UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

EDGAR JONES, JASON MOORE, GERMAN STUMBO, DREXIL HALL, TEDDY KINNEY, BENNY CAUDILL, KENNETH ROLLAND, a/k/a POSTMAN, RANNY BLANKENSHIP, EUGENE TACKETT, HAROLD MOORE, HERMIT NEWSOME, TIM MILAN, MOSE MEAD, DONAHUE HALBERT, AUSTIN "BO" MOORE, PEBO GAYHEART, LINVILLE MOSLEY, RAYMOND HALL

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: MARCH 1, 1984

VOLUME FORTY-SIX

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
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I N D E X

PHILLIP GENE BOOTH

Direct Examination By Mr. Self: Pgs. 5-

EXHIBITS

Government's Exhibit No. 122: Pg. 126

Government's Exhibit No. 84: Pg. 105

MILLERS FALLS
EXERASE
BOTTOM CONTENT

A P P E A R A N C E S

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For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

For the Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

WILLIAM D. KIRKLAND, ESQ.

For Phillip Gene Booth:

JOSEPH W. JUSTICE

WILLERS FALLS
EZERASE
COTTON CONTENT

(Court convened at 9:02 a.m.)

THE MARSHAL OF THE COURT: All rise, please. Hear ye, hear ye, all persons having business before the United States District Court for the Eastern District of Kentucky draw nigh, give attention, and ye shall be heard. Order is commanded. Court is now in session.

God save the United States. Be seated and come to order, please.

Your Honor, all defendants, attorneys and jurors are present.

THE COURT: Are we ready to proceed, gentlemen?

MR. SELF: Yes, Your Honor.

THE COURT: Mr. Booth, please return to the stand.

MR. SELF: May I approach the podium, Your Honor?

THE COURT: Yes, sir.

THE CLERK OF THE COURT: Mr. Booth, you've been previously sworn in this case, and do you still recognize that you're still under the continuing oath, sir?

THE WITNESS: Yeah.

THE CLERK OF THE COURT: Thank you. Please

take your seat.

(The witness complied.)

THE COURT: Please proceed, sir.

DIRECT EXAMINATION (Resumed)

BY MR. SELF:

Q. Mr. Booth, yesterday when we finished up for the day you indicated that you were up at the picket line at the top of the hill at Ray-Mac, and left the hill and ran into some individuals.

A. Yes.

Q. Who did you run into?

A. Teddy Kinney and Jason Moore.

Q. And did you have a discussion with them at that time?

A. Yes.

Q. What, if anything, did you or they say?

A. They said they'd been to Edgar's office, and that Edgar told them in order to protect his contract it had to be a legal strike.

Q. And what, if anything, did you say?

MR. HARWELL: May the Court please, I apologize to Mr. Self, but I didn't hear the last part of the witness's sentence. I'm sorry, Your Honor.

Q. Would you repeat what was said, Mr. Booth.

A. That the--in order to protect his contract it had to be a legal strike, that they'd have to go pull all the mines out.

Q. And did they-- What, if anything, did you say to them?

A. Anything that I said?

Q. Did you say--tell them anything?

A. No, not at that time.

Q. And from where-- Where were they going at the time? Do you know?

A. Back upon the hill at that time.

Q. And where, if anyplace, did you go?

A. Back to Edgar Jones' office.

Q. And who was at Edgar Jones' office when you got there?

A. Pearl and me. Pearl was there and I walked in.

Q. What, if anything, was said by you or Pearl or Mr. Jones at that time?

A. Edgar said that they had to pull all the mines out in order to protect his contract, and that there wasn't no way that day we could meet the unit train. And I asked him could I go to see Teddy or one of them to see about letting finish its belt setup.

Q. What did he say specifically about a unit train?

A. There was no way we could meet it that day.

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Q. Did he say why?

A. Well, Calamity didn't have no coal. Atkins didn't have none. Junior Hamilton might have had four of five loads on the ground. And I don't know how much was Spewing Camp.

Q. Anything else he said about the unit train?

A. There wasn't no way we could meet it that day.

Q. And was there to be a unit train that was supposed to leave McDowell that day?

A. Supposed to leave the next evening.

Q. How many cars?

A. Forty-two.

Q. Now, do you know, Mr. Booth, why your mines were not producing enough coal for the unit train?

A. Calamity had low coal. You'd have to shoot the top in order to get the drill into it, you know, to shoot the coal out.

Q. What about Bryan?

A. It was down making a belt setup.

Q. And had you inspected any

other mines that morning as to the amount of coal they had?

A. Earl Atkins's mines.

Q. Did they have any coal?

A. About two hundred ton.

Q. And do you know, Mr. Booth, why any of the other operators and Mr. Jones were not having - - did or did not have coal?

A. They'd all been having a lot of breakdowns. There was a bunch of mines - - Well, one of the mines had blowed up, and we had a lot of inspectors.

Q. One of - - Whose mine had blown up, Mr. Booth?

A. It was not one of Edgar's.

Q. And what kind of inspections were you having?

A. They'd just come anytime they want to and inspect the mines.

Q. Who?

A. State and Federal Mine Inspectors.

Q. And what, if any - - What did Mr. Jones state to you in regard to pulling everybody out?

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A. That he had to have - - everybody had come out in order to protect his contract.

Q. Did he explain what he meant by that?

A. No, not at that time.

Q. Did you know - - Did you know what he meant at that time?

A. Yes. We didn't have no coal to - - It had to be a legal strike before he could not - - before he could have a reason that he couldn't ship the coal.

Q. And did he say anything about having met with anybody before that?

A. Just that he had a phone call about one company.

Q. What, if anything, did he say about the union organization activity?

A. Nothing about a union organization activity.

Q. Did he say anything about the union?

A. Nothing about the union. We was helping them now, and they'd be helping us later.

Q. Is that what you said?

A. No, that's what Edgar Jones said.

Q. Did you - - What, if anything, did you say to Mr. Jones at that time?

A. At that time? Nothing at that time.

Q. And how long did you stay there?

A. About fifteen or twenty minutes.

Q. And where did you go then?

A. Bryan.

Q. Why did you go to Bryan Coal Company?

A. I went up there to where they could - - I could tell them that Teddy agreed to let them finish getting their belt set up.

Q. Had you talked to Mr. Kinney about that before?

A. I talked to him once, yes.

Q. And did you go to Bryan?

A. Yes, I went to Bryan. I met Teddy and Jason up there.

Q. And what, if anything, did

you say or they say?

A. I asked Teddy could I finish making my belt setup; use one shift to do it in. He told me we'd help them and he'd help me, to go ahead and let one shift work on it and have the rest of them on the picket lines.

Q. And what did you tell him?

A. I'd do it.

Q. And the men working at Bryan at that time?

A. They was outside.

Q. And what, if anything, did you say to the men?

A. Told them that Teddy agreed to let us work one shift making a belt setup, and he wanted the rest of them on the picket line.

Q. Why did you ask Mr. Kinney for permission to operate your own mines, Mr. Booth?

A. He was the union president.

Q. You were the employer of those men, were you not?

A. Yeah, but he'd done been up there and told them to come outside.

Q. And they were outside when you got there, correct?

A. Yes.

Q. Why did you have to ask Mr. Kinney for permission to operate your mines?

A. Well, he - - he was the president of the Union. He could call them out.

Q. And was there a strike going on at your mine?

A. No, sir.

Q. Were there pickets at your mine?

A. No.

Q. Were you having any labor disputes or disagreements with any of your employees under the coal contract?

A. No, sir.

Q. After you talked to Mr. Kinney at Bryan where, if any place, did you go then?

A. I went to - - back around on the hill.

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Q. What hill?

A. John Hall Branch hill, at the Ray-Mac Mining site.

Q. And what if anything did you see when you got there?

A. There was a bunch of men there, all the men had started coming in from different mines.

Q. How many men were there?

A. Twenty-five or thirty.

Q. And who all was there, Mr. Booth?

A. Teddy, Jason --

Q. (Interrupting) Pardon?

A. Teddy Kinney, Jason Moore, Drexil. Some people from Dye Coal Company. Some people from my mines, from Calamity Coal Company. And I was there, Tilton Dye and Jimmy Dye.

Q. Are they the operators of a mine?

A. Yeah, they were operating Dye Coal Company.

Q. Who else was there?

A. Mose -- well, Phillip Dale Moore was there. I had met him down at the tipple and he rode up there with me. I -- I don't know all their names from the different mines, but some of my men were there.

Q. Do you know what mines these men were from other than the ones you just mentioned?

A. All of them were from JRM Mines.

Q. And what were the men doing on the picket line?

A. Mostly sitting and drinking.

Q. And did you talk with any of these Defendants at that time?

A. I talked to Jason Moore.

Q. What did you say to Jason or did Jason say to you?

A. I gave him a hundred dollars to get beer and whiskey with -- beer with.

Q. Why did you do that, Mr. Booth?

A. I just gave him a hundred dollars to get beer with for the men to

drink.

Q. How long did you stay up there?

A. An hour or so.

Q. And other than standing around drinking, were the men doing anything else?

A. There was two trucks come up the hill that was turned back.

Q. What kind of truck?

A. A Brite-Way and a Mack Truck, coal truck.

Q. And where were these trucks going, do you know?

A. Ray-Mac.

Q. And what happened when the trucks came up the hill?

A. They turned around and went back off the hill.

Q. Do you know why they turned around and went back off the hill?

A. They turned them around and told them they couldn't load.

Q. Who talked to the drivers?

A. Drexil.

Q. Did you overhear what Mr. Hall said?

A. He told them they couldn't load coal up there at that time. They were --

Q. (Interrupting) I'm sorry, go ahead.

A. There was two trucks coming off the hill too.

Q. From Ray-Mac?

A. Yes.

Q. The two trucks that were coming up the hill, did you talk to the drivers of those, Mr. Booth?

A. No.

Q. Were you there beside Mr. Moore -- Mr. Hall when he was talking to them?

A. I was within fifty foot of it, I wasn't down there where -- around where they were at.

Q. But could you overhear what was said?

A. He told them not to come up there and load no more.

Q. Did he tell them why?

A. No, he didn't tell them why. I didn't hear him tell them why, I don't know why he told them.

Q. Was anyone else talking to the drivers?

A. There was three or four over there, I don't know who all was over there.

Q. Now, as far as the trucks that came off the hill, what happened in regards to them?

A. They stopped and told them that would be their last load.

Q. Who stopped them?

A. Drexil and Teddy and all of them were over there talking to them men.

Q. Did you go over and talk to them?

A. No.

Q. And specifically, what did Mr. Hall or Mr. Kinney say to them, if you overheard them -- did you overhear what they said to the trucks?

A. I just overheard that driver say something, I never heard what they said.

Q. What did the drivers say?

A. He had payments he had to make on his truck.

Q. Did he come on off the hill?

A. He told them he had the payments he had to make and they told him that'd be his last load.

Q. How long did you stay up there?

A. About -- must have been an hour and a half or something like that. I couldn't tell you the exact time.

Q. And then where did you go?

A. From there I went back to the office, Edgar's office.

Q. How did you come to go back to Edgar's office?

A. Just drove back down there. Dwayne Little came up there and told me that Edgar wanted to see me and all.

Q. Who is Dwayne Little?

A. He works for Edgar

in the office there.

Q. And what did Mr. Little say to you?

A. Edgar wanted to see me down there.

Q. And did you go down to Mr. Jones' office?

A. Yes.

Q. About what time was this, do you remember?

A. Two or 2:30 in the afternoon.

Q. Who was at the office when you got there?

A. Earl Adkins, Phillip, Pearl --

Q. (Interrupting) Phillip who?

A. Huh?

Q. Phillip who?

A. Phillip Adkins.

Q. Who else?

A. Pearl was there and me and that's all.

Q. Any other coal operators there besides Mr. Jones and yourself and Mr. Adkins?

A. No.

Q. And what happened at this meeting?

A. They were talking about - -

Q. (Interrupting) Don't say --

A. (Interrupting) Well, they--

Q. (Interrupting) Who was - -

A. (Interrupting) Edgar was there was talking about shutting them down.

Q. What did Mr. Jones say?

A. He was going to shut them down, he, he'd show them who they were fooling with.

Q. Did he say who he was going to shut down?

A. Ray-Mac Mining.

Q. What did he say about Ray-Mac?

A. He said it was just like a set of steps. We paid union royalty at the bottom of the hill and they don't have to pay them at the top of the hill and he seen Nick Cooley's car go up the hill.

Q. Did he make any statement

attaching any significance to Mr. Nick Cooley's car going up the hill?

A. He said Nick -- that Ray-Mac was mining Nick Cooley's and Arnold Turner's coal, they'd lease it off them.

Q. When he said that did he say anything else in relation to that?

A. They'd been jealous of him all their life and that's all he said.

Q. What else did Mr. Jones say during this meeting to you and Mr. Adkins, Phillip Adkins, and Earl Adkins, and Pearl?

A. I told him that I'd give Jason a hundred dollars to get beer with.

Q. And what did he say?

A. He told me that was all right and he said he'd have me some whiskey at the restaurant in the morning and we'd get that to them.

Q. What if anything else was said during this meeting Mr. Booth?

A. That if we didn't stop them that we'd all be out of a job.

Q. Did he say why - - did he say why?

A. Well, if he didn't have no more coal orders.

Q. What if anything else did he say?

A. Nothing exactly that I remember at that time.

Q. How long did this meeting last?

A. About fifteen, twenty minutes.

Q. Did he tell you as an operator or Mr. Adkins as an operator anything to do?

A. He told me he wanted me on the hill in the morning.

Q. Did he say anything about your mine?

A. He told me to get - - go up there and see what they needed and have Tootsie to call it in to the office and he would order what we needed to fix the belt with.

Q. As far as supplies for the mines?

A. Yes.

Q. Did he mention anything about any previous discussions that you had had with

him?

Did he mention anything that you and he had talked about alone at that time?

A. Just about what they underbid him on his orders.

Q. What did he say about that?

A. They underbid him about the same thing that he had to pay the union. I don't know how much that is he had to pay the union.

Q. Now, where did you go from there?

A. I went from there back to Bryan Mines.

Q. What happened when you got to Bryan?

A. Tootsie Hall was outside and he had to order some steel rope and some belt hardware and he had to go pick it up. And from there I left - - I left at that time. I called it in to Angie before I left.

Q. Where did you go from there?

A. I went back down the hollow down there and they said Junior Hamiliton mine was still running coal. I went from there to the Spewing Camp.

Q. What happened at the Spewing Camp?

A. I asked them boys to come out .

Q. What was at the Spewing Camp Mr. Booth?

A. Junior Hamilton's mine, the Four H Coal Company.

Q. And did you talk to the employees or the operators of that coal company?

A. No, I stopped at the stock-pile.

Q. And who was with you?

A. Me, Phillip Dale Moore, Smitty Joe Mitchell were riding in my car.

Q. Was there anyone else that went in another vehicle with you though?

A. Harold Stumbo. But I don't know who all he had in his truck.

Q. And where did they go?

A. They were there to, but there was a bunch by the time we got there already up on the hill talking to them. I don't know who they was up there.

Q. And where did you go from

the Spewing Camp?

A. Back around on the hill, John Hall Branch hill, the Ray-Mac mining site.

Q. And what happendd when you got there?

A. The time I got there there was a whole lot of people there then.

Q. What were the whole lot of people doing?

A. Drinking, throwing tacks out in the road.

Q. Of the defendants here in court today who all was there?

A. Drexil, Jason, Teddy, Hermit Newsome, Ranny Blankenship and Eugene Tackett.

Q. Did you talk with any of these men?

A. We were all standing around talking.

Q. What if anything did those gentlemen say to you?

A. Well, they didn't say - - we were just talking about everything, you know, about shutting them down and everything.

Q. Shutting who down?

A. Ray-Mac.

Q. Did - - who said that to you?

A. Drexil and Jason. Drexil was doing most of the talking.

Q. What was Mr. Hall saying?

A. That we would have to shut them down if we didn't we'd all be out of a job.

Q. How long did you stay up there?

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A. Stayed up there till everybody got just about drunk.

Q. Did anything happen while you were up there as far as any of the employees of Ray-Mac or anything?

A. There was some of them that came off the hill. They came off the hill in a brown Blazer.

Q. And what happened when they came off the hill?

A. They stopped and they talked to them. I don't know what all was said, I was not close--I don't know what was said.

Q. And where did the men go after they talked to them?

A. Went on off the hill.

Q. About what time was this?

A. About three-thirty or four o'clock.

Q. And was anything going on, any unusual activity going on at the Ray-Mac site at that time?

A. The Ray-Mac site?

Q. Up on the hill, where the Ray-Mac strip mining was going on.

A. They didn't work any of their shifts that evening, as far as I know they didn't.

Q. Did you see anything come in and out of there other than the trucks?

A. There was a helicopter come in there.

Q. How many times did you see it come in?

A. One time.

Q. Was there any shooting that went on at that time, Mr. Booth?

A. No.

Q. Did you see any of the men upon the picket line have any weapons?

A. Drexil had a pistol in his pocket, I don't know what it was.

Q. What did he have on?

A. A blue windbreaker.

Q. Did he have the pistol in the pocket?

A. Yes.

Q. Did it have UMWA on the front of it or something?

A. Yes, it had it on the back

of it, too.

Q. What, if any, discussions did you have with Mr. Drexil Hall and Mr. Jason Moore and Teddy Kinney or any of the other defendants that were up there in regards to the union?

A. Nothing.

Q. Do you know what an interest card is, Mr. Booth?

A. Interest card?

Q. A union card, it's not a membership card, but a card that you ask people to sign up and join the union.

A. I signed them before.

Q. Was any one of the people up there passing out cards to the Ray-Mac employees and asking them to join the union?

A. I didn't see them if there was.

Q. Was there any discussions between you and those gentlemen in regards to asking Ray-Mac employees to join the union?

A. No, sir.

Q. During your times up there at that date, was that ever discussed between you and any of the men that worked there--

MR. HARWELL: (Interrupting) May the Court please, I respectfully object to the leading questions. I think the last four or five have been leading.

