can look at that real quick.

4 It's not coming up, but anyway, it's in the books in the
5 back. You can look at the serial numbers and see how
6 inappropriate they are. And he also says that he found paint
7 inside, inside that, inside the grooves. And that goes along
8 with the government's thesis of the case that when Mr. Friesen
9 was under all this pressure, the inspectors are there, that
10 very night he goes downstairs and in a haphazard manner is just
11 banging it in because he doesn't know if ATF is going to show
12 up, and that's why the serial numbers are all screwed up. And
13 there is also evidence from Sarah Walbridge there is only one
14 layer of paint on this and she never found any solvent. And
15 that contradicts scientifically the testimony of Mr. Friesen
16 who, when was pinned down, he would never recollect and would
17 never say I don't remember saying this to the inspectors, don't
18 remember saying that to Agent Knopp.

19 The witnesses. Agent Knopp testified he seized the
20 machine gun on June 10, 2004, and he testified to the statement
21 that Mr. Friesen said, "The girls missed the serial number
22 because they were in such a hurry."

23 Now, look at Count No. 4, and you remember Mr. Friesen's
24 testimony. He knew, he testified that he knew he covered up
25 the serial number in the year 2000 because of rust, he knew in

1 February of 2003 in the inspection, that he found the serial
2 number, and then he tells the ATF agent, Agent Knopp, they
3 couldn't, the girls missed it for -- because they were in a
4 hurry. People, that standing alone, that statement standing
5 alone, irregardless of what happens in this case shows that how
6 can Mr. Friesen not tell the agent the truth on that day, that
7 I did this in 2000, and back in 2003 I did this and I recovered
8 the serial number. How could he not tell the agent when he
9 popped off and made that comment? That doesn't make any sense.
10 That standing alone, and remember, the instructions are counts
11 are separate crimes, shows, shows that there is material
12 falsity there.

13 Now, when you took -- look at the evidence. Remember,
14 there's a tape on how to build a Sten machine gun, not how to
15 fix it, not how to repair it, he gives an explanation about a
16 tape, build a Sten machine gun, and there's also evidence or
17 documents to show ways to order more parts for different
18 machine guns. So what that tells, I believe you, is that Mr.
19 Friesen, he's an expert in this stuff. He knows this stuff.
20 You saw his pedigree about going through all the type schools,
21 et cetera, et cetera, he knows about all this stuff. And for
22 him not to remember, not to remember that he covered up a
23 serial number, and he admitted that he covered up a serial
24 number, he admitted that he covered up a serial number for a
25 bunch of weapons that were in a locker that's like \$50,000

1 worth of firearms, how could he not remember that? How could
2 he not remember that? And remember, the inspectors who
3 thoroughly looked at it said, we didn't find any serial number
4 on there. We looked in the light. There was no glob of paint
5 on there, we looked at it, Ms. McGrew looked at it, Ms. Rowden
6 looked at it, the defendant couldn't find it, but only four
7 inches away is the D part and he points out the D part and says
8 that's the serial number for the machine gun. Which is also
9 kind of peculiar, because he testified two days prior to the
10 inspection he was thinking about selling it, and somebody came
11 up to look at the firearm to buy, and he never, he never tells
12 the inspectors that day. But he says he doesn't remember
13 looking for the serial number. Remember, the gun is in the
14 closet the whole time. So the first time the inspectors came
15 out there there's a four-hour delay and all the guns are on the
16 second floor, and he can't find it? The government's position
17 is he couldn't locate the gun, he's scrambling around and he's
18 got an unregistered firearm that he had for a long period of
19 time and he showed it to see if he could BS the inspectors.

20 Now, Dennis, Ms. LeMaster. Ms. Dennis, she said several
21 things that are important. She said that Mr. Friesen had a
22 Sten machine gun before the Oklahoma City bombing, and that
23 bombing was April of 1995. And number two, the most important
24 thing she says is that I blued guns with Mr. Friesen and he
25 always told me never, ever, ever cover up a serial number.

1 Again, he's an expert. The woman testifies that they had
2 relationship a long time ago, but the woman testified that,
3 hey, that's the DNA of the gun. Never cover it up. How could
4 that be, and he doesn't remember that? Very, very strange.

5 And also is the way that Mr. Friesen approached Ms.
6 Dennis, Ms. LeMaster, going over to the courthouse, dropping
7 the documents on her, and then later on having an affidavit
8 with his stationery on there. That smacks, something is not
9 right about that. Just think about how that issue develops.

10 Dr. Bugg. Dr. Bugg testifies he wanted buy the machine
11 gun, it was worth a lot of money, and Mr. Friesen gives a
12 fanciful story how this gun was dropped behind enemy lines to
13 aid the resistance during World War II. Consider that,
14 consider that statement in regards to everything else.

15 Now, there are other people involved. We have Ms. Long,
16 we have Anita [sic] Johnson, Ms. Newell, we have Julie White,
17 James Scully. But the thrust of their testimony is that the
18 defendant always had guns in the hidden safe or the hidden room
19 behind the bookcase. And that's -- that's hooked up with Count
20 No. 2.

21 So we have Mr. Friesen purposely saying that he's not
22 going to disclose a part of his business. Now, remember, he's
23 an FFL, he's got to disclose that. That's one of his
24 responsibilities for selling guns here in the United States.
25 You have to have a responsibility. You have to take good

1 records, you have to have adequate disposition and acquisition
2 books, and you can see from the testimony of Ms. Rowden when
3 she did the summary chart, those records were in disarray. It
4 took him days and days to find them. And add that, again,
5 using your Oklahoma common sense of what's going on here,
6 there's a deception, there's an underlying layer of pretense
7 that's going on here.

8 Now, Donald Ladd. Bank robber, the person incarcerated
9 from Arkansas. Hey, he's a criminal. He's a real, real bad
10 guy. But funny, funny, the thing that he says that is kind of
11 unusual, he says, you know, he was going to sell me machine
12 guns and silencers. And when you look at the indictment, there
13 is no mention of silencers. No mention of silencers at all.
14 How did Donald Ladd know that Mr. Friesen had an affinity with
15 silencers? Think about that. And one thing we also know is
16 Donald Ladd never bought the registered E683. We don't -- we
17 still don't know where it is, but Donald Ladd never had it.

18 Now, Mr. Friesen made a series of strange statements,
19 doesn't recollect, didn't recollect, doesn't recollect. He
20 also mentioned the collection was worth about \$50,000. He had
21 to take care of the rust problem. Government submits if that
22 was really true he would have done that a long, long time ago.
23 And when you look at that gun, look at that machine gun,
24 Government's Exhibit 3.16 with the D part number that's not
25 registered to him, it looks like it's never been messed with,

1 it's looked like nobody has ever touched it. It's been like
2 that for all these years. He had it hidden somewhere. If he
3 was going to refurbish it in the year 2000, as he testified to,
4 take the rust off and cover the serial number up, and then in
5 2003 because of the inspection, tried to get the serial number
6 up, he would have done something different with the gun. That
7 gun looks like it's been who knows where. It's been there for
8 a long, long time.

9 And then I asked him this question:

10 "Okay. When they asked you to point out a serial
11 number, you didn't remember and say, oh, my gosh, I
12 painted over it?"

13 And he answers:

14 "I can't answer that question the way you asked it
15 because I don't remember them asking me to point out
16 the serial number."

17 That's in direct conflict of what the inspectors said.

18 Very strange response, very unreasonable response.

19 Defendant's contention is this: What happened was in the
20 year 2000, from his testimony, the gun was somewhat rusted and
21 he tried to paint it up, and that part of the, of the gun, only
22 that part of the gun and he covered over the serial number.

23 The government's position is that's just totally unreasonable
24 because of his background, and the way he conducts his affairs.

25 He loves guns, he's an enthusiast, he's a hobbyist, and even

1 Mr. Foster said he was an expert. So we believe that doesn't
2 look like that's what he did.

3 So take a look at those guns. Go back and look at
4 Government's Exhibit -- look at the bookend firearms, and look
5 at the serial number, and you'll see the serial number in --
6 compare the serial numbers. They are so radically different,
7 the depth of the firearm -- the depth of the serial numbers is
8 even different from each other, and they are not even in a
9 line. And Ms. McGrew said during the course of her testimony
10 this is the strangest serial number she's saw in her life.
11 That's her testimony.

12 Mr. Friesen also said this, during some of the question
13 and -- the Q and A during the cross-examination the government
14 asked him this:

15 "Let me ask you this: Did you use the secret Armor
16 gun safe to store some of your personal guns,
17 anybody's guns during the time you were an FFL?"

18 And he answers:

19 "The only guns that ere -- sorry. Yes, is the answer
20 to your question.

21 "Question: You kept -- it's a gun safe; is that
22 right?"

23 "Answer: It is. It's a safe. It can be used for
24 guns. It certainly has hooks on the front door.

25 "Question: It's a gun safe?"

1 "Answer: I'm not arguing with you.

2 "Question: You put the gun in the gun safe, right?

3 "Answer: Among other things.

4 "Right. So you kept some of your firearms, personal,
5 business, whatever, client firearms in the armor vault
6 behind the bookshelf? Yes or no, Mr. Friesen.

