

**Tuesday, May 13, 1997 (afternoon)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,  
Defendant.

REPORTER'S TRANSCRIPT  
(Trial to Jury - Volume 94)

Proceedings before the HONORABLE RICHARD P. MATSCH,  
Judge, United States District Court for the District of  
Colorado, commencing at 1:45 p.m., on the 13th day of May,  
1997, in Courtroom C-204, United States Courthouse, Denver,  
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription  
Produced via Computer by Paul Zuckerman, 1929 Stout Street,  
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APPEARANCES

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PROCEEDINGS

(Reconvened at 1:45 p.m.)

THE COURT: Be seated, please.

(Jury in at 1:45 p.m.)

THE COURT: Next witness, please.

MR. HARTZLER: Government calls Helmut Hofer.

Mr. Goelman will question him.

THE COURT: All right.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Helmut Hofer affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name, please.

THE WITNESS: Helmut Hofer, H-O-F-E-R.

THE COURTROOM DEPUTY: Would you spell it one more time.

THE WITNESS: Hofer, H-O-F-E-R.

THE COURT: Proceed.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

Q. Mr. Hofer, where were you born?

A. Austria.

Q. When did you move to the United States?

A. 1965.

Q. And in April of 1995, were you the owner and manager of the Imperial Motel?

A. Yes.

Q. Where is that located?

A. Kingman, Arizona.

Q. Where about in Kingman?

Helmut Hofer - Direct

A. It is on Andy Devine, the main road in the city.

Q. How far is it from the intersection of Stockton Hill Road and Andy Devine?

A. One block.

Q. What were your responsibilities as manager and owner?

A. To take care of daily operation and whatever -- whatever goes on. I was taking care of all business.

Q. Okay. Does that include checking people in?

A. Yes.

Q. What was the routine when a guest came to register at the Imperial?

A. The guest signs in the registration form, and we take care of the rest then.

Q. The guest signs part of it and then you fill out part of it; is that right?

A. Yes.

Q. Where would you keep this registration form while the guest was still registered at the Imperial?

A. We have slots like set up, like a pigeonhole set up where each room has its own set, you know.

Q. What would you do with the registration card when the guest checked out?

A. Then it gets stored in boxes such as bank boxes.

Q. How long would you keep these records for?

A. So far we have kept them for 10 years.

Helmut Hofer - Direct

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Hofer, can you take a look inside there and see if you can find Government Exhibits 260 and 261.

A. Yes.

Q. Do you recognize these as registration cards from the Imperial?

A. Yes, I do.

Q. Were these made every time a guest registered?

A. Yes.

Q. Kept in the ordinary course of business?

A. Yes.

MR. GOELMAN: I move to admit Government's Exhibit 260 and 261.

MR. NIGH: No objection, your Honor.

THE COURT: They're received.

MR. GOELMAN: Thank you, your Honor.

May I publish?

THE COURT: Yes.

BY MR. GOELMAN:

Q. From these exhibits, can you tell when this particular guest checked in?

A. Yes, I can.

Q. And what date was that?

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A. The first check-in was on 3-31-95, which is a Friday.

Q. Okay. And for that particular check-in, when was that good until?

A. That would be good till -- since it's a weekly check-in, it would be good till 4-07, which is a Thursday.

Q. What happened on 4-07?

A. 4-7, Mr. McVeigh came in the office again and asked to extend to stay for another week; but since he did not have enough money at that time, he said if he could stay five days. And so we prorated it for five more days.

And so we violated it for five more days.

Q. From Government Exhibit 261, from the form itself, can you tell how long this guest stayed in the Imperial?

A. Yes. He stayed from 3-31-95, to 4-12 of '95.

Q. So altogether those 12 days?

A. 10 days. 10.

Q. 3-31 to 4-12?

A. Right. That's correct. That's 12 days, yes.

Q. And do you remember this particular guest?

A. Yes.

Q. Did you have occasion to see him around the motel several times between March 31 and April 12, 1995?

A. Yes. Once or twice, yes.

Q. Once or twice?

A. Uh-huh.

Q. I want you to take a look around the courtroom, see if you

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see that particular guest there.

A. Yes. Sitting there in the gray shirt.

MR. GOELMAN: Your Honor, let the record reflect identification of the defendant?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Hofer, according to the registration cards, then, Mr. McVeigh checked in on March 31, and he checked out on April 12; is that right?

A. Yes.

Q. Do you know when on April 12th the defendant checked out?

A. The best to my recollection is that by 10:00 on the 12th he

was no longer in the room.

Q. Why do you remember that?

A. When the maid start making the room, the first thing we do is we take all the towels out from stay-overs or whatever is written down. And when the maid went in there to collect the towels, the key was laying on the table and McVeigh was not there no more.

Q. Mr. Hofer, can guests make long distance calls from the Imperial?

A. Yes. If they make prior arrangement, yes.

Q. What if they don't make a prior arrangement?

A. Then they have to use a 800 number to do that.

Q. Do the Imperial phone lines have the capability of carrying

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800 calling-card calls?

A. Yes. Yes, they do.

Q. Mr. Hofer, I'm going to show you what's already been admitted into evidence as Government Exhibit 555.

MR. GOELMAN: May I publish, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Would you please turn to the entry under 4-5-95. It's one of the last pages. Or you can just look down on the screen, Mr. Hofer.

A. Yes.

Q. You see the one that says 4-5-95?

A. Yes.

Q. And are you familiar with what the Imperial phone number or phone numbers were in April 1995?

A. Yes.

Q. That entry for April 5, 1995, where it says, "Called to Ryder Truck Rental, One Way, Incorporated," it indicates a number for the Imperial Motel. Can you please read that number.

A. (602)753-5502.

Q. And was that in fact one of the Imperial's phone numbers on that date?

A. Yes.

Q. Turning to the entry for April 11, 1995, the call to

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subscribers are Terry Nichols in Herington, Kansas; is that right?

A. Yes.

Q. Does this indicate that there were two phone calls that day?

A. Yes, it does.

Q. And can you tell me where these phone calls were made from, according to this chart?

A. From the same line, 753-5502, both.

Q. And that again was a phone line that the Imperial had on April 11, 1995?

A. Yes.

MR. GOELMAN: I have nothing further, your Honor.

THE COURT: Mr. Nigh.

MR. NIGH: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. NIGH:

Q. Good afternoon, Mr. Hofer.

A. Good afternoon.

Q. Was it your policy there at the Imperial Motel, if a guest registered for one person, to make sure that only one person stayed in the room?

A. Yes, it was the policy. But there are exception, and that is that sometimes people can bring other people in without us knowing it.

Helmut Hofer - Cross

Q. Did you try to prevent that from happening?

A. Yeah, if we can, if we can, if we see it, if we can help it, yes.

Q. During the time that Mr. McVeigh stayed in your motel, were you aware of that happening at all?

A. I'm not aware, no.

Q. You remembered Mr. McVeigh, did you not?

A. Yes.

Q. And he was a good tenant for you, was he not?

A. Yes.

Q. Kept his room nice and clean?

A. Yes.

Q. Paid his rent in advance?

A. Yes.

Q. Did you have any problems with him at all when he was there?

A. No.

Q. And did he pay up until the day that he stayed -- until he left the motel?

A. Yes.

Q. And the reason that he didn't register for a full week the second time that he paid was because he was short of funds; is that right?

A. That is correct; that's what he said.

Q. Have you watched any of the media reports about this case?

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A. Yes.

Q. Have you seen any pictures of a man named Michael Fortier?

A. Yes.

Q. Did you ever see Mr. Fortier at your motel?

A. No.

Q. Did you ever see him come to visit Mr. McVeigh?

A. No.

Q. Now, there came a time, Mr. Hofer, that the FBI showed a great deal of interest in the room that Mr. McVeigh had stayed in; is that right?

A. Yes. I would say they were interested more than others at that point.

Q. Interested more in Mr. McVeigh's room than other rooms?

A. No. They were more interested in other people for that room at that time.

Q. I see.

A. Like photographer, newspapers, stuff like that.

Q. I see. Did they rent that room from you?

A. Yes, they actually paid two days of rent while they were investigating the room, yes.

Q. And did they conduct numerous tests while they were renting that room from you where Mr. McVeigh stayed?

A. They were doing what?

Q. Do you know if they conducted tests, looked for evidence?

A. Tests, yes, yes, yes, they were. A couple of fellows

there

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that were testing the fiber from the carpet and the blanket and the walls and the mirror and -- yes.

Q. Looking for trace evidence, was that your understanding?

A. Yeah. Yeah.

Q. Dusting for fingerprints?

A. I would assume so, because it was a messy room afterwards.

Q. You mean that the FBI left your motel room messy?

A. Well, let's say that we had to do a little more cleanup than when Mr. McVeigh left.

MR. NIGH: I think I'll stop on that point, your Honor.

THE COURT: Any follow-up questions?

MR. GOELMAN: No, your Honor.

THE COURT: Witness excused, then?

MR. HARTZLER: Yes.

THE COURT: Is that agreed, Mr. Nigh?

MR. NIGH: Yes, your Honor.

THE COURT: You may step down, Mr. Hofer. You're excused.

Next witness, please.

MR. HARTZLER: William Bodziak. Mr. Mendeloff will question him.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(William Bodziak affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: William J. Bodziak, B-O-D-Z-I-A-K.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Where do you live, Mr. Bodziak?

A. I live just outside of Annapolis, Maryland.

Q. What is your education?

A. I have a master's degree in forensic science and an undergraduate degree in biology.

Q. Are you employed?

A. Yes, I am.

Q. Where do you work?

A. I work at the FBI.

Q. How long have you worked there?

A. Since 1970.

Q. And what are your responsibilities at the FBI?

A. I'm an examiner of questioned documents, footwear, and tire-tread impressions, assigned to the FBI laboratory.

Q. Can you tell us what each of those things means.

A. "Questioned documents" means the examination of handwriting. typewriting. mechanical printing processes and

manufacturing, engineering, mechanical printing processes and all aspects of paper examination.

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"Shoe print examination" refers to the examination and identification of footwear and footwear impressions left at crime scenes.

And "tire-tread analysis" refers to the analysis of the tire tread and the track width of the tires left at crime scenes.

Q. Now, have you performed an examination of track width in connection with this case?

A. Yes, I have.

Q. And can you tell us what is your training to perform tread and track-width analyses?

A. When I was assigned to the laboratory in 1973, I completed a three-year course of training from '73 to '76 in all of those

areas: Documents, footwear, and tire-track analysis. In addition with regard to tires, I've been on about a dozen occasions fortunate to go to manufacturing facilities and trained with representatives of those facilities, such as Firestone, Goodrich, Cooper, Kelly Springfield, and so forth, to learn about the aspects of tire construction and things about tires that pertain to my examination.

Q. Have you been doing these kinds of examinations since the mid 70's?

A. Since 1973.

Q. Are you associated with any professional associations, organizations, which are dedicated to this kind of work?

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A. Yes. American Academy of Forensic Science and the International Association for Identification.

Q. How many different examinations -- or investigations, excuse me, have you worked in relating to tire-tread analysis?

A. Since 1973, I've worked several hundred cases involving tire-track analysis involving thousands of independent examinations.

Q. Have you written any papers or books on the subject?

A. Yes, I wrote an article that referred to tire-track analysis in the FBI Law Enforcement Bulletin and also one in the Journal of Forensic Identification. With regard to the general recovery methods of impression evidence, I wrote a book entitled Footwear Impression Evidence in 1990.

Q. Now, does that go beyond footwear recovery?

A. No, just specifically to footwear. But the recovery methods for some of the evidence are the same.

Q. When you say "recovery methods," just so I understand, what



do you mean?

A. Photographing the impressions, casting the impressions, enhancing the impressions and those aspects of recovery.

Q. Do you teach any courses related to tire-tread and track-width analysis and recovery?

A. Yes. I teach a course which is a combined course of footwear and tire-track analysis at the FBI Academy at Quantico, Virginia. I've taught that approximately eight or

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ten times since 1983. I also teach that same course but on the road at various law enforcement facilities, both domestically and on some occasions internationally.

Q. Does your work in the tire-tread and tire-track-width areas

require you to be familiar with various types of tires?

A. Yes, it does.

Q. And does it require you to be familiar with various wheel alignments on different kinds of vehicles?

A. Yes.

Q. What do you we mean by "wheel alignments"?

A. Are you referring to the alignment or the track width?

Q. Track width.

A. The track width is the distance between the left tire -- the center of the left tire on the left side of the vehicle and

center of the right tire on the right side of the vehicle.

Q. When you talk about width, you're talking about how far the two tires are apart on either side?

A. When a vehicle makes an impression with both tires, it will

leave a track on both sides; and the measurement across the width of that track is what's referred as track width.

Q. Now, approximately how many times have you testified regarding track, tire-tread and track-width analysis?

A. I don't know exactly. Approximately 30 times.

Q. Now, when did you begin your tire-track-width analysis in this case?

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A. Late in the day on April 22, 1995.

Q. Where were you when you began your analysis?

A. In Herington, Kansas. In the Mini Storage Shed portion of the Herington Industrial Park.

Q. And let me ask you to look at Government Exhibit 358 that should be in the sheaf of papers in front of you.

Tell us what that is.

A. Exhibit 358 is a photograph I took of the general scene, the general area of the mini storage sheds at Herington, Kansas.

Q. And when did you take that photograph?

A. I took that on April 22, 1995.

Q. Does it fairly and accurately reflect the way that area looked back on that day?

A. Yes, it does.

MR. MENDELOFF: Move the admission of Government Exhibit 358.

THE COURT: I think we already have it in.

MR. MENDELOFF: Is it in? Thank you. May we publish it, then, Judge?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Would you just go through this photograph and tell us what we're looking at, please.

A. Okay. Well, as you look at it, there are two series of

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storage sheds in two buildings, smaller ones on the left and ones with a garage-size door on the right. Drawing the attention to the building on the left, my focus of attention at

that scene was in Shed No. 2, which is the second from the left

on the left building.

Q. All right. Would you take the pen in front of you and circle Shed No. 2 for us.

When you arrived at Herington mini storage sheds that -- late that day, did you see any tire tracks in the area?

A. Yes, I did.

Q. And where were they?

A. Those were immediately centered on Shed No. 2, directly in front of it and perpendicular to it.

Q. And those are the ones you focused on?

A. Yes.

Q. Were there other tire tracks as well?

A. Yes.

Q. You focused on the ones in front of Shed No. 2?

A. Yes.

Q. Can you show us with your light pen where those tracks were found.

Now, what -- please describe the tracks that you saw.

A. The tracks were double tire tracks, meaning that the left side of the vehicle had two tires mounted side by side. On the right side, they had two tires mounted side by side, so there

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would be a total of four tracks in the rear of the vehicle.

They were very deep. They had -- they were perpendicular to Shed No. 2. They terminated before reaching the wall of Shed

SHED NO. 2. THEY TERMINATED BEFORE REACHING THE WALL OF SHED No. 2, and they were directly centered on Shed No. 2.

Q. Now, based on your experience in the area and your familiarity with wheel alignments, are these types of tires

common to any kind of vehicle?

A. Yes, they are. They're common to trucks which are equipped to carry heavier loads.

MR. MENDELOFF: Your Honor, I'd like to show the witness Government Exhibit 88 on the ELMO, please.

THE COURT: All right.

THE COURTROOM DEPUTY: What's the --

MR. MENDELOFF: Government Exhibit 88.

THE COURTROOM DEPUTY: 88.

BY MR. MENDELOFF:

Q. Mr. Bodziak, focusing on what's been marked as -- previously admitted as Government Exhibit 88. Can you tell us what Government Exhibit 88 is.