THE COURT: Don't lead the witness.

Q. Do you understand my question, Mr. Booth?

A. I forgot what it was.

MR. SELF: May I repeat that question, Your Honor?

THE COURT: Yes.

Q. During the times that you were up at the picket line on Monday, February 15, 1982, what, if any, discussions did you have with any of these defendants or any of the individuals up there as to asking Ray-Mac employees to join the union?

A. None.

Q. Now, where did you go from the picket line?

A. I didn't leave right at that time.

Q. Did anything else happen while you were up there?

A. There was some trucks from

Arnold Turner's come across the hill.

Q. What happened then?

A. They stopped and asked them not to haul no more.

Q. Who stopped and asked them?

A. There was four or five around the trucks. I couldn't tell you who all it was.

Q. What did those trucks do?

A. They told them they wouldn't haul no more.

Q. Now, were they hauling up to the Ray-Mac site?

A. No, they were hauling across the hill to Arnold Turner's tipple which was above Edgar Jones' tipple.

Q. They were coming from the Mud Creek side?

A. Yes.

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Q. And what else, if anything, occurred while you were up at the picket line?

A. Nothing at that time.

Q. Where did you go after that?

A. Back to Edgar Jones' office.

Q. And what happened when you got to Mr. Jones' office?

A. I told him who all was up there and he told me he wanted me to be up there the next morning. Stop at Em Pack Restaurant and he'd give me a case of whiskey.

Q. Who said that?

A. Edgar Jones.

Q. Did he say why?

A. To give it out to the men.

Q. Had Mr. Jones ever given you a case of whiskey before?

A. No, sir.

Q. Was there any mention by him of Ray-Mac?

A. He'd show them who

they were fooling with.

Q. What did he say?

A. He said I'll show them who they're fooling with now.

Q. And they being?

A. Ray-Mac Mining.

Q. And when you discussed it, did he always refer to them as Ray-Mac Mining Company?

A. Huh?

Q. Did he always refer to the group up on the hill as Ray-Mac Mining Company?

A. Nick Cooley, Arnold Turner and Ray-Mac Mining Company.

Q. What, if anything, did he say in regards to Nick Cooley, Arnold Turner or Ray-Mac Mining Company?

A. They were trying to cut his throat and take his orders.

Q. Now, where did you go from there, Mr. Booth?

A. I went from there home.

Q. And what happened at

your house, if anything?

A. There was a bunch come around, sitting around drinking in the garage.

Q. Is this a normal activity at your house?

A. No.

Q. Who all was there?

A. Me, Phillip Dale Moore, Hermit Newsome, and I couldn't tell you who all was there.

Q. And did anything occur that day? that afternoon that you recall?

A. Pearl sent the woman that stayed there and cleaned the house to get some guns from up there at my house -- my mother's house.

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Q. How do you know that?

A. Well, she told me she called up there.

Q. Your wife, Pearl, what did she say to you?

A. She sent up there to get the guns that I took up there and hid.

Q. And do you know what guns she was referring to?

A. Two .30 caliber carbines, .870 Remington shotgun, .357 Magnum, .25 automatic, and a 9 millimeter.

Q. And did your wife say why she sent up there and got those guns?

A. Sent up there and got them in case we needed them.

Q. Why did you - - why did you think you might need them, Mr. Booth?

A. Said for everybody to have a gun up there the next morning.

Q. Who said that?

A. Drexil said it.

Q. When did he say that?

A. When we was getting ready to leave up there on the hill.

Q. Mr. Jones had not discussed - - had he ever told you to bring guns up there?

A. He told Pearl.

Q. At that point in time?

A. No, sir.

Q. Do you know if any guns were obtained on Monday?

A. Yes.

Q. Were those guns that you just described obtained?

A. Yes.

Q. And where were they brought to?

A. Back to my house.

Q. And who went and got them?

A. Betty Tackett.

Q. Who is Betty Tackett?

A. She kept - - she stayed there and cleaned house.

Q. And what, if anything, happened to those guns on Monday?

A. They was put in the living room in the closet. All the handguns was kept out.

Q. Did anything else occur on Monday?

A. No.

Q. Other than what you testified about?

A. No.

Q. What happened, if anything, on Tuesday morning?

A. I put the shotguns - - put a shotgun and pistols in the trunk of the car, kept the .45 out, had it in the seat.

Q. And what did you do after you put the shotgun - - what you have just testified, what did you do then?

A. I went up to the Em Pack's Restaurant.

Q. Was anybody else with you?

A. Phillip Dale Moore.

Q. And what happened when you got to the Em Pack Restaurant?

A. Sat down and drank a cup of coffee, talked to Edgar, Harry Wallen, Junior Hamilton.

Q. What did you talk to Mr. Jones about?

A. About who all was supposed to be up there. There was supposed to be everybody up there that morning. We was all going to meet at the

tipple.

Q. Is there anything else you can recall discussing with them inside Em Pack?

A. No, not until I got ready to leave.

Q. What happened then?

A. He followed me out to his - - he had a Wagoneer - - a Jeep Wagoneer. Me and Phillip Dale went out, and Harry Wallen came out.

Q. What happened then?

A. He opened the back door and got a case of Jack Daniels liquor out.

Q. And what happened to that case of Jack Daniels at that time?

A. I opened the trunk, and had to move a shotgun, and sat it down in the trunk.

Q. And who put it in your trunk?

A. (No response)

Q. Who put the whiskey in your trunk?

A. Harry Wallen.

Q. And when Mr. Jones was there, did he make any statements in regard to that whiskey?

A. If I ever needed any more,

there is more where that come from.

Q. Do you remember anything else he said?

A. Give it out to the men up there on the picket line, keep them all fired up.

Q. Now, this was February of 1982, wasn't it?

A. Yes.

Q. It wasn't Christmas, was it?

A. No.

Q. After you got the case of Jack Daniels, what, if anything, did you do?

A. Went up to the tipple.

Q. Who went with you?

A. Phillip Dale Moore and Ed Tackett.

Q. What happened when you got to the tipple?

A. They was all standing around up there.

Q. The tipple being whose tipple, Mr. Booth?

A. Edgar Jones's tipple.

Q. And approximately how many men were there?

A. Thirty, thirty-five, maybe. I don't know exactly how many there was there.

Q. About what time was this?

A. About 7:00.

Q. 7:00 A.M.?

A. Yes.

Q. What happened when you got to the tipple?

A. I opened the trunk, and just two or three fifths of whiskey was got out, and people started drinking.

Q. Did you give it to anybody or did everybody help themselves?

A. Anybody that wanted it could get it.

Q. Pardon?

A. Anybody who wanted it could have got it.

Q. Did you pass it out to anybody?

A. Just opened my trunk.

Q. Did anybody get a fifth out?

A. There's two or three of them got it out.

Q. And what, if anything,

happened at that time?

A. We was all standing around there, and Jason and them went to - - he went to get one of those union officials, which just lives right below the tipple. I don't remember his name.

Q. What did Mr. Moore say to you before - -

A. (Interrupting) They were going to get him to go up on the hill with us.

Q. Did he say who it was?

A. He said his name, but I don't know.

Q. And what, if anything else, did Mr. Moore do at that time?

A. He got his carbine out and laid it in the front seat of his truck.

Q. What kind of a - - what kind of a - - what kind of carbine?

A. .30 caliber carbine.

Q. A rifle?

A. Yes.

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Q. When he got it out and set in the seat of his truck, did he say anything?

A. Not at that time. He was wiping it off.

Q. Was it dusty?

A. Uh-huh.

Q. And did you see any of the weapons at that time?

A. I had a .45, and I gave Phillip Dale Moore a .30 Special. Harry Wallen had a .25 automatic. Drexil had his gun. And there was other guns there, but I don't know who all had them.

Q. What kind of gun did Drexil have?

A. It was a little black gun, automatic; I don't know what it was.

Q. Do you recognize that gun or one like it if you saw it again?

A. Probably would.

MR. SELF: Mr. Marshal, would you hand the witness what has been previously introduced into evidence as Government's Exhibit No. 39.

(The Marshal complied.)

THE MARSHAL OF THE COURT: This weapon has been cleared, Your Honor.

Government's Exhibit No. 49.

(The Marshal complied.)

THE MARSHAL OF THE COURT: This weapon has been cleared, Your Honor.

THE COURT: Thank you, sir.

Q. Did you see any weapons like that up at the tipple, Mr. Booth?

A. Yes.

Q. Did you see one very similar to that?

A. Yes.

Q. Who had it?

A. Herl Stumbo.

Q. Herl Stumbo?

A. Yes.

Q. Who is Herl Stumbo?

A. Drummond Stumbo's brother.

Q. And what was he doing with it?

A. He had it in his coat pocket.

Q. Why did you give Mr. Phillip Dale Moore a pistol, Mr. Booth?

A. To carry in case he got shot at.

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THE COURT: Thank you, sir.

Q. Have you seen a weapon like that before, Mr. Booth?

A. Yeah, one just like it, if it ain't it.

Q. Pardon?

A. One just like it, if it isn't it.

Q. How do you know it isn't it?

A. I don't know it is not it. I said one just like it if it is not it.

Q. Oh, I'm sorry. And does that appear to be the same weapon Drexil Hall had?

A. Yes.

Q. Now, other than the ones you have testified about, do you see any of the weapons up there that you can recall at the tipple?

A. Carbine.

Q. Did you see any pistols other than that?

A. Just the ones I had and Harry had.

MR. SELF: Mr. Marshal, would you hand the witness what has been introduced into evidence as

Q. Why were you carrying a pistol?

A. In case I got shot at.

Q. Did you see any other weapons around there other than that?

A. Just that .30 caliber carbine. Just about everybody had one, but they had them in their pockets.

MR. SELF: Mr. Marshal, I'm sorry, but I don't know the number of the long .30 caliber carbine that is out here, but would you hand that to Mr. Booth.

THE COURT: Madam Clerk. Before you do that, let Madam Clerk identify it.

MR. SELF: Yes, sir, Mr. Marshal.

THE MARSHAL OF THE COURT: Number 14.

MR. SELF: Yes, sir.

THE MARSHAL OF THE COURT: This weapon is cleared, Your Honor.

THE COURT: Thank you, sir.

Q. Have you seen that gun before, Mr. Booth?

A. Yeah, or one like it.

Q. And where did you first see it?

A. On the hill.

Q. Who had it?

A. Jason. He had it at the tipple first.

MR. SELF: Thank you, Mr. Marshal.

Q. Is that the type of weapon you were referring to as the .30 caliber carbine?

A. Yes.

Q. What happened while you were there at the tipple other than what you have already testified to, Mr. Booth?

A. Danny Blanton's coal truck went up.

Q. Went up?

A. Towards the hill.

Q. What happened to Mr. Blanton's coal truck when it up the top of the hill?

A. They hollered at him and called him everything.

Q. Who hollered?

A. Everybody.

Q. And what were they holler-ing?

A. Calling him a scab and everything.

Q. At that time do you know who Mr. Blanton was hauling coal for?

A. He was hauling off for Ray-Mac.

Q. Do you know where Mr. Blanton lived at that time?

A. He lived there at McDowell.

Q. And after Mr. Blanton went by, what, if anything, occurred?

A. They all loaded up and went on the hill.

Q. And how did you get up there?

A. Me and Phillip Dale Moore drove a black '81 Cadillac.

Q. That was your car?

A. It was my car, but it was in my father's name.

Q. And where did you go?

A. To the top of Ray-Mac hill up there by the job, where you go up there to the job.

Q. And what time did you get up there?

A. I couldn't tell you what time it was. It was early.

Q. And at that time who all was up there of these Defendants, Mr. Booth?

A. Benny Caudill, Herl Stumbo, Hermit Newsome, Phillip Dale Moore, Ranny Blankenship. There was a whole bunch of other people, you know, but I just don't know their names.

Q. Take a look at the Defendants over here, Mr. Booth, if you would, and tell the ladies and gentlemen of the jury who all was up there?

A. Jason, Teddy, Bo, Benny. That's about all I know that was up there at that time.

Q. Besides yourself, Mr. Booth, was there any other coal operators up there?

A. Yes, sir, Earl Adkins and Phillip Adkins.

Q. Who else was up there, Mr. Booth?

A. Who else was up there?

Q. Besides the people you

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A. Back just right on this side of the gap.

Q. On which side?

A. The McDowell side.

Q. How many cars were up there?

A. They was lined all up and down the hill. I couldn't tell you exactly how many.

Q. When you first got there, what, if anything, did you or did you see?

A. Just -- there was two trucks that come up the hill, and they were turned back.

Q. Tell us about that.

A. Some old guy they call "Kojak". I don't know his real name.

Q. What does he look like?

A. He's bald-headed. He shaves his head or something. I don't know.

Q. And when the truck came up the hill, what happened?

A. They turned it back, and the one behind it wanted to get a load and take

have named?

A. Harry Wallen, Harold Dean's father-in-law.

Q. Harold Dean whose father-in-law?

A. Harold Dean Moore's. I don't know his name. And there was some people from other mines up there.

Q. Other mines?

A. My truck driver was up there, Eddie Keith Martin.

Q. "Other mines". What do you mean by "othermines"?

A. Other ones that is operated by JRM.

Q. Who else was up there?

A. That's all. Just like I told you, there was a bunch of people up there. I don't know who all was there.

Q. Approximately how many were up there?

A. Thirty-five, forty, fifty, maybe more.

Q. And when you got up there, where did you park?

it back -- he lived over there -- they wouldn't let him do that.

Q. Who, if anybody, went to the coal truck that Mr. Kojak was driving?

A. Drexil Hall and -- I don't know who all went down there.

Q. Did you go over there?

A. No.

Q. Okay. What did you -- did you overhear what they said?

A. There wasn't going to be no coal hauled over there that day.

Q. Who said what, Mr. Booth?

A. Drexil was doing all the talking.

Q. What did Mr. Hall say?

A. He said there wasn't going to be no coal hauled over there that day, couldn't load.

Q. Did he state to the coal truck driver why there wasn't going to be any coal hauled out of there?

A. No.

Q. After he said that, what -- what happened to the coal truck?

A. It turned and went back down the hill. They said it loaded down there at that other strip job.

Q. What about the one behind you? What happened to it?

A. It turned.

Q. And where did it go?

A. Back to the top of the hill.

Q. All right, after those trucks turned around, what, if anything, occurred?

A. We all stood around there, I'd say, fifteen, twenty minutes. And there was three trucks started off the hill.

Q. As those trucks started off the hill, Mr. Booth, tell us exactly what you did and what you saw anybody else do?

A. They all lined up right there right next to where you go up on the hill at.

Q. The access road?

A. The one that goes up to the mine, Ray-Mac's site.

Q. Who was lined up there?

A. Well, there was a big bunch of people. I don't know who all was there - - Drexil, Herl Stumbo - - just a bunch of people, you know. I couldn't tell you exactly who all was over there.

Q. And did any of those men state to you as to why they were lined up there?

A. Stopping trucks.

Q. And what happened?

A. About the time Danny cleared the road there, he didn't stop. He didn't try to

stop.

Q. Were there some trucks that came off the hill?

A. Yes.

Q. What kind of truck came off first?

A. A red Ford.

Q. Driven by whom?

A. Danny Blanton.

Q. Was there anything that came off the hill before he did?

A. A brown Blazer.

Q. Tell us what happened to that brown Blazer?

A. It pulled over the side of the road, and them boys got out of it and was standing there.

Q. Were they out of it when Mr. Blanton's truck came out?

A. They was out of it when it came out, yes.

Q. Just tell us, starting from when that brown truck came off of the hill, Mr. Booth, as to what you saw and what happened?

A. It come off, pulled over

there on the side of the road and stopped. They got out, and the trucks was right behind them.

Q. "They", being who got out?

A. I don't know who they was. They was from Ray-Mac though.

Q. And what did they do when they got out?

A. They were just standing there. They didn't talk to nobody or nothing. They might have said "Hi", or something like that.

Q. Did they have anything in their hands?

A. No, not when they got out, they didn't.

Q. Then what happened, Mr. Booth?

A. Danny started coming down the hill.

Q. Danny Blanton?

A. Yes.

Q. Okay. What happened as he came down the hill?

A. He got about twenty foot, maybe fifty foot, from where everybody was standing at, and started changing gears in his truck.

Q. What happened when he changed his gears as far as the speed of his vehicle?

A. Speeded up a little bit, not much.

Q. How fast was he going before he changed gears?

A. Just a crawl. Them roads was muddy.

Q. And how fast was he going after he changed gears?

A. Five or ten miles an hour.

Q. And after he changed gears, what happened?

A. He started on down the hill, cut to go down the hill.

Q. Turned?

A. He didn't make a complete turn.

Q. Which way was he turning?

A. Down the hill - - John Hall Branch hill.

Q. All right. As Mr. Blanton's truck reached the road there - -

A. (Interrupting) Hurl Stumbo

throwed a rock at him.

Q. What - - what did you see Mr. Hurl Stumbo do?

A. Throw a rock.

Q. Throwed a rock at what?

A. The truck.

Q. Where did he hit it?

A. On the passenger's side glass.

Q. Then what happened?

A. Then Drexil shot into the back of the truck. Danny jumped out of the truck and had a shotgun. And then another truck stopped, and they started shooting.

Q. Now, them other trucks being what?

A. The other two trucks behind Danny.

Q. Before we get to that, what happened as Mr. Blanton - - did he turn before Drexil shot?

A. He almost made it down the hill turning. You know, the truck never did make a complete turn down the hill.

Q. Then what happened as far

as Mr. Blanton's truck?

A. It stopped.

Q. And before it stopped, what happened?

A. Before it stopped, what happened? It was turning to go down the hill.

Q. What did you see anybody do?

A. Shoot into the back of the truck.

Q. Who was shooting into the back of it?

A. Drexil. And I don't know who all was shooting at it.

Q. And when after Mr. Blanton - - or Hall shot, what happened?

A. Them other truck drivers up on the hill had guns, and they started shooting down through there. And that guy in the brown Blazer started shooting up through there, shooting into the Jeep. Most of the people hid behind the Jeep before they would run.