7 "Answer: Including all those categories you're
8 asking, the answer is yes."

9 And then he finally says:

10 "Answer: Well, no, I couldn't even have segregated
11 them over at the office because the office location
12 was the location of the business, so I couldn't even
13 have segregated them there because it was the
14 business. Any firearm, personal firearms that I would
15 have had there would have to have been disclosed
16 because it was the business address."

17 When Ms. McGrew asked him about that very issue, he never
18 said anything about the safe. And the testimony is replete
19 that he used the bookshelf or the hidden room to keep stuff
20 behind it. Remember, Mr. Nelson testified that when he was
21 building rooms or refurbishing stuff for Mr. Friesen there was
22 hidden places both in the residence and also in the office.

23 So what we have here, people, is we have a person who has
24 a responsibility as a dealer, a gun dealer to make guns -- to
25 sell firearms who is not living up to that responsibility, and

1 when the inspectors came out there on a normal compliance
2 inspection, they asked him for a firearm, there was delay, he
3 gives them a gun that is unregistered to him. They all look,
4 they use the light, they can't find the serial number, and Mr.
5 Friesen, who just a couple years ago refurbished that, through
6 his testimony, he can't even find it. And then when he is
7 confronted by Mr. Knopp, the agent, during June 10, during the
8 search warrant, he says, hey, the girls were in a hurry and
9 just missed that.

10 We believe that that is bizarre at the very least.

11 Criminal -- and also criminal.

12 Again, use your Oklahoma good-old common sense on the ways
13 of the world on how things actually work, not an academic
14 exercise, use your common experience that you've accumulated
15 all your years of your life to determine what's going on in
16 this case.

17 When you hear all the evidence, the government is going to
18 submit to you that not only is Mr. Friesen guilty beyond a
19 reasonable doubt, but there is no doubt at all of the things
20 that he's been charged with. He purposely had in his
21 possession an unregistered machine gun for whatever reason, and
22 to this very day we can't locate the Sten machine gun, the Sten
23 Mark II that he had in his possession.

24 And from the testimony of Mr. Erb and everybody else, this
25 is what a Sten Mark II looks like. Look at 683 and 685. And

1 this (indicating) is and the type of firearm he wound up with.

2 I want to thank you for consideration and your time.

3 Because the government has the burden of proof, we're allowed
4 to go last. My presentation hopefully will be short and I can
5 address the points that Mr. Martin, a fine attorney, will raise
6 during his presentation.

7 THE COURT: Thank you, Mr. Kumi ega.

8 Mr. Martin, are you ready?

9 MR. MARTIN: I am, your Honor.

10 THE COURT: You may proceed.

11 MR. MARTIN: I, too, want to thank you on behalf of
12 Mr. Friesen and myself and Kendall and all the people, the
13 Court, for your time and consideration in sitting in this
14 trial. I'm reminded of a quote that's attributed to Will
15 Rogers wherein he said, "One of the most horrible deaths a
16 person can endure is to be talked to death." And looking at
17 some of you right now you look almost terminal. This thing has
18 gone on a long, long time, and I'm, as Mr. Kumi ega said, Ed
19 said, this is my last opportunity to speak, and he'll get to
20 speak again because the government has the burden of proof.

21 The Court has told you in its instructions, and you'll see
22 that it's Instruction No. 1, only one person has a burden of
23 proof in this case, the United States of America. If they don't
24 convince you through their evidence beyond a reasonable doubt
25 of all of the elements of the offenses they've charged, you

1 must return a verdict of not guilty. You probably wished I
2 could have or would have, but I could have sat right there and
3 slept this whole trial, I didn't have to cross-examine one
4 witness, we didn't have to call one witness, Doug didn't have
5 to get on the stand, I don't have to make a closing argument,
6 and if you find they've failed in their burden it's your duty
7 under the law to return a verdict of not guilty.

8 I told you at the beginning of this case that I'm going to
9 -- that our plea is not guilty, and at the end of it we're
10 going to ask you to return a verdict of not guilty. And now
11 I'm going to tell you why we're going to ask you to do that.

12 Mr. Kumi ega said to you use your good-old Oklahoma common
13 sense. I'm going to ask you to do the same thing, because if
14 you use your good-old Oklahoma common sense, you're going to
15 have Mr. Kumi ega get up in his last closing and he's going to
16 have to answer a bunch of questions. Why? Why? Why? Why?
17 This doesn't make sense.

18 Why would Douglas Friesen have an unregistered machine gun
19 when he could buy legally under the law as many as he wanted?
20 He could have a hundred, he could have 500. He was a licensed
21 dealer. He had three we know of. The government wants you to
22 think he made this gun. Did you hear any testimony about a
23 welder, because that gun was welded. You've got to ask
24 yourself why. Why did we -- why did the government say he's
25 making this gun when they don't have a welder. They don't have

1 any evidence of anything to indicate that he made a silencer,
2 but they brought Donald Ladd in here.

3 The government makes a big deal about the shape of this
4 gun. They saw the gun, as you'll recall, February 19th, 2003,
5 they did nothing with it. They didn't ask Doug, hey, Doug,
6 we've got a problem with the serial number, would you mind if
7 we just borrowed it and took it back to our office and looked
8 at it under the light and microscope, like he did, and see if
9 we can find the serial number? Why? Why didn't they do that?
10 Well, we didn't have the authority. They didn't ask him. They
11 didn't ask him. He was cooperative, he went with them, he
12 assisted them, he cooperated with them a hundred percent.

13 They then come back on -- if they thought it was an
14 unregistered firearm, why did they wait 16 months to get a
15 search warrant to come back and get that gun? You've got to
16 ask yourself, why, if this was such a serious offense, did we
17 wait 16 months to come get a search warrant? Explain that to
18 us, Mr. Kumi ega.

19 Then after they get it on June 10th, 2004, why do they
20 wait until after they've indicted him in 2008, four years
21 later, why do they wait before they run one test on it? You
22 remember Mr. Kong. He said the first time I saw this firearm
23 was sometime in late February or early March of 2008. Why do
24 they do that? They didn't run any tests, they did nothing to
25 that gun for almost 4 1/2 years.

1 You know, there is a lot of questions about this case, and
2 I don't want to dwell on too many of them. I don't want --
3 because I know you've heard every bit of the testimony, and the
4 collective minds of all 12 of you is better than my mind and
5 better than Mr. Kumiega's mind, and that's why there are 12 of
6 you, because you'll remember things we've forgotten. But
7 you've got to remember, the records of the government, the very
8 first witness that hit the stand, Denise Brown, introduced, as
9 Mr. Kumiega calls, the DNA, the birthing document. And what's
10 the first thing we find out? There two birth certificates for
11 that gun, one from April of 2000 -- excuse me -- April of 1986,
12 April 20th, and then there's one in March -- excuse me -- May
13 of 1986.

14 I guess the government gets to choose which one they want
15 to use, because in their, quote, blue ribbon documents, they
16 don't have the very first one, they don't have anything in
17 there to indicate that even existed. Mr. Knopp told you he had
18 no idea until the trial started that there were even two
19 documents. He showed the first one, the April 20th document to
20 Mr. Erb, and Mr. Erb said, yeah, that's the one. Then when he
21 gets on the witness stand, Mr. Erb kind of remembers something
22 differently. You've got to wonder why. Why can't we
23 acknowledge that there's two documents? Why can't we
24 acknowledge there are problems with our records, with the ATF
25 records, because there are. There's major problems with the

1 records.

2 And you know, we go about the fact that, well, we
3 presented the witness Fritz Scheurne to point out the problems
4 with the records, and that you can't base a conviction on just
5 that. If you'll remember, Mr. Kumi ega got up on
6 cross-examination and asked Mr. Scheurne about these records.
7 What if I bring in all these people and they show line by line,
8 person by person where that firearm went? He said that's a lot
9 better, Mr. Kumi ega, and as a matter of fact, that would be
10 more convincing, and I would believe that. But what Mr.
11 Kumi ega didn't point out was they didn't bring in all the
12 people. The Stens that were introduced went from Mr. Erb to
13 R. J. Perry. I don't remember R. J. Perry or anyone from his,
14 from his company getting on there and testifying that they ever
15 got one Sten from Erb. We've got Mr. Kemmerer. He's the
16 second witness, and he says, I got these from R. J. Perry. He
17 doesn't know what E683 looked like when he got it. He doesn't
18 know what had occurred to it, because when he got them
19 approximately 40 percent had been manufactured and 60 percent
20 were still tubes, and he transferred them to Mr. Davenport, and
21 Mr. Davenport transferred them. You know, that does not, that
22 does not, ladies and gentlemen, prove that this gun was or
23 wasn't manufactured by who. We don't know. R. J. Perry is a
24 link missing in this case. And the problem that Fritz Scheurne
25 talked about was the fact that you don't have everybody here

1 and the records are bad and you can't rely on them.

2 I'm going to focus in on a couple of witnesses here
3 because I don't want to -- I don't want to cover every -- I
4 don't want to -- not all of them have the question why by them.
5 But let's talk about Mr. Knopp a minute. He was the
6 government's third witness.