A. Exhibit 88 is a lease dated September 22, 1994. The lessee's name is Shawn Rivers, and it is for a shed storage Space No. 2 at the Mini Storage Shed Partnership, Herington Industrial Park, Herington, Kansas.

Q. That's the same shed that you were just talking about where

you found the two double tires emanating -- centered on the

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double door?

A. Yes, it is.

Q. Now, as part of your work in this case, have you received any information regarding the type of truck that was rented at Elliott's Body Shop on Monday, April 17, 1995?

A. Yes, I have.

Q. And what --

A. It was a 1993 Ford F700 Ryder rental truck.

Q. Have you examined the rear-wheel assembly on that kind of a

truck?

A. Yes, I have.

Q. What sort of tracks would be made by a truck like that backing up to Shed No. 2?

A. Double tracks would be made, two tires on each side.

Q. And how does that compare to the tracks that you found?

A. That's the same as the tracks that I found in front of Shed

No. 2.

Q. Now, let me ask you to look at Government Exhibits 359 to 362 and tell us what those are.

A. Okay. Exhibit 359 is a direct front photograph which I took of Herington shed -- Storage Shed No. 2.

Q. Mr. Bodziak, before we go through those in detail, are all those photographs you took of the tracks and the relation of them to the shed?

A. Yes, they are.

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Q. And do they fairly and accurately depict what you saw that day when you arrived at the shed to do your examination?

A. Yes, they do.

MR. MENDELOFF: We move the admission of Government's Exhibits 359 to 362.

MR. TRITICO: No objection.

THE COURT: They're received.

MR. MENDELOFF: May we publish Exhibit 359, please, Judge?

THE COURTROOM DEPUTY: On the computer?

MR. MENDELOFF: On the computer, please.

BY MR. MENDELOFF:

Q. Mr. Bodziak, we're looking here at Government Exhibit 359. Would you tell us what we're looking at.

A. Yes. This is a photograph taken directly facing Shed No. 2

showing the double tracks I observed in front of Shed No. 2, which are centered on it and which terminate in front of it.

Q. Now, we're seeing several orange cones with numbers on them. Can you tell us what those are and what the purpose is?

A. The cones numbered "1", which is on the left, and No. 3, in

the foreground on the right, are reference marks for the tire tracks, the double tire tracks.

Q. Law enforcement personnel placed them there?

A. Yes, they did.

Q. When you say reference marks, tell us what you mean.

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A. They're reference marks so that the tracks on the left can now be associated with Cone No. 1 and the tracks on the right with Cone No. 3 so that when other more closeup photographs of those specific tracks are taken, one can recognize them as the same tracks in this general photograph.

Q. So we can -- if we take a closeup of the track on the right

with the Cone No. 3 in it, we'll know from looking at this photo which one it is; is that it?

A. That's correct.

Q. And I see a white plaster mass on the ground. Would you tell us what that is?

A. That's a white dental-stone cast which I made of a portion of the tread area on one of the tracks in an attempt to recover

the tread design in that area.

Q. Is that a different kind of analysis?

A. Yes, it is.

Q. And what is a tread analysis?

A. A tread analysis is a comparison of the design or pattern

on the face of the tire, known commonly as the tread design. And it can be used to identify the type or brand of tire, and it can also be used to make a comparison with a particular tire on a vehicle.

Q. Were you able to recover any kind of tread markings from the tracks that we're looking at?

A. No, I was not.

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Q. Why not?

A. There were no tread design or patterns evident in those sets of double tracks, both by Cone 1 and 3 in the area where I made the cast. There was some possibility that there might have been some remaining part of a tread design, and that's why

I made a cast in that area. However, upon cleaning the cast and observing it, there was no design in that area.

Q. And you took these photographs on April 22; is that right?

A. Yes, I did.

Q. Now, what was the reason that there were no tread design -

- there was no tread design evident in these tracks?

A. The tracks had been washed out by rain.

Q. Was it raining when you got there, or had it rained previously?

A. It had rained previously, and there was quite a lot of standing water in the area.

Q. Let me show you Government Exhibit 350 -- excuse me, 361. I'm sorry. What am I showing you? 360. Tell us what that is.

A. This is a photograph I took of the same set of tire tracks but at a slight angle, just to provide a different perspective.

Q. And focusing you on 361, tell us what that is.

A. This is a closeup photograph of the dual or double tire tracks next to Cone No. 3 on the right side of the photograph as you face Shed No. 2.

Q. And we can combine the number "3" on the cone here with the

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number "3" on Government Exhibit 358 -- 359 to be able to tell us which track it is coming from --

A. That's correct.

Q. So it would match on the right-hand side?

A. That's right.

Q. Finally let me ask you to look at Government Exhibit 362. What is that?

A. This is a closeup photograph of the double tire tracks next to Cone No. 1 which is also depicted on the left side of

to cone no. 1, which is also depicted on the left side of Exhibit 359. And again, this is to give a closer view of that double tire track.

Q. Now, we see a tape measure on the foreground of the picture. Give us one of the reasons that is there.

A. I left the tape measure in this particular photograph because it gives a different perspective in looking at the depth of the tracks. It's draped over the center ridge that was squeezed up between the two tires.

Q. Have you prepared a general exhibit that will aid you in presenting your findings from these photographs?

A. Yes, I have.

Q. Let me ask you to look at the chart, Government Exhibit 363, which is next to the marshal back there; and it should be the first one, first large chart. First large chart.

MR. MENDELOFF: If you'll show it to the witness without showing it to the jury, please.

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MR. TRITICO: Your Honor, may I?

THE COURT: Yes, you may, Mr. Tritico.

BY MR. MENDELOFF:

Q. What is this, Mr. Bodziak?

A. 363 is a series of three enlarged photographs which I have previously described as Exhibits 360, 361, and 362.

Q. And will those enlarged photographs aid you in presenting your findings regarding the depth of these tracks?

A. Yes, they would.

MR. MENDELOFF: We move the admission of Exhibit 363, your Honor.

MR. TRITICO: No objection.

THE COURT: Received.

MR. MENDELOFF: May we put it on the easel and let Mr. Bodziak explain it?

If I could ask the marshal to center that a little bit more so it doesn't fall off. And could you move it over a little bit so everybody in the jury can see it.

I think we need it a little closer to the witness, please.

BY MR. MENDELOFF:

Q. Mr. Bodziak, if you could go through those photographs one by one and explain to us what you found regarding the depth of the tracks, what the photos show.

A. On Exhibit 363 at the top right is the angular view of the

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double tire tracks in front of Shed No. 2 at the Herington Industrial Storage Shed area. Depicting on the left of Cone No. 1 in the foreground to the right of Cone No. 3, this shows the tracks were deep. The bottoms of the tracks were wet.

They were darker in color. The area between these tire tracks was squeezed up quite a bit, and even some of the higher parts of the ridges are starting to dry out and appear lighter in this photograph.

Q. What is the significance of those two facts, that the area at the bottom is darker and that the top is drying out?

A. The area at the bottom being darker, because it was filled with standing water from rain, and the tire-tread design had been washed out in that area.

Q. All right.

A. The darker soil remaining -- the wetter soil remaining darker.

Q. And the pushed-up area between the tires being drying, can you tell us what the significance of that is?

A. Simply because it was raised I guess at the highest point, and this ridge may be thinner, and it was the first to begin to dry out and now appears to be lighter.

Q. All right. Go the next picture.

A. On the bottom right side is a photograph of the tire tracks

in the vicinity of Cone No. 1 with the tape measure draped over

the three ridges, which were formed by the double tracks. The

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highest ridge in the center of those tracks, which would be directly center of two tires and the tracks -- or the ridges to

the outside where the soil was squeezed to the outside of those tires.

Q. And finally, the last photo?

A. On the bottom left next to Cone No. 3, this depicts the track on the left as you face Shed No. 2, again showing the depth in the tracks. This one has a right-angled ruler set down inside one of the tracks and showing the closeup detail of

the raised ridge in the area squeezed to the side of that track

as well as in front of Shed No. 2.

Q. Based on your experience in tire-track analysis, what does the depth of these tracks indicate?

A. The depth indicates that the weight of the truck that made them was significantly heavy enough in conjunction with the soil condition to leave this deep of a track.

Q. Were those tracks significantly deeper than others that you found in the area?

A. They were much more -- much deeper than any other track in the entire area at the Herington Industrial Storage Shed.

Q. You said you performed a track-width analysis?

A. Yes.

Q. Do all vehicles' tire tracks, the area between the two

tires, have the same width?

A. No.

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Q. And do all vehicles with double wheels on the back have the same width between the two tires?

A. No, they don't.

Q. In fact, do all vehicles that are rental -- storage rental trucks have the same distance between the back double tires?

A. No, they do not.

Q. Now, will you tell us what a tire-track width-measurement analysis is.

A. A tire-track-measurement analysis is the measurement of the distance between the center point of the two tires on the left and the center point of the two tires on the right. And its purpose is to determine if a vehicle could be excluded as having made that track or could be considered as one that possibly made that track.

Q. All right. Now, when you tell us -- let's break that into two parts. You say one of the parts of this analysis is determined whether a vehicle could be excluded in making those tracks. What do you mean?

A. Yes. If the measurement -- if the track-width measurement was significantly different, then it would be impossible for a particular vehicle having that measurement to have left that track.

Q. All right. So if they are significantly wider or narrower, they couldn't have left those tracks?

A. That's right.

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Q. What about -- does it tell you any more than that about the vehicle that made the tracks?

A. No, it does not.

Q. How do you perform a track-width analysis? Where do you actually measure?

A. You measure from the center of the tires, the center of the double tires; in this case, the ridge between the two tires. You would find the dead center of that point and measure directly across the vehicle at a 90-degree angle to the center ridge or center point between the right two tires.

Q. All right. And if you perform -- did you put together a chart to help you illustrate how you performed this analysis?

A. Yes, I have.

Q. I'm going to ask you to look at Government Exhibit 364.

A. Yes.

Q. What is that?



A. This is a chart I prepared entitled "Track-Width-Analysis Measurements." It depicts the three measurements that I made of the tire tracks in this case.

Q. And that includes the center-to-center measurement you just talked about and two others?

A. Yes, it also includes the inside-to-inside and outside-to-outside track width.

Q. Will this chart assist you in demonstrating how you performed --

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A. Yes, it will.

Q. -- the measurement you performed?

MR. MENDELOFF: Move the admission of Government Exhibit 364.

MR. TRITICO: No objection.

THE COURT: Received.

MR. MENDELOFF: May we publish it, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Let me ask you to look at your screen in front of you and tell us which measurements you made using the chart and your light pen.

A. Okay. The first measurement I made was the center-to-center measurement, which is marked by the numeral No. 2. This was made from the center point of the ridge between the tires to the opposite center point of the ridge.

Q. All right. Now, when you're talking about the ridge, you're talking about the actual area on the chart where we saw -- where we found the soil ridge; is that right?

A. Where the soil has been squeezed up between the tires.

Q. Okay. Then did you perform any other measurements when you did this analysis?

A. Yes. Other measurements can be made, and I made two. One is the outside-to-outside. This would be marked by No. 3 on this chart. Outside-to-outside would be the outer edge of the

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left tire to the outer edge of the right tire.

Q. And finally did you make a third measurement?

A. The third one was from the inner edge of the inner tire -- oops. Sorry.

Q. Don't press that button.

A. Okay. Inner edge of the inner tire to the inner edge of the other tire.

Q. What is the purpose of outer-to-outer and the inner-to-inner?

A. The inner-to-inner and the outer-to-outer measurements are occasionally taken as a way of corroborating the center-to-center measurements, particularly in cases where the vehicle may be turning and it may be hard to determine whether

vehicle may be turning and it may be hard to determine whether you're making that measurement directly across. Also in cases where you have on one side there may not be a center-to-center measurement that is either clear or present.

Q. What is the reason that the center-to-center measurement is the preferred measurement?

A. The center-to-center is the easiest to measure. It varies the least, and it is what the industry recognizes as the track of the vehicle.

Q. Tell us what you mean as the industry recognizes it as the track of the vehicle.

A. When the industry publishes a track measurement or a track-width measurement, it is from the center-to-center point

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that they are publishing.

Q. And why is it that the inner-to-inner and the outer-to-outer measurements are less useful?

A. They're less useful because the reference points are made by the tires themselves, and the impression is subject to erosion, it's subject to contamination, such as rocks that may be in the impression; and then particularly when erosion begins, start making it hard to define the edge because the tracks may be sufficiently deep. As the tire goes up, it looks wider, so if the track is deeper, the track becomes wider.

And also the backing in and backing out sometimes will widen the portion of the tire if it hasn't backed in and out perfectly straight.

Q. That does not, however, affect the center-to-center?

A. No, it doesn't.

Q. Let me ask you again to look at Government Exhibit 359. That should be on the screen in front of you. We need to switch back to the computer.

Ask you to show us how you made these precise measurements in relation to this case.

A. Okay. First measured the center-to-center, which would be from the center of the ridge on one side to the center of the ridge on the other side. I then made the outer-to-outer measurement and then the inner-to-inner.

Q. When you made these measurements, did you record them in

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your notes?

A. Yes.

Q. At the time you made these measurements, did you have any idea how wide the back tires of a Ryder truck of the type that was rented at Elliott's Body Shop was?

A. No, I didn't.

Q. Once you obtained these measurements, did you do anything to try to determine how wide the tires on the back of the one

rented at Elliott's Body Shop were?

A. Yes.

Q. What did you do?

A. I obtained -- I located a truck which had a very close vehicle identification number to the truck which was rented at Elliott's Body Shop on April 17, 1995, in the name of Kling. And by having a very close vehicle identification number and determining that it was produced in the same batch, it would have the same specifications, including the track width.

Q. All right. Where did you find a truck of that type?

A. I found this truck at a rental facility in Alexandria, Virginia.

Q. And have you prepared a chart to demonstrate the similarities of the vehicle identification numbers?

A. Yes, I have.

Q. And let me ask you to look in your papers for Government Exhibit 365.

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A. Okay.

Q. What is that?

A. This is a chart I prepared entitled "Vehicle Identification Number," and it shows the two vehicle identification numbers, one on the truck rented on April 17, '95, at Elliott's rental by Robert Kling, and the other the truck I examined at Alexandria, Virginia.

Q. The one you found that had a very close vehicle identification number and the one that was rented at Elliott's Body Shop?

A. Yes.

Q. Will this assist you in describing how you did that comparison?

A. Yes, it will.

MR. MENDELOFF: Move the admission of Government Exhibit 365.

MR. TRITICO: No objection.

THE COURT: Received.

MR. MENDELOFF: May we publish it, Judge?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Mr. Bodziak, using your light pen again, would you first go through this and tell us which number is which and then explain to us how they compare?

A. Okay. The vehicle identification number at the top is from

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the truck which was rented on April 17, 1995, at Elliott's Body

Shop by Robert Kling. The one on the bottom is the vehicle identification number on the 20-foot Ryder truck which I examined at Alexandria, Virginia.

Q. Does this chart include the markings that indicate the significance of the various aspects of that vehicle identification?

A. Yes, it does.

Q. Can you go through those and tell us what they are and how they compare?

A. Yes. First is the manufacturer number which represents the first three digits of the number, and that tells the make of the truck. The second is the brake system which is a single digit and represents information about the particular brake system of the truck. The next three digits are the chassis or cab type. The next digit is the engine type. The next digit is known as a check digit, and I will refer to that later. The next digit is the vehicle model year. The next digit is the plant that it was -- the vehicle was manufactured in or assembled in. And the last sequence of numbers is known as the production sequence number, and that number, which in the case on the top of Elliott's rental, is A26077. And that would mean that that would be a sequence number. The vehicle after that would be A26078 and so forth. And on the bottom, the truck I examined in Alexandria, its sequence number is 123 vehicles

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prior to the one that was rented at Elliott's, and that is A25954.