Q. What did you see, or what did you hear?

A. What did I hear?

Q. What did you see, Mr. Booth, and what did you hear?

A. I saw them starting shooting into it. And Jason got down in the ditch over there with a carbine.

Q. Where was Mr. Moore at?

A. On the opposite side of the road.

Q. And what was he doing?

A. Laying in the ditch with the carbine shooting into the truck.

Q. What truck?

A. Danny Blanton's. I don't know what he was shooting at. I don't know what he was aiming at, but he was shooting.

Q. How was Mr. Moore dressed?

A. He had a green pair of coveralls on and a toboggan.

Q. What kind of toboggan was it?

A. You could roll it down. It had a nose and a mouth on it. It covers your face.

Q. And was it pulled down or up on his head?

A. That I couldn't tell you for

sure.

Q. And what, if anything, was anybody else doing at that time?

A. Phillip Dale Moore was shooting from behind the Jeep.

Q. Could you tell what he was shooting at?

A. He couldn't tell what he was shooting at. He was just holding his hand out shooting.

Q. And who else was behind the Jeep, if you saw anybody?

A. Drexil.

Q. What was Mr. Hall doing?

A. He done shot his gun empty. He was hiding.

Q. What was anybody else doing? Was there anybody else behind the Jeep?

A. I don't know who all was behind it after that. I broke and run.

Q. And as you broke and run, what did you do?

A. I got shot.

Q. Did you have a weapon at that time, Mr. Booth?

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A. Yes, sir.

Q. Where was that weapon at?

A. In my hand.

Q. Where was your hand at?

A. I got it out of my coat sleeve.

Q. What did you do with that pistol you had?

A. I started shooting.

Q. You started shooting at who?

A. Right down the middle of the road where everybody else was shooting at.

Q. Did you?

A. No. I got shot before I got to shoot.

Q. How did you get shot, Mr. Booth?

A. I got shot with a shotgun as I was turning. I got shot on my left side.

Q. Where did you get shot?

A. The back of my left arm, buckshot. Some went into the back of my head.

Q. Do you know who shot you?

A. I thought Danny Blanton did until I looked at the pictures.

Q. What pictures are they?

A. The pictures where the Jeep was sitting at, and hit the back glass. There wasn't none in the front of it.

Q. And based on that - -

A. (Interrupting) Huh?

Q. And based on that, did you change your mind as to who shot you?

A. It had to be somebody behind me.

Q. Behind you being in which direction?

A. Towards McDowell.

Q. And was there anybody up there besides - - did you see anybody up there besides - - did you see anybody up there at all with shotguns?

A. Not that morning I didn't.

Q. Nobody?

A. Well, that one they call "Step-and-a-half". I don't know his real name, but he had one.

Q. Who does he work for?

A. He did work for me.

Q. Now, was there anything

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when Danny Blanton's truck came off the hill, that caused anybody to start shooting?

A. He just wasn't going to stop. He just was going on.

Q. Did anybody say anything at that time?

A. They said that everybody better watch them because they had shotgun riders with them, and to get your shotguns ready.

Q. Okay, who said that?

A. That was said by a bunch of people. I don't know who all it was talking. Drexil was one of them standing up there. Drexil had his hand in his pocket. He never did get it out, his hand, for nobody to see it until the truck done passed.

Q. And as the truck came past, did Mr. Blanton - did Mr. Drexil Hall say anything?

A. He told them to start shooting.

Q. And did anything occur then?

A. Started shooting.

Q. And as gunfire errupted, what happened, other than what you have already said?

A. I took off running.

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Q. Was there anybody else with you?

A. I don't know. I got in the car with Bo Moore.

Q. Okay. And what happened at that time?

A. We went back on down the hill.

Q. What were the other people doing?

A. They was trying to get to their cars too.

Q. Did anything happen in relation to any of those cars?

A. Just some old fellow trying to get a blue truck out, and he just kept on backing up back and forth and hitting the same two cars.

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Q. Was he parked between two cars?

A. Yeah. He never did cut his wheels to try to turn out.

Q. What else, if anything else, did you see?

A. Nothing at that time.

Q. And did you ride down the hill with Mr. Bo Moore?

A. A little ways down it. Harry Wallen was coming off of it frontwards and Bo was still going backwards, and I got out and got in the truck with Harry.

Q. Was Mr. Moore backing down the hill?

A. Yes.

Q. After you got -- Did you get out of Mr. Moore's truck?

A. I got out of his car. It wasn't a truck.

Q. And you got into whose vehicle?

A. Harry Wallen.

Q. Where did you go from there?

A. From there down to the tipple. I stayed there about -- maybe five minutes, and went on to Edgar's office.

Q. What happened before you went in, down at the tipple?

A. Started hiding the guns.

Q. Where were you hiding the guns at?

A. In the scale house.

Q. Is this the JRM tipple or JPL tipple?

A. Yes.

Q. Who all came off the hill at that time?

A. They was all coming off.

Q. Everybody that you saw up there?

A. Yeah. They hadn't all got off, but they was all coming off.

Q. Did you see Mr. Moore before you left the tipple, Jason Moore?

A. No. He was still up there.

Q. After you got to the tipple how long did you stay there?

A. Anywhere between three to five minutes, something like that.

Q. Why were you hiding the gun, Mr. Booth?

A. So nobody could see them.

Q. Pardon?

A. If the State Police would have come up there -- I wouldn't want to get caught with a gun.

Q. Did you hide your gun?

A. Yes.

Q. And where was your vehicle at at that time?

A. Still sitting up on top of the hill.

Q. Do you know how it got off the hill?

A. The State Police come up there and took somebody up to get it. It was Phillip Dale Moore, I think.

Q. Do you know who drove

it back?

A. Phillip Dale.

Q. Now, after you were at the tipple for a few minutes where, if anyplace, did you go?

A. To the office, JRM office.

Q. About what time was this?

A. About eight, 8:30.

Q. Now, prior to going down there had you seen Jason Moore up at the tipple?

A. He hadn't come off the hill yet.

Q. Now, you went from the tipple to Mr. Jones' office?

A. Yeah.

Q. Who was at Mr. Jones' office when you got there?

A. Nobody besides Edgar, at that time, and Angie.

Q. And what happened?

A. Well, I told Edgar that I got hit and Ricky Moore got hit, that's all

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we know that got shot. And he told us to go up there and find out -- go back to the tipple and find out if anybody else got hit.

Q. Did you?

A. Yes.

Q. All right. And what happened when you were up at the tipple at that time?

A. At that time Jason come off the hill. He -- They told me Ricky got hit right over the eye with a buckshot.

Q. What did he say?

A. He just wanted to go down there and check on him.

Q. Did he have anything with him when you saw him come off the hill?

A. No. He left his gun up there.

Q. Did you talk with him about what he'd seen up on the hill?

A. What he'd seen?

Q. Did you have any discussions with Mr. Moore at that time about what had occurred up on the hill just before that?

A. Danny Blanton's truck

was still sitting there. He didn't know what was wrong with it.

Q. Did he say how he knew this?

A. He was laying in a ditch, and he run over the garbage dump to get away from there.

Q. What else did he say?

A. He had to hide his gun up there. He went down over the hill and got somebody to bring him to the tipple.

Q. Now, how long did you stay at the tipple at that time?

A. Thirty-five, forty minutes.

Q. And then what happened?

A. The phone rung in the scale house. Harry answered it, and he said I had to be in the office -- Edgar's office.

Q. And what did you do?

A. I went to the office.

Q. Okay. Before you left and went to the office, did anybody come up to the tipple?

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A. Pearl.

Q. And what happened when Pearl Booth came up to the tipple?

A. She loaded all the guns up and put them in the trunk of the car.

Q. What kind of a car was she driving?

A. Toronado.

Q. What kind of guns were put in the car?

A. Shot guns, pistols, carbines.

Q. Do you know why those guns were put in there?

A. In case the State Police come up there.

Q. Did you tell anybody to do it?

A. Huh?

Q. Did you tell them to put the guns in your car?

A. Pearl did, I didn't.

Q. And after she put the guns in your car what, if anything, did you and her do?

A. Went to Edgar's office.

Q. And who was there when you arrived, Mr. Booth?

A. German, Teddy, and Jason.

Q. German Stumbo, Teddy Kinney and Jason Moore?

A. Yes.

Q. Who else?

A. Earl Adkins and Phillip and me and Phillip Dale Moore and Pearl.

Q. Earl and Phillip Adkins were there?

A. Yes.

Q. Was Mr. Jones there?

A. Yes.

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Q. And what, if anything, occurred at that time, Mr. Booth?

A. They was all talking about--that Ray-Mac had machine guns there and had big guns, and we just had little ones.

Q. Who was saying that?

A. Phillip Dale Moore, for one.

Q. What, if anything else, was said at that time?

A. Phillip Dale told them that before he went back up on the hill they'd have to have a bigger gun for him to carry instead of a .38 Special.

Q. What, if anything, did anybody else say at that time?

A. Edgar said he'd take care of that.

Q. What else was said?

A. We just all stood around talking about it. And--

Q. What were you talking about?

A. About shutting Ray-Mac down. They said they was going to have to be shut

down.

The helicopter flew some more guns in up there. The helicopter had done been up--it was up there what time we was in the office. It flew up there. I don't know what it took.

That's about all. Well, they was talking about shutting them down and everything.

Q. Did they say how they were going to shut them down?

A. Not at that time, no.

Q. What happened?

A. Edgar left the office, went in there and talked to Angie.

Q. Okay.

A. I don't know what was said.

Q. Where was Ms. Elliott at this time?

A. Sitting behind her desk in the next office over.

Q. And you were in the office on which side?

A. We was in--as you go through the door, the office on the right.

Q. What happened after

Mr. Jones went in to talk to Ms. Elliott?

A. She went and got a check and started typing it out. I don't know who it was to, though.

Q. How do you know she did?

A. I watched her type it out. I was sitting right there where I could see it.

Q. How close were you to her?

A. Ten feet.

Q. And--Mr. Jones come back in the office?

A. Yes. He come back in and sat down.

Q. What happened at that time? What was said?

A. He was just talking about that--you know, they was going to have to be shut down; we'd show them who they was fooling with, talking about getting shot and stuff.

Then Angie hollered for him to come in there again.

Q. What did he do?

A. He come in there. He stayed around for a few minutes.

He went in the other office

and hollered for German to come in there.

Q. German Stumbo?

A. Yes.

Q. What happened then?

A. Him and German talked in that back room. They went outside and stood and talked. I don't know what was said.

Q. Okay. Now, was Jason Moore there during that time, Mr. Booth?

A. Jason left. He left to go check on his boy, Ricky.

Q. At what time did he leave?

A. About three or four minutes after I got to the office.

Q. And before he left, what, if anything, had been said?

A. Jason-- Edgar told Jason to make a list out of what he needed and give it to Pearl.

Q. Did he say a list of what, supplies?

A. Anything he needed. Shells and stuff.

Q. Who mentioned anything about ammunition?

A. Well, he said make a list out of what you need upon the hill. He said, I'll give it to Pearl and Pearl will take care of it.

Q. And Mr. Moore left?

A. Yes.

Q. You said later Mr. Stumbo and Mr. Jones had a discussion outside your presence, is that correct?

A. Yes.

Q. What happened at--at that time?

A. Well, he went out and talked to German. Then he come back in.

He told Pearl to get whatever Jason needed and he'd reimburse her for it.

Q. At that point in time who all was there?

A. Me and Pearl and Phillip Dale.

Q. And what did Mr. Jones say to your wife?

A. Pardon?

Q. What did Edgar say to Pearl?

A. Told her to get what she

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needed--what Jason needed and he'd reimburse her for it.

Q. What else did he say?

A. That the fighting had just begun.

Q. What, if anything, did you, Pearl or Mr. Jones say at that time?

A. I was leaving at that time.

Q. Did Pearl remain there or did she leave with you?

A. She didn't leave when I did. Me and Phillip Dale left and went back up to the tipple.

Q. Okay. When did Mr. Earl and Phillip Adkins leave?

A. They left right after Jason did.

Q. Was there any-- What, if anything else, was discussed at this time between the parties that were there, Mr. Booth?

A. Phillip Dale said before he'd go back on the hill he'd have to have a bigger gun. They was kidding me about getting shot.

Q. Why were they kidding you about getting shot? Did anybody say?

A. I don't know. Just kidding me, said-- Pearl told me--said I'd live, I'd been shot before.

Q. Had you been shot, Mr. Booth, at that time?

A. Huh?

Q. Had you been shot at that time upon the hill?

A. No, not upon the hill.

Q. Where were you shot at? Was there any visible signs that you'd been shot at that time?

A. Yes. I still got buckshots in my arm.

Q. You still have them today?

A. Yes.

Q. After you left this meeting-- Who did you leave with?

A. Phillip Dale Moore.

Q. And where did you go?

A. Back up to the tipple.

Q What happened when you got up to the tipple?

A Stood around for two -- a couple of hours, I guess. I don't know exactly how long we stood up there. We stood up there and drunk.

Q How many men were up there?

A Fifteen, twenty, maybe more.

Q Anything happen while you were there?

A No, not at that time. The State Police and everything was running up and down the hill -- going up the hill.

Q Did Mr. Booth -- Did Pearl leave with you?

A No. She was still in the office when I left.

Q Do you know what happened to the guns she put in the back of her car?

A Not at that -- They were still sitting there at Edgar's office in the car, as far as I know.

Q Did he -- Did Edgar

make any statements to Pearl about those guns?

A. Yeah. She had to move them out of the office lot. She took them and parked them on down the road there.

Q. After you went up to the tipple what, if anything, did you do then?

A. I just rode up and down the hollows, riding around, riding up and down through there.

Q. Why were you riding up and down through there?

A. Just to see what all was going on.

Q. Where did you go to? Anyplace in particular?

A. We all went up to Stiffy Stumbo's barn for a while.

Q. Okay. What's Stiffy Stumbo's barn?

A. Just a big barn.

Q. Where's the big barn at?

A. It's up there at Stiffy Stumbo's, Frasure's Creek.

Q. Who's Stiffy Stumbo?

A. German Stumbo's father.

Q. And what kind of a building or whatever this thing is?

A. What kind of a building? It's a big wooden building.

MR. SELF: Mr. Marshall, would you hand the witness what's been marked for identification as Government's Exhibit 105.

(The Marshall complied)

THE WITNESS: That's it.

Q. Do you recognize that photograph?

A. Yes.

Q. And what is that a photograph of?

A. It's the barn that's up there on Frasure's Creek.

Q. Is that the barn you referred to as Stiffy Stumbo's barn?

A. Yes.

Q. Is that the way it appeared in approximately February of 1982?

A. Yes.

MR. SELF: Your Honor, at this time we'd move for the introduction of what's

previously been marked for identification as Government's Exhibit 105.

THE COURT: Being no objection, let that which has been marked as Government Trial Exhibit 105 be finally admitted into evidence as Government's Trial Exhibit 105.

MR. SELF: Thank you, Your Honor.

Q. Who all was up there when you went up there at that time, Mr. Booth?

A. At that time Drexil, Jason -- not Jason; Drexil, German, Jake, me and Phillip Dale and Lee Jones. All the people -- Smitty Joe Mitchell, Hurl Stumbo and some old guy they call Lum. I don't know who he is -- last name is.

Q. Pardon?

A. Some old guy they call Lum. I don't know what his last name is.

Q. And what, if anything, were these men doing?

A. Sitting around there drinking at that time.

Q. Do you remember anything that any of the Defendants stated to you at that time?

A. No, not at that time there was nothing said.

Q. Okay. How long did you stay there?

A. Twenty, twenty-five minutes.

Q. Where did you go?

A. Went to Bryan Mines.

Q. Why did you go to Bryan Mines?

A. See what all they needed to finish their belt set up.

Q. And were the men still working at Bryan Mine?

A. Yes.

Q. Had any of those men been up on the picket line that morning?

A. No.

Q. Now, in regards to the men that were up on the picket line, Mr. Booth, was there -- do you know who the people were or who they worked for that were up there?

A. Well, they all worked for JRM. I mean they worked for us but it was JRM, you know, contract mines.

Q. And were there any retired miners up there?

A. Yes, Clyde Hamilton, some old guy they call Hi. There was a bunch. I don't know who all they were.

Q. Were there any employees that you're aware of from any other coal companies that worked for JRM?

A. No, not as I was aware of.

Q. After you left Stiffy's barn at that time and you went up to Bryan --

A. Uh-huh.

Q. -- where did you go from there?

A. Drove back around the tipple. Just -- Wasn't that many people there, and we didn't stop. We went down to the house -- my house.

Q. What happened there?

A. I helped Pearl take the guns out of the car and put in the house. I sat there and eat, me and Phillip Dale and Ed Tackett; just sat around talking.

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Ed said a man would be able to go back up on the hill with all them guns up there. Ed said they had guns in the timber and everyplace. I don't know, I didn't see them.

Q. All right.

A. We sat there for maybe an hour, hour and a half.

Q. Where did you go from there?

A. Back to Frasure's Creek.

****

Q. Where did you go to on Frasure's Creek?

A. Went to the barn.

Q. Before you got there did you run into anybody?

A. Run into Panhandle Moore.

Q. And where did you run into Mr. Moore at--Panhandle Moore?

A. Over about a quarter of a mile--half a mile below the barn.

Q. Is the first time you'd seen him that day?

A. First time I'd seen him that day, yes.

Q. And what, if anything, occurred at that time?

A. At that time he was in a hurry to--he was going.

Q. What did he say to you, Mr. Booth?

MR. HARWELL: May the Court please, for the record we'd like to note an objection as to what Panhandle Moore said. He's deceased. We'd like to have that a continuing objection so I don't have to stand up and interrupt.

THE COURT: All right. This is tentative evidence about the conversation with Panhandle Moore. Go ahead.

Q. What did Mr. Moore say to you?

A. He was going to Philman Caudill's, and they'd been--they'd been in the hills up there at Hood's Fork looking down over Ray-Mac, at that mine site over there.