7 He told you that the serial number on every machine gun,
8 firearm, has to be on the magazine. What did he tell you about
9 the D number? It's not on the magazine. The inspectors knew
10 it wasn't on the magazine. They didn't say Mr. Friesen knew it
11 was on the magazine. Why did they write it down as the serial
12 number if they knew it wasn't the serial number? It wasn't on
13 the magazine, that D part number. Have Mr. Kumienga tell you
14 why they did that.

15 Mr. Knopp testified that he seized die stamps, the die
16 stamps Mr. Kumienga was up here imitating like an elf around
17 Christmas in the basement from my client. What did he tell
18 you? He told us we didn't submit those die stamps to our
19 expert Mr. Kong, to our expert Ms. Walbridge, because it was
20 obvious just by looking at them those die stamps did not match
21 the stamps on the Sten E683. Use your common sense. What does
22 that tell you? My client did not stamp this gun, as Mr.
23 Kumienga just imitated for you.

24 Mr. Knopp also -- did you hear him testify about finding
25 any parts for homemade silencers like Donald Ladd testified

1 about? I think not.

2 Could we pull up Government's Exhibit 45.

3 Exhibit 45 is one of those tubes that Erb told you about.
4 This is my serial number, E, I believe that's 694, that was
5 reinspected by the inspectors and approved, even though it has
6 one cut in it. I believe you'll recall his testimony they have
7 to have a five, six, or seven cuts in them, and we went into
8 detail about that, that this is a registered Sten that you
9 didn't complete. Why would Mr. Erb tell you that when we can
10 see plainly from the photographs that the government took that
11 this is not one of those. This is one of those Sten tubes that
12 he got in a hurry to make, that Mr. Knopp caused to be
13 photographed when it was not a completed Sten, just like he
14 testified. Why are they doing that?

15 Why did Valerie Rowden, when she talked to Doug, not tell
16 him that there was a major problem with the serial number? You
17 need to find that serial number or you could be indicted for
18 possession of an unregistered firearm. You've got to ask
19 yourself something, have the government tell you, why didn't
20 she tell you that? We asked her on cross-examination, she said
21 no, I didn't tell him that. We didn't find the serial number,
22 we wrote down the part number, and we went on. Wouldn't you
23 think that our government, that our inspectors would at least
24 point out, hey, if there's a problem with the serial number
25 maybe you ought to sit down and do some looking and talk about

1 it? What did Doug tell you? He said, they were more concerned
2 about finding my A&D records than they were the serial number.

3 What did she say? Why didn't they ask him if they could
4 voluntarily have it? You heard Erb testify that the ATF came
5 out there and seized all kinds of his stuff, the inspectors,
6 they put it in a box, they sealed the box, and the ATF agents
7 came out and got those. Why didn't they do that in this case?
8 Did they target Doug for something? We don't know. We don't
9 know.

10 You heard Haley McGrew get on the stand and testify that I
11 asked Doug four times, four times about the location of Lobo
12 Arms firearms. Why did she say that? Because on
13 cross-examination we went through her report and read her
14 report that she wrote some almost five years earlier, and what
15 did she say? That was very important and I would have put it
16 in my report, because asking him four times was important.
17 When she read the report it doesn't say anything in her report
18 about asking him that question four times. That's the question
19 -- Count 2. And Count 2 is rather important in this case,
20 because Count 2 is a little different.

21 The Court has given you a copy of the indictment in this
22 case. Count 2 is covered in Court's Instruction, I believe
23 Instruction No. 4. And you'll see that when you get the
24 instructions. And in Count 2, what does it say he was asked?
25 It says that he's charged with making a false statement to

1 Hal ey McGrew i n thi s case.

2 "Speci fi cally, Defendan t Fri esen told the i nsp ector
3 whi le i n performance of her offi ci al duti es that he
4 had onl y three pl aces wi thi n hi s offi ce for stori ng
5 fi rearms. These i ncl uded an offi ce desk, a case on
6 the second fl oor, and a cl oset on the second fl oor.
7 The i nsp ector then asked Fri esen i f he had any other
8 l ocati ons to store hi s fi rearms."

9 I've underli ned on my i nstructi ons "hi s fi rearms." What
10 di d you hear about that secret safe? The onl y guns that were
11 i n that safe on February 19th, accordi ng to Jim Foster when he
12 saw i t on 20th, there was nothi ng. On the 20th, there was
13 nothi ng. On the 20th, that morni ng, when he brought Ms.
14 Johnson's guns over and put i n there, those were cl ients' guns.
15 There were no -- none of Mr. Fri esen's fi rearms i n that offi ce
16 on the 19th, on the 20th, on March 4th. There has been no
17 testi mony at all that hi s fi rearms were ever i n that safe
18 relati ng to the questi on that she asked hi m, l adies and
19 gentlemen.

20 Why then was he i ndi cted for that when they weren' t hi s
21 fi rearms? I guess i t's okay for Ms. McGrew to exaggerate a
22 l i ttle bi t then and say I asked hi m four ti mes when she di dn' t
23 even remember i t and i t wasn' t i n her report.

24 Recall Howard Kong. He testi fied two ti mes; he testi fied
25 yesterd ay and he testi fied earl y on i n the tri al. But he

1 specifically told you, I cannot scientifically tell the jury
2 that serial number E683 was not on that Sten on February 19th,
3 2003, the date of the compliance inspection. Why are we here?
4 He said on direct examination agents flew these out to me in
5 California. I have Defendant's Exhibit 110 and 111. They flew
6 these out to me. They flew -- I'm pointing over here because
7 that's where the machine gun is, E683 -- they flew that out to
8 me. I didn't perform one test on either Defendant's Exhibit
9 110 or 111, I didn't perform one test on the Sten, but I'm here
10 to testify that you can put serial numbers on these without
11 bending the tubes as these are, without the use of a mallet.
12 Why didn't you? Why didn't you? We don't do it that way. We
13 don't do it that way, Mr. Martin.

14 Well, don't make these statements if you're not going to
15 come here and present it to y'all, because we've heard all the
16 testimony about peer review and people looking over somebody's
17 shoulder to see whether or not they are doing their tests
18 right. This is the peer in this case. You will be the ones
19 that will be peer-reviewing the expert testimony in this case.
20 And stick your fingers in there and you will feel that there
21 are bumps. That Sten firearm is smooth across the top, and I
22 submit to you that Mr. Friesen is not in his basement beating
23 this out, because if he would have you would have big dents
24 just like these in that gun. Those were already in there and
25 have always been in there, and that's the only gun that he's

1 ever had.

2 Howard Kong came in here and testi fying does not prove
3 that it can be done. He didn't even try to do it. He could
4 have attempted it at least. It would have taken him maybe 15
5 seconds, but maybe he just didn't have the time.

6 Do you have Exhi bi t 52, please?

7 You saw one of Mr. Erb's tubes. That's Exhi bi t 52, the
8 second photograph. It's amazing how close that is to this tube
9 right here, size and every thing else. I submi t to you that
10 this is one of the photographs also that Mr. Knopp, Agent Knopp
11 had taken.

12 Thank you, Bonni e.

13 The government called James Bugg. James Bugg testi fied
14 that he tried to buy that fi rearm, that he was in Doug's
15 office, that it's dark in Doug's office, that he wrote the
16 serial number down wrong on that gun - amazingly, a lot of
17 people have that trouble with this serial number - and it was
18 dark in the office when he was -- although the lights were on,
19 it was dark in the office and he had di ffi cul ty and he wrote
20 one of the numbers down wrong. Is that not reasonable doubt,
21 ladies and gentlemen? This case is a Webster's dictionary
22 defi ni ti on of reasonable doubt.

23 The government called Donald Ladd. Mr. Kumi ega calls him
24 a criminal. I think he's more than that. I think he's a man
25 trying to get out of a 218-month sentence. He's 60-something

1 years old. He's got almost a 20-year sentence to serve. He's
2 been down this road before and testified for the government
3 before and got a break. He's trying to do it again. He
4 testified about going to Mr. Friesen's house in 2004 when Mr.
5 Friesen doesn't even live there. He lives up on Northwest
6 17th. He testified about Mac 10 machine guns. Mr. Friesen
7 doesn't have Mac 10 machine guns. He testified about homemade
8 silencers. There's no evidence that anyone seized anything
9 that could be used to make homemade silencers. He testified
10 about, on and on and on about going to the Red Dog Saloon. You
11 saw the testimony, the exhibits are in there, that we sued Red
12 Dog Saloon, we wouldn't go in there because we would probably
13 get beat up, quite honestly. We went in there and took money
14 out of their cash register from a judgment we got, and it
15 wouldn't be very realistic or smart for us to go back in there.
16 His testimony is not credible at all.

17 We put on Fritz Scheurne just to show you there are major
18 problems with the government's records in this case. Len
19 Savage got on the stand and testified about the testing that he
20 did, which I would submit to you raises multiple doubts about
21 the validity of the government's case.

22 My client got on the stand, he didn't have to, he looked
23 you in the eyes and he told you I didn't do what the government
24 said I did. We put on Jim Foster who testified about Annette
25 Johnson's guns being in there on the 20th of February 2003.