Q. So the Alexandria truck was 123 trucks ahead of the Elliott's truck on the assembly line?

A. That's correct.

Q. And did you determine whether or not those trucks were made

as a result of the same purchase order?

A. They were made as part of a batch of 400 trucks.

Q. That were ordered all by Ryder rental from Ford?

A. With the same specifications, yes.

Q. Just so we're clear, vehicle model year, it says P. Does that equate to a code on another area that indicates what P represents --

A. Yes.

Q. -- such as 1993?

A. Yes. The letters in these numbers have numerical equivalents assigned to them by the manufacturer.

Q. We have check digit. You were going to explain what that is.

A. Yes, the check digit number in the center is a number which is not created until all of the other numbers in the vehicle identification number are computed. Once they're computed, the

the  
letters are assigned a certain value and the numbers a certain  
value, and an equation is computed; and the resulting number  
is  
the check digit number or it's derived from that resulting

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number.

It's a way -- it's a security device to determine  
that  
the rest of the VIN number is in fact a valid number.

Q. So as the trucks are -- go through the assembly line and

they get a different number, that check digit number is going  
to change in relation to the final number on the sequence  
production code?

A. Yes. For instance in the case of the vehicle  
identification number on top for Elliott's rental, that  
particular number is A26077, the sequence number. That check  
number is number "4" for that particular vehicle  
identification

number. The next vehicle made, which would be a 26078, would  
have a totally different check digit number.

Q. Check digit has nothing to do with the specifications or  
the content of the truck involved, then?

A. No.

Q. And what do these vehicle identification numbers on this  
chart indicate to you about the two trucks involved?

A. They indicate to me that the vehicle had the same

specifications; in other words, the various components of the  
truck would have been the same.

Q. So after you found this comparison truck in Alexandria,  
Virginia -- why don't you erase your screen there. You just  
need to press that button. There you go.

After you found that comparison truck in Alexandria,

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Virginia, what did you do to obtain measurements from it?

A. I made measurements of the track width of that vehicle.

Q. Have you prepared a chart that demonstrates that?

A. Yes, I have.

Q. Let me ask you to look at Government Exhibit 367.

What is that?

A. Exhibit 367 is a diagram I prepared that shows the  
track-width measurements I made of the Ryder truck at  
Alexandria, Virginia.

Q. And will that chart assist you in explaining what you did?

A. Yes, it will.

MR. MENDELOFF: Move the admission of Government  
Exhibit 367.

MR. TRITICO: No objection.

THE COURT: Received. It may be published.

BY MR. MENDELOFF:

Q. Can you tell us what you did.

A. I first made a measurement of the center-to-center width, which is indicated by No. 2. And that was 73 1/2 inches from the center -- dead center of the area between the tires to the dead center of the area between the tires on the opposing side.

Q. All right.

A. I then measured from the most outer edge of the outside tire, indicated by No. 3, across to the outer edge of the opposite tire; and that measurement was 92 3/8 inches. I then

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measured the edge of the -- the distance between the edge of the inner tire on the left side to the edge of the inner tire on the right side, and that measurement was 54 3/8 inches.

Q. And you did this after you took your measurements in Herington; is that right?

A. Yes, I did.

Q. Is this the first time you ever learned the width of a back end of a truck like this?

A. This is the first time I had any knowledge of what an actual 20-foot Ryder truck of these specifications would measure, yes.

Q. Have you prepared a joint chart which will display the analysis in full -- in other words, your comparison of these measurements -- with the measurements in Herington?

A. Yes, I do.

Q. Let me ask you to look at Government Exhibit 366 and Government Exhibit 368. 366 is the next big chart.

MR. MENDELOFF: If the marshal could help us, please.

BY MR. MENDELOFF:

Q. While he's getting that, let me ask you to focus your attention on 368. What is 368?

A. 368 is a numerical summary of the track-width dimensions, the center-to-center, the outer-to-outer and inner-to-inner, when I made of the double tracks in front of Herington Shed No.

2; and also on this chart and are the same corresponding

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measurements I made of the Ryder truck in Alexandria, Virginia.

Q. And what is 366?

MR. MENDELOFF: If you'll just show the witness, please.

THE WITNESS: 366 is a chart which depicts the measurements as well but also is accompanied by photographs of the double tracks at Herington, Kansas, in front of Shed No. 2 and of the rear end of the Ryder truck that I measured at

Alexandria.

BY MR. MENDELOFF:

Q. Now, that photo of the Ryder truck in Alexandria, does it fairly and accurately depict the way that truck looked when you measured it?

A. Yes, it does.

Q. And will that chart as a whole assist you in presenting the results?

A. Yes it will.

THE COURT: Move the admission of Government Exhibit 366 and 368.

MR. TRITICO: I have no objection to 368. May I take a moment to --

THE COURT: You may.

MR. TRITICO: No objection.

THE COURT: All right. Both 366 and 368 admitted and may be published.

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MR. MENDELOFF: Thank you.

BY MR. MENDELOFF:

Q. Let me ask you to turn your attention to Government Exhibit 368. I'm sorry, 366. Ask you to tell us what that chart shows.

A. This chart depicts the measurements I made on the left of the double tracks in front of Shed No. 2 at Herington, Kansas. Those measurements were 73 1/2 inches for the center-to-center measurement. On the right side I made measurements of the center-to-center measurement between the double tire tracks of the Ryder truck in Alexandria, and they were also 73 1/2 inches.

Q. All right.

A. On the left, the outer-to-outer measurement is also depicted, which I made at the Shed No. 2 in Herington. That was 92 inches.

Making a measurement of that outer-to-outer measurement between the outer edges of the left and right tires of the rear of the Ryder truck in Alexandria, I measured that as 92 3/8 of an inch.

And then looking at the inside-to-inside measurement at the Shed No. 2 in Herington, the inner-to-inner measurement, which was 55 inches; and on the Ryder truck at Alexandria, I measured that as 54 3/8 inches.

Q. Which of these measurements was the one that you said is

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the significant one, most significant one in performing your analysis?

A. The center-to-center, the 73 1/2 inches.

Q. And that is for the reason you described before?

A. Yes, it's the easiest to measure and the most reliable.

Q. Now, the outer-to-outer measurements is 3/8 of an inch off and the inner-to-inner is 5/8 of an inch off. Are those differences significant?

A. No, they are not significant.

Q. Tell us why.

A. They're not significant because of the erosion that occurred on those tracks, the interference of the rocks in the track, the fact the vehicle when it backed in and out may have been slightly mistracking, and the fact that those reference points on the edges of the inner and outer tracks simply were not as reliable as on the center-to-center measurements.

Q. Based on these measurements, have you developed an opinion about the kind of vehicle that made these tracks?

A. Yes.

Q. Can you tell us what that is?

MR. TRITICO: I'm going to object that this is speculation based on the evidence --

THE COURT: Overruled. He may express his opinion.

BY MR. MENDELOFF:

Q. Go ahead.

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A. The tire tracks were made by a double tire, double-track vehicle having a center-to-center measurement of 73 1/2 inches.

Q. What else do those -- does your analysis tell us about the depth of the tracks?

A. It also, based on my comparison of the tracks in front of Shed No. 2, tells me that the vehicle that made those tracks had significant weight considering the existing soil conditions

to make a very deep track.

Q. Finally, what does your conclusion tell you about how that compares to the Ryder truck that you found?

MR. TRITICO: Excuse me. I'm going to make the same objection, your Honor.

THE COURT: All right. Overruled.

THE WITNESS: That it could have been made by a 20-foot Ryder truck such as the one that I examined at Alexandria, Virginia.

BY MR. MENDELOFF:

Q. Now, can you say that those tracks were definitely made by a Ryder truck of that sort?

A. No, I cannot.

Q. Why not?

A. Because those are characteristics that are shared by other trucks as well.

Q. What can you say?

A. I can say that whatever truck made that had those



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track-width dimensions.

Q. In addition to the track-width measurements, did you perform any other sort of analysis to double-check whether or not a truck of the type that was rented at Elliott's Body Shop could have made those tracks?

A. Yes, I did.

MR. TRITICO: Excuse me. Same objection, your Honor.

THE COURT: Well, I don't understand the question now.

MR. MENDELOFF: Okay. Well, he's done another analysis of a different type to determine whether or not the rental -- the truck of the type rented at Elliott's Body Shop and the type he examined at Alexandria, Virginia, could have made those tracks.

THE COURT: Well, "could have" is no longer significant. Objection is sustained.

BY MR. MENDELOFF:

Q. Have you perform an analysis that corroborates this analysis to some degree?

MR. TRITICO: Same objection.

THE COURT: He's given the only opinion that he can give with respect to this, these tire tracks.

MR. MENDELOFF: Yes, your Honor. This goes beyond the tire tracks to a different measurement that was performed on the same truck.

THE COURT: Well, you asked him whether he did

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something to corroborate this opinion that he already testified. I sustained an objection to that.

MR. MENDELOFF: Can I rephrase the question and make it a little more artful, hopefully?

THE COURT: Whatever. You might phrase it in a way that might make it relevant.

MR. MENDELOFF: All right, Judge.

BY MR. MENDELOFF:

Q. Did you perform an analysis of another measurement you made on the Ryder truck in Alexandria and compare it to the findings or the tracks you found at the Herington Storage Sheds?

A. Yes, I did.

Q. What was that analysis?

A. The tracks terminated in front of the wall of Shed No. 2, and there was a certain amount of distance between them. I measured that distance, and when I examined the truck, I also was looking for the distance behind the rear wheels of the truck to see if it could fit into the space between the ends

of  
the tracks and the wall of Shed No. 2.  
Q. To see if what could fit into that space?  
A. See if the portion of truck behind the rear tires.  
Q. So in effect, a clearance analysis?  
A. A clearance, if that truck backed up.  
Q. And what were the different steps that you took in this analysis?

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A. At the Shed No. 2 in Herington, I measured the distance between the ends of the tracks on the left side as 10' 2" and the ends of the tracks on the right side as 9' 7" between the ends of those tracks and the shed of wall -- the wall of Shed No. 2.

Q. And did you prepare a drawing to demonstrate that measurement?

A. Yes, I did.

Q. Let me ask you to look at Government Exhibit 355.

What is that?

A. Exhibit 355 is a diagram I prepared which shows the measurements that I made between the ends of the double tracks in front of Shed No. 2 and the distance between them and the wall of Shed No. 2.

Q. Would it assist you in presenting your results?

A. Yes.

MR. MENDELOFF: May we move in Government Exhibit 355.

MR. TRITICO: No objection.

THE COURT: Yes. Received.

MR. MENDELOFF: May we publish it, Judge?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Tell us what we're looking at, sir.

A. This is a diagram which depicts the Mini Storage Shed, particularly Shed No. 2 and the measurements that I made

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between the points where the track ends on the left side and right side and the wall of Shed No. 2, that measurement being on the left side, 10' 2" and on the right side, 9' 11".

Q. Why are those numbers different?

A. Those numbers are -- could be different -- or are different

for a couple of reasons. One, the contouring of the substrate, the ground, if it rises, will create a shorter track; and the vehicle may not have been put in or backed in exactly perpendicular to the shed.

Q. So if it wasn't exactly perpendicular, one track would be closer than the other?

A. That's correct.

Q. Now, after you obtained this measurement, did you obtain any other measurements?

A. Yes, I did. I made measurements between the rear wheel, the bottom of the rear wheel of the Ryder truck I measured at Alexandria, to the rearmost portion of that truck, which was the rear of the overhang on the back of that truck.

Q. Have you prepared a chart to demonstrate this measurement?

A. Yes, I have.

Q. Let me ask you to look at Government Exhibit 356.

A. Yes.

Q. What is that?

A. This is a diagram I had prepared which shows the measurement I made from the bottom part of the center of the

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rear wheel of the Ryder truck at Alexandria to the rearmost portion of the rear overhang; in other words, the clearance of that truck -- that that truck would require behind the rear wheels.

Q. Would it assist you in presenting your results?

A. Yes.

MR. MENDELOFF: Move the admission of Government Exhibit 356.

MR. TRITICO: No objection.

THE COURT: Received. May be published.

BY MR. MENDELOFF:

Q. What does Government Exhibit 356 show us?

A. 356 shows the measurement that I made from the portion on the ground where the tire would leave a track to the wall or -

-  
excuse me, to the most rear portion of the truck, which was 8' 5 1/2".

Q. And the measurement stops in the middle of the tire because

it's at about that point that the track ends; is that right?

A. Yes.

Q. Now, after you obtained these measurements, what did you do with them?

A. I then compared them to determine if there was sufficient clearance for a 20-foot Ryder truck such as the one rented at Elliott's Body Shop and being the one that I examined in Alexandria to fit into the space between the ends of the double

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tire tracks and the wall of the shed.

Q. And what was your finding?

A. My finding was that there was sufficient clearance for that

truck to fit in there and that there was still 20 1/2 inches remaining on the left side as you faced the shed and 17 1/2 inches on the right side as you faced the shed

INCHES ON THE RIGHT SIDE AS YOU FACED THE SHED.

Q. And you prepared a chart that demonstrates this finding?

A. Yes, I have.

Q. Let me ask you to look at Government Exhibit 357.

What is that?

A. This is a chart I prepared which shows from overhead the clearance between the tire tracks in front of Shed Door No. 2 and the wall of the shed and the amount of space that the truck

I examined at Alexandria -- like the truck rented at Elliott's Body Shop, the amount of space that that truck would occupy.

Q. There's a dotted outline of that truck. What did you use to create that dotted outline?

A. The dotted outline is scaled with the dimensions of the truck that I measured. In other words, it represents the 8' 5 1/2" behind the center of the rear wheel to the rearmost portion of the overhang.

Q. And the rest of the drawing is similarly scaled; is that right?

A. Yes, it is.

MR. MENDELOFF: We move the admission of Government

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Exhibit 357.

MR. TRITICO: No objection.

THE COURT: Received. Exhibit 357 may be published.

BY MR. MENDELOFF:

Q. Let me ask you to look at Government Exhibit 357 and tell us what this shows us.

A. Okay. The end of the blue mark here shows the end of the tracks that I observed and measured in front of Shed No. 2 at Herington, Kansas.

Q. Now, the shaded area beyond that, is that where the tires would have been?

A. That would be the remaining half of the tire.

Q. All right. Go ahead.

A. The area in black in front of the Shed No. 2 would be the shed wall. That would be the area that a truck could not pass without damaging the wall.

Q. All right.

A. The distance between the wall -- excuse me, the distance between the rear of the tracks and the rearmost overhang that I

have just described, this distance in here, is 8' 5 1/2". And that is represented by the dotted outline of the truck.

Q. Leaving the clearances that you have marked there on the chart?

A. Yes, the clearances that remain are noted by A and B. And B is 20 1/2 inches. And on the right side as you face the

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shed, B is 17 1/2 inches.

Q. Thank you.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Mr. Tritico.

MR. TRITICO: Yes. Thank you, Judge.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Mr. Bodziak, good afternoon.

A. Good afternoon.

Q. You and I have met one time before, haven't we?

A. Yes, we have.

Q. We met in Oklahoma City when you and the Government allowed

me and my expert to examine some vehicles and some tires; is that right?

A. That's correct.

Q. On that occasion -- I believe it was about six weeks ago, but I really don't recall -- we did not discuss any of the facts of this case or your investigation into it; is that right?

A. That's right.

Q. As a matter of fact, when we asked to discuss that, you told us you wouldn't; right?

A. That's probably what I said, yes.

Q. So this is really the first time I've had a chance to talk with you about your investigation into the case, right?

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A. Yes.