Q. Did he say who'd been up there?

A. He said him and German and Teddy. I couldn't tell you who all he did name off.

Q. Did he say why they'd been up in the hills at Hood's Fork?

A. They was going to go back there the next morning at daylight.

Q. What, if anything, did he have with him? Did you see anything?

A. At that time?

Q. Yes.

A. He had a gun hanging on a gun rack. I don't know what kind it was.

Q. Do you remember anything else he said or you said to him?

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A. Yeah, I wanted to see him that evening after he got back.

Q. Did you tell him why you wanted to see him?

A. I was going to buy some guns off of him.

Q. What did you say to him at that time when you met him?

A. I told him I wanted to buy some guns off of him because the ones down at the house--one of the carbines hung up all the time. He said he had some. I told him I'd buy them off of him.

Q. After you-- Anything else that you and Mr. Moore discussed at that time?

A. No, not at that time.

Q. Was anybody with him?

A. No. He was by himself in the truck.

Q. Where did you go from there?

A. Up to the barn.

Q. Stiffy's barn?

A. Yes.

Q. What happened when you got

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there?

A. German was there, Raymond Hall, Jake Moore, Drexil, Harold, me, Phillip Dale and Lee Jones.

Q. Drexil being--

A. Teddy Kinney was there.

Q. Drexil being Drexil Hall?

A. Yes.

Q. And what-- What was going on and what was said at that time?

A. They was all just sitting around drinking. They had found a place the next morning they could go to to shoot overtop of Ray-Mac's equipment.

Q. Who told you that, Mr. Booth?

A. German was talking about it. They said Panhandle was going--Philman was going around that ridge to look at the other side of the hill and see what it looked like from the other side.

Q. What was-- How was Mr. German Stumbo dressed at that time?

A. Had on a green work shirt and a pair of Levis.

Q. Anything unusual about the

way he was dressed or the condition of his dress?

A. HIs pants was wet plumb up above his knees.

Q. Had it been raining that day?

A. Originally was raining, yes.

Q. Was he wet all over or just below the knees--above the knees down?

A. Up to the knees down.

Q. Okay. What, if anything else, was said at that time by any of the people you've just named?

A. No, not at that time there wasn't.

Q. Did Mr. Stumbo state whether they had specifically been?

A. Went up and--went up in Hood's Fork up past Sam Bentley's place, and up the hill there. They went up that way through them mountains into there, you know, where they was down in a little valley.

Q. Did he say why they'd gone up there?

A. Up there to look for a

place the next morning to go to.

Q. Did he say why they were going to go up there the next morning?

A. They were going up there to shoot overtop of Ray-Mac's equipment.

Q. Did he say why they were going to go up there and shoot over the top of Ray-Mac's equipment?

A. No, not at that time he didn't say nothing like that.

Q. Did he say anything about what he done while he was up there?

Did Mr. Stumbo say anything about what happened while he was up there at that time?

A. They just had guards walking around the hills and stuff. He said they was walking from one end of the job to the other one; had some upon the ridge up there.

Q. Anybody come in while you were there?

A. Jason.

Q. Did you talk to Mr. Jason Moore?

A. Jason had--he'd been down

there to check on his boy down at the hospital. They said they'd send him to Pikeville to see if they was going to have to take that buckshot out.

Q. And what, if anything-- other discussions did you have?

A. I told him to find out what all he needed and bring the list down there, and Pearl would call in to see if they had it; and we'd send after it.

Q. What did he say?

A. Said okay.

Q. What else occurred while you were there, Mr. Booth?

A. Nothing at that time, sir.

Q. Was there any agreement that was reached between the parties that were there as to what would occur?

A. They wanted to know who all was going to go in the hills the next morning.

Q. All right.

A. Some of them volunteered, told them they would. I don't know who all was up there at that time.

Q. Okay. Take just a minute and think about who volunteered at that time to go

to the hills the next morning.

A. Phillip Dale Moore, Jake, Hermit--

Q. Hermit?

A. Newsome. German, and that's about all I can think of.

Q. Who all was there that said they weren't going?

A. There was a bunch of people there, and nobody said about who wasn't going.

Phillip Dale said if he was going he was going to have to have a bigger gun, though.

Q. Who did he tell that to?

A. Told them all that.

Q. And was anybody running the show at that time, Mr. Booth?

A. They was all just standing there talking at that time.

Q. Did you make any speeches?

A. Speeches?

Q. Yes.

A. I said I'd see they got what they needed.

Q. Did you ever threaten the

men?

A. Threaten?

Q. Yes.

A. No.

Q. Did you tell them you were going to fire them if they didn't go to the hills?

A. No.

Q. Did you ever threaten to take their jobs away from them at that time if they didn't go to the hills?

A. No.

Q. Was Panhandle there?

A. No, not at that time he wasn't.

Q. And how long did you stay up there?

A. An hour or so. I don't know exactly how long.

I wasn't in no hurry to get no place that day. I'd taken my time.

Q. Were there any other defendants other than the ones you've named that came in there while these discussions were going on?

A. Benny Caudill come up there. He'd had David Martin go get his Jeep upon

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the hill. He said the radiator was shot off of it--out of it, the window. He said Danny Blanton had cut the top off of it.

****

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Q. He stated that?

A. Huh.

Q. He stated that Danny Blanton had cut the top off of it?

A. Yeh.

Q. Did he state how he knew that?

A. He didn't say how he knew it. And the tires were shot off of it. And he didn't know what all was tore up off it. But they were down there and they was supposed to be changing the license plates off it.

Q. What did he say about the license plate?

A. He said that the license plates that were on it when they took the pictures, the State Police - - he had been talking to the State Police they came off a '75 Cordoba with a topper.

Q. With regards to that jeep-- Mr. Marshall, will you hand the witness what's been introduced I think as Government's Exhibit 31?

(Reporter's Note: The Marshall complies)

Q. Do you see a jeep depicted in those photographs Mr. Booth?

A. Yeh.

Q. Do you recognize that jeep?

A. Yes.

Q. And whose jeep - - in February of 1982, whose jeep was that?

A. It belonged to Bryan Coal Company Benny Caudill was using it.

Q. And do you recognize it as it's depicted in those photographs?

A. Yes.

Q. Did you see it after it was up on the hill?

A. Yes.

Q. And is those pictures - - depict where it was at up on the hill at Ray-Mac?

A. What?

Q. Did they the pictures show the way it was setting up on the hill at Ray-Mac?

A. Yes.

Q. And is that the one Benny was talking about?

A. Yes.

Q. Now, you talked earlier about some buckshots in that jeep?

A. The buckshot was in the back - - the back lights there.

Q. Was the front glass still existing?

A. Yes, it was plastic it just made holes in it. I can't see it in the picture right now, they got the front part of it.

Q. Now, I ask you if you would Mr. Booth to turn that photograph over. Do you see what's depicted on the back of it?

A. Yeh.

Q. Do you know what that is?

A. Yes, that's the jeep.

Q. The photograph on the other side?

A. Jason Moore's truck.

Q. Is that where Jason Moore's truck was at up on the hill on the morning of the 15th - - or the 16th?

A. Yes.

Q. Where was Jason Moore lying in relation to that truck Mr. Booth?

A. Just back this side of it, back toward the Mud Creek side of it down the side of another truck.

Q. Was there a truck in front of his though?

A. That time there was it ain't here.

Q. Now, carrying you forward back again to Tuesday afternoon is that the jeep that Benny Caudill was talking about?

A. Yes.

Q. And do you see some bullet holes in the picture of that jeep?

A. In the front of it, yeh.

Q. Do you know how those bullet holes got there?

A. Phillip Dale shot three of them in it.

Q. How do you know that?

A. They come from the back of the truck.

Q. Where was Phillip Dale when he was shooting?

A. Standing right on the passenger side - - shooting on the passenger side in the back of it.

Q. Now, carrying you again back to the barn on Tuesday afternoon Mr. Booth. You said Benny Caudill came in, did any other defendants come in at that time?

A. I can't remember who all came in.

Q. Was there any discussions as to why the men were going to go in to the hills the next morning, of the people that were there Mr. Booth?

A. Going to the hill to shoot down over top of them, scare 'em or something.

Q. What was said, by whom?

A. Just going down there to shoot down through there.

Q. Did they state why the purposes was that they were going up to scare them?

A. Try to shut them down.

Q. Any other purpose said other than to shut them down?

A. We had to do something if we didn't we were all going to be out of the job.

Q. Did you tell them that or is that what they told you?

A. That's what everybody was talking about.

Q. Now, where did you go from the the barn Mr. Booth?

A. Just riding around. Just

riding up and down the hollow.

Q. Did you go any particular place that evening after you left the barn?

A. Went down to the house.

Q. Who all was down at the house?

A. Me, Ranny, Hermit, Eugene, Ed Tackett, Lee Jones, Phillip Dale. Just a bunch of men standing around there out in the yard.

Q. After you went to the house, did you go anywhere else that evening, before dark?

A. Before dark?

Reporter's Note: Mr. Self nods his head:

A. I couldn't tell you whether I did or not.

Q. Did you ever see Edgar Jones anymore that day?

A. Yes, I went up to Edgar's office, that was earlier.

Q. Before you went to the barn or after?

A. It was after I went to the barn.

Q. Okay. When you got to

Mr. Jones's office who was there?

A. Mr. Jones, Pearl and me. Phillip Dale set in the car.

Q. What if anything occured at that time?

A. I told Edgar Panhandle was going to look for a place to go to and the rest of them would be in the hills the next morning.

Q. What did Mr. Jones say?

A. He already knowed that.

Q. What did he say Mr. Booth?

A. He already knowed that and just smiled.

Q. Did he state how he already knew it?

A. No, sir.

Q. How long did he stay there?

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A. About five minutes and less because Phillip Dale was out in the car and I was afraid he would come in there and he was drunk.

Q. And as you were leaving, did you see any other Defendants?

A. Hermit backed down and got a telephone pole.

Q. What happened?

A. He come backwards down the lane and hit a telephone pole and knocked the night light off of it.

Q. What was he driving?

A. A white Thunderbird.

Q. Did you stop and talk to Mr. Newsome?

A. Yeah, he was drunk and I helped him get the light off the trunk.

Q. I didn't understand you, Mr. Booth.

A. He was drunk and I helped him get the light off the trunk of the car.

Q. And where did you go from there?

A. Home.

Q. And what happened then?

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A. At that time Pearl's - - well, we just went in there and stood around for maybe an hour just talking, weren't talking about nothing serious. And Pearl's brother came down there.

Q. Pearl's brother being who?

A. Wendall Ray Newman.

Q. And what happened when Mr. Newman came down?

A. He brought three rifles down there.

Q. What kind?

A. A .30 - - a .30 caliber carbine. 30.06. And a .243.

Q. And what did you do with those?

A. Just brought them in the living room.

Q. Who all was there at that time, besides you and - -

A. (Interrupting) Jason came in about the time we were there.

Q. Jason Moore?

A. Yeah.

Q. Was anybody with Mr. Moore?

A. Teddy Kinney was with him.

Q. What happened - -

A. (Interrupting) Teddy didn't get out of the truck.

Q. Was he outside?

A. Teddy didn't get out of the truck, Jason did.

Q. What truck were they in?

A. A green Chevrolet, I don't know what model it is. It's a four-wheel drive.

Q. The one that's in those pictures?

A. Yes.

Q. And when Mr. Moore came in, what if anything, was said or done?

A. Wendall told him that, if the price was right tell Edgar that he'd help close Ray-Mac down to where they'd never be able to run another lump of coal.

And Jason went to the door and knocked on the door and gave Pearl something, a piece of paper.

Q. Did he say - - where were you at, outside?

A. Outside.

Q. What did Mr. Moore say to

her or did you hear?

A. I couldn't hear what Mr. Moore was talking to her about.

Q. And after he did that, what if anything, happened?

A. Jason came out and said they were going down to Walter Blackman's.

Q. What did Mr. Moore specifically - - the best that you can recall what did Mr. Moore state to you?

A. He was going down to Walter Blackman's at that time and that they were going to have a union meeting up there and I was invited.

Q. Did he state why he was going down to Walter Blackman's?

A. Not at that time, no.

Q. What did he say in regards to a union meeting?

A. He said there was going to be one that night and I was invited to it.

Q. Had you ever been invited to a union meeting before, Mr. Booth?

A. No.

Q. Have you ever been invited

to one since?

A. No.

Q. Did he say why you weren't invited?

A. No.

Q. Did he say why the purpose of that union meeting was?

A. He said they called a special meeting, that's all he said.

Q. What happened after Mr. Jason Moore left?

A. Pearl hollered and told me to come in the house.

Q. What happened then?

A. She was talking to somebody on the telephone about some shells and wanted to know if it was all right if she ordered two Uzi machine guns.

Q. Do you know who she was talking to or did she refer to who she was talking to by name?

A. She referred that she was talking to Donahue, but I didn't hear him.

Q. What did you hear Ms. Booth, your wife say?

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A. She was ordering all kinds of shells. She ordered two carbines, two Uzis. A case of shells for each one of them. And I told her to check to see if he had a 9 millimeter pistol.

Q. Did you tell her to order those guns?

A. She asked me if it was all right and I told her it was all right with me.

Q. Why did you tell her it was all right with you?

A. I didn't care what she ordered.

Q. Why were you ordering guns, Mr. Booth?

A. To use up on the hill. I wasn't going to get shot no more.

Q. Why were you ordering an Uzi?

A. It was a machine gun I thought.

Q. And when you ordered them, what was your intent to do with them?

A. What was my intent to do?

Q. Yes.

A. I was going to take them

and anybody that wanted to use them could use them. I was going to use one myself.

THE COURT: Gentlemen, at this point let's have a recess. We'll be in recess for fifteen minutes. During this recess the not now admonition is in effect.

Any objection or corrections to the form of the admonition.

MR. ROWLAND: None, Your Honor.

THE COURT: Please excuse the Jury for fifteen minutes.

THE MARSHALL OF THE COURT: Your Honor, the Jury is out of the Courtroom, Your Honor.

THE COURT: All right, please excuse - -

MR. HARWELL: (Interrupting) Judge, may I make a record. I respectfully renew the motion that I made at the close of yesterday, Your Honor, in regards to the sequestration of this witness from talking to the Government lawyers or agents during his examination.

THE COURT: Let that be overruled. Please excuse the witness and the remainder of the Courtroom for fifteen minutes.

REPORTER'S NOTE: Let the record show that a recess was called at 10:28 A.M.

(Reporter's Note: The Court is called to order at 10:47 A.M.)

THE MARSHALL: Your Honor, all counsel and the jury are present in the courtroom, Your Honor.

THE COURT: Thank you. Let's have order, Mr. Marshall.

Are you ready to proceed, Mr. Self?

MR. SELF: Yes, Your Honor.

THE COURT: Please do.

Q. Mr. Booth, you indicated that you went in and your wife Pearl was talking on the phone with someone?

A. Yes.

Q. Did you overhear her end of the conversation?

A. She was ordering shells.

Q. What kind of shells was she ordering?

A. .243, .30 caliber carbine, .44 Magnums, 30-30's. I don't know what all the kinds she was ordering. .45 shells.

Q. After she finished

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the discussion, did you have a discussion -- after she finished the phone call, did you have a discussion with her?

A. Yes.

Q. What -- what did you all say?

A. That -- she was just talking about what all she ordered. She ordered two Uzis, two carbines, and a case of shells for each. And I had her to call back at that time and see if he had a 9 millimeter pistol -- I wanted two of them.

Q. Did she call somebody?

A. Yes.

Q. Do you know who she called or from the conversation that you heard, do you know who she was talking to?

A. She asked for Donahue Halbert when she called.

Q. And what did she say?

A. Asked him if he had two 9 millimeters --

MR. ROWLAND: (Interrupting) Excuse me, Your Honor, haven't we heard this before, before the break?

MR. WALBOURN: I thought that we had.

THE COURT: I don't believe so, go ahead.

Q. Did you talk to whoever she was talking to?

A. Yes.

Q. Who did you talk to?

A. Donahue Halbert.

Q. What did you tell him?

A. I wanted a 9 millimeter and he just had one but he had a -- he had two of them, but he had a model 39 and a model 59.

Q. What did you tell him?

A. I wanted a model 59, and to get me four or five boxes of shells for it.

Q. Did he say anything to you?

A. No, not at that time.

Q. Did you tell him what you wanted it for?

A. I told him they were having a war up on the hill.

Q. What did he say, if anything?

A. Nothing at that time.

Q. And after your discussion with Mr. Halbert, what, if anything, happened?

A. I hollered and got Phillip Dale to come in the house.

Q. What happened then?

A. Pearl signed a check and give it to him and gave him the list and sent him after the shells.

Q. Did you sign the check?

A. No, sir.

Q. What was the check on?

A. Calamity Coal Company.

Q. And what happened to the check at that time?

A. What happened to it, she gave it to Phillip Dale.

Q. Did she give him anything else?

A. Huh?

Q. Did she give him anything other than the check?

A. About six cans of beer.

Q. Is that all?

A. He took a pistol with him.

Q. Did he leave?

A. Yes.

Q. Who was with him?

A. Ed Tackett.

Q. And after he left, what, if anything did you do?

A. I went back outside and stood around and just stood around there till Phillip Dale got back.

Q. What happened when Mr. Phillip Dale Moore got back?

A. He got back and got on the shells and brought them in there and sat them on the living room table.

Q. Do you remember what all kinds he brought back?

A. I don't remember what all kinds they were. They were in a big box.

Q. What else did he bring back besides boxes of shells?

A. A 9 millimeter pistol.

Q. What did you do with

that pistol?

A. I kept it for a long time.

Q. What else did he bring back other than the pistol?

A. He had a piece of paper where he signed to buy it. He said it couldn't be traced, that was a register or something -- a register for a gun.

Q. And what, if anything, did he say about how he obtained it?

A. He said that Donahue went to get something he stole it off of Donahue's desk or a counter or whatever he filled it out on.

MR. SELF: Mr. Marshall, would you hand the witness what's been introduced as Government Exhibit 91.