1 And we put on Zella Holder.

2 Now, Zella Holder, I submit to you, she's not a government
3 witness, as Mr. Kong, Mr. Knopp, Ms. Walbridge, who goes all
4 over the place for training and teaching her how to testify
5 more believably as a witness, when you ask her a question she
6 looks back over at the jury, or they look back over to the jury
7 and talk to you in a persuasive manner. She's just a person
8 just like everyone else, and she's recalling things as best she
9 can. She wasn't rehearsed. If I was going to have her come in
10 here and prompt, or Mr. Friesen was going to have her come in
11 here, she would have done a lot better job probably than what
12 she did. But she told you what she remembered, and I submit to
13 you that makes her testimony probably more credible than anyone
14 else's because she can't remember everything, ladies and
15 gentlemen.

16 Mr. Kumiaga said, well, why didn't Mr. Friesen tell the
17 agents about the paint and everything? Do you think if law
18 enforcement comes to your house, start searching through
19 everything, go to your office, start searching through
20 everything, start seizing everything you own, you might think
21 maybe I don't really want to talk to them anymore? Maybe I've
22 already said too much. I submit to you, using good-old
23 Oklahoma common sense, that's what happened in this case,
24 because we had already cooperated, we had already assisted.
25 You remember Delbert Knopp testifying, and the Court has

1 instructed you about, you know, about intent here. The Court
2 has instructed you that --

3 Let's talk about intent. Instruction No. 16.

4 "Intent ordinarily may not be proved directly because
5 there is no way to fathom or scrutinize the operation
6 of the human mind. You infer intent from the
7 surrounding circumstances. Intent may be and usually
8 is proved by circumstantial evidence, if proved at
9 all. You may consider any statements made or any acts
10 done or omitted by defendant, and all other facts or
11 circumstances in evidence to indicate the state of
12 mind."

13 What did Mr. Knopp tell you? What was my client's state
14 of mind? He told you that he was cooperative, that he
15 assisted, that we couldn't find two of his NFA firearms, that
16 he took us upstairs and we found the Stinger, we went to
17 another location, and we found a gun and a silencer. He
18 cooperated with Rowden. He cooperated with Haley McGrew.
19 What's his intent? Those are his actions that he cooperated
20 all the way with the government.

21 He called Inspector Rowden and said, I'm trying to
22 transfer this firearm to a person, Mr. Bugg, what paperwork do
23 I need to do? His intent was to make sure he was in compliance
24 with the law and to cooperate with law enforcement. But when
25 they come up to the house to kick in your doors and start

1 videotaping stuff and seizing items, maybe you shouldn't
2 cooperate anymore, maybe you shouldn't talk anymore. Maybe
3 that's why he didn't tell Delbert Knopp any more than what Mr.
4 Kumiaga says he should have done, ladies and gentlemen. I
5 submit to you that good-old Oklahoma common sense says I've
6 cooperated enough. I've assisted enough in this case.

7 I submit to you, ladies and gentlemen, that the indictment
8 in this case, as Mr. Kumiaga outlined for you, Count 5 deals
9 with possession of an unregistered firearm. I submit to you
10 that the government has completely and absolutely failed to
11 prove beyond a reasonable doubt that this is not the firearm
12 that was registered to Douglas Friesen in this case.

13 I submit to you that if you find him not guilty on that
14 count, you're going to have to find him not guilty on Counts 1,
15 3, and 4, because they all deal with the firearm, which leaves
16 us with Count 2. And Count 2 is when McGrew says to him, where
17 -- do you have any other locations that you store, quote, it's
18 in the indictment, his firearms, your firearms, Doug? And the
19 answer is no. I don't store my firearms in that safe. The
20 only thing in there was my clients' firearms. And I submit to
21 you you have to return a verdict of not guilty as to Count 2
22 also.

23 I know it's been a long trial, and I apologize for that,
24 probably am just as guilty of dragging it out as anyone else in
25 this case from long cross-examinations or whatever. But I

1 hesitate to sit down because, as you know, Mr. Kumi ega i s going
2 to get a chance to get up here and say more things about what
3 I've said and say more to you, because he has the burden of
4 proof beyond a reasonable doubt.

5 I'm very concerned, because I always feel like I'm
6 forgetting something, I've left something out. There are four
7 possible conclusions that can occur in this case, and they
8 concern me. This case reminds me of the story of a great
9 Russian marksman. There was a great Russian marksman, it goes,
10 that was looking across Russia because he had heard of another
11 great marksman that he wanted to meet because he was such a
12 fine marksman, he could hit a bull's-eye from 200, 300 yards.
13 One day he's walking across the tundra and he hears about the
14 marksman in this neighborhood. And he goes to it and he sees a
15 little 12 year-old boy about this tall (indicating) dragging a
16 firearm behind him, the gun is taller than he is, and he's
17 dragging this gun behind him. And he says, are you the great
18 marksman that I've heard so much about? And the young man says
19 yes, I am. And he says, can you show me your talent? And the
20 young man says, yes, I can. And the little boy gets his gun
21 and can hardly hold it it was such a big gun, and way off in
22 the distance you can see a big wall, and he takes his gun and
23 he shoots at the wall like it's that screen over there. Boom,
24 boom, boom. Puts the gun down and him and the great Russian
25 marksman walk to the wall. And on that wall are bullet holes

1 inside little bitty circles that are 2- 300 yards away. And
2 the little boy reaches in his pockets, pulls out a piece of
3 chalk, and he draws circles around the three holes he just put
4 in the wall.

5 That's what the government has done in this case, Ladies
6 and gentlemen. They have targeted my client. They've gone out
7 and tried to draw little circles around Doug after the fact.
8 They didn't do one thing to that gun before he was indicted.
9 They didn't look at it, they didn't test it, they didn't
10 perform any stampings or anything until after they indicted
11 him, just like that little boy with the gun. He shot, walked
12 over there, then started drawing circles around things.

13 I'm going to ask you not to let the government target
14 someone like they have in this case. It's not right, they
15 haven't proven their case beyond a reasonable doubt.

16 As I said, I'm going to sit down. It's been almost five
17 years since they got that gun, and I submit to you they haven't
18 proven their case. There's four things that can happen: You
19 can, by your verdict, convict a guilty man; you can, by your
20 verdict, acquit an innocent man; you can, by your verdict,
21 acquit a guilty man; or the biggest travesty of all is you can
22 convict an innocent man, Doug Friesen.

23 I submit to you all at the beginning of our case we talked
24 about tubes and how the government's case is about tubes.
25 Well, they have completely failed, Ladies and gentlemen, to

1 prove their case, and they've completely failed in presenting
2 you an appropriate case. And I ask you, by your verdict, to
3 return a not-guilty as to all counts, 1 through 5. Thank you.

4 THE COURT: Thank you, Mr. Martin.

5 Mr. Kumi ega, you may conclude.

6 MR. KUMI EGA: Thank you, your Honor.

7 Ladies and gentlemen, again, I want to thank you for your
8 time and your patience and your observations in this case.
9 Agent Knopp is going to put up the time line so I can just
10 point out some of the things that Mr. Martin brought up.

11 The government's thesis of this case is still the same,
12 that there is scientific evidence, that there is witness
13 statements, and there is manufacturer's statements to say that
14 the gun that Mr. Friesen possesses was not the gun that was
15 registered to him.

16 Erb testified he made it, he said that's not his gun.
17 There was testimony that Mr. Perry passed away, and that gun
18 went from Mr. Perry to Mr. Kemmerer, the person in Florida.
19 And he said, ain't no way that that is an Erb gun, and I --
20 just ain't no way. And Mr. Davenport said, when he looked at
21 the firearm, said ain't no way that was an Erb gun.

22 The manufacturers, who also are supported by the
23 documents, show that that firearm that the government seized
24 that day was not registered to him.

25 Government's thesis is also that the inspectors on that

1 day saw that gun, and they couldn't find a serial number.

2 Now, when they gave it to Mr. Friesen, Mr. Friesen, and
3 that serial number is only four inches away, pointed out the D
4 part number as being the DNA of the firearm. Now, what Mr.
5 Mack Martin conveniently neglects to tell you during his
6 presentation is Mr. Friesen took the stand and he said in 2002
7 he had to refurbish that firearm because of rust. No mention
8 of that have in his closing argument. And Mr. Friesen
9 testified that he covered up the serial number.

10 Now, the government submits to you that how unreasonable
11 is that? How could somebody like Mr. Friesen, a lawyer, gun
12 enthusiast, heck, he's a marksman, goes to machine gun school,
13 how could he cover up a serial number? That segues nicely from
14 what Mr. LeMaster said when she said, people, we never covered
15 up a serial number.

16 Now, Mr. Martin also makes a big deal about, well, how
17 come, you know, Mr. Friesen, they kick down the door, they did
18 this and this and this. The testimony was that during this
19 period of time the inspection was basically friendly. You
20 would think from -- again, something that Mr. Mack Martin does
21 not address is that Mr. Friesen testified several days later,
22 after the 19th, as this thing progresses, Mr. Friesen found
23 something and he doesn't tell -- he doesn't tell the
24 inspectors? It's a friendly interview. Why would you not
25 disclose and say, hey, by the way, it was not the D part

1 number, here it is, take a look at it? How come he doesn't do
2 that? What -- is he playing? Is it a game here that he wants
3 to be indicted, that we have to go through this ordeal? Why
4 would he not say, here it is? The reason being is because the
5 inspectors, when they looked at it that day, they couldn't find
6 anything, nor could Mr. Friesen. That would support the fact
7 that he was downstairs that day putting a serial number on
8 there. And that's the worst serial number, as Ms. McGrew
9 testified, that she ever saw.