Q. You were discussing a moment ago about your measurement of the track width that you saw out at Herington, Kansas. Do you recall that?

A. Yes.

Q. That's really -- if I understand the terminology that you use in your business correctly -- that's the stance of the vehicle; is that right?

A. That's -- the stance is a term that's used sometimes, yes.

Q. And what you get when you measure the stance of the vehicle

in large part is the width of the axle -- right -- with a little bit extra on either side for the wheel and the tire; right?

A. Well, certainly the axle has a part to play in that measurement, yes.

Q. Has most of it, doesn't it?

A. It's related to it. It could vary, but it's related to it, yes.

Q. Well, if the axle is 42 inches long and you add the wheel on either side and the braking system and that, you may get an extra few inches on either side; but the biggest part of the measurement is from the axle; isn't that true?

A. The biggest part would be, yes.

Q. Okay. Now, when you did your investigation into this case,

did you find out how many vehicles Ford Motor Company puts the

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same axle on?

A. No, I did not.

Q. Did you find out how many auto manufacturers make an axle the same size as the one on the Ryder truck?

A. No, I did not.

Q. Did you find out . . . strike that.

Now, you testified, if I understood you correctly, based on the measurements and the calculations that you did, that a Ryder truck could have backed up to the Herington, Kansas, storage shed -- right -- No. 2?

A. That's right.

Q. I noticed when I looked over your notes in the things that were provided to me from the Government, I didn't find any information that you obtained from Budget in their truck leasing department. Did you check with them on the length of their trucks and the stance of their trucks?

A. No, I did not.

Q. You don't know if Budget leases a 20-foot truck with dual wheels on the back, then, do you?

A. No, I do not.

Q. You don't know if Budget leases a truck with the same stance of the vehicle or the same axle width; is that correct?

A. No.

Q. How about U-Haul? I didn't find that in your notes, either.

William Bodziak - Cross

A. No.

Q. So you don't know if they rent a truck with the same stance or the same axle width?

A. That's right.

Q. You don't know if they rent a 20-foot truck with dual tires on the back.

A. No.

Q. Penske: Did you check with them?

A. No.

Q. So you don't know if they rent a 20-foot truck, do you?

A. No.

Q. You don't know if they rent a truck with the same stance or axle length; right?

A. No.

Q. Now, with the distance that you found between the back of the -- where the tracks stopped at Herington and to the storage

shed, you have 20 inches on one side and 19-something on the other; right?

A. 17 1/2.

Q. Okay. I wasn't agreeing with you about that

Q. Okay. I wasn't arguing with you about that.

A 18-foot truck could have backed up there and left

--

backed up to there, couldn't it?

A. I'd have to measure it.

Q. Well, is an 18-foot truck in your opinion shorter than a 20-foot truck?

William Bodziak - Cross

A. Common sense would dictate it would possibly fit in there, but I would have to measure it to be able to say for certain.

Q. What about a 15-foot truck?

A. There would be more likelihood that that would fit.

Q. 12-foot truck?

A. Sure.

Q. Matter of fact, any truck shorter, in your opinion, than a 20-foot truck, could have backed up there and left those same marks; right?

A. That's possible, yes.

Q. Now, when you went out and you measured the tracks at the Herington, Kansas, storage shed and you made your evaluation and you did your mold, you found that the tracks, if I understood your testimony correctly, were degraded somewhat; is

that right?

A. That's correct.

Q. Is that a correct term?

A. That's appropriate, yes.

Q. Okay. And that would have been in large part, I take it by

your testimony, from the weather conditions; right?

A. Yes.

Q. As a matter of fact, when you examined the photograph that is in evidence, you see that there's quite a bit of water out there standing around, isn't there?

A. Yes, there is.

William Bodziak - Cross

Q. It had been raining for how many days prior to your entry onto the scene?

A. I don't know exactly how many days, but I was told there had been considerable rain in the past few days.

Q. Now, a lot of rain affects the condition of the tracks; right?

A. That's right.

Q. And dry weather -- actually, on the other side of the scale, very dry and windy weather will also affect the scale (sic); right?

A. Certainly.

Q. But in this instance, we're talking about the wet because that's what you found, was very wet weather; right?

A. Yes.

Q. Now, if I understood you correctly, a track was left that

deep, based on the weather conditions and the soil conditions; right?

A. That's correct.

Q. And if I understood you correctly -- and I didn't mean to misinterpret your testimony -- a very heavy vehicle based on the weather conditions?

A. Heavy related to the soil conditions.

Q. Exactly. So the wetter it is, the lighter the vehicle has to be to leave a track that deep and that wide; right?

A. No, I don't -- I don't think you could say that. That's

William Bodziak - Cross

certainly possible, but I don't think you could say that in all instances.

Q. Well, then, it's not your testimony that if it isn't wet -

- if it's completely dry and the ground is hard, it's not your testimony that that truck, given the -- with the same weight is going to leave a track that deep -- are you?

A. No, certainly the wetness would be a part of it.

Q. And you didn't check how long it had been raining or how much it had been raining, did you?

A. Just that there was considerable rain.

Q. I'm sorry. My question was did you check to find out how long it had been raining and how much it had been raining?

A. No, I didn't.

Q. And so you can't say what the weight was of the vehicle that left the track; right?

A. I couldn't say even if I did know that information.

Q. If it was wet enough, a truck that was empty could leave a track that deep, couldn't it?

A. I couldn't say that.

Q. Didn't check, did you?

A. I don't think there's a basis for determining that.

Q. Did you run your truck over some wet ground to find out?

A. I don't have a truck.

Q. You rented one, didn't?

A. In Alexandria, Virginia, not in Herington, Kansas.

William Bodziak - Cross

Q. Did you run it over some wet ground?

A. No. The ground would not be the same as it was in Herington.

Q. Did you go to Herington, Kansas, and rent a Ryder truck and run it over some wet ground?

A. I wouldn't be able to reconstruct the exact conditions.

Q. Sure. Now, when you go out there and you make your measurements and you take your molds and you take your photographs, one thing you don't learn by doing all of that is



when that track was put there, do you?

A. That's correct.

Q. You can't tell the ladies and gentlemen of this jury how it got there.

A. No.

Q. Can't tell them who put it there.

A. No.

Q. Can't tell them anything other than the fact that there's some tracks there that fit one of many types of vehicles that may be out on the road.

A. That's correct.

MR. TRITICO: I thank you, sir. I pass the witness.

THE COURT: All right.

MR. MENDELOFF: Just a couple questions, your Honor.

THE COURT: Yes.

MR. MENDELOFF: Your Honor, I'm going to need the

ELMO

William Bodziak - Cross

for this.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Mr. Bodziak, remember being asked about whether a track that deep could be made by a lighter truck? You remember being asked that?

A. Yes.

Q. Do you remember being asked whether a track that deep could be made depending upon the wetness of the soil?

A. Yes.

Q. In fact, you were asked whether a track that deep could be made by an empty truck.

A. That's correct.

Q. Were there any other tracks that deep out there?

A. There were no other tracks anywhere close to being that deep anywhere in the entire storage shed area, the entire area that I saw, including the incoming road, all of the roads around the two storage sheds, and even some of the areas that had a grass/soil mixture that was more clay than the rocky soil mixture.

Q. Let me ask you to look at Government Exhibit 359, please. Let me ask you to look at Shed No. 1. Are there double tracks centered on Shed No. 1?

A. No, there are not.

Q. Are there double tracks centered on Shed No. 3?

William Bodziak - Redirect

A. No, there are not.

Q. Are there double tracks centered on Shed No. 4?

- ..

A. No.

Q. Which shed is the double tracks centered on?

A. Shed No. 2.

MR. MENDELOFF: Nothing further, your Honor, thank you.

MR. TRITICO: I don't have anything further.

THE COURT: All right. Are you excusing this witness?

MR. MENDELOFF: Yes, your Honor. Thank you.

THE COURT: Are you?

MR. TRITICO: Yes.

THE COURT: You may step down. You're excused. Next witness?

MR. HARTZLER: The Government calls John Hurley. Mr. Mackey will question him.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(John Hurley affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: John Allen Hurley. Spelled H U R L E Y.

THE COURT: Proceed, Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good afternoon, Mr. Hurley.

A. Good afternoon.

Q. Tell the members of the jury where you reside.

A. Oklahoma City.

Q. And how long have you lived in Oklahoma City?

A. Since August of 1991.

Q. Tell us a little bit about your educational background.

A. Graduated high school in 1981, went into military, went to military training until 1982, come out of the military in 1991,

and am currently enrolled in Rose State College, getting my degree in secondary education and history.

Q. What was your field of specialty while you were in the military?

A. I was avionics instrument systems specialist.

Q. And were you honorably discharged from the Air Force?

A. Yes, I was.

Q. Where is Rose State again?

A. It's in Midwest City in Oklahoma City -- in Oklahoma.

Q. Are you going full-time now in that course of study?

A. Yes, sir, I am.

Q. When were you last employed?

A. January of '96.

John Hurley - Direct

Q. And for whom were you working at that time?

Q. And for whom were you working at that time.

A. Burns Security.

Q. How long did you work for Burns Security?

A. I worked for them two separate times, approximately 12 months.

Q. And were you working for Burns Security in April of 1995?

A. Yes, sir, I was.

Q. What position did you have with Burns?

A. I was a security guard at the Regency Tower Apartments.

Q. And was that an assignment given to you by Burns?

A. Yes, sir, it was.

Q. How many total months did you serve as a security guard at the Regency Towers?

A. The 12 months I was employed by Burns.

Q. No other location, then?

A. Yes, sir.

Q. Could you tell the members of the jury what you did as a security guard at the Regency Towers.

A. I was in an office down on the main lobby. Any visitor that came into the building had to check in with security to be

allowed access into the building, be escorted to the leasing office, or have a resident come down and get them; monitor 14 video cameras that did surveillance throughout the building; did patrols on a time schedule throughout the building, checking for different things that could go wrong or problems,

John Hurley - Direct

something being destroyed.

Q. Mr. Hurley, the jury's heard previous testimony about Regency Towers, but I want to take just a moment and reorient the jury. And by doing so, I'd like to direct your attention to Government's Exhibit 958 on the ELMO, please.

Does Exhibit 958 depict the location of Regency Towers and the Murrah Building among other structures in downtown Oklahoma City?

A. Yes, sir, it does.

Q. Can you use the light pen to your left there and just circle each of those two structures. Describe which one you're circling as you do so.

A. The first one I'm circling is the Regency Tower Apartments.

Q. That was your place of employment in April of '95.

A. Yes, sir, it was. And the second building that I'm circling is the Murrah Building.

Q. Approximately how many floors existed in the Regency Towers apartment complex in April of '94 -- or '95?

A. There were 24 floors above ground and one below.

Q. And how many units, living units, were in that building?

A. Approximately 273.

Q. Where was your work station?

A. My work station was in the front of the Regency Tower

Apartments facing 5th Street, and it was in the center of the building.

John Hurley - Direct

Q. Take a look in the accordion folder in front of you for Exhibit 904, which should be right on top.

A. I have it, sir.

Q. And do you recognize what that photo shows?

A. Yes, sir. It does. It shows the main entrance to the Regency Tower Apartments is basically in the center. Off to the left-hand side is the corner of the security office.

Q. All right.

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 904.

MS. MERRITT: No objection.

THE COURT: 904 received.

BY MR. MACKEY:

Q. Mr. Hurley, if you'll take the pen and click it one time, two times, it will clear the screen. Thank you.

I'll show you Exhibit 904.

Is that the front entrance to the Regency Towers on 5th Street in downtown Oklahoma City?

A. Yes, sir, it is.

Q. Does that photograph depict a portion of your guard station?

A. Yes, sir, it does.

Q. With that same pen, tell the jury where that is.

All right, thanks.

Why don't you describe for the jury what that guard

John Hurley - Direct

station looked like.

A. It was a room about 10 by 10. The upper three-quarters of it was completely encased in glass. Our video monitors -- monitor was in there. Our card-key access computer was in there. It was our secured office. We -- it had our fire alarm

system in it. It was our station during our tour of duty.

Q. And from inside the guard station there at the Regency Towers, what could you see looking out?

A. Looking out the front, you could see to the east the church

and the parsonage. As you come towards the west, you had the Water Works parking lot, basically in front of the Regency Towers you had another parking lot, with moving further to the west would be a auto body shop, and then there would be Hudson Street, and then you could see another parking lot.

Q. Would you have a clear view of motor-vehicle traffic on 5th Street?

A. Yes, sir, you would. There would be no problem with any

kind of motor-vehicle traffic at all.

Q. What direction did 5th Street run?

A. It ran from west to east.

Q. Was it one way, or two ways?

A. One-way street.

MR. MACKEY: Your Honor, may I approach --

THE COURT: Yes.

MR. MACKEY: -- the witness?

John Hurley - Direct

BY MR. MACKEY:

Q. Let me show you what's been previously marked for identification as Exhibit 903. Tell the jury, please, what that is.

A. It's a picture looking right straight out the front of the security office at the Regency Towers. Again, starting from the -- as I'm looking at the picture, the left-hand side, you've got --

Q. Let me interrupt just for a moment, Mr. Hurley, and ask you

this question: Does it accurately show the view, the range of view from inside the guard station out to 5th Street?

A. Yes, sir, it does.

Q. In a panoramic way?

A. Yes.

MR. MACKEY: Your Honor, I'd move to admit Exhibit 903.

MS. MERRITT: Your Honor, may I take a look at it?

THE COURT: Yes, you may.

MS. MERRITT: I have no objection.

THE COURT: All right. 903 is received.

MR. MACKEY: With the Court's permission, could Mr. Hurley simply display it to the jury?

THE COURT: Yes. You can hold it up so the jury can see it.

MR. MACKEY: Thank you, Mr. Hurley.

John Hurley - Direct

BY MR. MACKEY:

Q. What portion of your workday did you spend inside the guard

station?

A. The tour of duty was an eight-hour tour of duty. I was only out of the hour -- out of the office schedule for an hour and a half, unless I was called to go to a different area.

But

other than that, I was in that office at all times.

Q. Mr. Hurley, turn now to Exhibit 907.

A. Okay.

Q. Tell everyone what that is, please.

A. It is a photograph taken from inside the lobby of the Regency Tower Apartments, and you're looking out the front of

Regency Tower Apartments, and you're looking out the front of the Regency Tower Apartments at the secured foyer entrance area, the security guard office, and out onto 5th Street.

Q. Does that capture the scene from the front lobby in April of 1995, as you were working there?

A. Yes, sir, it does.

MR. MACKEY: Move to admit Government Exhibit 907.

MS. MERRITT: No objection, your Honor.

THE COURT: Received, 907.

BY MR. MACKEY:

Q. Mr. Hurley, with your words, please orient the jury as to what they're looking at.

A. Okay. On the left-hand side you're looking at one corner of the Regency Tower lobby, looking out towards 5th Street.

John Hurley - Direct

The area in the center is what we called the main entrance foyer area, where anybody coming into the Regency Tower except for residents would have to come through to discuss their visit

or call the resident to have them accessed in.

Directly behind the double doors in the foreground is another shot of the security guard office where our station was.

Q. All right. With your pen, just circle that on the exhibit, please, once again, your guard station.

A. The guard station. Okay.

Basically, that's it.

Q. You told the jury earlier that equipment that you usually relied upon in carrying out your duties was stored in that guard station?