(Reporter's Note: The Marshall complied.)

Q. Have you ever seen that before, Mr. Booth?

A. Seen one like it.

Q. Where did you see it?

A. Phillip Dale had it.

Q. Has that got a date

on it?

A. 2nd 16th of '82.

Q. Is that Tuesday, February 16th, 1982?

A. Yeah, I guess.

Q. What, if anything, did you do with that piece of paper that he brought back?

A. Huh?

Q. What did Mr. Moore do with that piece of paper he brought back?

A. Threw it in the garbage.

Q. Did he bring anything else back with him?

A. Anything else?

Q. Other than what you just testified to?

A. Not as I can remember right now.

Q. After he brought that back, what if anything, did you and Mr. Moore or your wife do?

A. Me and Mr. Moore went to Panhandle Moore's house.

Q. What did you go up there for?

A. To buy two guns off of him.

Q. What did you do when you got there?

A. Just pulled up there and blowed, and Panhandle come out.

Q. And what happened?

A. I talked to him about two guns he said he had, and we - - we went in there in the other house and got them out. Me and Phillip Dale went in there with him.

Q. What did you do?

A. We just went in that house, and he took a drill and took some bolts out of the wall -- took some screws, and took a piece of plywood out and got two guns out of the wall.

Q. What was behind that plywood?

A. It was Mini-14 and another gun. There was a bunch of guns behind there, but I just bought two of them.

Q. What did you buy?

A. A Mini-14 and - - it looked like a Mini-14, according to the paper that I - - he was going to show me to identify it by.

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MR. SELF: May we have just a moment, Your Honor.

THE COURT: Yes.

Q And what happened while you were up there at Mr. Panhandle Moore's?

A One of his - boys had run over his dog and killed it.

Q What did he do?

A He got - - his boy had an old car sitting out there, and he took that one gun and shot that car up full of holes.

Q How did he do that?

A He just walked out the door and shot it.

Q Which gun was this?

A The big one.

Q What kind of gun was it?

A M-14, it was supposed to be.

Q And did you do anything at that time?

A I didn't do anything. I was afraid to get out there around him.

MR. SELF: Mr. Marshall, if you would, please, I would ask you to mark this or introduction

as the next Government Exhibit.

THE CLERK OF THE COURT: Your Honor, the exhibit that was not previously marked for identification is now being marked for purposes of identification as Government's NPM No. 27, and is now being marked for purposes of trial as Government's Trial Exhibit No. 122.

THE COURT: What number, Ma'am?

THE CLERK OF THE COURT: No. 122, Your Honor.

THE COURT: Thank you.

REPORTER'S NOTE: Said Exhibit is being examined by defense counsel.

THE MARSHALL OF THE COURT: Your Honor, this exhibit has been examined by all counsel.

Q. Mr. Booth, have you ever seen this gun before?

A. Yes.

Q. Where did you first see it?

A. Out when Panhandle got it out of the wall up there.

Q. What, if anything, did you do with it at that time?

A. Took it out in the yard and shot it after I got it - - after I done bought it.

Q. Did you buy that gun that night?

A. Yes, bought both of them.

Q. And the other one was what kind?

A. M-14.

Q. And why did you buy those guns, Mr. Booth?

A. Bought them to be used on the hill.

MR. SELF: Your Honor, at this time I move for the introduction of what has been marked for identification as Government's Exhibit No. 122.

MR. PAFUNDA: Your Honor, I would like to approach the Bench at this time.

THE COURT: Yes, sir.

REPORTER'S NOTE: At this point all counsel approached the Bench; whereupon the following was heard.

MR. PAFUNDA: That is a Mini-14, Your Honor, not a - -

MR. SELF: (Interrupting) It is a Mini-14.

THE COURT: What is the difference between a Mini-14 and a - -

MR. SELF: An M-14?

THE COURT: No. Is this a - - what they call a .243?

MR. HARWELL: Uh-huh.

MR. PAFUNDA: A .223. It is a different caliber.

THE COURT: Go ahead.

MR. PAFUNDA: No. 1, at this time I would like to renew my objection that I made yesterday about the statements made by Panhandle Moore, as well as the conduct by Panhandle Moore, on the basis, No. 1, it is hearsay.

And, No. 2, my clients are being denied the right to confront Mr. Moore on cross-examination under the Sixth Amendment of the United States Constitution.

No. 3, with regard to this particular exhibit, this is the first time I have ever seen it.

MR. SELF: That is correct, Your Honor.

MR. PAFUNDA: That exhibit wasn't introduced at the pre-trial and I object to it on that basis, also, Your Honor.

But I would like to make my objection to the Panhandle Moore statement as well

as Panhandle's assertive conduct, and make it a continuing objection; because it is very difficult during this ong trial to stand up in front of the Jury and constantly object.

I would like to do it in that manner, Your Honor.

THE COURT: All right.

MR. SELF: I would like to state for the record that counsel has not seen this weapon before. It was just obtained this week in a search of Mr. Panhandle Moore's residence.

THE COURT: All right.

MR. WALBOURN: Can I obtain as to where it was obtained from?

THE COURT: He said Panhandle Moore's residence. Isn't that what you said, Mr. Self?

MR. SELF: Yes.

MR. WALBOURN: I thought Panhandle was dead. Who gave him the gun.

MR. SELF: It was obtained from Mrs. Moore, Your Honor, by agents of the ATF.

THE COURT: Okay. All right, gentlemen, thank you.

MR. HARWELL: Judge, may I say one thing for the record?

THE COURT: Yes, sir.

MR. HARWELL: I believe, may the Court please, that Your Honor's previous orders with regard to discovery, since the Government got it this week, or whenever they did, that the proper way to handle this matter would be to notify us and let us look at it.

I, therefore, join in the objection, Judge.

THE COURT: All right.

MR. HARWELL: Thank you.

*** *** ***

REPORTER'S NOTE: At this point the Bench Conference concluded.

THE COURT: Let the objections be noted and be overruled, and that which is marked as Government's Trial Exhibit No. 122 is finally admitted into evidence as Government's Trial Exhibit No. 122.

REPORTER'S NOTE: At this point Government's Trial Exhibit No. 122 was admitted into evidence.

THE COURT: Ladies and gentlemen of the Jury, you are admonished that all of this evidence concerning statements and conduct of Panhandle Moore is tentative evidence. You all understand that?

All right, you may proceed, Mr. Self.

MR. SELF: Thank you, Your Honor.

Q Mr. Booth, how much did you pay for those two weapons?

A Five hundred dollars, for them and the shells.

Q And how did you pay for them?

A Check.

Q Drawn on who?

A On Pearl Booth's personal

account.

Q. And after you bought those guns, did Mr. Moore say anything to you?

A. He wanted a big one. He wanted a big one.

Q. The one you just bought?

A. Yeah, the one - - Phillip Dale is the one that said that. He said he wanted a big one, the one he was shooting into the car with.

Q. And - -

A. (Interrupting) Both of them was shot into the car.

Q. What, if anything, did you and Mr. Moore do at that time?

MR. WALBOURN: Which Mr. Moore, Your Honor? I apologize.

MR. SELF: You and Phillip Dale Moore.

MR. WALBOURN: Thank you.

A. Put the guns in the truck, come back and carried - - this one had a thousand rounds of ammunition with it, and the other one had about five hundred rounds.

Q. At the time you bought these, did Panhandle Moore have other guns there at his house?

A. Yes.

Q. What other guns did you see?

A. There was four or five hid there in the wall. One of them was a .35. It was like a carbine, but it shot a .35 shell. And there was a carbine. He called it an old Army issue carbine.

And there was a 8 millimeter Mauser, some pistols. I don't know what all was hid in the wall.

Q. Okay. Where were these guns at?

A. Panhandle Moore's A-frame house.

Q. And after you and Mr. Moore - - Phillip Dale Moore were up there, where did you all go, if any place?

A. Back to my house, took the guns down there. Panhandle followed us down there.

Q. What happened at your house?

A. I got that automatic, and stuck it out the back door, and started shooting it.

Q. Which gun was that?

A. It wasn't this one, it was the other one, the M-14.

Q. And what do you mean by "automatic"?

A. You just hit the trigger, and it started shooting it. You didn't have to let up off of it and pull it back again.

Q. And what did you do with those guns at that time?

A. Put them in the trunk of my car.

Q. And what, if anything, happened at that time?

A. Me and Phillip Dale left and went to the union meeting.

Q. Did anybody go with you?

A. No, just me and Phillip Dale. Ed went on up through there, but he went on home.

Q. Did Ed say anything to you while he was down at your house?

A. He come down there - - just followed me down there when I got the guns to get the check off Pearl.

Q. And what happened when you went - -where did you and Phillip Dale Moore go?

A. To the union meeting.

Q. Where is that at?

A. Up in Frasure's Creek.

Q. At the union hall?

A. Yes.

Q. What happened when you got there?

A. Drexil was there.

Q. What happened there?

A. Well, everybody had started coming in then.

Q. Did you talk to Mr. Hall?

A. Yes.

Q. What did you talk about?

A. Said Teddy and Jason went down to Blackburn's at Drift.

Q. Did he say why they had gone down there?

A. He said to - -

MR. PAFUNDA: (Interrupting) Your Honor, at this time I would like to object at this time as to statements of Drexil Hall in that they weren't referred to in the hearing that we had in November, Your Honor.

THE COURT: Okay. The objection is noted and overruled.

Q. What did Mr. Hall say to you?

A. That Teddy and Jason went down there to Walter Blackburn's at Drift. He said they went down there to have a - - to vote for a change, and Drexil was supposed to resign on a Saturday as vice president; and they was wanting to get the local union involved in the trouble up on the hill.

Q. Did he say anything else at that time?

A. Jason was going to be put in as president - - vice president.

Q. And what did you say, if anything?

A. Nothing at that time. I just listened to him. Phillip Dale and him was talking.

*** *** ***

Q. Was any mention made of Edgar Jones?

A. Not right there at that time -- not at that specific time.

Q. Did you have a later session with Mr. Drexil Hall in regards to --

A. (Interrupting) Yes, after everybody had started coming in. He said that Edgar Jones --

Q. (Interrupting) Who said what?

A. Drexil said Edgar told him that he'd help them every way he could and everything, and Ray-Mac would take his contract, and if they underbid him that there wasn't no way he could afford to mine the coal and take a cut on the coal.

Q. Who all was present at that meeting, Mr. Booth?

A. Me, Phillip Dale, Willie Moore, Linville Mosley, some Page boys; I don't know their names. Frank Scott was there -- Jason, Teddy, Drexil, Herl Stumbo, just a whole bunch of us there.

Q. Approximately how many

men were there all total?

A. Thirty-five, forty men.

Q. And who -- did you see Mr. Linville Mosley doing anything?

A. Linville was running around talking to everybody.

Q. Did you overhear anything he was saying?

A. That he just talked like he always talks, just -- he wasn't talking about nothing -- nothing concerning nothing.

Q. What happened at that meeting, Mr. Booth?

A. Frank Scott got up -- well, he didn't get up, he just stood up where he was sitting at.

Q. And who is Frank Scott?

A. He is from District 30 over here.

Q. And was there anybody in charge of that meeting?

A. I don't know who was in charge of it. There wasn't nobody that stood up

and opened no meeting or nothing.

Q. Was any minutes read of the meeting?

A. No.

Q. Was the meeting ever called to order like a formal meeting?

A. No. Everybody was talking and couldn't understand what nobody was saying.

Q. Did anybody make any speeches?

A. Frank said that he --

MR. THOMAS: (Interrupting) Objection, Your Honor.

MR. SELF: Don't say what Mr. Scott said.

Q. Did any of the Defendants make any speeches, Mr. Booth?

A. No, just Willie Moore wanted to get up -- wanted me to get up and say something; and he wanted everybody else -- anybody that was there to get up and say something, and nobody wanted to get up.

The Page boys in the back wanted to go on the hills that night.

Q. Was there any -- what, if anything, did any of the Defendants say to the men at the meeting?

A. That everything was going to be taken care of in the morning.

Q. And what was said by whom as to what was going to go on in the morning?

A. Nobody said anything about what was going to go on. It was just the Page boys wanted to go in the hills and shoot down through there and everything, and they said that that would be taken care of in the morning.

Q. Who said that?

A. I couldn't tell you exactly who did say it at that time. They was -- there was three or four of them standing up there, you know, where everybody stands at.

MR. WALBOURN: Your Honor, I move then that that be stricken, if he doesn't know who said it.

MR. SELF: I think it is admissible as to the state of mind of the people that was there as to what their knowledge was.

MR. WALBOURN: The state of mind goes to the Defendant, Your Honor. If he doesn't know

who said it, and if there were forty people there -- and I don't see forty gentlemen sitting over here -- so there is a fifty/fifty chance that one of these gentlemen didn't say it.

MR. SELF: Let me try to be more specific with the witness, Your Honor.

THE COURT: All right.

Q. Mr. Booth, did any of the Defendants make that statement?

A. There was Drexil, Teddy and Jason standing up at the front of the meeting.

Q. And what were they saying?

A. That they -- well, everyone was saying it all would be taken care of the next morning, because you couldn't go into the hills that night and take too big a chance of somebody slipping in behind you.

Q. Who made that statement?

A. It was one of them that was up front there. I couldn't tell you which one it was.

Q. Either Jason Moore or

Drexil Hall or Teddy Kinney?

A. It was one of them.

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Q. Now, other than yourself and Mr. Phillip Dale Moore who were there, were there any other coal operators there?

A. Earl Adkins and Phillip Adkins.

Q. Were there any other non-union men that you were aware of that was there?

A. Hermit Newsome was one.

Q. Hermit was a foreman for you, right?

A. Yes.

Q. Any other nonunion men that were there?

A. Half of my men didn't belong to the union.

Q. At that time?

A. At that time.

Q. Were they there?

A. Some of them was, and some of them wasn't.

Q. What other nonunion men were there that you know of?

A. I don't know. It's been so long, I couldn't tell you who all was there.

Q. Was there any formal

motions made and voted on at that meeting?

A. No, sir.

Q. How long did it last?

A. About an hour.

Q. Was there any concensus or agreement made as to--by everyone that was there?

MR. PAFUNDA: Your Honor, I am going to object to counsel leading the witness.

THE COURT: Well, I'm going to sustain the objection as to the form of the question.

MR. SELF: Yes, Your Honor.

MR. PAFUNDA: Thank you, Your Honor.

Q. What about anything else occurred at that meeting that was said by any of the defendants?

A. We was all supposed to meet at Stiffy Stumbo's barn the next day.

Q. Who said that to you?

A. Huh?

Q. Who told you that?

A. Jason told me that when we were getting ready to leave.

Q. Did he tell you why you were going to meet at Stiffy Stumbo's barn the next morning?

A. I was supposed to bring what shells Pearl sent and got up there.

Q. Who told you that?

A. Jason.

Q. What, if anything else, did Mr. Moore state to you about the guns--the shells?

A. He told me to bring what guns I had--had already done got. And then I come back-- Well, I told them they was all down at the house, and could I drive down and get them.

Q. What did he say?

A. What?

Q. What did Mr. Moore say when you told him--

A. (Interrupting) Just bring them up there in the morning.

Q. After you left, where did you go?

A. Started home. I met Ed down in the hollow--Panhandle. Well, I met him down there--he was coming down my driveway as I was going in.

Q. And did you stop and talk to him?

A. Yes.

Q. What was the nature of that discussion?

A. He wanted to know could he use those two guns the next day.

Q. And what did you tell him?

A. I done let Phillip Dale's boy done have one of them.

Q. Which one?

A. This one right here.

Q. Phillip Dale's boy being?

A. Larry D. Moore.

Q. What about the other one?

A. I give it back to him.

Q. What did you give back to Mr. Panhandle Moore at that time?

A. The M-14.

Q. Any other guns?

A. .38 Special, .44 Magnum--not a .44 Magnum, but a .357 Magnum, and a .38.

Q. Any other rifles?

A. A .30 caliber carbine.

Q. And did Mr. Moore state as to why he wanted those guns?

A. He was going to go in the

hills the next morning, be there before daylight.

Q. And did he say why he was going up there?

A. He was going on one side of the hill, and there was going to be another crew on the other side.

Q. Was anybody with Panhandle at that time?

A. Panhandle at that time?

Q. Yes.

A. One of his little girls. I don't know her name.

Q. After you met Mr. Moore, where did you go?

A. Down to the house.

Q. What happened at that time?

A. We just all sat around down there maybe an hour or so, and we all went to bed.

Q. Did you see Jason Moore that evening after that?

A. No. I took the shells and stuff to Jason the next morning. He might have come down there. I don't know for sure whether he did or not.

Q. Why don't you know for sure, Mr. Booth?

A. I was drunk.

Q. Was there a lot of men down there at your house after the meeting?

A. A few of them maybe come down there and sat drank maybe a beer or two. There was always beer kept around the garage.

Q. Now, what happened the next morning, if anything, Mr. Booth?

A. The next morning I took these guns and stuff up there.

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Q. What did you take, and where did you take them?

A. I took a bunch of shells, a .243, 30.06, and the carbine what belonged to Pearl's brother. All the three guns belonged to him.

There was a 12 gauge shotgun in the trunk, and a .30 caliber Enforcer.

Q. What shells did you take up there?

A. Big box of shells. I don't know what all was in it.

Q. Where did you get those?

A. Phillip Dale went to Donahue's and got them.

Q. And where did you go to on Wednesday morning?

A. Wednesday morning?

Q. This morning that you are talking about, where did you go?

A. I went to Stiffy Stumbo's barn on Frasure Creek.

Q. Who went with you?

A. Phillip Dale Moore

rode up there with me. He didn't come back with me.

Q. What time did you go up there?

A. It was before daylight. It was early.

Q. What happened when you got -- what were you driving?

A. An '81 Cadillac.

Q. And what happened when you got there, Mr. Booth?

A. I opened my trunk and gave Jason some shells and stuff out of it. I give him the guns.

He reached for the one that had a scope on it to Phillip Dale, and told him, said: "Papaw said give you a good one."