10 The government obviously can't address everything in this
11 case, but here's another thing: Mr. Friesen, \$50,000 worth of
12 machine guns, as Mr. Mack Martin said, I mean \$50,000 worth of
13 guns, three machine guns, a bunch of silencers, Mr. Mack Martin
14 said, well, he could have bought a machine gun. Yeah, he could
15 have, but he didn't. You know, nobody can look into Mr.
16 Friesen's mind and say, how come -- why did you do this? The
17 government has no idea why he did that, but the evidence speaks
18 loud that that gun, from the manufacturer's testimony that says
19 that was not the gun that passed through commerce, from what
20 the inspectors said who said we can't find the serial number.

21 Now the scientists. The government put Mr. Kong on the
22 stand and he said, he said that there's a layer of paint inside
23 the serial number.

24 Can you get that up? Okay. That's going to be Government
25 No. 9, I believe.

1 This is what -- this is what the case is all about. This
2 is the very funny serial number that has been stamped over
3 multiple times and scribed. We don't know how it got there.
4 We honestly don't know how it got there. Mr. Kong is not a
5 soothsayer. He can't say how it got there, but he says for
6 sure it was put on there after a layer of paint was put on.

7 Go to the next one.

8 He's got more scribing here. He's analyzing the serial
9 number itself.

10 Go to the next one, please.

11 Here is the general serial number, again, compared to the
12 bookend guns. That's the general serial number. Look at that.

13 Go to the next one, please.

14 Here's the paint inside there.

15 Now, Mr. Savage took the stand to try to refute everything
16 Mr. Kong did in this case, but the government is going to
17 submit to you that he's -- Mr. Savage has his own personal
18 agenda for why he's testifying, and he never explained any
19 protocols or explained the accuracy of the tests. And Mr. Kong
20 said, it is possible to put a serial number on there if you use
21 the right amount of force or less amount of force. That's why
22 the government is going to submit to you, go back there and
23 look at that. Use your good-old Oklahoma common sense to
24 determine whether or not the serial numbers are deep, like 682
25 and 685.

1 Now, going back to Ms. McGrew and Count No. 2. This is
2 the Q and A during the cross-examination.

3 Government: "All right. Let me ask you this:
4 Did you use the secret Armor gun safe to store some of
5 your personal guns, anybody's guns during the time you
6 were an FFL?"

7 "Answer: The only guns that were -- sorry. Yes is
8 the answer to your question."

9 Now, Mr. Mack Martin makes a big deal and says it's his
10 firearms. It's his possession of guns, people. It's his guns
11 because he's the FFL there. It's presumed that he has to know
12 where his guns are in his business because he took an oath to
13 sell guns reasonably and to follow the law and when you
14 disburse this stuff you do the right thing, and Mr. Friesen
15 didn't do that. Remember the testimony of Ms. McGrew when she
16 did the summary charts? On that day that we went there there
17 were guns missing, just like the Sten gun. This is a
18 consistent pattern with Mr. Friesen. We can't read into his
19 mind, but looks like Mr. Friesen, when confronted, he either
20 has no recollection or he just basically changes the answer.

21 Again, the government's thesis is he, when confronted on
22 the 19th, had the opportunity to say I covered it up and he did
23 not. Why would he not say that? It's inconceivable. And it's
24 also inconceivable because he said two days before that he was
25 getting ready to sell that firearm. He would have looked at it

1 and here it is. But he's got no mention, he doesn't bring
2 forward who's that person to say that.

3 Zella Holder. Mr. Friesen waits three weeks before trial
4 to find Zella Holder, and you saw her demeanor on the stand.
5 And this happened around 2000, February 19, 2003. Ms. Zella
6 Holder, no reports like the inspectors wrote, is down there and
7 Mr. Friesen says -- and she thought it was a car part, and Mr.
8 Friesen is pointing out certain things. And remember, Sarah
9 Walbridge said there was no solvent used. She took the paint
10 right next to that number. The scientific testimony
11 contradicts what one of Mr. Friesen's best friends testified
12 to.

13 Now, Mr. Friesen was very proud of law enforcement
14 officers who are friends, who are his friends. And Mr. Foster,
15 again, said he's a very good friend. Mr. Foster, how strange,
16 how odd. He doesn't know anything about the serial number. He
17 testified that Mr. Friesen never talked to him about that.
18 Now, again, use your good-old Oklahoma common sense and explain
19 that.

20 Mr. Mack Martin talked about, well, you know, we waited
21 this long. Well, certainly there was no rush to judgment.
22 Things progressed pretty reasonably in this case.

23 Scientific evidence confirmed what the grand jury thought
24 from the beginning when they made the indictment, and this is
25 how the case progressed. But the point is the government has a

1 serious interest to determine whether or not floating out there
2 in today's world, we have no idea if there's a registered Sten
3 machine gun that somebody has, because the government's
4 position is, remember, this case is about two guns.

5 MR. MARTIN: Your Honor, your Honor, I object to this
6 societal alarm type arguments here.

7 THE COURT: Objection will be overruled.

8 MR. KUMIEGA: There are two guns out there: The
9 registered gun that we can't find, and the unregistered gun
10 that is in Mr. Friesen's possession. That's why we're here
11 today. It's about two firearms. When you think of one, think
12 of the other.

13 Now, Ms. McGrew, when cross-examined by Mr. Friesen [sic],
14 she said at least three times, went down that whole list and
15 went over, at least three times, maybe not four but at least
16 three, and she took notes of everything. Remember, the
17 government presents evidence, we have reports, we have notes so
18 the defense attorney can just -- can look at each statement and
19 analyze it. When the government had to cross-examine Ms.
20 Holder we had no reports, we had -- we had nothing. We had to
21 go on her statement and what Mr. Friesen said.

22 Even Mr. Knopp, the agent, he testified that Mr. Friesen
23 said the girls missed the serial number because they were in a
24 hurry. People, how could that -- how could he say that? How
25 could he honestly say that when he said -- when he testified

1 that he covered it up in 2000 because of the rust, that he
2 uncovered it in '03 during the inspection, not after the
3 inspection, and then he doesn't launch into and say, hey,
4 you've got the wrong guy here? This doesn't make any sense.
5 That standing alone is a lie. It's a material falsehood. How
6 could he say that if you believe Agent Knopp? That standing
7 alone shows that he's misleading, his misleading everybody,
8 because he wants to take direction away from the firearm
9 itself.

10 If he does not -- if he was sick and tired of the
11 government he should have kept his mouth shut, but he didn't.
12 He takes that extra step trying, again, to convince the agent
13 and everybody else, oh, everyone just missed that. How could
14 that be after he testifies? And remember, when the United
15 States asked him questions, me, asked him questions during the
16 course of the cross-examination, every important question
17 regarding the firearm itself he had no recollection. He has no
18 recollection.

19 Just like Mr. Mack Martin, I'm worried. I want to ask all
20 these questions too. I want to make sure that every bit of
21 evidence that we possess is in front of you so you can make a
22 righteous decision. The government has no intention of putting
23 an innocent person in prison, or we're not here to do that. We
24 don't want -- we don't want to convict an innocent person. But
25 when you line up the evidence, you would have to say in your

1 mind that there has been a cascade of events behind Mr.
2 Friesen's control that convicts him. That's the position of
3 the defendant, that number one, the manufacturers are wrong,
4 that they are totally wrong. Again, a cascade of events. The
5 inspectors, not only they're wrong, but obviously they are
6 lying. The scientists are wrong, they don't know what they are
7 doing. All these other witnesses are wrong. So there's going
8 to be a chain of failures, is what Mr. Martin is saying to say
9 that Mr. Friesen is -- we're going to convict an innocent man.
10 You can't do that. And that's why I want you to use your
11 common sense as you analyze each count separately and then
12 collectively.

13 Look at the demeanor of the witnesses, look at into your
14 notes, review the testimony. And at the end of the -- end of
15 your deliberations, you're going to find, the government
16 submits, that Mr. Friesen is guilty beyond a reasonable doubt.
17 In fact, there are is no doubt at all when you analyze the
18 evidence here. Mr. Friesen had an unregistered machine gun and
19 he tried to pawn it off as a registered gun. That's what he
20 did. And when you look at his background and all the evidence,
21 again, his background is important. It's not like he's an
22 average citizen, somebody who has one or two guns. This is his
23 -- this is his DNA too. He is like the DNA of a gun. He loves
24 this stuff. He's -- he teaches it, he cleans his guns, he goes
25 to machine gun school, and he's going to cover up a serial

1 number, the thing that he loves the best? He's not going to
2 tell the inspectors, oh, by the way, I think I covered it up, I
3 made a mistake? No, he says, oh, it's a gun dropped behind
4 enemy lines in World War II to kill Nazis. Come on, people.

5 Mr. Friesen had this thing, we don't know where he got it
6 but, again, when you analyze this case, remember, there are two
7 machine guns out there. There's the registered machine gun
8 that we can't find or we never located, and an unregistered
9 machine gun that we brought in court today. There is the time
10 line, you have seen it before. Remember the birthing
11 documents, everything joins together.