A. The equipment that was inside that room was one card-key computer, which monitored all the cards that were used for access into the building. There was a video monitor that was divided into 16 -- 16 little screens --

Q. Let me start, Mr. Hurley, by asking more general questions.

A. Okay.

Q. Did the Regency Tower, at the time you were a security guard, use a surveillance camera as part of its security?

A. Yes, sir, we did.

Q. Describe the system that it used and your familiarity with it.

John Hurley - Direct

A. It used 14 individual cameras throughout the Regency Tower Apartments inside and out. It had a mixing unit, it had a VCR, and it had a monitor.

Q. Well, let's start now with the cameras. Where exactly were

they located? Not precisely, but where on the premises as a general matter.

A. Generally, all non -- I don't want to say nonsecured -- they were in all entrances, main entrances into the building. They were in all common areas of the building, as well as on the 4th floor outside on the pool deck.

Q. Did you have, or at the Regency Tower, a security camera overlooking the lobby that the jury's seeing, in April of 1995?

A. We had actually three cameras overlooking that lobby. There was only one that faced out towards 5th Street. The other two were actual internals.

Q. Thanks. Take a look at Exhibit 906.

A. Okay.

Q. See that?

A. Yes, sir.

Q. And does that photograph depict the location of the security camera you've just described?

A. Yes, sir, that does.

Q. And was that its location in April, specifically April 16 and April 19 of 1995?

A. Yes, sir, it is.

John Hurley - Direct

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 906.

MS. MERRITT: No objection.

THE COURT: Received, 906. You may show it.

BY MR. MACKEY:

Q. Mr. Hurley, circle for the jury the security camera at the front entrance to the Regency.

And in what direction is that camera facing?

A. It is facing towards 5th Street in a southwest direction.

Q. I would direct your attention to Exhibit 907. Does that photograph also show the camera?

A. Yes, sir, it does.

Q. Circle that, please.

You were telling the jury that this camera is one of 14 situated throughout the premises of the Regency?

A. Yes, sir, it is.

Q. How did the feed from each of those cameras get to the guard station?

A. The video camera was continuously on. It traveled into the security office via cable. It went into a mixing unit, which is what we used to call the "brain." At that point, the signal was split between the VCR and the monitor. The monitor was instantaneous. All 14 cameras at one time, we were watching. The VCR was controlled by the mixer to decide which actual camera at which precise moment would be placed on that tape.

John Hurley - Direct

Q. So if you're a guard sitting in the guard station, do you see a series of pictures going on simultaneously around the premises at the Regency Towers?

A. Yes, sir.

Q. Was part of your duties, then, to monitor that monitor for security problems?

A. Yes, sir, it was.

Q. In the course of carrying out those duties, then, did you become familiar with each of the scenes being captured by those

14 cameras?

A. Yes, sir.

Q. Now, was a videotape or tape recording made of any of those

scenes as it occurred?

A. Yes, sir.

Q. How so?

A. We used, as I stated earlier, the mixing board or box was a . . . let me try to make an example of this. There were four

main pieces to the video system. We had the cameras, which were the eyes to the system. They were our eyes outside the office. You had a mixing unit which, like I stated, we called it the "brain." You had a VCR recorder, which is like memory in the brain and any kind of a storage-type system. And then we had the actual monitor, which was instantaneous pictures, exactly what was going on at exactly that moment. And the mixing control box controlled which pictures were reported in a

John Hurley - Direct

random fashion. There was not a pattern to it. It also controlled the actual video that we saw on our monitor.

Q. Mr. Hurley, did the VCR tape-record every scene captured by

every one of those cameras?

A. In a random fashion, yes, it did.

Q. It was the brain that decided which would be captured and which sequence?

A. Yeah, which specific second or minute of the trial -- of the recording of the tape.

Q. Did the VCR have any way to keep track of date and time of the events that it was recording?

A. Yes, sir, it did.

Q. Describe that, please.

A. It recorded the date, which would be month, day, and year. It recorded the day. It recorded the time. And it also recorded the speed of the tape. And that was always imprinted on each picture that it recorded, basically digitally printed on there.

Q. How many tapes in the course of a day did you as a



security

guard keep for Regency Towers?

A. There was one tape for each day of the week.

Q. And did you record around the clock, 24 hours?

A. Yes, sir, we did.

Q. Onto how many tapes each day?

A. One tape, sir.

John Hurley - Direct

Q. How does that work?

A. The video recorder had speed selection on it, which we could decide how many hours would be put on each tape. And by directive of the management, we were setting them up and permanently set up at 24-hour intervals. So we could take an entire 24-hour day and put it on 120-minute tape.

Q. Did you and the other security guards have a system or procedure for keeping and retaining the tapes that you were making in the course of your duties?

A. Yes, sir, we did. The third-shift security guard, when he came on duty, he would remove the tape of that particular day and then replace it with the tape for the next day, which was labeled by days of the week. And then we would maintain them for a seven-day interval. And every Tuesday, we used the same Tuesday tape. So we would have it for a period of seven days.

Q. So it was the responsibility of the midnight guard to change the tapes in the VCR?

A. Yes, sir, it was.

Q. And that was a duty you carried out on occasions as well?

A. Yes, sir, I did, when the -- when I was relieved from duty,

if I stayed over, or the guard that normally relieved me would come in early, one or the other at that particular time would change the tapes. But they were always changed out.

Q. Did you make it a practice to verify the accuracy of the time on the VCR clock?

John Hurley - Direct

A. Yes, I did.

Q. What did you do in that way?

A. Normally every -- sometime during Sunday, I would turn around and call the local weather/time phone number and use their clock to set ours. And I was the only security guard who knew how to set the time.

Q. Did you do so on Sunday, April 16, 1995?

A. Yes, I did.

Q. At approximately what time of the day or evening did you do so?

A. It was approximately 6:30 in the evening.

Q. In the course of making these tapes, what did you and the other guards do with them after they were made?

A. Could you rephrase that?

... could you rephrase that.

Q. Sure. Monday tape comes out, Tuesday comes in: What do you do with Monday's tape?

A. Monday's tape is put back into its jacket and placed with the remaining days of the week that have not yet been used as the days came up. But they were kept inside that office locked.

Q. Mr. Hurley, were you a security guard at the Regency Towers

on April 15, Saturday, April 15, 1995?

A. Yes, sir, I was.

Q. And did you work on that day?

A. Yes, sir, I did.

John Hurley - Direct

Q. Did you work the next two days -- I'm sorry, Sunday, April 16?

A. Yes, sir, I did.

Q. And did you work on Monday?

A. No, sir, I did not.

Q. Or Tuesday?

A. No, sir. They were my normal scheduled days off.

Q. Where were you on the morning of April 19, 1995?

A. I was at Rose State College attending a course.

Q. Did you become aware of a bombing that had taken place in downtown Oklahoma City?

A. I became aware of it when my instructor told me just after class had ended.

Q. After learning that, did you go back downtown to the Regency Towers?

A. Not immediately. Immediately I went back to my house, called in to work, to find out what my status was at that time,

whether I needed to go report downtown or whatever. And they had told me that I was to stay home till noon and then go downtown.

Q. Later that afternoon on April 19, did you go to the Regency Towers?

A. Yes, sir, I did.

Q. And on that day, did you turn over to law enforcement officials the VCR tape for activity of that same day, April 19,

John Hurley - Direct

1995?

A. Yes, sir, I did.

Q. And later in the course of that investigation, did you also turn over additional VCR tapes for other days of the week?

A. Yes, sir, I did. About seven days later, I turned over additional tapes.

Q. And what dates did they represent?

A. They represented the 18th, the 17th, and the 16th.

Q. Sunday, Monday, and Tuesday prior to the bombing?

A. Yes, sir.

Q. Let me turn now, Mr. Hurley, to the remainder of the exhibits before you. Direct your attention to the accordion folder that has "April 16, 1995" on it.

A. Okay.

Q. Ask you if you'd look at Government Exhibit 346.

A. Okay.

Q. What is that, please.

A. This is a videotape that came out of the Regency Tower, and

it's marked Sunday, so that would be April the 16th.

Q. And is that the same VCR tape that you turned over to law enforcement officials for that day, April 16, 1995?

A. Yes, sir, it is.

Q. And to assure yourself of that, have you previously examined the contents of Exhibit 346?

A. Yes, sir, I have.

John Hurley - Direct

Q. And do you recognize each of the scenes captured on that particular videotape?

A. Yes, sir, I do.

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 346.

MS. MERRITT: Your Honor, I'm going to object on grounds of relevancy and prejudice.

THE COURT: Overruled. 346 received.

BY MR. MACKEY:

Q. Mr. Hurley, if I were to put that tape into a VCR machine, would it be easy to see the events captured on that tape?

A. Not that particular tape, no.

Q. And why is that?

A. It is recorded in such a way that it is an extremely fast flash of pictures. And unless you've gotten used to the system, it would be basically too fast to really recognize it.

Q. In that regard, did you take a look at Exhibit 347, a second videotape?

A. Yes, sir, I did.

Q. And what is that?

A. This is a slowed-down version of the tape that came out of the Regency Tower recorder.

Q. For a portion of the evening of Sunday, April 16, 1995?

A. Yes, sir, it is.

Q. And is it more easy for one to see what's on that

John Hurley - Direct

particular exhibit?

A. Yes, sir. It's real easy.

Q. And are the scenes captured on Exhibit 347 from the

original tape, Exhibit 346?

A. Yes, sir.

MR. MACKEY: Would move to admit Government Exhibit 347.

MS. MERRITT: Your Honor, I'm going to object upon the same grounds, and also chain of custody.

THE COURT: Chain of custody?

MS. MERRITT: On this one, I think this is the -- not the one that he took out of the camera but a real-time version of it.

THE COURT: Well, how do you know that this is the same tape?

THE WITNESS: Same scenes, sir, or the same tape?

THE COURT: Same scenes.

THE WITNESS: Same scenes. Looking at the Regency Towers videotape, it has time dates stamped on it; and looking at the real time on this one, the slowed-down version, it has the same date times stamped on it.

THE COURT: All right. Objection's overruled. 347 received.

MR. MACKEY: Thank you, your Honor.

BY MR. MACKEY:

John Hurley - Direct

Q. You looked at Exhibit 347 before coming to court today, didn't you, Mr. Hurley?

A. Yes, I did.

Q. Finally let me turn your attention to Exhibits 346A and 346B.

A. Okay.

Q. We'll start with Exhibit 346A.

A. Okay.

Q. Are those photographs, still photographs, made from scenes depicted on Exhibits 346 and 347?

A. Yes, sir, they are.

Q. Those are the scenes that you recognize from your employment as a guard and from previously examining the two videos?

A. Yes, sir, on 346A.

And 346B, yes, they are.

Q. Your answers are the same as to each of those two exhibits?

A. Yes, sir.

MR. MACKEY: Your Honor, I'd move to admit Exhibits 346A and 346B.

THE COURT: They're multiple exhibits. They're photographs all marked with one number.

MR. MACKEY: I can make a more precise record, your Honor.

THE COURT: I think you better.

John Hurley - Direct

BY MR. MACKEY:

Q. That's a group exhibit, 346A, Mr. Hurley -- make sure that I read this right -- is a still photo with a frame marked 20:17:47 for April 16; correct?

A. Did you say for 346A?

Q. A, yes.

A. Okay. Sorry, I was looking at B. Yeah, the first one is 20:17:47 time stamp.

Q. Is the second photo as part of that group exhibit frame 20:17:49?

A. Yes, sir, it is.

Q. And the third and final photo, is that 20:17:51?

A. Yes, sir, it is.

Q. Turn now, Mr. Hurley, to Exhibit 346B. For the record, is the first photo frame 20:23:59?

A. Yes, sir, it is.

Q. The second photo is marked frame 20:24:01?

A. Yes, sir.

Q. Third frame is marked 20:24:02?

A. Yes, it is.

Q. And the fourth photo of that group exhibit is 20:24:03; is that correct?

A. Yes, sir.

MR. MACKEY: With that clarification, your Honor, I renew my motion.

John Hurley - Direct

MS. MERRITT: Same relevancy objection, your Honor.

THE COURT: Overruled, they are received.

BY MR. MACKEY:

Q. Finally, Mr. Hurley, I want to turn to April 19 or the VCR tape for that date. Do you see that group of exhibits before you?

A. Yes, sir, I do.

THE COURT: I think we'll recess before we go into the next set of exhibits. Midway.

We're going to recess for 20 minutes, Mr. Hurley.

You may step out.

Members of the jury, we'll take our afternoon recess, again, of course, with the same cautions of refraining from the natural tendency of human beings to discuss what they've been seeing and hearing. Remember, you are human beings, but you're on the jury; and therefore you're under restrictions with respect to those natural tendencies.

So you're excused now for 20 minutes with the same restrictions.

(Jury out at 3:27 p.m.)

THE COURT: All right. Recess.

(Recess at 3:28 p.m.)

(Reconvened at 3:48 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:48 p.m.)

John Hurley - Direct

THE COURT: Mr. Hurley, please resume the stand.

Mr. Mackey you may continue.

MR. MACKEY: Thank you.

BY MR. MACKEY:

Q. Mr. Hurley, I have three more exhibits to show you. Get in front of you, if you would, Exhibit 670, 6-7-0. Have you looked at that exhibit before coming to court this afternoon?

A. Yes, sir, I have.

Q. And having done so, do you recognize what it is?

A. Yes, sir, I do.

Q. And tell the Judge and members of the jury what that is.

A. It is the videotape from the Regency Tower for the 19th of April, 1995.

Q. And were you present at the time that that videotape was turned over to law enforcement officials?

A. Yes, sir, I was.

Q. Describe what happened.

A. The other security guard and myself were discussing it, and

we went back down to the control area where they had the barrier and explained to one of the Oklahoma City policemen that there was a videotape in that building and we thought that

they might want it; and at that time we were escorted into the security guard office to retrieve this tape.

Q. And were you personally present when that tape came out of your VCR machine at the Regency Tower?

John Hurley - Direct

A. Yes, sir, I was.

Q. And turned over to law enforcement?

A. Yes, sir.

Q. On April 19?

A. Yes, sir.

MR. MACKEY: Your Honor, I move to admit Exhibit 670.

MS. MERRITT: Objection.

THE COURT: Overruled. Received.

BY MR. MACKEY:

Q. Mr. Hurley, Exhibit 671: What is that, please.

A. It is a slowed-down version of the tape that came out of the Regency Tower video recorder.

Q. Is that a version of Exhibit 670 that encompasses the period 8:55:48 to 9:00:21 seconds on April 19, 1995?

A. Yes, sir.  
Q. Have you looked at 671?  
A. Yes, sir, I have.  
Q. Is it a copy of just those portions of that original videotape?  
A. Yes, sir.  
Q. In a fashion that one could view more easily?  
A. Yes, sir.  
MR. MACKEY: Would move to admit 671.  
MS. MERRITT: No objection.  
THE COURT: Received.

John Hurley - Direct

BY MR. MACKEY:  
Q. Finally, Mr. Hurley, turn your attention to group Exhibit 670A. Do you find a series of 27 still photographs?  
A. Yes, sir, I do.  
Q. And are those still photographs made from scenes captured on the videotapes you've previously identified?  
A. Yes, sir, they are.  
Q. Do they each depict a scene outside the front door of April 19, 1995?  
A. Yes, sir, they do.  
Q. And do they cover the time frame of 8:55:48 and through and to 9:00:21.  
A. Yes, sir, they do.  
MR. MACKEY: Would move to admit group Exhibit 670A.  
MS. MERRITT: No objection.  
THE COURT: They're received.  
Perhaps we ought to indicate for the record the number of them -- I mean, how many there are. You've given the time frame.  
BY MR. MACKEY:  
Q. Mr. Hurley, did you count previously the number of the still photographs that are part of that group exhibit?  
A. Yes, sir, I did.  
Q. And how many did you find?  
A. I'd like to re-count them.