Q. What kind of gun was that?

A. .243.

MR. SELF: Mr. Marshall, would you hand the witness -- I'm not sure what the number of it is. It is the rifle with the scope on it.

(The Marshall complies)

Q. Have you ever seen that

one before, Mr. Booth?

A. Yeah, or one like it.

Q. When did you see it?

A. I got it out of the trunk of the car. Pearl Booth -- I seen it that evening before when they brought it down there. It was in a zip-up thing.

Q. Who took it out of the trunk of your car that morning?

A. I got them and reached them to Jason.

Q. Jason?

A. I got two of them out and reached them to Jason. One of them I reached to Jake Moore.

Q. And Mr. Jason Moore gave that to --

A. (Interrupting) Phillip Dale.

Q. And then made the statement you just testified about; is that correct?

A. Yes.

Q. What other guns were passed out at that time?

A. A 30.06, a carbine

out of my truck -- I mean out of my car. And that is all that came out of my car.

Q. Did you see any other weapons there?

A. They was all kinds of guns there.

Q. First of all, at the time who all was there, and who all was given weapons?

A. German was there, Raymond Hall, Bo Moore, Teddy, German, Phillip Dale, and Hermit Newsome.

Q. And at that time what were these men doing?

A. Getting ready to go up in the hills.

Q. Did you talk with them -- any of them?

A. Just laughing and talking to them, not nothing about nothing.

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Q. And did these men have anything with them?

A. That had guns.

Q. Of the men you just named, who had what?

A. I couldn't tell you what kind of guns they was. They all had guns.

Q. Was there anybody else other than the ones you've just named there?

A. That's all I seen. Raymond Hall was there.

Q. How long did you stay?

A. About - - I don't -- fifteen or twenty minutes.

Q. Was Panhandle Moore up there?

A. No.

Q. Did you see any of his vehicles there?

A. Panhandle was done gone.

Q. How did you know that, Mr. Booth?

A. One of the men there said that he had done gone because he had a longer way to go than they did.

Q. Who said that?

A. I don't know which one it was said it.

Q. Was it one of the defendants - -

A. Yes.

Q. - - That you've just named?

A. Yes.

Q. What did he say?

A. Said he was done gone, he had a longer way to go than he did.

Q. Was there any other defendants - - take a look at them -- that was up there at that time?

A. Teddy Kinney was there. I guess I done said that, though.

Q. Anyone else that you can recall?

A. Not as I remember right now.

Q. And did you leave before any of the men left there?

A. Yes.

Q. And where did you go?

A. Went out to the tipple.

Q. Whose tipple?

A. JRM's tipple.

Q. Who went with you?

A. I drove back down the hollar by myself.

Q. Did Mr. Phillip Dale Moore remain at the barn?

A. Yes.

Q. What happened at the tipple?

A. We all sit around there for about - - just stood around there waiting for something to happen, waiting for them to start shooting.

Q. Who all was there of the defendants at that time?

A. Of the defendants?

Q. Of the gentlemen seated over here (indicating), who all was there at that time at the tipple?

A. They was all - - There was a bunch of us there.

Q. Who - -

A. I couldn't tell you who all or that was there. I know Eugene come in later. There was Ed Tackett that come in, Joe Stanley, Billy Hall, Gary Ward, Harry Dean Stewart, Step-in-a-half,

or whatever his name is. Some boys from Dye Coal Company come in there, and they had shotguns.

I couldn't tell you who all was there. Drexil Hall was there.

Q. Was Drexil Hall there?

A. Yes.

Q. Okay. Who else?

A. His brother was there. Just a bunch of men come in.

Q. How long did you stay there?

A. I stayed there maybe forty-five minutes before I went to Edgar's office.

Q. While you were there did anything occur up on the hill?

A. They hadn't started the shooting yet, no.

Q. And you went to where?

A. Edgar's office.

MR. HARWELL: May the court please, for clarification I would respectfully ask that we delineate which day of the week. Either my memory's wrong or - - There's been reference to several days of the week as to these most recently testified to transactions. Thank you, Judge.

THE COURT: Specify the time, please.

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Q. This is what day, Mr. Booth?

A. Wednesday.

Q. Wednesday, February the 17th, 1982?

A. Yes.

Q. You left the tipple and went where?

A. Edgar Jones's office.

Q. What happened at Mr. Jones's office?

A. Went up that - - After I went down to the office I told him that they'd done went to the hills and everything.

Q. What did he say?

A. Yuh?

Q. What did he say?

A. He said he already knowed that. I stood there about two or three minutes. I left then went back to the tipple.

Q. Okay. What happened at the tipple at that time?

A. We stood around there about thirty minutes, and the State Police come up there.

Q. While you were there did any shooting take place up on the hill?

A. About thirty minutes after I got up there the State Police - - I mean they shot. They was exchanging fire. It sounded like a little war up there for maybe fifteen, twenty minutes.

Q. After the shooting up on the hill what happened?

A. It all got quiet. There was a bunch of State Police that went up there, Deputy Sheriffs.

We noticed one State Police going up there, a William - - a West, I believe was his name, you know, go up there.

Q. Go up where?

A. Go up to the tipple.

Q. Okay. What happened then?

A. They come up there and wanted to know where Drexil Hall was.

Q. Was Drexil there at that time?

A. Yes.

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Q. Where was he at?

A. Out with a bunch of men.

Q. And what did you tell the policeman?

A. He was at my house in Winchester.

Q. Why did you tell him that?

A. I didn't want them to take him to jail.

Q. What happened?

A. They just kept on going around looking at everybody's car at guns and stuff. That one West guy got Jason's rifle out of the seat of the car.

Q. Was Jason Moore there?

A. Yes. Got it out. He told Jason he could take it.

Jason wanted to know how he could take it. It wasn't concealed.

He said he could take it. They all just sit around there and argued.

He was going from

MILLERS MALL EXHIBIT

car to car looking. Drexil talked to him once. He didn't even know who Drexil was.

He just kept on standing there talking to him, and Drexil told him his name was Drexil Hall.

Q. What happened at that time?

A. He placed Drexil under arrest. They put him in the back seat of the car.

Q. Anything occur at that time?

A. Yes. Pearl come up there driving a -- one of JRM's trucks, the one Dwayne Little drives.

Q. All right.

A. Come up there and had her little badge on her coat. She tried to get them to let her bring Drexil to jail. They wouldn't.

Q. What was she driving?

A. Toyota -- Yellow Toyota truck that belonged to JRM Mining.

Q. What, if anything, did she say when she came up there?

MILLERS FALLS
EZERASE
COTTON CONTENT

A. She come up there and went over and talked to the State Police Officer, told them she was a deputy sheriff. She said she'd be responsible, she'd take Drexil into Prestonsburg.

Q. Was this the first time you'd seen her that morning after you'd left the house?

A. No, she come up there and got another load of guns.

Q. When was this?

A. Early that morning.

Q. Before or after the shooting?

A. Right after the shooting.

Q. Why'd she get the guns?

A. Afraid the State Police would come up there and take them all.

Q. What was she driving when she come up and got the guns?

A. Well, she was driving a -- a Toronado, car.

Q. This was the second

occasion she's come up to the tipple and got guns?

A. Yes.

Q. After she came back she was driving what?

A. Toronado, Oldsmobile.

Q. When she came up with her badge what was she driving, a yellow Toyota?

A. Yellor Toyota.

Q. And was Mr. Hall placed in her custody?

A. No, he wouldn't do it. He said he couldn't. He said he'd done placed him under arrest.

Q. What happened then?

A. Well, the State Police stood around there and talked. The one said his daddy was a --

Q. Well, don't say what somebody said other than the Defendants.

A. Well, he just stood around there and talked. I don't know what he said then.

He talked about fifteen minutes while Drexil was sitting in the car.

Q. What happened then?

A. Well, they leave.

Q. They being whom?

A. The State Police.

Q. Was Mr.Hall with him?

A. Yes.

Q. Where did you go? Did you stay there or what?

A. Stayed there for about five minutes.

Q. Then what happened?

A. The phone rung. Edgar wanted to see me in the office again.

Q. Where did you go?

A. To the office.

Q. Who went with you?

A. Went down there with me at that time.

Q. Who went with you to the office?

A. Harry Wallen.

Q. What happened when you got to the office?

A. Edgar told me that --

go to Prestonsburg and get Drexil out of jail, and to get Danny Blanton with a warrant for shooting and wounding.

Q. With a warrant for what? I didn't hear you, Mr. Booth.

A. Shooting and wounding me.

I took Harry back up to the tipple, to his truck. We stayed there about five minutes.

Went down to the house to get Pearl.

I stayed there until I seen my car -- other car leave the office.

Q. When you were in the office was your wife there?

A. Yes.

Q. Did she tell Mr. Jones anything or do you recall?

A. She told Edgar she'd go get Danny out of jail to get Danny Blanton to pay for what was going on.

Q. Anything else said in the meeting with Mr. Jones at that time?

A. He said go get Drexil

out of jail. He said the war has just begun now.

Q. Who said that?

A. Edgar Jones.

Q. Where did you go?

A. I went back to the tipple at that time. Took Harry up there. I waited until I seen my car leave.

Q. Where did you go then?

A. I went home.

Q. Who was there?

A. Pearl, the housekeeper.

Q. What happened while you were there, if anything?

A. Nothing at -- while we was there. She had to change clothes before she went to Prestonsburg. I had to wait for her to change clothes.

Q. Who?

A. Pearl.

Q. Then did you go to Prestonsburg?

A. Yes.

Q. What happened in Prestonsburg?

A. I got a warrant for

Danny Blanton for shooting and wounding. Jason come and got Drexil out of jail.

Q. How do you know that?

A. I seen him in the hallway.

****

MILLERS FALLS
EZERASE
COTTON CONTENT

Q. And after you got the warrant for Danny Blanton what, if anything, happened?

A. I went back to the office.

Q. What did you do with the warrant?

A. Took it and give it to Terry Hall, Kentucky State Highway Police.

Q. Is this before you went to the office or after?

A. No, I went back to the office first.

Q. What happened? Who went back to the office with you?

A. Me and Pearl.

Q. What happened at that time?

A. Edgar told me to make sure to give it to Terry Hall. He wanted him to be the one to serve it.

Q. Did he tell you why he wanted you to give it to Terry Hall?

A. Terry was--

Q. Did he tell you at that time why he wanted you to give it to Terry Hall?

A. Terry would take him to jail and wouldn't let him post bond there at his

house. Terry owed me six thousand dollars and owed Edgar six thousand dollars, you know, at that time. He owed us a favor.

Q. How come him--Terry Hall to--to owe you six thousand dollars?

MR. HARWELL: I object to that, Your Honor. That's irrelevant, immaterial and has no probative value. We weren't supplied this earlier, may the Court please.

THE COURT: Overruled.

Q. How come Mr. Hall to owe you some money?

A. Me and Edgar loaned him six thousand dollars apiece to buy a coal truck, which was to be used on JRM's haul.

Q. And at that point in time was that coal truck being used to haul coal from one of the JRM subcontractors?

A. It-- He'd went to Lexington and picked a truck up. I don't know what day it was, but it wasn't running. They had a fuel problem with it.

The people had come there to use it.

Q. Okay. At that point in

time that you're talking about, on February 17, 1982, who was Terry Hall?

A. Kentucky State Highway Police.

Q. And after you had this meeting with Mr. Jones what, if anything, did you do?

A. Took the warrant to Terry Hall.

Q. Where did you give them to him at?

A. Down at the Bestway Market in McDowell.

Q. After you gave the warrant to Mr. Hall what, if anything, happened?

A. Went back to Stiffy Stumbo's barn, which is at Frasure's Creek.

Q. Who went with you?

A. Went with me? Lee Jones.

Q. What time of day was this, Mr. Booth?

A. It was late in the afternoon, about three something.

MR. SELF: Just a moment, Your Honor.

(Mr. Self conferred with prosecution.)

Q. And what happened when you

got to Stiffy's barn?

A. Jake Moore was there, German, Raymond, Bo Moore, Hermit Newsome and Phillip Dale.

Q. Anyone else?

A. Huh?

Q. Any of these other defendants there at that time?

A. Raymond Hall, Teddy Kinney. That's about all I know that was there.

Q. And what was going on at that time?

A. They was all sitting in the barn drinking--and laughing about Jake burning the barrel off a carbine.

Q. Who said what about Mr. Jake Moore?

A. German said Jake burnt the barrel off a carbine. I asked Jake did he do it. He said, yeah, it blowed apart up there on the hill.

Q. What, if any, other statements were made by any of the people that were there at that time?

A. Phillip Dale Moore said he wasn't going back. He said he didn't care if he

never again hit another lick. He said them people up there shooting was shooting to kill.

Q. What, if anything else, was said by any of the people you just named?

A. They just-- Jake said as he come back-- He said he didn't know the gun was tore up until he came back through the gap and went to shoot it, you know, to let them know they was coming back. They had two people watching to make sure, you know, nobody had snuck in behind them.

Q. Did he say who the people were that were watching?

A. Raymond Hall and Bo Moore. He said when he went to shoot it the end of the barrel flew out of it.

Q. Who told you about Bo and Raymond Hall being watchmen?

A. Jake said that.

Q. What, if anything else, did any of the other individuals say?

A. Said they'd be going back tomorrow morning early. Jason said he'd have to have more ammunition.

I told him he could go down there and give the list to Pearl; she'd call it

in and get it.

Q. Anybody come up to the barn while you were there?

A. Huh?

Q. Did anybody come up to the barn while you were there and come in?

A. Harry Wallen come in and Benny Caudill come in.

Q. The men that you've just named, Jake, German, Hermit Newsome, Raymond Hall, Teddy Kinney, Bo Moore and Phillip Dale Moore, how were they dressed or what was their condition?

A. They was all wet.

Q. All of them?

A. Yeah.

Q. Did any of them tell you where they'd been?

A. They'd been up on Ray-Mac's job site. They hid them in a little gulley, shooting. They was laughing about getting lost.

Q. Who was laughing about getting lost?

A. Hermit Newsome.

Q. Okay.

A. He said German is supposed to fox some of them places all over them hills, and he got them lost up there.

Q. Did you see any guns in the barn?

A. No. The guns was all hid.

Q. Who said that?

A. German said that when I asked him where the carbine was at.

Q. What did he say?

A. He said we've got them all hid right now.

Q. Anything more said about the guns other than what you've testified?

A. Said they was all hid in a good place, is all.

Q. Did you pick up any guns or ammunition at that time from them?

A. No, sir.

Q. Where did you go from there? How long did you stay up there, Mr. Booth?

A. Oh, an hour or so, maybe two hours.

Q. And where did you go from there?

A. Back to the office--Edgar Jones' office.

Q. What happened there?

A. Told him they all got back off the hill. He said he figured that.

Ray-Mac's men was running up and down the hollow, going in and out of Hood's Fork, which is on Frasure's Creek.

I followed them up the hollow and stopped up at the barn.

Q. Pardon?

A. I was acting a fool with Jake over that gun.

Q. What happened?

A. I told the next time he went up there they'd have to get him a slingshot.

Q. What did he say?

A. He said he'd have to have another gun if he was going up there. He looked around and said he was the only one laying there shooting; the rest of them had took off. He said he looked around and Hermit's beard had turned white.

Q. Anything else that was said?

A. No, not-- Phillip Dale

said he wasn't going back period.

Q. Did he say why?

A. He said he wasn't going to get killed.

Q. Did Hermit say anything to you?

A. No. Hermit was just chewing tobacco and laughing and cutting up. He was about drunk. He took a fifth of whiskey with him upon the hill.

Q. How do you know that?

A. He got it out of the trunk of my car.

Q. Do you know where that fifth came from?

A. Yeah. I didn't have none at the house. It come out of the case that Edgar Jones had give me.

Q. Was that case still in the back of your car?

A. About three or four bottles of it was. The rest of it was gone.

Q. Pardon?

A. About three or four bottles of it was. The rest of it was gone.

Q. And where-- How long did you stay there this time?

A. I stayed there about five-- I'd say it was about five o'clock at that time.

Q. Where did you go?

A. I went home.

Q. Anybody go with you?

A. Phillip Dale.

Q. Okay. And what happened when you got home?

A. It was about-- We sat around and drank about four or five beers. Jason brought another list of shells down.

Q. Anybody with Jason?

A. I couldn't tell you at this time whether there was or not because it was so dark. Jason was the only one that got out and came in the house.

Q. And do you remember what Jason said or what he did when he came down there on Wednesday night?

A. Just give her a list. He said he had to have that, that kind of shells and everything. He told me to have them up at Stiffy's barn the next morning at five o'clock.

Q. He told you that?

A. Yes.

Q. Did he say why you should bring them up at five o'clock that next morning?

A. They'd all be leaving about that time.

Q. Did he say where they were going to be leaving to or for or why?

A. He said they'd be going back in the hills.

Q. Now, what else happened on Wednesday eveing after Mr. Moore brought you the list?

A. I sent Phillip Dale to get the shells. Tootsie Hall went and got some that day, too.

Q. Tootsie Hall is who?

A. Morris Ray Hall.

Q. Who is Morris Ray Hall?

A. He was the outside man at Calamity, which was working at Bryan at that time.

Q. How do you know he went and got them?

A. When I come home they was sitting on the--sitting in the hall as you open up

the door.

Q. What was sitting in the door?

A. Shells.

Q. What kind?

A. Carbine shells, .45 shells, 9 millimeter shells. And there was another--another carbine sitting there.

I don't know what all kinds of shells. I didn't take them out of the box and look.

Q. Okay.

A. I told him to take the 30-30 shells back.

Q. Who did you talk to?

A. I told Pearl to tell him, when she called me on the phone, to take the 30-30 shells back because the 30-30 had tore up, too.

Q. Now, did you-- What do you mean, it had tore up?

A. It would shoot, but it wouldn't reject the shells. You had to take them out and pry the shell out of it, the hull.

Q. Now, after Jason brought the list you said you did something in regard to

Phillip Dale Moore.

A. Phillip Dale--I took him to get his car, which is at Larry Foster's having a heater hose put on it. Then he went to Donahue Halbert's and got another bunch of shells.