12 Again, thank you for your consideration, thank you for
13 your patience, thank you for your attention because you were
14 -- you took very excellent notes, you were conscientious, and
15 again, the government is going to submit after you use your
16 good-old Oklahoma common sense and dissect everything you'll
17 find him guilty beyond a reasonable doubt. Thank you.

18 THE COURT: Thank you, Mr. Kumi ega. I'm going to read
19 the closing argument -- excuse me -- the closing instruction.

20 (Closing instruction read by the Court)

21 THE COURT: Mr. Kumi ega, any objection to the Court's
22 closing instruction?

23 MR. KUMI EGA: No, your Honor.

24 THE COURT: Mr. Martin?

25 MR. MARTIN: No, sir.

1 THE COURT: If the bailiff would come forward at this
2 time and be sworn, please.

3 (The bailiff was sworn).

4 THE COURT: Ladies and gentlemen of the jury, except
5 for Ms. Harrington and Mr. Haslam, if you will now follow the
6 bailiff to the jury deliberation room, you may begin your
7 deliberations.

8 Now, if at any time during your deliberations you decide
9 to take a break or even during your deliberations if somebody
10 needs to get up or go to the restroom or something, stop your
11 deliberations. Don't several of you keep on while one is not
12 there. Take a break, stop, and none of the rest of you talk
13 about -- continue to talk about the case during any break or
14 any time somebody uses the restroom or not all of you
15 participating. I don't want anyone else talking about the
16 case. You're only to deliberate when all 12 of you are in the
17 jury deliberation room with the bailiff seated outside and the
18 door closed and all 12 of you participating.

19 If we'll start over here, Mr. Anderson, and if you'll
20 follow Ms. Williams to the jury deliberations room.

21 Ms. Harrington and Mr. Haslam, I just want to at this time
22 thank you on behalf of the Court and thank you on behalf of the
23 government and the defendant and their counsel for your
24 willingness to serve in this matter and your service in this
25 matter. Now, at this time I'm going to excuse you, but not

1 discharge you; I'm not discharging you at this time. I would
2 just tell you that I know that it's been a lengthy trial and
3 taken a lot of your personal time, and you had a lot of other
4 things to do, I'm sure. And now I hope you don't feel that,
5 well, I wasted all this time, because you didn't. Without your
6 service, if anything had happened, any accidents or emergency
7 to any of the other jurors, without your willingness to fully
8 participate in this matter and pay close attention to the
9 evidence, we would have to start all over, and you can see that
10 that would be a great cost in not only time but money and
11 expense to not only the Court but to the parties involved, and
12 not only in dollars, but in emotional time and everything else
13 spent. So you can see that it's absolutely necessary that both
14 of you contributed to this entire matter, and without it, we
15 just could have, it could have been a real disaster for
16 everybody. So your time and your service was extremely
17 important and we're all very appreciative for it.

18 Now, until this jury comes back with a verdict, as I say,
19 I'm going to excuse you, but not discharge you. There could be
20 some emergency that would cause you to be called back into
21 service and in deliberations. So I'm going to admonish you and
22 give you the same admonishments that until this jury reaches a
23 verdict if you're discharged you're not to discuss the case
24 with anyone or among yourselves, or allow anyone to discuss it
25 with you. And we can notify you if there is some emergency and

1 we need to call you back or this jury has reached a verdict and
2 you can then be discharged at that time, and we'll have either
3 Ms. Youngberg or Ms. Moy notify you whatever the result is, and
4 whether you're then discharged.

5 After you have been discharged, if this jury has reached a
6 verdict you are then free to talk about the case with anyone
7 you want to or not talk about it. It's solely your decision.
8 If somebody should try to talk to you about it and you don't
9 want and they should persist, you notify the Court, because as
10 a jury you have certain rights of protection.

11 So with that, again, on behalf of the government, and
12 behalf of Mr. Friesen and their counsel, on behalf of this
13 Court, we thank you for your very dedicated service in this
14 matter.

15 All rise.

16 What you need to do is go back and report to Ms. Moy
17 you've been excused but not discharged in this matter.

18 All rise while the alternate jurors are excused.

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

21 THE COURT: I would advise the counsel and the parties
22 to keep Ms. Youngberg informed as to their whereabouts, and to
23 not leave the immediate vicinity of this courtroom, and in case
24 the jury has a question or reached a verdict we don't want to
25 spend 15 or 20 minutes running you down or trying to find where

1 you are. Even if you go to another part of the courthouse or
2 stand outside or whatever, let Ms. Youngberg -- and you're not
3 in the immediate vicinity of the courtroom here on the fifth
4 floor, let Ms. Youngberg know where you are.

5 Anything further, Mr. Kumi ega, at this time?

6 MR. KUMI EGA: No, si r.

7 THE COURT: Anything further, Mr. Martin?

8 MR. MARTIN: No, your Honor.

9 THE COURT: Okay. We'll wait until we hear back from
10 the jury. It would be my intention that we would probably not
11 work late tonight, but basically I leave a lot of that up to
12 the jury. But things happen around here like heat and air are
13 turned off and everything else at 6:00, and cleaning people
14 come in and so forth, so normally we wouldn't work past about
15 5:30.

16 So we'll stand in recess until we hear back from the jury.

17 (Court stood in recess at 3:17 p.m. The jury began
18 deliberations at 3:12 p.m.)

19 (The following was had in open court at 5:45 p.m.):

20 THE COURT: Ladies and gentlemen of the jury, and
21 parties, the Court has received a note from the jury that says:

22 "We're unable to come to a decision right now. What
23 are our choices regarding this evening?"

24 Signed by Ms. Flannery.

25 You've been meeting now for about two and a half hours,

1 and that you've been unable to come to a decision right now is
2 not certainly unusual or anything. What I found generally is
3 after you've met, you've been in this trial, this is the third
4 week, and haven't talked to anybody about it, and you go in and
5 start hearing everybody's views and so forth, it's helpful
6 sometimes, instead of staying in there, to maybe after you've
7 met for this period of time, to maybe go home, think about
8 everything, and then come back in the morning and be fresh and
9 not worn out and everything else. So I know it's another day
10 for you and you're ready to move on in your lives, but I think
11 it's a very important part of the process, and so I think what
12 we're going to do this evening is call it a night. Things do
13 kind of shut down around here by about 6:00 anyway, and so I
14 think for everyone's convenience and so forth we'll call it a
15 night and we'll reconvene at 9 a.m. in morning.

16 What I'm going to ask you to do again, remind you not only
17 the oath that you've taken and what you've told us and for the
18 obligation you owe these parties, but the obligation you owe
19 your fellow jurors, remind you not to talk about the case with
20 anyone or allow anybody to talk about it with you or do any
21 research or anything else on your own. Just go home, enjoy the
22 evening, and come back at 9 a.m.

23 When you come back in the morning go down to the jury
24 assembly room where you've been meeting and the bailiff will
25 come get you and bring you to your jury deliberation room.

1 With that, have a nice evening and we'll see you in the
2 morning at 9:00.

3 All rise while the jury exits.

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

6 THE COURT: We're in recess.

7 (Court stood in recess until October 1, 2008.)

8 (The following was had in open court on October 1, 2008,
9 at 1:40 p.m., without the presence of the jury:)

10 THE COURT: The Court has received a message from the
11 jury stating that they are unable to come to a unanimous
12 decision on any of the counts, and I've shown that note to
13 counsel and have concluded that because of the relatively short
14 time that the jury has been out deliberating and the length of
15 this trial and the difficulties of a retrial that it would be
16 appropriate to at least try once to give an Allen charge and
17 send them back for further deliberations. And I've discussed
18 that with counsel and with my understanding from our conference
19 in chambers there is no objection to that.

20 Is that correct, Mr. Kumi Ega?

21 MR. KUMI EGA: I thought the Court was not going to do
22 the Allen charge.

23 THE COURT: No. I said I was.

24 MR. KUMI EGA: Oh.

25 THE COURT: Is there any objection?

1 MR. KUMI EGA: No. Oh, no.

2 THE COURT: Mr. Martin?

3 MR. MARTIN: No objection, your Honor.

4 THE COURT: Okay. Well, that will be the proceedings
5 of the Court. I hope, Mr. Kumi ega, that my rulings have not
6 been that unclear throughout the trial.

7 MR. KUMI EGA: I misunderstood, Judge. I guess I was
8 thinking about the numerical -- I apologize.

9 THE COURT: I just said I thought it would be worth,
10 no more than they deliberated relative to the length of the
11 trial, at least we would send them back once and see what
12 happened.

13 If you'll have the jury brought in, Ms. Youngberg, please.
14 (Jury brought in at 1:45 p.m.)

15 THE COURT: Ladies and gentlemen of the jury, I have
16 received a note from your presiding juror, Ms. Flannery, that
17 says:

18 "We are split and are unable to come to a unanimous
19 decision on any of counts of the indictment."

20 Ms. Flannery, is that the general consensus of the jury?

21 PRESIDING JUROR: I'm afraid so, your Honor.

22 THE COURT: Well, I'm going to give you a supplemental
23 instruction, and I'll just tell you, first of all, that this
24 trial, this is an important case. The trial has been
25 extensive. Your failure to agree upon a verdict will

1 necessitate another trial, and will require the parties once
2 again to undergo the investment of time and effort and the
3 stress of trial.