John Hurley - Direct

There are 27 of them, sir.

Q. 27?  
A. 27.  
Q. Thank you, Mr. Hurley.  
As a result of the explosion, Mr. Hurley, what happened to the security system at the Regency Towers on April 19, 1995?  
A. As a result of the explosion, we lost total power to the Regency Tower Apartments, which at that time it shut down the video surveillance system.

Q. Does the last photograph in Exhibit 670A capture the last image recorded by your security system on that morning?

A. Yes, sir.

MR. MACKEY: I have nothing else, your Honor.

THE COURT: Ms. Merritt?

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good afternoon, Mr. Hurley.

A. Good afternoon.

Q. Were you also responsible for maintaining the video and camera equipment at the Regency Towers?

A. No, sir -- no, ma'am. Excuse me.

Q. Can you tell me who was?

A. ADT, which was an electronics firm there in Oklahoma City.

Q. Do you know how often they would come and clean the

John Hurley - Cross

equipment; for example, the camera lenses?

A. No, ma'am, I don't.

Q. Do you know prior to April 19, 1995, the last time the camera lenses were cleaned?

A. When we had the new system installed, the new cameras installed, new monitor, mixing system. We had just gone through a refit on the security system.

Q. Do you keep records of the maintenance of the cameras and the video equipment?

A. No, ma'am, not that I'm aware of.

Q. Do you know how often -- well, first of all, were the tapes reused?

A. The seven tapes that were in our office, yes, were reused.

Q. Do you know how many times you used to reuse tapes?

A. For the time period I was there, they were continually used, unless one tape was turned over to local law officials for some reason; and then we would replace that specific tape.

Q. And then you would replace it with a new tape?

A. Yes, ma'am.

Q. Did you keep any records regarding when these new tapes were put in to substitute for the reused tapes?

A. The management office would have records of that. They had

every tape that left that office signed for.

Q. Was it also this company that you just mentioned -- that company's job to clean, align, and check the recording heads on

John Hurley - Cross

the video camera?

A. Ma'am, could you --

Q. The video recorder?

A. Okay. Are you talking about the ADT personnel?

O. I'm talking about the video recorder, the tape recorder.



not the cameras.

A. Okay. I don't understand who you're talking about.

THE COURT: I think you were referring to ADT, weren't you?

MS. MERRITT: Oh, the company? Yeah, he mentioned the name of the company, right.

THE WITNESS: Okay. Not that I know of, ma'am, no.

BY MS. MERRITT:

Q. Do you know if anyone would come or would -- anyone there or anyone from the company would come and clean the recording heads?

A. The only time anybody would do anything to that system would be if they were called in by management, and it would be by report of us for some sort of maintenance problem; but as long as I was working there, the only time that they came down was when they replaced the cameras and the system itself prior to the bombing.

MS. MERRITT: I have no further questions.

MR. MACKEY: Nor do I.

THE COURT: Excusing Mr. Hurley, then?

MR. MACKEY: Yes, your Honor.

THE COURT: Agreed, Ms. Merritt?

MS. MERRITT: Yes.

THE COURT: You may step down. You're excused. Next, please.

MR. HARTZLER: William Stokes. Mr. Mackey will question him.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(William Stokes affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: William J. Stokes, spelled S-T-O-K-E-S.

THE COURTROOM DEPUTY: Thank you.

#### DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good afternoon, Mr. Stokes.

A. Good afternoon.

Q. Would you tell the -- tell the jury where you live.

A. I currently live in Woodbridge, Virginia, near Washington, D.C.

Q. Mr. Stokes, how do you make your living?

A. I'm employed as a special agent of the FBI, and specifically I'm employed by the FBI laboratory.

#### William Stokes - Direct

Q. Can you tell me a little bit about your educational background?

A. I have a bachelor of science degree in chemistry and

mathematics from Mississippi College.

MR. JONES: Your Honor, excuse me. The witness is turning away.

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Stokes, in this courtroom, please, direct your answers back to me.

A. Once again, I'm a graduate of Mississippi College, which is located in Clinton, Mississippi. I have a degree in chemistry and mathematics.

Q. And when was that degree awarded?

A. 1976.

Q. After you finished college, what did you do?

A. I first was a high school football coach and chemistry and mathematics teacher, followed by an employment as a structural steel designer in Baton Rouge, Louisiana.

Q. When did you go to work for the FBI?

A. In 1985.

Q. And what is your current assignment?

A. I am the chief of all photographic operations for the FBI in the FBI laboratory.

Q. And how long have you had that job?

William Stokes - Direct

A. Since 1994.

Q. And how long have you worked out of headquarters in D.C. for the FBI?

A. I have been in that unit for six years, since 1990, and became the chief of photographic operations in the last two years, in 1994.

Q. Can you describe your field of specialty to the jury, please.

A. I am an examiner of forensic photographic evidence, which includes evidence such as videotapes from bank robberies, crime-scene photography, or any type of photography or videotape that is related to a criminal investigation.

Q. Describe what you do with that evidence.

A. In -- typically in bank robbery, videotapes or film photography, I examine it to identify the individual in the photo from facial identification, or I identify the clothing worn by the individual; and in many cases I identify vehicles that may be a getaway vehicle that was used during a bank robbery, where it's captured by external -- or camera that's outside the bank.

Q. And what sort of techniques do you use to make those comparisons?

A. There are typical side-by-side comparison, where you compare the questioned image with the known item, such as a known item of clothing, a photograph of a person, or a known

William Stokes - Direct

photograph of a car and/or an on-site investigation, where I go back to that location and use the same camera, using it to examine a known vehicle.

Q. Do you recognize the term "class characteristics"?

A. Yes, I do. Typically, that would be characteristics such as a car -- would be a Ford, a Chevrolet, Honda, a Toyota, or a Nissan.

Q. And how about the term "unique characteristics"?

A. In the case of, let's say, a Honda Accord, first the class characteristics I would compare to ensure that the questioned vehicle, too, is a Honda Accord; and from that point, I would look for uniquenesses that may have occurred to the vehicle after it came off the assembly line.

Q. Before your assignment in this case, how many prior assignments did you have as your task to compare a photograph of a questioned vehicle with the photograph of a known vehicle?

A. Typically in my unit I receive about 2,000 cases a year, most of them bank robbery cases; and of that, about 20 percent to 25 percent involve the identification of a vehicle.

Q. As it relates to this case, did it fall to you to make some comparisons of photographs of questioned vehicles?

A. That is correct.

Q. Let me turn your attention, Mr. Stokes, to Government's Exhibit 347 -- do you see that before you? -- previously admitted into evidence.

William Stokes - Direct

A. Yes, I do.

Q. Have you seen that before today?

A. Yes, I have.

Q. Could you describe what is on Exhibit 347?

A. This is a videotape containing a real-time version of a tape from the Regency Tower that was dated April 16, 1995, from the time base on the videotape starting at 15:46:58 through 22:56:19, and this is where I've converted a time lapse original into basically a two-hour real-time video so you could see it on a VCR.

Q. Did you use Exhibit 347 in your examination for this case?

A. Yes, I did.

MR. MACKEY: Your Honor, I'd move the Court's permission to publish this particular --

THE COURT: 347?

MR. MACKEY: Yes, your Honor.

THE COURT: You may do so.

MR. MACKEY: May I approach?

THE COURT: Yes.

BY MR. MACKEY:

Q. Could you orient the jury, Mr. Stokes, to what they're looking at right now?

looking at right now.

A. This is a video image from a camera that's located inside the lobby of the Regency Tower, which is on 5th Street, and you're looking directly outside onto the street area. And this

William Stokes - Direct

is a paused frame that starts at 20:16:32 on the April 16, 1995.

Q. Mr. Stokes, what appears in the frame marked 20:17:49?

A. There is a pickup truck with a camper shell as originally described when this was submitted to me that is in the middle of the frame up at the upper portion, right under the numbers 20:17:11.

Q. And with the benefit of the light pen that you find to your left, can you simply circle that vehicle.

You'll need to take your pen down below and press on the monitor itself.

And was it this particular vehicle that was the subject of at least part of your examinations for this case?

A. That is correct.

Q. If you click the pen, that green circle will disappear and we'll continue playing.

MR. MACKEY: Your Honor, I'd like to fast-forward now to approximately 8:23.

BY MR. MACKEY:

Q. Did you see that same vehicle a second time on this tape of Sunday, April 16, 1995?

A. Yes, I did.

Q. Is that depicted here on the same exhibit?

A. I've not seen it yet. It's on -- the vehicle just passed by.

William Stokes - Direct

Q. All right. Which is why we have still photographs here?

A. That's correct.

Q. Take a look, Mr. Stokes, at Government's Exhibits 346A and

B. Do you find those before you?

A. I have them.

Q. And did you use those photographs as part of your examination in this case?

A. Yes, I did.

MR. MACKEY: Your Honor, may I publish at this time the photographs?

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Stokes, circle for the jury the vehicle in question in this particular frame, 20:17:47.

A. Could you zoom out so I can see the time base on that particular frame?

Q. I want to direct your attention to 20:17:49. That is a still photograph of the frame you previously identified?

A. Yes, it is.

Q. And finally, 20:17:51. Do you see any portion of the same vehicle in that photograph?

A. Yes. It's in the left side of the frame, to the left of the 20:17:11.

Q. Can you circle that, please.

I show you four photographs later in the evening,

William Stokes - Direct

beginning 20:23:59.

A. Yes. I have those photos.

Q. With the pen, can you show what vehicle you were examining.

20:24:01: Do you see the same vehicle in that photograph?

A. Yes, I do. Immediate under the date 4-16-95.

Q. Circle that, please.

A. My pen doesn't seem to cooperate.

Q. Does it appear right here in this photograph?

A. That's it, right.

Q. All right. 20:24:02: Do you see the same vehicle in that scene?

A. Yes.

Q. Thank you. And 20:24:03: Would you circle the vehicle there, please.

Thank you. Tell his Honor and the jury what steps you

took, Mr. Stokes, then to attempt to identify the make and model of the vehicle that you found on the videotape.

A. I first compared it to known photographs of pickup trucks which are maintained by the FBI laboratory in what's known as the National Automotive Image File. Once I determined that it was basically the same make and model as a 1984 GMC Chevrolet pickup truck, I went to the next step of comparing it to a known photograph of a 1984 GMC pickup.

After making that comparison, then I began comparing

William Stokes - Direct

other parts of the truck which would be considered aftermarket,

such as the camper shell. And then in the final phase of the examination, I went back to the Regency -- or went to the Regency Tower and compared the known -- or the known truck, which is a 1984 GMC pickup, with the pickup that appears in these images.

Q. Let's go back to your brochures. Look in front of you for Government's Exhibits 350, 351, and 349.

A. I have 349, 350 and 351.

Q. What are each of those for the record, please.

A. These are known photographs that are taken from the FBI's

National Automotive Image File of 1984 pickups which include in Exhibit 349 a GMC pickup, in Exhibit 350 a Ford pickup, and in Exhibit 351 a Dodge Ram pickup.

Q. Did you use each of those photographs or exhibits in making your comparisons?

A. Yes, I did.

Q. Turn now to Exhibits 387, '88, '89 and '90. Tell the jury and his Honor what each of those are, please.

A. These are once again known photographs taken from the National Automotive Image File: 387, a GMC Sierra Classic pickup; 388, a Ford F150 pickup; 389, a Ford pickup, and finally in Exhibit 390, a Dodge Ram pickup.

Q. Did you again use those exhibits in the course of your comparisons?

William Stokes - Direct

A. Yes, I did.

MR. MACKEY: Your Honor, I'd move to admit Exhibits 349, '50, '51, 387, '88, '89, and '90.

MS. MERRITT: No objection.

THE COURT: They are received.

BY MR. MACKEY:

Q. Mr. Stokes, based on that information, what conclusion, if any, did you reach about the make and model of the vehicle depicted on the Regency tape?

MS. MERRITT: Your Honor, I'm going to object as this being speculation.

THE COURT: Well, I think we need a little more foundation about how he can arrive at such a conclusion.

BY MR. MACKEY:

Q. What use did you make of the exhibits you've previously identified, Mr. Stokes?

A. First, using a technique of ratio photogrammetry, I was able to determine that the particular headlight configuration and taillight configuration of the 1984 GMC pickup was consistent with the same ratios of the 1984 GMC pickups that were in the National Automotive Image File and inconsistent with a Dodge or a Ford pickup truck. I also compared the ratios and dimensions of the '84 GMC pickup at the Regency Tower with the one that appears in the questioned images, and it also showed to have consistent ratios and also consistent

William Stokes - Direct

characteristics of an '84 GMC pickup.

Q. In your examination, Mr. Stokes, did you also use Exhibit 51? If you could find that in your folder, please.

A. Yes, I did.

Q. What is that, please?

A. This depicts a 1984 GMC pickup, blue in color, with a

camper shell.

Q. Let me show you what's been previously admitted into evidence as Government's Exhibit 51. And how did you use this particular photograph in the course of your comparisons?

A. Could you zoom out just a little bit?  
May I use the pen to demonstrate?

Q. Please.

A. At the rear end of the pickup, there is a certain distance from the top of the taillight to the top of the bed. Then there is a certain distance from -- or the basic shape of the side -- the side window on the driver's side.

Also, the basic configuration of the headlights of the pickup and the side of the pickup truck were consistent with the ones that appear in the questioned image.

Q. And you told the jury earlier that you relied on occasion on unique characteristics; and what is shown in this photograph that you utilized in that way?

A. In this particular photograph, the camper shell that appears on the pickup is not an item that is placed on the

William Stokes - Direct

truck as it comes off the assembly line; so it is something that has been added to the pickup after it's manufactured.

Q. In the course of your comparisons, did you examine not only the features of the vehicle but the features of this topper as well?

A. Yes, I did; and that would be based on the general shape of the camper, such as the height of it as compared to the height of the pickup cab, and the general slant in the window of the pickup -- I mean in the slant of the camper.

Q. And is the finding in this particular case a combination of features you found both about the vehicle and the topper shell?

A. That is correct.

MR. MACKEY: Your Honor, at this time I'd --

THE COURT: Are you just talking about look at those pictures that we looked at?

THE WITNESS: I'm sorry?

THE COURT: Is all you did was look at the pictures that we looked at?

THE WITNESS: Along with returning to the Regency Tower and placing this pickup that appears in this exhibit back out in the street and rephotographing it with the same camera and then using those photos along with that technique to make a complete comparison.

MR. MACKEY: Your Honor, he's prepared an exhibit that illustrates that technique.

William Stokes - Direct

THE COURT: I think we better see what these techniques are before we can determine whether this opinion is worth anything.

MR. MACKEY: Very well.

BY MR. MACKEY:

Q. Mr. Stokes, Government's Exhibit 348: Do you have that before you?

A. I have 346.

MR. MACKEY: May I approach, your Honor?

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Stokes, tell his Honor and the jury what Exhibit 348 is.

A. This contains an image of the questioned pickup truck that was recorded on 4-16-95 by the Regency Camera No. 13 and a second image that I recorded after placing the pickup back in the street and recorded it using the same camera in the same orientation and then a superimposition of the known pickup onto the questioned pickup truck.

Q. So you started with the pickup that was recorded on April 16, '95, by the Regency Tower tape?

A. That's correct.

Q. And then you arranged to have the same photograph in Exhibit 51 placed outside the front door of the Regency Towers?

A. That is correct.

William Stokes - Direct

Q. And then took a photographic image of that and then simply compared the two?

A. That is correct.

Q. And is that comparison set forth in Exhibit 348?

A. That is correct.

MR. MACKEY: Your Honor, I move to admit Exhibit 348 for demonstrative purposes to demonstrate the likenesses that he found in that manner.