Q. Did you go with him?

A. No.

Q. How do you know he went to Donahue Halbert's?

A. He called back from Donahue's.

Q. What happened when he called back?

A. Donahue didn't have no 8mm Mauser shells.

Q. What was said and who said what?

A. Donahue said he didn't have them.

Q. Did you talk to him?

A. Yes.

Q. What did Mr. Halbert say?

A. He said he didn't have them at that time. He said he'd get them in.

Asked him how long it would

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take to get another 9 millimeter in, and he said he could order it that day and have it on a Friday.

He brought, I guess, about two or three hundred dollars worth of shells that night. I don't know exactly how much the check was wrote for.

Q. What check was this?

A. Calamity Coal Company check.

Q. How do you know it was a check involved?

A. He wouldn't let you have them on credit. Pearl gave Phillip Dale a check.

Q. And do you remember Mr. Moore coming back?

A. Yeah. He brought the shells back. He brought them in and set them down.

We carried the box that Tootsie had and the box that whatchamacalit had, you know, and put them in the trunk of the car.

Q. Whatchamacalit who?

A. Huh?

Q. Who is whatchamacalit?

A. Me and Phillip DAle carried them out, the ones that Tootsie bought and he bought,

and put them in the trunk of the Cadillac.

Q. Okay. What else was either in there or did you put in there?

A. Put in .870 shotgun, carbine, .357 Magnum, and the 9 millimeter.

Q. And after you placed them in the car, what, if anything, did you do?

A. Just went back in the house. Well, we drove up to Frasure's Creek to see what was going on. There wasn't nobody out.

We drove back down to the house. Ed Tackett had come down. Me and him and Lee Jones and Phillip Dale sat there for a while. We was just sitting around drinking. We went to bed.

Q. Anything happen during the night?

A. About four o'clock in the morning Lynn Thornsbury and Morris Joe Hall and Morris Joe's brother come down there at the house and woke us up.

Q. What happened then?

A. They sat around there and drunk a fifth of liquor in about an hour's time, all three of them.

Q. Did you drink any?

A. No.

Q. Then what happened?

A. Well, I got - - me and Morris Joe and Phillip Dale - - Phillip Dale came in as we were pulling out. Me and Morris Joe and Glen got in the car. Glen got a .357 Magnum. And Morris Joe got some kind of pistol, I don't know what kind it was. And they got another fifth of whiskey out of the trunk of the car and we all rode up to Stiffy Stumbo's barn.

Q. Did Phillip Dale Moore go with you?

A. Yes.

Q. And what happened when you got up to Stiffy Stumbo's barn?

A. Jason was there. His truck was setting kind of halfway on the road and halfway not. And I pulled up and hollered at him.

Q. Pardon?

A. I pulled up and hollered at

him. And he came over and we got the shells out and he was giving them out to the ones that had the certain caliber guns that they used, he would give them the shells.

Q. Okay. Who did Mr. Jason Moore pass shells out to on Thursday morning?

A. Panhandle got some. Van Patton - - I was standing there talking to Panhandle and I don't know who all he did give them out to around here.

Q. Well, who all was there that had rifles that you saw?

A. I seen - - I just seen the ones that Panhandle had there. The rest of them was standing around there, and then I got me a beer off Drexil. And Drexil was standing there and there was a bunch of people standing up above the road.

Q. Who was standing there at the barn with you?

A. Me, Glen, Panhandle, Van Patton, Tim Milan was there, Ranny Blankenship, Eugene Tackett, Linville Mosley and Panhandle's boy, come on up at that time. They were out there talking. And Tim Milan was there and that was about all that was there - - well, Smitty Joe Mitchell was

there, Herl Stumbo and that's about all I know about was there, I'd seen some more people there, but I can't remember exactly who they were.

Q. As far as any of the Defendants, is that all you remember being there?

A. Yes, at the barn now.

Q. Now, was there another group of men nearby the barn?

A. On above the barn, yeah.

Q. Were they - - if you're facing Stiffy's barn on Frasure's Creek, were they to the right or to the left of the barn?

A. Facing Stiffy's barn they were on up the hollow, on up towards Frasure's Creek.

Q. And what did you see?

A. There was a bunch of them up there standing up there.

Q. Up where?

A. At the driveway at Stiffy's house.

Q. Who was standing up there that you saw?

A. Sherman, Teddy, Raymond, the Postman, that's all you could see that you could recognize, it was getting dark.

Q. Were they just - - what were they doing?

A. Just standing there. And Raymond's Wagoneer was there.

Q. Did they do anything while you were there?

A. They were just standing around up there, you know. They left - - they left before I did. I don't know who drove them up there or nothing.

Q. What did they leave in?

A. A Wagoneer.

Q. Raymond Hall's Wagoneer?

A. Yes.

Q. But you don't know who was driving?

A. No, I couldn't see, it was after dark.

Q. Now, what did the men do that was there at the barn?

A. They were getting - - I was talking to Panhandle and he had a - - old Army fatigues on and he had a strap around him and had a little pouch, like a squirrel pouch on this side and another one down this side.

Q. And what did you see that was in those pouches, Mr. Booth?

A. There was dynamite in one and one was full of shells.

Q. Did you have a discussion with Mr. Panhandle Moore at that time about that dynamite?

A. No, not at that time.

Q. Did you have one later on in the day about it?

A. Yes.

Q. Who else was there and how were they dressed, the men you named?

A. Van Patton had on a pair of Army fatigues just like Panhandle had on. And he had on an old Army hat. And Harold Dean had an old green coat with a green hood on it.

Q. Who?

A. Harold Dean Moore.

Q. Was he there?

A. Yes.

Q. Okay.

A. Jason was there, he was just dressed normal. I couldn't tell you what all kind of clothes they had on, I didn't pay much atten-

tion except Panhandle had on those old Army uniforms, that's all I knowed.

THE COURT: This would be a good time to recess for lunch. We'll be in recess till 1:00 o'clock. During this recess the not now admonition is in effect.

Any objections or corrections to the form of the admonition?

MR. SELF: None, Your Honor.

THE COURT: Please excuse the Jury till 1:00 o'clock.

THE MARSHALL OF THE COURT: The Jury is all out of the Courtroom, Your Honor.

*** *** ***

THE COURT: Mr. Pafunda, do you want to give the Court a memo or a statement of authority on the effect of a statement of a deceased person under the new Federal Rules of Evidence?

MR. PAFUNDA: Your Honor, I would love to. When would I get a chance to do that, tomorrow?

THE COURT: No, you made an objection and I assume you have some authority in support of that.

MR. PAFUNDA: Your Honor, there might be one under here right now.

THE COURT: Fine, if you have any, we'd be glad to have it, gentlemen.

MR. SELF: Judge, it's the position of the United States that these are covered by 801D1, D2 --

THE COURT: (Interrupting) 801 D1 and D2.

MR. SELF: No, it's D2E. The statement of coconspirators during the course of and in furtherance of a conspiracy --

THE COURT: (Interrupting) All right.

MR. SELF: There's no requirement

that that person be dead or be alive as long as they're a coconspirator and the statements were made under that. Whether they're dead or alive has nothing to do with it at the time.

THE COURT: All right.

MR. HARWELL: May the Court please, we've got a brief. I can't put my hands on it, it's standard, but we will get it to the Court promptly. Basically -- it's basically as I recall in the body of case law, rests on the confrontation clause by the deceased obviously not being able to be subpoenaed into the courtroom.

THE COURT: All right.

MR. ROWLAND: I don't know where it is, Your Honor, but there's a reference in that handbook to that situation. I've seen it before.

THE COURT: You look it over and point it out to the Court.

MR. ROWLAND: I've got a feeling it would not help me.

THE COURT: All right. Gentlemen, we will be in recess until one o'clock.

MR. HARWELL: Your HOnor, may I renew my motion I've been making at every break in reference to the U.S. versus Geders ---

THE COURT: (Interrupting) Yes, sir. Let the record reflect that it's not necessary for you to do that anymore.

MR. HARWELL: Is the record showing that as a continuing motion?

THE COURT: A continuing motion and a continuing overrule.

THE MARSHALL OF THE COURT: This Court will be in recess till one o'clock.

(Reporter's Note: The Court was called to recess at 11:47 A.M.)

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DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

EDGAR JONES, JASON MOORE, GERMAN STUMBO, DREXIL HALL, TEDDY KINNEY, BENNY CAUDILL, KENNETH ROLLAND, a/k/a POSTMAN, RANNY BLANKENSHIP, EUGENE TACKETT, HAROLD MOORE, HERMIT NEWSOME, TIM MILAN, MOSE MEAD, DONAHUE HALBERT, AUSTIN "BO" MOORE, PEBO GAYHEART, LINVILLE MOSLEY, RAYMOND HALL

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: MARCH 1, 1984

VOLUME FORTY-SEVEN

DALE SOERGEL MOORE SHAW & ASSOCIATES
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I N D E X

PHILLIP GENE BOOTH

Continued Cross-Examination By Mr. Self: Pgs. 189-288

EXHIBIT

Government's Exhibit No. 117: Pg..288

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For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

For the Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

WILLIAM D. KIRKLAND, ESQ.

For Phillip Gene Booth:

JOSEPH W. JUSTICE

REPORTER'S NOTE: The Court convened at 1:05 P.M., March 1, 1984.

THE MARSHALL OF THE COURT: All rise. This Honorable Court is again in session. Be seated and come to order.

Your Honor, all Defendants, all Attorneys and Jurors are present.

THE COURT: Thank you, sir. Are we ready to proceed, gentlemen?

MR. SELF: Yes. May I proceed.

THE COURT: All right.

Q. Mr. Booth, calling your attention back to Thursday, the 18th of February, 1982, you previously testified you had gone down to Stiffy Stumbo's barn and met some of the Defendants there, and some ammunition had been passed out?

A. Yes.

Q. Did you see any guns there that weren't there when you got there?

A. Yes. There was some in the barn laid up in the corners, you know, and stuff.

Q. Those guns that you had brought down there that morning?

A. No. The ones that I brought

down done been gived out. They was to get more guns there.

Q. Do you know what type or caliber of guns that were there that you didn't bring down?

A. No.

Q. Approximately how many guns were there?

A. Four or five, something like that.

Q. Were they long guns, or were they pistols?

A. They were deer rifles or rifles. They was rifles. They weren't no pistols.

Q. Now, the weapon that you previously identified this morning, the Mini-14, did you see it down there?

A. No. I didn't pay no attention to whether it was there or not.

Q. After you gave that to Mr. Panhandle Moore, what day was it you gave it to Mr. Moore?

A. It was on a - - the night of the union meeting. It was on a Tuesday night.

Q. Did you ever see that gun

again during the next couple of days?

A. Yes.

Q. When did you see it again?

A. It was in Barry Moore's car.

Q. Barry Moore is who?

A. Phillip Dale Moore's son.

Q. And you testified that you had given it to Mr. Barry Moore; is that correct?

A. No. I gave it to Panhandle and he got it off of Panhandle.

Q. What happened to the gun that you saw in Barry Moore's car?

A. Panhandle got it out down at the tipple.

Q. When was that?

A. Wednesday.

Q. Do you know what he did with it?

A. No, sir.

Q. At the time you were at the barn on Thursday morning, do you remember any particular weapon that any of these Defendants had?

A. Panhandle had a .35. That's the only one that I know. I don't know. I didn't

go around and check to see what all kinds of guns everybody had.

Q. Okay. What, if anything, was said there at the barn that you have not testified to already?

A. Panhandle had some dynamite in one of these pouches.

Q. Did you talk to Mr. Panhandle Moore at that time about that dynamite?

A. Yes. I asked him what he was going to do with it.

Q. What did he say?

A. Going to blow something all to pieces.

Q. Did he say anything more about the dynamite at that time?

A. Not at that time, no.

Q. Did Mr. Moore make any - - Panhandle Moore make any more statements to the men that were there?

A. Yes.

Q. What did he do? What did he say?

A. He said the ones that run in his squad, said he would shoot them in the back.

He said that every man was for hisself if he got hit.

Q. Did the men leave while you were there, the ones that were in the barn?

A. They was getting into the back of the truck.

Q. Whose truck were they getting into?

A. Jason Moore's.

Q. The one that you have depicted in those photographs that you saw this morning?

A. Yes, sir.

Q. Who was driving that truck?

A. Jason Moore.

Q. Did Mr. Moore say where he was going?

A. He said he was going around the hollow around there by the tipple is what he said.

Q. The hollow above the tipple?

A. Yes.

Q. Where did you understand him to be saying that he was going?

A. The hollow by the tipple by Philman Caudill's.

Q. And who was with - - who got in Mr. Jason Moore's truck?

A. Well, I - - I just, you know, seen a few of them getting in there.

Q. Okay. Who did you see get in it?

A. Harold Moore, Ranny, Eugene Tackett, Van and Panhandle - - Van Patton and Panhandle Moore.

Q. After they got in the truck, what happened?

A. The truck was still sitting there when I left.

Q. Pardon?

A. The truck was still sitting there when I pulled out and went down the hollow.

Q. Had they already loaded in it?

A. Yes.

Q. Was there any people - - were any of these Defendants there that you didn't see get into that truck or leave in another vehicle?

A. The one that left - - they left before I did - - I mean, they left up the hollow, the ones that were there; but you couldn't tell

who all was getting in the truck, because it was still dark.

Q. Other than the group and the group that got into Jason Moore's truck, were any of the Defendants there that you didn't see get into a truck?

A. I can't remember who all was there.

Q. Was Drexil Hall there?

A. Drexil was there, but he didn't go into the hills. He didn't go up there to go into the hills.

Q. Was Linville Mosley there?

A. Linville and Ricky Moore was there, Panhandle's boy.

Q. Okay. What was Linville Mosley doing?

A. Just driving up and down the hollow.

Q. Did you talk to him at that time?

A. He was talking to everybody.

Q. Do you remember anything he said at that time?

A. No, just - -

Q. Did you see Tim Milan there?

A. Tim Milan was getting into the truck.

Q. Whose truck was he getting into?

A. Jason's.

Q. Did you see Mr. Benny Caudill there?

A. I don't know whether Benny was there or not at that time.

Q. After you left, where did you go?

A. I drove down to the house, stopped down there. I took Morris Joe Hall's brother down there. He wanted to go home. I took him down there to his car.

I went in and got a fifth of whiskey from Glen and Morris Joe, and then I drove up to the restaurant and stopped and eat.

Q. What restaurant is that?

A. Emma Pack's.

Q. Did you see anybody there?

A. Edgar was there.

Q. Did you say anything or talk

to him about this?

A. No, because he didn't want to talk too much, because Junior Hamilton was there.

Q. And after you left there, where did you go?

A. To the tipple.

Q. JPL, JRM tipple.

A. JRM tipple.

Q. At that time do you know what name it had?

A. It's a JPL sign there; that's all I know.

Q. Was it there at that time?

A. Yes.

Q. And what happened at the tipple?

A. A bunch of people just standing around waiting.

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Q. What time is this you went up to the tipple?

A. That's about the peak of daylight. I couldn't tell you what time it was. I don't know what time it got daylight at that time.

Q. Did anything happen while you were there?

A. Just a bunch of people drinking. And Edgar called me to the office.

Q. Did you see any of the defendants - - before you went to the office, did you see any of the defendants up there?

A. I couldn't tell you at that time who all was up there.

Q. And did you go to the office?

A. Yes.

Q. And had anything happened up on the hill before you went to the office?

A. No, sir.

Q. Okay. What happened when you went to the office??

A. He told me to tell all them people to move away from his tipple and to move up to the next tipple up.

Q. Who is "he"?

A. Edgar Jones.

Q. Was there anything else he said?

A. He said it was causing too much publicity.

Q. And what did you do?

A. I went straight back and told them what he said.

Q. And then as a result of that, did anything happen?

A. Everybody moved up there to the other tipple.

Q. Is that the tipple on up Bill Hall Branch?

A. Yes.

Q. And did you move up there too?

A. Yes.

Q. Okay. What happened while you were there?

A. We was all just stood around maybe an hour, hour and a half talking, and then they starting shooting up on the hill.

Q. What did you hear?

A. Some guns was going off - -

fire - - and a exchange of fire from side to side.

Q. How long did that last?

A. Long enough for them to fly a helicopter from Frankfort.

Q. Pardon?

A. Long enough for them to fly a helicopter in here with a SWAT team in from Frankfort.

Q. How do you know that, Mr. Booth?

A. They was still shooting when they went over.

Q. When the helicopter came in, were they still shooting?

A. I couldn't swear it was the one from Frankfort, but it was a helicopter up there.

Q. Now, at the time the shooting was going on, Mr. Booth, were any of the defendants in this courtroom at the tipple?

A. Drexil Hall was at the tipple.

Q. Okay, who else?

A. Benny Caudill.

Q. Who else?

A. That's about all I remember

of them being there.

Q. Okay. Did you talk with either Drexil Hall or Benny Caudill at that time?

A. I might have talked to them, but I don't know what all was said at that time.

Q. What happened after the shooting - - or while the shooting was going on?

A. There was all kinds of State Police cars up in there, Deputy Sheriffs, and newspaper people come up in there and everything.

Q. Okay. How long did you stay at the tipple?

A. I'd say about an hour.

Q. Other than Mr. Hall and Mr. Caudill, did you see any of the other dependants during that period of time mentioned?

A. No, sir

Q. What all happened while you were there at the tipple?

A. They had the State Police come there, and Glenn Thornsbury was drunk; and he throwed a fifth of whiskey over the hill. He had an old pistol, and - - so, I sent somebody - - I believe it was Joe Stanley in there to tell Pearl to come up there and get him to take him home before

the State Police take him to jail, he and Morris Joe Hall.

He throwed the pistol over the hill and the whiskey.

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Q. What, if anything else, occurred there at the tipple at that time?