4 The Court is of the opinion that the case cannot be tried
5 again better or more exhaustively than it has been on either
6 side. It is, therefore, very desirable that you should agree
7 upon a verdict. The Court does not desire, however, that any
8 juror should surrender his or her conscientious convictions.
9 On the other hand, each juror should perform his her duty
10 conscientiously and honestly according to the law and the
11 evidence.

12 The verdict to which a juror agrees must, of course, be
13 his or her own verdict, the result of his or her own
14 convictions, and not a mere acquiescence of the conclusions of
15 his or her fellow jurors. However, in order to bring 12 minds
16 to a unanimous result, you may examine the questions submitted
17 to you with candor and with the proper regard and deference to
18 the opinion of each other. You should consider that the case
19 must at some time be decided, that you are selected in the same
20 manner and from the same source from which any future jury must
21 be, and there is no reason to suppose that the case will ever
22 be submitted to 12 men and women more intelligent, more
23 impartial or more competent to decide it, or that more or
24 clearer evidence will be produced on one side or the other.

25 You may conduct your deliberations as you choose, but I

1 suggest you retire again and carefully consider again the
2 evidence in this case and the law as I've instructed you.

3 Now, in regard to that, I'm going to reread Instruction
4 No. 5, which you have a copy of.

5 The government has the burden of proving defendant guilty
6 beyond a reasonable doubt. The law does not require defendant
7 to prove his innocence or produce any evidence at all. The
8 government has the burden of proving defendant guilty beyond a
9 reasonable doubt, and if it fails to do so, you must find
10 defendant not guilty.

11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of defendant's guilt. There are few things in
13 this world that we know with absolute certainty, and in
14 criminal cases the law does not require proof that overcomes
15 every possible doubt, it is only required that the government's
16 proof exclude any reasonable doubt concerning the defendant's
17 guilt.

18 A reasonable doubt is a doubt based on reason and common
19 sense after careful and impartial consideration of all the
20 evidence in the case. If, based on your consideration of the
21 evidence, you are firmly convinced that defendant is guilty of
22 the crime charged, you must find him guilty. If, on the other
23 hand, you think there is a real possibility that he is not
24 guilty, you may give him the benefit of the doubt and find him
25 not guilty.

1 And the reason that I'm going to -- in addition to the
2 supplemental instruction I've given you, is this case has
3 lasted approximately two weeks, parts of three weeks, and your
4 deliberations have not been lengthy at this point considering
5 the length of the trial and the amount of evidence and so
6 forth. So that's why I'm going to send you back to see if any
7 further deliberations will assist you based upon my
8 supplemental instruction and rereading of the Instruction No.
9 5.

10 So I'm going to have you follow the bailiff and return you
11 back to the jury deliberation room at this time.

12 All rise while the jury exits.

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

15 THE COURT: Counsel, we'll stand at ease for a little
16 while longer until our next note. We'll be in recess.

17 (A recess was had, after which the following was had in
18 open court:)

19 THE COURT: Counsel approach.

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

22 THE COURT: There's another one? Have they seen this?

23 MR. MARTIN: Yes, we've seen that.

24 THE COURT: Here's my thought. It's either to bring
25 them in and dismiss them, discharge them, or to send them back

1 and get a definitive --

2 MR. MARTIN: Did you see it, Ed?

3 MR. KUMIEGA: Uh-huh.

4 MR. MARTIN: I don't want to consent to a mistrial, so
5 I suggest you send the note.

6 MR. KUMIEGA: What I'm troubled about is the phrase
7 "if necessary." And I think that is -- if there's a conviction
8 in this case, there would be great grounds to appeal.

9 THE COURT: Those two words --

10 MR. KUMIEGA: That's because -- because of that choice
11 of phraseology I think we just end it and we're forcing people
12 now against their conscience.

13 THE COURT: Those words concern me.

14 MR. KUMIEGA: And that's the way, if I was defense
15 counsel and there's a conviction, it's bad news.

16 THE COURT: Well, I don't like that they were willing
17 to change their verdict if necessary. That concerns me a whole
18 lot.

19 MR. MARTIN: I understand that, Judge.

20 THE COURT: And when we emphasize over and over --
21 what I thought about doing is calling them in and declaring a
22 mistrial, dismissing them and then visiting with them and if
23 they are amenable to let both of you visit with them together,
24 if you want to, or if you feel that would just -- with the
25 thought of two things. One is to get the government, I don't

1 know what your plans are on retrying.

2 MR. KUMI EGA: I'm going to have to talk to Mr.
3 Richter, your Honor. Nothing is set in stone.

4 MR. MARTIN: The input would be helpful, I'll say
5 that.

6 MR. KUMI EGA: But I would not want to visit together
7 with defense counsel. I think -- I think we can ask for the
8 appropriate motion to visit with the jurors individually, but
9 together collectively, I don't think that's going to accomplish
10 anything.

11 THE COURT: Well, I'm probably not going to let you do
12 it unless you do it together. I just think you could find out
13 where all the problems were and so forth.

14 MR. MARTIN: More of a discussion from them versus
15 questioning from us. I understand that. I wasn't planning on
16 why didn't you vote one way or another.

17 THE COURT: Main thing, let them tell you what all
18 they had problems with, and not necessarily know what, what the
19 split was unless they just want to tell you. That still --
20 that's pretty -- I feel uncomfortable with them, with you
21 knowing or them telling you, well, so-and-so was for you and
22 so-and-so against you.

23 MR. KUMI EGA: Sure.

24 THE COURT: Let me visit with them first.

25 MR. MARTIN: That's fine. And if not let us --

1 THE COURT: The other thing that I've done is talk to
2 them and say -- and they usually -- I don't -- that's their
3 sacred area, but a lot of times they volunteer stuff. But I
4 could say would you like me to convey to the attorneys where
5 the problems that you had were.

6 MR. KUMI EGA: I'm so hesitant to, unless the case is
7 over, that's fine, but to do it if they are deliberating --

8 MR. MARTIN: No. This is after a mistrial.

9 MR. KUMI EGA: There that would be fine, Judge.

10 THE COURT: I can't begin to talk to them before.

11 MR. KUMI EGA: I didn't know what sequence of events --
12 That would be fine. Whatever the Court feels is appropriate.

13 THE COURT: You might hang around just a little bit.
14 I'll visit with them a little bit and see.

15 (Jury brought into open court at 5:45).

16 THE COURT: I received a new note from your presiding
17 juror, Ms. Flannery, that states that:

18 "We continue to discuss and review in the same
19 circle. What other suggestions does the Court have?
20 Do you have any recommendations for me and where to
21 go, what to do? We have a couple of jurors willing to
22 change their verdict if necessary but there are
23 several others who are not."

24 Ms. Flannery, it would appear to me that the jury, after
25 further deliberations, is still deadlocked as to any and all of

1 the counts. Is that correct?

2 PRESIDING JUROR: We have one count that we're
3 unanimous in our decision, the other four we are deadlocked.

4 THE COURT: And the other four you're deadlocked and
5 hopelessly deadlocked do you think?

6 PRESIDING JUROR: It appears that way, without
7 compromising that instruction that the Court gave us.

8 THE COURT: The Court does not want to compromise the
9 instruction or any juror to compromise their belief in their
10 position. What I said is the instruction, of course, is that
11 concerns me a little bit about the language about some are
12 willing change to their verdict if necessary, and I don't want
13 anyone changing their opinion or verdict just to get a
14 unanimous verdict and go against what they believe is the
15 correct verdict. So if you do have an unanimous verdict as to
16 one count, I'm going to let you go back to the jury
17 deliberation room and fill out that count, and return it to the
18 Court -- and then we'll, if you feel that further deliberations
19 would not be useful as to the other counts, then I'll discharge
20 you as to -- rather than any -- if you feel that further
21 deliberations would be helpful we can work later tonight or
22 come back tomorrow. But why don't you discuss that.

23 And again I would remind you to read the instructions and
24 each juror to respect the views of others, but to not render a
25 verdict simply that they feel forced to or render a verdict

1 that they feel is wrong. So because I will tell each of you
2 individually that the verdict is your verdict on whatever the
3 verdict is you reach. But if you feel you have a unanimous
4 verdict as to one count, then I'm going to have the bailiff
5 take you back to the jury deliberation room, and then you can
6 also discuss whether any further deliberations would be useful
7 regarding the other counts or whether you are hopelessly
8 deadlocked. If you feel that other, more deliberations would
9 be helpful, then I'll let you decide whether you want to stay
10 later tonight or come back in the morning. If you feel that
11 you are hopelessly deadlocked, then tell me that and I'll
12 discharge you in relation to the other counts.

13 PRESIDING JUROR: Okay.

14 THE COURT: So Bailiff, if you'll take the jury back
15 to the jury deliberation room.

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

18 THE COURT: We can stand at ease or why don't we just
19 recess. Stay by the courtroom here.

20 We'll be in recess until we hear back from them.

21 (Court stood in recess.)

22 (The following was had in open court at 6:35 p.m.)