MS. MERRITT: No objection for demonstrative purposes.

THE COURT: All right. 348 is received for that purpose.

MR. MACKEY: May I approach, your Honor?

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Stokes, tell the jury and his Honor what we're going to

see on Exhibit 348.

A. The first image you'll see is a recording or a still image of the questioned vehicle on 4-16-95. That will be followed by



an image of the pickup placed back in the street and then rerecorded. Then you'll see the two superimposed on each other. And it's a matter of placement of the pickup back in the same spot after having placed -- ensured that the camera has not moved.

Q. And the camera that you used to record this was which one?

A. It was Camera No. 13 that is in the Regency Tower, which is

William Stokes - Direct

basically the same camera that was there on April 19, 1995.

Q. Where is it located?

A. It is immediately above the head to your right as you walk through the front door of the Regency Tower.

Q. All right. This first title page is what, please.

A. This is indicating that this is the image taken from the original tape that was recorded on April 16, 1995. And this is

the pickup truck appearing in that image at 20:17:11 on 4-16-95, and I have recorded it on to the tape in a still mode so that it will remain on the screen for a few seconds.

As it fades out, it fades to the known vehicle of March 31, 1997, where I placed the vehicle that appears in Exhibit 51 back in the street after having aligned the camera to ensure that it was the same alignment and recorded the image

of that pickup.

Q. Mr. Stokes, the vehicle that is shown in this particular frame: Is that the same vehicle depicted in Exhibit 51?

A. That is correct.

Then the next will be a video comparison, which is a superimposition or a composite of the two. The first one you see is the original questioned pickup truck, and fading into it

is the pickup that I recorded on March 31, 1997; and then the video fades back out to the questioned image.

The pickup truck was placed back in the same location, and it basically superimposes on it. All features are alike.

William Stokes - Direct

Q. So you took one image and laid it on top of another?

A. That is correct.

Q. To demonstrate the likenesses that you observed?

A. That is correct.

Q. What is the next frame?

A. This is another way of superimposing. This is known as a diagonal white. And from this particular superimposition, I'm looking at the -- how the doors line up or how fixed objects such as the pole out front and the street are lining up; and that was done to demonstrate that the camera has been placed back in the same orientation as it was on April 19, 1995.

Q. To this point, you have shown the images and recorded from 1995

Q. In this particular frame, the images are moving from left to right. Is that right?

A. That is correct.

Q. Simply again to illustrate the likenesses between those two images?

A. Not only the camera orientations but also the likenesses between the two pickup trucks.

And then that's the end of the examination.

Q. Does that illustrate the similarities you found between --

A. Yes, in that particular image of the truck.

Q. We can stop here.

A. I did others along with that one. It's the same technique over and over, just using different images of the pickup as it moves up and down the street.

William Stokes - Direct

Q. The vehicle appeared on the tape twice in the course of a few minutes?

A. Yes, sir.

Q. You made the same kind of comparisons?

A. Moving the pickup up and down the street, the known one.

Q. As the second part of your examination in this case, did you look at Regency video of a large truck situated across the street from the guard station at the Regency Towers?

A. Yes, I did on a tape that was dated April 19, 1995.

Q. Could you describe for his Honor and the jury what you did to make that comparison?

A. Same technique was used once again. A truck of similar make and model was placed out on the street, and this time at a

parking meter across the street. And then the questioned image

was superimposed onto the known image of the pickup -- I'm sorry -- of the truck that I placed in the scene. And once again, they were superimposed on each other.

Q. What was the known vehicle that you used to make the comparison for the image of April 19, 1995?

A. A 20-foot Ford Ryder truck.

Q. And what likenesses or similarities did you find?

A. The same as in the pickup. It is basically the same size and make, such as a Ford, as the questioned vehicle.

MR. MACKEY: Your Honor, that's all I have of this witness. Thank you.

William Stokes - Direct

THE COURT: All right. Ms. Merritt?

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Agent Stokes, do you know how many dark blue, 1994 (sic) GMC pickup trucks with white camper shells were manufactured in 1993 or 1994?

- A. With camper shell, none. However, I cannot state as to specific color, but you would really want to include GMC and Chevrolet, since they have basically came off the same assembly line; and that would be 531,892. Of GMC pickups that are this particular series model, there were 71,020 manufactured. But of all GMCs in 1984, there were 121,900 -- 121,558.
- Q. Do you know how many were sold in 1994?
- A. I would certainly hope all -- GM sold them all.
- Q. Is the answer no, you don't know?
- A. I have no idea.
- Q. Do you know how many were on the road in Oklahoma City in April of 1995?
- A. No, I do not.
- Q. Do you know how many were on the road in the United States in 1995?
- A. An approximation would be the 500-some-odd thousand. 531,000.
- Q. So you know that there were 531,000 on the road in 1995?
- A. At least that many manufactured. I'm sure some were lost

William Stokes - Cross

to wrecks or whatever the case may be.

- Q. Agent Stokes, that wasn't my question, though. My question was do you know how many were on the road?
- A. No, I do not.
- Q. Now, this technique that you used to view the truck: It didn't tell you who was driving the truck, did it?
- A. No, it did not.
- Q. And it didn't let you -- it didn't tell you what color the truck was, did it?
- A. That is correct, with the exception that if it had been a white truck I could have told that it was a white truck, or yellow truck, some dramatic difference in color.
- Q. But it did not tell you that in this case?
- A. It did not tell me that it was a blue truck or red truck or gray truck.
- Q. And you did not see the license plate through this particular technique?
- A. No, I did not.
- Q. And you couldn't see what state issued the license plate, could you?
- A. No. That is correct.
- Q. Now, with respect to the Ryder truck that you examined, you couldn't tell who, if anyone, was inside the truck, could you?
- A. That is correct.
- Q. Couldn't tell how many people were inside the truck?

William Stokes - Cross

A. That is correct.

Q. Couldn't see who, if anyone, was behind the truck?

A. That's correct.

MS. MERRITT: Thank you, your Honor.

THE COURT: Is he excused?

MR. MACKEY: Yes.

THE COURT: Agreed, Ms. Merritt?

MS. MERRITT: Yes.

THE COURT: You may step down. You're excused.

Next witness.

MR. HARTZLER: Your Honor, could we have a minute?

We have a few witnesses, and I need to figure out who we're going to call.

THE COURT: Yes.

MR. HARTZLER: Call Charles Edwards.

THE COURT: All right.

MR. HARTZLER: Mr. Goelman will question him.

THE COURT: Charles Edwards. All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Charles Edwards affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

Please state your full name for the record and spell your last name.

THE WITNESS: Charles Christopher Edwards,

E-D-W-A-R-D-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

Q. Good afternoon, Mr. Edwards.

A. Good afternoon.

Q. Where do you live?

A. Greeneville, Tennessee.

Q. How long have you lived there?

A. 35 years.

Q. And who do you live with?

A. My wife, my son and my daughter.

Q. Could you briefly describe your education for the jury.

A. I have an associate of science degree and a bachelor of science degree in engineering technology from East Tennessee State University.

Q. When did you get your degrees in engineering?

A. I got my associate of science degree in 1982 and my bachelor of science degree in 1984.

Q. And what did you do after you got your degrees in engineering?

A. After graduation in August of 1985, I started work at Quality Machine Products Company, a small machine shop in Greeneville. And I was employed there as a setup operator for

numerically controlled machines through March of 1985.

Q. Where did you go in March of 1985?

A. I went to Hurd Corporation in Greeneville, Tennessee.

Q. What kind of company is Hurd Corporation?

A. We are a manufacturer of locks, keys, and custom die castings.

Q. How big is Hurd Corporation?

A. We have between 2- and 250 employees right now.

Q. And when you went to Hurd Corporation in 1985, what was your position initially?

A. I started as a draftsman, and that involved detailing the locks and the pieces that go in the locks and served in that capacity through 1986.

Q. What did you do after that?

A. After that, I became a designer and was responsible for the conceptual design of the locks and the parts that went in the locks and worked more with the customers and our sales group developing products to add to our product line.

Q. So you develop lock-and-key sets as an engineer?

A. Yes, sir.

Q. As a designer?

What did you do after you were a designer?

A. In 1989, I became the design engineering manager. I was responsible for a group of designers as well as having responsibility for the builds, materials, and routings that

Charles Edwards - Direct

were released to the manufacturing floor.

Q. What did you do after that, sir?

A. In 1994 -- from 1994 through 1996, I was the general manager of Hurd Corporation.

Q. Are you still the general manager?

A. No, sir. In 19 -- August of 1996, I requested to return to the design engineering department as the design engineering manager.

Q. And is that the position you hold right now?

A. Yes, sir, it is.

Q. Have you also taught courses in machining or designing?

A. Yes, sir. I taught courses in blueprint reading and computer-aided manufacturing at the Greene County Center for Technology between 1985 and 1989.

Q. And during your years as designer at Hurd Corporation, how many lock-and-key sets did you personally design?

A. Over a hundred.

Q. In your years as a supervisor at the same company, how many

lock-and-key sets do you oversee the design of?

A. Again, well over a hundred.

Q. And during all your years at the Hurd Corporation, how many

lock-and-key sets were actually produced by the company?

A. We have produced billions of locks and keys through the years that I have been there

years that I have been there.

Q. During your time at Hurd, have you been involved at all

Charles Edwards - Direct

with lock or key sets manufactured for the Ford Motor Company?

A. Yes, sir. We were supplying Ford Motor Company locks and keys from 1985 through 1996 in a production capacity and continue to supply Ford locks and keys to their parts and service division to present.

Q. Are you familiar with something called the Ford 10-bit system for keys?

A. Yes, sir. That describes a particular type of key and the locks that are associated with that key.

Q. Okay. What exactly -- what type of key is a 10-bit key?

A. A 10-bit key has 10 regularly spaced positions along the shank of the key. In each one of those positions, one of five cuts could be made.

Q. So there are ten different positions that you position one of five different cuts?

A. That's correct.

Q. How many possible combinations does that make?

A. We had over 253,000 possible combinations in production.

Q. And during your work at the company, did you become familiar with how these keys and locks were actually made?

A. Yes, sir, I did.

Q. Did you hear from the FBI sometime after the bombing in Oklahoma City?

A. In the summer of 1996, I was contacted by the FBI and told they might need our assistance in that case.

Charles Edwards - Direct

Q. What did they ask you?

A. They asked us to -- they asked me to make a lock set for a 1993 F700 using Key Code 108B529.

Q. 108B529?

A. Yes, sir.

Q. How do you remember that key code?

A. You -- I was subsequently asked to make a series of diagrams explaining how that code functioned in the lock.

Q. And before you went ahead and built this lock set, did you know anything else about the truck except for that it was a Ford F700 and that it was Key Code 108B529?

A. No, sir, I don't think that I did.

Q. Mr. Edwards, I want to show you what's already been admitted into evidence by another witness as Government's Exhibit 668. Do you recognize that document?

A. No, sir.

Q. Is that a Hurd Corporation document?

A. No, sir.

Q. Okay. I'm going to ask you to take a look in the upper right-hand corner. Can you see the key code that's indicated there?

A. Yes, sir.

Q. And what is that key code?

A. 108B529.

Q. Is that the very same key code that the FBI gave you in the

Charles Edwards - Direct

summer of 1996?

A. Yes, sir, it is.

Q. What did you do with the key code, Mr. Edwards?

A. I went to our code charts and wrote down the series of cuts

that would be associated with that code and proceeded to our -

-  
the manufacturing floor to the key-bitting area and had a --  
two keys cut to that code.

Q. What's a code chart?

A. A code chart is part of Ford's specification that we received that tells us the depth of cut to put in each one of the 10 positions.

Q. And why did you build a key, if the FBI requested that you build a lock set?

A. We begin construction of all of our locks and keys by cutting the key. Then we build the rest of the lock around that key.

Q. Did you have to build one, or two keys for the different locks that would be on the Ford F700 vehicle? I mean would you

build one for the doors and one for the ignition?

A. I built one lock for the ignition and two locks for the doors.

Q. As far as the key goes, did you have to build separate keys

for the door locks --

A. No, sir. The ignition and door locks use the same key.

Q. And did you prepare a diagram illustrating the key that you

Charles Edwards - Direct

built from Key Code 108B529?

A. Yes, sir, I did.

Q. I'm going to ask you to look down on your screen. This has

not been admitted into evidence. And tell me if you recognize what's been marked for identification as Government's Exhibit 707.

A. Yes, sir, I recognize that.

Q. Is that a diagram you prepared illustrating the key that you made?

A. Yes, sir, it is.

MR. GOELMAN: Your Honor, Government moves to admit Government's Exhibit 707.

MR. NIGH: No objection, your Honor.

THE COURT: 707 is received. It may be shown.

BY MR. GOELMAN:

Q. Mr. Edwards, referring to the image on your screen -- and you need -- there is a light pen up on your left. Can you please explain how the different parts of the key with Key Code

108B529 operate?

A. These cuts in -- these first -- these are the cuts on the key along the blade of the key that I'm tracing over right now.

And as I said, in each one of the 10 positions, 1, 2, and so on

down through -- these are defining the 10 positions, those numbers -- we put one of five depths, one of five depth cuts.

The first six cuts from the tip of the key operate the

Charles Edwards - Direct

ignition lock. The last six cuts from the tip of the key operate the door locks. The cuts in the fifth and sixth position operate both the ignition and the door locks.

Q. So the fifth and the sixth bits are the only ones that overlap?

A. That's correct.

Q. Only ones that are relevant to both locks?

A. That is correct.

Q. And do you see on that diagram the key code that the Government provided you in the summer of 1996?

A. Yes, sir. It's this code up here, 108B529.

Q. Mr. Edwards, you testified that in order to build a lock set, you had to first build a key. Is that right?

A. Yes, sir.

Q. Did you subsequently build a lock set as well?

A. Yes, sir, I did.

Q. Can you describe how you did that?

A. After cutting the keys, I went to our ignition-lock assembly area and retrieved an ignition-lock cylinder assembly from storage and a housing assembly from storage. I inserted the key into the ignition-lock cylinder and had the cylinder coded to fit that key.

I then installed the side bar and related hardware into the ignition-lock cylinder, placed the ignition-lock cylinder in the housing assembly and checked it for function.

Charles Edwards - Direct

Q. And did it work?

A. Yes, sir, it did.

Q. Did you also build door locks?

A. Yes, sir, I did.

Q. And can you real briefly describe how did you that?

A. I went to our door-lock assembly area and selected the tumbler plates that corresponded with the cuts on the key and inserted them into the door lock cylinder. I then cut the key



inserted them into the door-lock cylinder. I then put the key into the door lock and inserted that assembly into the door-lock housing and checked it for function.

Q. What did you find there?

A. And it worked.

Q. Did you prepare diagrams to explain to the jury how this particular key worked in the door and the ignition locks?

A. Yes, sir, I did.

Q. Okay. I want to turn your attention to what's been marked for identification purposes Government's Exhibit 708. What's that?

A. That is a sectional view taken parallel to the shank on the key through the door locks.

Q. And is that a reasonably accurate depiction of how that particular key would work in that particular door lock?

A. Yes, sir, it is.

MR. GOELMAN: Move to admit Government's Exhibit 708, your Honor.

Charles Edwards - Direct

MR. NIGH: No objection, your Honor.

THE COURT: Received.

BY MR. GOELMAN:

Q. Referring to that exhibit, will you explain how the door lock -- the door -- the key would work in the door lock.

A. You can see that when the key is inserted into the door lock, the tumbler plates, which are these black areas, correspond with the cuts on the key, which are in these areas. The door lock works -- works off the last six -- last six cuts from the tip of the key.

Q. Did you also prepare a diagram to show how the key actually

would function to cause the lock to turn?

A. Yes, sir, I did.

Q. And I ask you to turn to what's been marked for identification purposes Government's Exhibit 709. It should be coming up on your screen soon.

Do you see that?

A. Yes, sir, I do.

Q. And that is the diagram you prepared?

A. Yes, sir.

Q. To help you to explain to the jury how the key would function to open the door lock?

A. Yes, sir.

MR. GOELMAN: Move to admit Government's Exhibit 709, your Honor.

Charles Edwards - Direct

MR. NIGH: No objection.

THE COURT: Received. It may be shown.

BY MR. GOELMAN:

Q. Go ahead, Mr. Edwards.

A. This view is used to explain the lock in a locked state. You can see that the tumbler plate, this piece right here, is extending up into a channel in the lock housing, and that blocks the cylinder's rotation. In this view above, when the key is inserted into the lock cylinder, the tumbler plate is pulled down within the diameter of the cylinder, and that allows the lock cylinder to rotate freely in the housing.

Q. So what happens if you have a key and you insert it and it's not cut to the right bit length?

A. If an incorrect depth -- if the wrong plate was placed in a manner that would correspond with -- if the tumbler plate and the depth of cut don't correspond, then the tumbler plate will either continue to be up in that area because the cut is too deep, or if the cut is too shallow, the tumbler plate will be pushed down into this area.

In either case, it blocks the cylinder's rotation and the lock won't turn.

Q. So it wouldn't work?

A. Right.

Q. Did you also prepare similar diagrams illustrating how this key works in the ignition cylinder?

Charles Edwards - Direct

A. Yes, sir, I did.

Q. I ask you to turn to what's been marked for identification Government's Exhibit 710. And is that the side view that you prepared?

A. Yes, sir, that's a sectional view taken parallel to the shank of the key as it's inserted into the ignition lock.

Q. Would that help you to explain to the jury how the ignition lock functions?

A. Yes, sir.

MR. GOELMAN: Your Honor, I move to admit Government's Exhibit 710.

MR. NIGH: No objection.

THE COURT: 710 is received, may be used.

BY MR. GOELMAN:

Q. Referring to the image on your screen, Mr. Edwards, can you explain to the jury how the key for 108B529 would function the ignition lock?

A. In this particular view, you can again see that the tumbler plates, which are the little black-shaded areas above the key, align with the first six cuts on the shank of the key.

Q. And did you also prepare a diagram illustrating how the

key

would actually function inside the ignition lock?

A. Yes, sir, I did.

Q. I ask to you take a look at what's been marked for identification Government's Exhibit 711. Is that that diagram?

Charles Edwards - Direct

A. Yes, sir, it is.

Q. Would that help you to explain to the jury this particular mechanism?

A. Yes, sir, it would.

MR. GOELMAN: Move to admit Government's Exhibit 711, your Honor.

MR. NIGH: No objection.

THE COURT: Received. May be used.

THE WITNESS: The ignition lock is a little bit different from the door lock as far as the internal construction is concerned. It has in this area a device called a side bar. With the key removed, the tumbler plate is pushed down in its opening by the tumbler spring. When it's pushed down, this V, which is cut in the tumbler plate, is misaligned; and it pushes the side bar out into this opening.

When the key is inserted, the V is positioned symmetrically about the axis of the cylinder and the side bar; and you can see the little spring down here -- is naturally pushed down into the diameter of the cylinder again, freeing the cylinder up so it can be rotated.

BY MR. GOELMAN:

Q. What if you have a key that's cut wrong?

A. Then the V is slightly misaligned above or below the horizontal centerline in this view -- in this view; and that would push the side bar out into this channel again. It would

Charles Edwards - Direct

prevent the cylinder from rotating.

Q. Wouldn't work?

A. Wouldn't work.

Q. Mr. Edwards, you described how you built this key and these locks from the code that was provided to you. Is that right?

A. Yes, sir.

Q. Before you built these, did the FBI ever provide you with a key that they might have found?

A. No, sir.

Q. Had you ever been shown a picture of a key that the FBI might have found?

A. No, sir.

Q. And had anyone even described to you a key that might have been found?

A. No, sir.

Q. They just gave you the code, asked you to build this?

A. Yes, sir.

MR. GOELMAN: May I approach, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Edwards, you're being shown what's already admitted into evidence as Government's Exhibit 699. Can you open that bag and pull the key out, please.

Does that say Q2323 on it, Mr. Edwards?

A. Yes, sir.

Charles Edwards - Direct

Q. And do you recognize what kind of key that is?

A. That is a Ford 10-bit key.

Q. Does it say "Ford" on it?

A. No, sir, it doesn't.

Q. How do you know that it's a Ford key?

A. There are several things that tell me this is a Ford key.

The shape of the key way, looking down parallel to the shank of

the key, has a distinct shape which is used in Ford's cars and trucks. There is 10 cuts along the blade of the key, and the shape of the head and the shape of the key ring opening in the head is consistent with the 10-cut keys that our company manufactured for Ford.

Q. Did your company ever manufacture keys for Ford that it didn't stamp with the Ford logo?

A. Yes, sir.

Q. What kind of vehicles were those?

A. I can't say what kind of vehicles they were, but we did occasionally receive requests to set up lock sets for Ford without a logo on the key; and my understanding is that those locks were usually sold to Ford's fleet customers.

Q. What are fleet customers?

A. Rental -- usually rental agencies.

Q. Do you know what years Hurd manufactured these types of keys for Ford Motor Company?

A. These keys were in production vehicles between 1985 and

Charles Edwards - Direct

1994.

Q. And is this the same kind of key that Hurd manufactured for

the Ford F700 truck series in 1993?

A. Yes, sir, it is.

Q. Looking at that key, can you tell if it's an original or a duplicate?

A. That's an original key, I believe.

Q. How do you know that?

A. There is no coining on the head of the key or embossing at

A. THERE IS NO COINING ON THE HEAD OF THE KEY OR EMBOSSED AT all, and most aftermarket keys are coined or embossed in some manner. The company that makes them usually puts some identification on the head.

Also, the way that the bits are cut into the key, they're very regular. There is no irregularities between one side of the key vs. the other side of the key. And also, the peaks that occur naturally between the bits on the key are very sharp and well-defined, which makes me believe that this was cut off of some of our production equipment.

Q. Mr. Edwards, you indicated that you manufactured both door locks and ignition lock and keys in response to the Government's request?

A. Yes, sir, I did.

Q. And that was from Key Code 108B529?

A. Yes, sir.

MR. GOELMAN: May I approach, your Honor?

Charles Edwards - Direct

THE COURT: Yes.

BY MR. GOELMAN:

Q. You're being shown what's been marked for identification Government's Exhibit 712. Can you take the locks and keys out of that, Mr. Edwards.

Do you recognize those locks and those keys?

A. Yes, sir, I do.

Q. Are those the ones that you built in response to the FBI request?

A. Yes, sir, they are.

Q. How do you know those are the same?

A. When I built those, I had -- took them to our tool room and used a little punch press and punched the date and my initials

on the ignition lock when I built it; and on the door locks, I took a punch press and punched my first initial on the tail of the door lock cylinders.

Also, when at a later time -- when I brought them out here to Denver, I engraved the date and my initials on them again.

MR. GOELMAN: Your Honor, move to admit Government's Exhibit 712.

MR. NIGH: No objection, your Honor.

THE COURT: Received.

BY MR. GOELMAN:

Q. Did you also before coming to court today, Mr. Edwards,

Charles Edwards - Direct

insert Government's Exhibit 699 into both the door locks and the ignition lock that you built?

A. That's the key?

Q. That's the key.

A. Right. Yes, sir, I did.

Q. Did you do that?

A. Yes, sir, I did.

Q. And did you try to turn the locks with that key?

A. Yes, sir, I did.

MR. NIGH: Your Honor, if I might, at this point I'm going to object based upon my objections to Ms. Hester's testimony and the admission of 699.

THE COURT: Overruled.

BY MR. GOELMAN:

Q. What did you find when you tried that key in those locks?

A. That key functioned the locks that I built.

Q. Do you know what key code Government's Exhibit 699 is?

A. I believe that it's 108B529.

MR. GOELMAN: Your Honor, may we have Government's Exhibit 700 put back up on the easel?

THE COURT: All right.

MR. HARTZLER: May we approach and assist?

THE COURT: Yes. Let's help find it.

BY MR. GOELMAN:

Q. Can you see that, too, Mr. Edwards?

Charles Edwards - Direct

A. If I lean up -- can I get up and look?

THE COURT: It doesn't have to be that severe an angle.

Is this in evidence?

MR. GOELMAN: Yes, your Honor.

THE WITNESS: Yes, sir, I can see that.

BY MR. GOELMAN:

Q. And taking Government's Exhibit 699, can you compare it to the key that's depicted in Government's Exhibit 700 and tell me if that's the same key.

THE WITNESS: May I get up and --

THE COURT: Yes.

THE WITNESS: Yes, sir, I believe that's the same

key.

BY MR. GOELMAN:

Q. I want to show you a different key now, Mr. Edwards.

MR. GOELMAN: Do you have Defense Exhibit U1A?

MR. NIGH: The Government already took it.

MR. GOELMAN: It's not marked, your Honor, but this is U1A, defense exhibit.

BY MR. GOELMAN:

Q. You're now being shown Defense Exhibit U1A, and I want you to do the same thing with that particular key.

MR. GOELMAN: May he get off the stand, your Honor?

THE COURT: What do you mean, "the same thing"?

MR. GOELMAN: Compare it with the key depicted in

Charles Edwards - Direct

Government's Exhibit 700, your Honor.

THE COURT: All right.

THE WITNESS: Okay.

BY MR. GOELMAN:

Q. Is that the same key, Mr. Edwards?

A. No, sir, I don't believe it is.

Q. What's different about it?

A. Can I look one more time? I want to make sure.

Q. Sure.

A. The key in the photograph does not appear to have any coining or embossing on the head. This key has -- if you look at the perimeter of the key, you can see that the inside of the head of the key has been coined.

Also, the cuts along the shank of the key appear to be different than the cuts on this key, and especially to me -- one of the things that is really significant to me is the last cut on this key in the 10th position has a much sharper angle adjacent to the last cut.

And another thing is this key is an aftermarket key; and I can tell that it's an aftermarket key. As I look at the bits of the key, I can see little tracks or grooves in the bit area and the tips -- between the -- the peaks between the cuts on the key have been rounded off, which is consistent with a duplicate key.

And finally, this key has been brushed along the

Charles Edwards - Direct

shank, which is something that is typically done when the key is duplicated.

Q. So to the trained eye, there are some significant differences?

A. Yes, sir.

MR. GOELMAN: One moment, your Honor.

THE COURT: Yes.

MR. GOELMAN: Nothing further.

THE COURT: Mr. Nigh, how long is your cross going

to  
be?

MR. NIGH: I think it will take more than two minutes, your Honor.

THE COURT: Well, start.

MR. JONES: And finish, your Honor?

THE COURT: I didn't say that.

CROSS-EXAMINATION

BY MR. NIGH:

Q. Good afternoon, Mr. Edwards.

A. Good afternoon, sir.

Q. First, let me ask you if keys are like fingerprints.

A. In what way?

Q. Are they all unique?

Q. Are they all unique:

A. Each key is -- I don't guess you'd get two keys that are exactly identical, but you have keys that are very consistent.

Q. As a matter of fact, a number of keys are cut to the same

Charles Edwards - Cross

code, are they not?

A. Yes, sir.

Q. And if I understand correctly, Hurd Lock Corporation during

1993 shipped locks to Ford Motor Company in lots of 50 per box?

A. That's correct.

Q. That's right?

And isn't it true that up to 30 percent of the locks and the keys in any given box could have the same key code?

A. That's correct. We cannot -- can I elaborate on that?

Q. Sure.

A. If you had a box of 25 keys or of 25 locks, eight locks in

the box -- seven or eight locks in the box would have the same code.

Q. All right. And that would be 30 percent.

A. Right.

Q. And so in a box of 50, which as I understand the way that Hurd sent these keys to Ford most of the time, in a box of 50, 15 of them would have the same key code and the same locks.

A. That's correct.

Q. And so in an order of 400 -- say, for example, Ford Motor Company ordered 400 lock sets and keys for a set of or a fleet of trucks, if you would, as many as 120 of those would have precisely the same key code, same keys, same locks.

A. I trust that your math is correct and will say --

Q. That's a dangerous thing to do, but I think it is.

Charles Edwards - Cross

So keys are not, in fact, unique in terms of key codes. Is that right?

A. Locks, we shipped with a 30 percent code mix. That's correct.

Q. So many of them are the same in terms of the way that they're cut?

A. Right.

Q. All right. Now, on your direct examination testimony, you were looking at the Government's exhibit, which I believe is 699, the key 2323, the one that has a piece of tape on it.

A. Right.

Q. And if I understood you correctly, I think you said, "I believe the key code is 108B529."

A. That's correct.

Q. Did you qualify your answer with the word "believe" for a reason?

A. There is no tag with the key.



Q. Meaning it's impossible to determine for certain what the key code for that key was?

A. I can read the cuts on the key and compare them to the cuts that -- the cuts on the key that I was asked to make, which was Code 108B529, and say that they are the same cuts.

Q. But you can't tell that it's -- that that key code was used to make that key?

A. I believe that that was the key code used to make that key.

Charles Edwards - Cross

Q. But you're not certain.

A. I'm 99 percent certain.

Q. All right. Would you be able to tell that by looking at that photograph what the key code was for the key in the photograph?

A. If I held the keys that I was asked to make up against the photograph, again, the bits would be consistent with Code 108B529.

Q. From just looking at the photograph, would you be able to tell what the key code was for the key depicted in the photograph?

A. Yes, sir, I could -- I could read -- I can tell by looking at the shank of the key -- I can tell you the values of the cuts on the key. I can tell you the depths.

Q. Can you tell if there is any dirt covering up some of the edges of the key in that photograph?

A. Not on the top surface, which is the surface I was looking at.

Q. Not necessary to look at the bottom surface?

A. No, sir. If I can see one side, I can get the code. Both sides are cut the same.

THE COURT: I'm convinced you have more than we're going to accommodate. You win.

You may step down. We'll have to have you back in the morning.

THE WITNESS: Okay.

THE COURT: Members of the jury, we kept you a little bit longer here than normal to see if we could finish; but obviously Mr. Nigh should have a fair opportunity to cross-examine the witness, so we'll resume in the morning. And of course, once again, you're excused to do as you choose within limits during this recess. And the limits, of course, are those things that I've told you about many times before, which are very important for you to follow.

Let the matter rest again in your own minds even until tomorrow morning; and of course, be careful about all of the

things that you see and hear to avoid anything that could relate to the issues of the trial. I hope you're not going out

and getting a set of keys to duplicate tonight.

You're excused till 9:00 tomorrow morning.

(Jury out at 5:06 p.m.)

THE COURT: Okay. Recess, 9:00.

(Recess at 5:07 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
260 & 261	8655	8655			
346	8727	8727			
346A & 346B	8729	8731			
347	8728	8728			
348	8751	8751			
349 - 351	8747	8747			
355	8696	8696			
356	8698	8698			
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PLAINTIFF'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
363	8675	8675			
364	8680	8680			
365	8681	8681			

365	8684	8684
366	8690	8690
367	8688	8688
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670A	8734	8734
671	8733	8733
707	8764	8764
708	8766	8767
709	8767	8768
710	8769	8769
711	8770	8770
712	8774	8774
903	8716	8716
904	8714	8714
906	8720	8720
907	8717	8717

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 13th day of May, 1997.

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Paul Zuckerman

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Kara Spitler