23 THE COURT: The Court has received a note that states
24 that the jury has reached a unanimous verdict as to Count 2.
25 Prior to the note, counsel for the government and counsel for

1 the defendant had approached the Court in chambers regarding a
2 concern over the earlier note that the Court had received from
3 the jurors in which it stated we have a couple of jurors
4 willing to change their verdict if necessary, but, there are
5 several who are not. And I think both counsel expressed
6 concern over that terminology used by the presiding juror.

7 I thought before the Court -- Mr. Martin, you had
8 indicated that you were wanting to make a record before the
9 Court decided to take the verdict or not. And so I thought
10 before the Court had the jury come in and take the verdict, if
11 you wanted to make a record the Court would -- we will do that
12 at this time, and Mr. Kumiaga, you could also make a record.

13 MR. MARTIN: Your Honor, I just want to express to the
14 Court, as you've already indicated, that the severe serious
15 concerns you have about the verdict that the jury now has
16 obviously before we received the note with the language "if
17 necessary" we did not know -- at least a note did not reflect
18 that they had reached a verdict yet, and it causes myself and
19 my client and Ms. Sykes severe concern about the validity of
20 any verdict. In particular, not knowing when it may have been
21 reached. And because of that, we have great concern about the
22 validity of any verdict that may have been rendered. And if I
23 may have just one moment.

24 (Brief pause)

25 MR. MARTIN: And I think, based upon consultation with

1 my client, we would ask the Court based upon that last note,
2 that the Court not accept the verdict and declare a mistrial.

3 THE COURT: Mr. Kumi ega.

4 MR. KUMI EGA: We wholeheartedly join with the
5 conclusions of Mr. Martin and his client in this case.

6 THE COURT: And request a mistrial?

7 MR. KUMI EGA: Yes, sir.

8 THE COURT: Okay. Ms. Youngberg, if you would have
9 the jury brought in.

10 (The jury was brought into open court at 6:40 p.m.)

11 THE COURT: Ladies and gentlemen of the jury, I have a
12 note that says you've reached a unanimous decision as to Count
13 2, you do remain hopelessly deadlocked on 1, 3, 4, and 5.

14 Ms. Flannery, do you have the verdict?

15 PRESIDING JUROR: I do.

16 THE COURT: Would you hand it to the bailiff, please.

17 Ladies and gentlemen of the jury, this has been a most
18 unusual case, and a very difficult case. And the parties
19 recognize this and counsel recognize it, and certainly in my
20 number of years on the bench that I could tell you that this is
21 one of the more difficult cases that I know a jury has had to
22 try to decide the issues and the law. And it's all been made a
23 little more difficult by the -- some of the matters that came
24 up in trial, and some of the delays and so forth. But several
25 things have caused me some concern, and I think caused all of

1 the parties concern.

2 And the last note indicating that some jurors might change
3 their verdict if necessary, and I took that to mean, and I
4 think the parties did, to mean if necessary to get a unanimous
5 verdict, but also meaning that they would be giving up their
6 opinion or view of the case. And that, and the length of your
7 deliberations and the indication earlier that you were
8 deadlocked, and when I brought you back in and sent you back
9 out, I think it's caused all of us enough concern that even
10 though you have -- and we have no idea what your verdict is, I
11 think all of the parties in this case and the Court agree that
12 this -- we should just have a mistrial in all of the entire
13 case because of the concern that maybe some jurors, after all
14 indications earlier and the language in here, "if necessary",
15 that some jurors perhaps gave up their belief just to get a
16 unanimous verdict, which, of course, would cause an appeal
17 immediately whichever way the verdict was, and a lengthy
18 appeal, and then I'm sure concern by the appellate court over
19 that language.

20 And so I think it would be more judicious and fair to all
21 parties and alleviate all concerns, and so the Court is going
22 to not accept your verdict and to declare a mistrial as to all
23 counts in this matter.

24 Now, that doesn't mean you failed, so don't take it
25 personally that anybody failed. As I said, this was a

1 difficult case. I knew it was going to be difficult for you.
2 It will be difficult for the next jury, if there is another
3 jury and the case is retried. But because a lot of the facts
4 and the issues and the evidence and the length of trial and the
5 law surrounding it are all rather confusing. So I wasn't
6 surprised that you didn't come back in 30 minutes or an hour
7 with a verdict either way, because I knew it was going to be a
8 difficult case for you.

9 I would just say that on behalf of the Court and on behalf
10 of Mr. Kumięga and Mr. Martin, Ms. Sykes, Mr. Friesen, Mr.
11 Knopp, we appreciate your service in this matter. You were
12 attentive, you were a very attentive jury. I didn't see
13 anybody not paying attention to the evidence, and trying to
14 figure it out all. You deliberated long and hard and tried to
15 reach a verdict. But, you know, I told you in that one
16 instruction that while you -- if you recall, I said while you
17 should not hesitate to re-examine your own views and change
18 your opinion if convinced it's erroneous, no juror should
19 surrender an honest conviction as to the weight or effect of
20 the evidence solely because of or for the mere purpose of
21 returning a verdict.

22 So it doesn't happen often, but it does happen. You're
23 certainly not the first jury that I found could not reach a
24 verdict, and you won't be the last.

25 But again, we appreciate your dedicated service. And I

1 hope that you've had an interesting and educational experience,
2 and everyone can go home feeling that they, their opinion was
3 the right one, whatever it was, and that they didn't compromise
4 that opinion.

5 So we thank you for your service in this matter. It's
6 been a, as I say, a long arduous experience I know for some of
7 you, but I hope it's education and you've learned something and
8 maybe made some new acquaintances and found out a little bit
9 about how a trial is conducted here as opposed to the TV trials
10 of Judge Judy and others, and found out that they are
11 different.

12 But I would again tell you, as I told you earlier, that
13 our system of justice simply does not work without 12 people
14 willing to give and, 14 people including our alternates, give
15 of their time and of their talents, and accept responsibility
16 for their decisions.

17 So again, on behalf of the parties, the government, and
18 Mr. Friesen, and counsel, and the Court, we appreciate your
19 service in this matter. I hope you get to serve in another
20 case sometime, and maybe one that's a little easier and a
21 little shorter. I see everybody can't wait to do that.
22 Anybody that wants to serve next week we'll take your names
23 down.

24 This was a longer case than normal. Most cases are
25 completed within a week, but not all. I have had cases that

1 lasted six weeks. As a matter of fact, I did have one case, a
2 civil case that lasted six weeks and the day the jury was
3 deliberating the parties had settled it after they were here
4 for six weeks. So they were afraid of what the jury was going
5 to do, both of them were. So your time has not been wasted.
6 And a lot of the decisions the Court has made, if there's a
7 retrial, I don't know if there will be or not, but if there is
8 we've already been through it once and a lot of decisions the
9 Court has made and the parties have, you know, I'm sure can
10 fine-tune the case somewhat next time, if there is.

11 With that, thank you for your dedicated service in this
12 courtroom, and in this community, and hope you get to serve in
13 a more pleasant experience next time on a jury.

14 Any reason, Mr. Kumi Ega, why this jury can't be charged at
15 this time?

16 MR. KUMI EGA: No, your Honor.

17 THE COURT: Mr. Martin?

18 MR. MARTIN: No, sir.

19 THE COURT: Ladies and gentlemen of the jury, you'll
20 be discharged from further service in this matter.

21 I will tell you something now I haven't told you before,
22 and that is you may now talk about the case if you want to, but
23 you don't have to. And none of the parties here unless the
24 Court gives permission to them will be contacting you. They
25 can't contact you, either parties or the attorneys or anybody

1 involved in the case, unless they ask permission of the Court
2 and I give them permission. But as far as your spouses,
3 neighbors, people at work, whatever, you can talk about it if
4 you want to or not.

5 I would tell you if anybody should persist in trying to
6 get you to talk about the case and you don't want to talk about
7 it, you let me know because you have certain rights and
8 protections as jurors in this matter that you don't have to
9 talk to anybody about it or explain any -- to anybody your
10 thoughts on it or anything else unless you just want to. It's
11 solely up to.

12 With that, again, thank you.

13 And, Ms. Williams, if you'll lead the jury out this door,
14 please.

15 All rise while the jury exits.

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

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

19 MR. KUMI EGA: Nothing from the government, your Honor.

20 THE COURT: Anything further, Mr. Martin?

21 MR. MARTIN: No, your Honor. Did you want us to wait
22 around or not? Maybe contact you later?

23 THE COURT: Yeah, contact me later. I'll talk to them
24 and see if they care if anybody talks to them or not.

25 MR. KUMI EGA: That would be fine.

1 THE COURT: We'll do that.

2 Ms. Youngberg always reminds me, counsel needs to, since
3 we're short of space up here, withdraw all exhibits, their
4 exhibits, and they're entrusted as officers of the Court to
5 make sure that they are kept for safekeeping unless they are
6 needed again in this matter.

7 MR. KUMIEGA: Do you want us to get it today or
8 tomorrow morning?

9 THE CLERK: I'll lock them up.

10 THE COURT: Let's lock them up tonight and do it
11 tomorrow morning.

12 MR. MARTIN: Very well.

13 THE COURT: Thank you.

14 (End of Proceedings)

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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