A. Everybody was loading their guns up again. Everybody that had a gun give them to Pearl.

Q. Again?

A. Yeah.

Q. Did you know what she did with them? Did you see what she did with them?

A. No, I didn't see.

Q. What else happened there at the tipple, if anything, Mr. Booth?

A. I can't remember right now.

Q. Where did you go from the tipple?

A. I went from the tipple to the house -- down to my house. I picked up Phillip Dale at that time.

Q. Where did you pick up Phillip Dale Moore at?

A. At the service station down there at McDowell.

Q. After you picked him

up what, if anything, did you do or where did you go?

A. Me and Phillip Dale tried to ride across the hill, across John Hall Branch hill up there by Ray-Mac.

Q. Why did you try to do that?

A. Just to go up there to see what we could see.

Q. Did you go across?

A. No.

Q. What did you do then?

A. Well, the State Police stopped us, searched us, and turned us back. We went back and rode down the road.

Then I busted a tire on my car I took it to have it fixed. I got somebody, I couldn't tell you who it was now, to take me down to the house to get another car.

Q. After you got the other car what, if anything, did you do?

A. We rode up in Frasure's Creek. First we rode up to the mines, and come back out of the hollow. We stopped at Larry Foster Stumbo's, and Terry Hall was down there

having a fan belt put on his cruiser.

Q. This same Terry Hall you were talking about with the State Police cruiser?

A. Yes.

Q. What did you do after that?

A. Drove from there back up to Stiffy Stumbo's barn in Frasure's Creek.

Q. Prior to this time you said you'd seen Jason Moore earlier in the morning. Had you seen him in the other time other than the time you went up to Stiffy Stumbo's barn?

A. Jason was riding up and down the road all the time. He stopped at the tipple one time.

Q. What happened when he came to the tipple?

A. He come to the tipple and he said that Panhandle and them hadn't gotten out of the hills yet, and they'd been seen over by John M. Stumbo's School on Mud Creek.

Q. What did he say then?

A. He was going to go over there and find them.

Q. Did he mention anything

to you about losing a coon dog?

A. No, not at that time.

Q. How long after this was it that you went to Stiffy's barn?

A. Maybe thirty minutes.

Q. Prior to going to this barn -- excuse me, Stiffy's barn had you talked to Edgar Jones anymore other than the one time you were in the office?

A. Yes. I stopped on the way up the hollow.

Q. Why did you stop?

A. I told him Panhandle and them was trapped in the hills, and they had that helicopter up in there looking for them.

Q. What, if anything, did he say?

A. He said Panhandle had been in them scrapes before, if anybody could get out of it he could.

Q. After that where did you go?

A. I went from there -- first down to see if they had the car fixed. They still didn't have it fixed.

I rode from there to Stiffy Stumbo's barn.

Q. About what time was it you got to Stiffy's barn?

A. About 1:30, I'd say, two o'clock.

Q. Okay. Who was at Stiffy's barn?

A. There was German -- German, Raymond, Smitty Joe Mitchell, Herl --

Q. Herl Stumbo?

A. -- Herl Stumbo. Postman was there. And people from Ray-Mac started running up and down the hollow.

Q. Were any of the other Defendants there at that time?

A. I -- I don't know who all was there at that time.

Q. What were the men doing there at Stiffy's barn?

A. Drinking.

Q. Doing anything else?

A. Sitting around drinking and laughing.

Q. What were they laughing

laughing about? Could you tell? Did you overhear?

A. They was laughing because they'd been shooting down over there at the strip job.

Q. Who said what that you overheard at that time, Mr. Booth?

A. They just -- I don't know, it was just a bunch of them there talking. I couldn't tell you -- They was talking back and forth between each other.

Q. Okay. What were they saying? Who was saying what?

A. They --

Q. Who's they?

A. German and them was talking and Raymond and them was talking about shooting over there and everything, and that they wasn't going back in the hills no more because somebody was going to keep on fooling around until somebody got killed.

Q. Did you talk to Ranny Blankenship?

A. No, not at that time.

Q. Did you talk to any of the other Defendants or did they make any

statements that you overheard to what they had been doing or what has gone on?

A. Said that they'd take turns about shooting. Panhandle decided to shoot one time and they'd quit, and then they'd start shooting.

Q. Did you talk to Mr. Van Patton?

A. No, sir, not at that time.

Q. Was Mr. Van Patton dressed as he was earlier?

A. I didn't see him at that time.

Q. You didn't see him?

A. (Witness responded by nodding his head in the affirmative.)

Q. Did anybody talk about him?

A. No, not...

Q. Did you see Harold Dean Moore there?

A. No.

Q. How long did you stay?

A. Oh, about thirty,

thirty-five minutes.

Q. And the men that were there, what was the condition of the clothing that they had on?

A. It was all wet. It was raining. It was real foggy.

Q. Do you remember any other conversations or statements that were made there at that time?

A. They was wanting people to run around and go up them hollows, see if they'd see Panhandle as he came off the hill.

Q. Did anybody at that time make any statements in regards to Panhandle's whereabouts or condition?

A. No. They said they didn't know where he'd come off the hill at; he could come off over at my house, over on Mud or in Frasure's Creek there on John Hall Branch by Philman Caudill's house, or he could come off in Drift, Kentucky.

Q. So, at that point in time nobody knew where Panhandle was at, is that correct?

A. Yes, sir.

Q. Where did you go from there?

A. I went down to the house. We were looking around with binoculars to see if we could see him coming out of the hills. We stayed down there maybe an hour looking.

Q. Who's we?

A. Me and Phillip Dale and Ed Tackett and Joe Stanley and Jerry Ward.

Q. Okay. After you went to your house where, if anyplace, did you go after that?

A. We just drove up and down the hollow there. Phillip Dale got out and got in a car with -- in a van with Willie Moore.

Q. Did you go back to the barn any that day?

A. I was in that barn off and on all day.

Q. Did you go back after you went to your house?

A. Yeah, and told them I couldn't see him. Harry Wallen went to Drift to try to find him. Linville went up the hollow up there someplace to try to find them.

Q. What did Linville say to you?

A. Huh?

Q. How do you know Mr. Mosley went up there looking for him?

A. Linville said he was going up through there to try to find them, to see if he could see where they went to, you know, if they ever got off the hill.

Q. Did you have any discussions with any of the other Defendants at that time about what had gone on or what had gone on?

A. Benny was trying to find them, Benny Caudill. Everybody was running around trying to find him. Everybody thought he was trapped in the hills. They didn't know if he was dead or alive.

Q. Did there come a point in the afternoon that you discovered that they'd made it out?

A. Yes. That was late that afternoon. It was after dark.

Q. Where were you at when you found that out?

A. Up there in a little store building beside Stiffy's barn.

Q. Who all was up there at that time?

A. German, Jake, Panhandle, Van, Herl Stumbo and -- that was all, you know, I can remember being there of the Defendants.

Q. What, if anything, did anybody say to you about -- or who said it to you about Panhandle's crew?

A. About Panhandle's crew?

Q. About Panhandle's making it out or whatever.

A. Panhandle made it out.

Q. Who told you that? Who told you that, Mr. Booth?

A. I think -- Well, it was -- Jason Moore said he'd made it out. Panhandle said they'd brought him two cases of beer in some barn he'd been hid into -- hid in.

I don't know whether he'd been hid or not. I don't know where he hid at.

Had a big cooler of meat cooking and everything there.

Q. Do what, Mr. Booth?

A. They had a big cooler of meat cooking there in the barn.

Q. Who was cooking it?

A. Herl Stumbo.

Q. And were any of the people talking about what had gone on at that time?

A. Yeah. Panhandle was talking about -- he'd shoot his gun and then holler it was your turn. Van had lost a box of shells.

Q. What kind?

A. .35 shells.

Q. What else -- What, if anything, did any of the other people say that were there?

A. Harold Dean said they shot a big hunk of bark right out over top of his head with a machine gun.

Q. What else?

A. Panhandle was laughing. He said, Harold, they didn't know how to cock a gun to shoot it.

He had some dynamite in his pocket.

Q. Who did?

A. Panhandle. I asked

him where he got it, and he told me he stole it from my mine.

I told him -- I said, you'll get me in trouble. He said, well, I didn't get that from up there, that come from --

Q. What else did he say about the dynamite?

A. What else did he say about the dynamite? He said he took it up there to blow something up with it.

Q. Did he state that he had it that day?

A. No. He said he hadn't blown nothing up that day. He had it with him.

He was on the opposite side of the hill to blow anything up.

Q. Did he state where he had been?

A. He'd been on the -- on the point across from the road -- across from the Ray-Mac site. It was on the opposite side of the highway.

Q. And did Mr. Panhandle Moore say who had been with him?

A. He said that Eugene

got lost and went almost to the highway.

Q. Eugene Tackett?

A. Yes.

Q. What did he say about Mr. Tackett?

A. He said he went almost down to the highway. He had to send one of them down there to get him. He said he was almost down to the main highway.

Q. What was said by the people there about anybody else in Panhandle's crew?

A. That they -- nothing was actually said about that. He said they took them -- they got lost and went over on the Mud Creek side. They said the helicopter flew over them and they had to cover up with leaves and stuff.

Q. What did they say about the helicopter? Who said what about it?

A. Panhandle said that if they had to shoot at it to hit the Stickman.

Q. Was Jason Moore up there at that time?

A. I couldn't -- Jason, he was talking about -- Yes.

Q. Who was talking about--

A. Jason was talking about the helicopter setting down beside of him up on the strip job.

Q. What did he say about that?

A. He said they set down; got out and talked to him and everything. He said he told them that he lost a coon dog.

Q. Mr. Moore say what he was doing over there?

A. He was over there looking for Panhandle and them.

Q. What, if anything -- Was anything else said that you can recall by the men that were there?

A. No, not at that time. We all sat around eating that -- eating and drinking then.

Q. Okay. Was there any plans made as to what was going to happen next?

A. There wasn't nobody wanting to go on the hills no more.

Q. Who said that and why?

A. Panhandle said he

wasn't going back in there and take no more chances. German wasn't going back in there. There wasn't none of them going back.

Q. Did they state why they weren't going back?

A. They said they was going to keep right on until they got called or got killed one.

Q. Anything else happen that day, Mr. Booth?

A. That night?

Q. Yes.

A. No, not that night.

Q. Did you send to get any more guns or ammunition?

A. No, not on Thursday night.

Q. Now, did you get anything while you were up at the barn that day?

A. Get anything?

Q. Anybody give any guns or ammunition back to you?

A. No, not at that time.

Q. Did you give anybody anymore guns or ammunition?

A. No.

Q. Did you see any of the other Defendants anymore that evening?

A. We all sat there until about ten o'clock, I guess it was. Everybody had to take their cars -- They had their cars scattered all over the place so the people from Ray-Mac who was running up and down through there really couldn't see whose car it was.

Q. How do you know people from Ray-Mac were running up and down the roads?

A. Well, I don't know whether it was Ray-Mac or not. There was police and everything going up through there going on Hood's Fork.

Q. Going where?

A. Hood's Fork.

Q. How do you know that?

A. They was -- We could see -- see them going up in there. Some of them were worried to death because that old guy that lived up there -- some Bentley guy -- seen who took them up there and who got out of the Jeeps and everything-- trucks.

Q. Who said that about the

Bentley fellow?

A. Linville Mosley is one.

Q. What did he say?

A. He said he was afraid that old Sam Bentley had seen them.

Q. Did he say when he was afraid they'd seen him -- when they'd seen him?

A. No.

Q. Where exactly, the best you recall, is Stiffy Stumbo's barn located?

A. It's located right below -- Well, it's about a half a mile -- a quarter of a mile back this side of Hood's Fork.

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MR. SELF: Mr. Marshall, if you would hand me for just a moment what's been previously introduced into evidence - - let me get the right number, Your Honor just a second.

Government Exhibit #6

(Marshall complies)

MR. SELF: Mr. Marshall, let the record reflect that you've handed the witness what's been introduced into evidence as Government Exhibit #6.

Q. Mr. Booth, do you recognize the area depicted in that photograph?

A. Yes.

Q. What is it?

A. It's Frasure's Creek.

Q. And is that the previous map that you marked for location of one of your mines on?

A. Yes.

Q. Do you see depicted in that photograph the location of Stiffy Stumbo's barn?

A. Yes.

Q. Can you see the building itself?

A. There's a bunch of buildings

there, you can't tell which one it is.

Q. Will you take a yellow pencil there - - Mr. Marshall hand it to him. I ask you if you would Mr. Booth circle the location of where Stiffy Stumbo's barn is and write Stiffy's right above it and put your initials beside it?

(Witness complies)

MR. SELF: Would you hold that up Mr. Marshall for the jury to see.

Q. Mr. Booth, would you show the ladies and gentlemen of the jury where - - is that where you marked where Stiffy Stumbo's barn's at.

(Witness nods head)

Q. How near the mouth of Hood's Fork is it?

A. At about a half a mile - - not quite a half mile.

Q. Back there?

A. Back towards McDowell from Frasure Creek.

Q. Now, you've marked on there the location of one of your mines, have you not?

A. Yes.

Q. Does that map show where

both of your mines are or just one of them?

A. That don't show the mines, but the area there where it's at.

Q. Can you see it from the photograph?

A. Yeh, I can see where it's supposed to be but you know, the picture was took this way.

Q. Would you place an X there and right - - which mine is it that you're talking about?

A. Calamity..

Q. Would you place an X there and write Calamity right above it?

(Witness compling)

MR. SELF: Thank you Mr. Marshall.

THE COURT: Let me see that a minute.

(The Marshall passing documents to the court)

Q. That was on Government Exhibit #6, was it not, where you placed the yellow X and wrote the name Calamity above the location of where your mine is, is that correct, Mr. Booth for the record?

A. Yes.

Q. Now, after you left the barn, where did you go?

A. That night? I went home.

Q. Did you talk to any of the defendants that night as you recall?

A. Just Phillip Dale, he's the only one. He's always come down around the house.

Q. Did anything happen that night?

A. No.

Q. The next day, Friday the 19th of February, 1982, what if anything occurred that day?

A. That morning I got up and went to Bryan Mines and stayed a while.

Q. Was Bryan working?

A. No, I wanted to see how they were doing on getting the belt set up.

Q. Was Calamity working?

A. No.

Q. Were any other mines or contract miners for Mr. Jones working that you know of?

A. No, not that I know of.

Q. Was there any picket lines

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(502) 587-6006

at your mine?

A. No.

Q. Was there any picket lines at any of the mines that you are aware of?

A. No.

Q. Was there any picket line up at Ray-Mac to your knowledge?

A. No - - Uh-Uh.

Q. Why do you say that?

A. There wasn't nobody would go back up there.

Q. After you went to your mines, where did you go?

A. I stayed there about an hour or more an hour and a half and then I just drove up and down the hollow there talking to people. I went to the house and then I went and picked Ed Tackett and Phillip Dale up and Glen Ison.

Q. And after you did that, where did you go?

A. Back up to Frasure's Creek and stopped at the office for a while and then went to Bryan because they would have their belt finished that afternoon.

Q. Did there come a point in

time that you met the defendant Edgar Jones?

A. That was at the office.

Q. How did you come to meet him?

A. I went in there.

Q. Why did you go there?

A. To tell him, you know that they would have the belt set up and finished that day. And I met him, you know, I just went in there and out. At that time, then I went back up to Frasures Creek and met Phillip Dale and the rest of them.

Q. Did you ever go back to the office that day?

A. Yes, later that afternoon.

Q. About what time was it, do you remember?

A. About two or two-thirty.

Q. Who went with you to the office?

A. Pearl - - I went to the office by myself and Pearl was already there. She sent up to the hollow and got me.

Q. What do you mean?

A. She sent up to Bryan mines

and got me and I left Phillip Dale and all of them up there.

Q. Who did she send up there to get you?

A. Her nephew, Robin Burke.

Q. And you then went to Edgar Jones's office?

A. Yes.

Q. Who was there?

A. Just me and Pearl and him.

Q. And what if anything happened?

A. He told me to take me a vacation I'd worked hard that week. And when I left to take me a bunch of witnesses with me.

Q. Did he say why to take some witnesses with you?

A. There was going to be some stuff done that was going to be blamed on me.

Q. What did he say?

A. He said there was going to be some stuff done and blamed on me. To take me a trip and take me a bunch of witnesses. They were talking - - I said what do you mean and he said just get out of Dodge for a while. And him and Pearl

started talking back and forth to each other.

Q. What did they say?

A. They said the only thing you can get to Ray-Mac - -

Q. (Interrupting) Who said that Mr. Booth?

A. Jones said it first, he said the only way you could get to Ray-Mac is to get to their equipment.

Q. What did Pearl say?

****

A. She said he was right.

Q. What, if anything else, was said by Mr. Jones at that time?

A. He--I asked him where he wanted me to go to and he said he didn't care where I went, just make sure I took people with me.

And then Pearl and he was standing there talking and I said something and he said he had the old-time timber rats that were going to be working that weekend.

Q. Did he at that time state to you who or what the old-time timber rats were?

A. He said they'd been doing it for a long time. He didn't tell me who they were or nothing.

Q. Had you ever heard him use that term before, old-time timber rats?

You have to answer, the Court--

A. (Interrupting) No, sir.

Q. And he didn't state who they were?

A. No.

Q. What else, if anything, did he say?

A. He and Pearl were just standing there talking and I left.

Q. Did you hear what they were talking about when you left?

A. No, just about the equipment--they'd have to destroy their equipment in order to shut them down.

Q. Who was saying that?

A Pearl and Edgar both were talking about it.

Q. Did you agree with Mr. Jones or did your wife agree with Mr. Jones to do anything in regards to equipment?

A. No, sir, I didn't--I didn't agree to do nothing.

Q. Did you overhear her agree to do anything in regards to equipment?

A. No, sir.

Q. Where did you go from there?

A. Back up to the mines. I called the foreman outside and asked him what time he'd be finished. And if he'd have it done by Monday and he said yes. I got Phillip Dale and Glen Ison and we went to Pikeville and bought two tires.

Q. Went to where?

A. Pikeville.

Q. What did you do in Pikeville?

A. Bought two tires for a car.

Q. Did there come a point in time when you went to Lexington or Winchester, Mr. Booth?

A. That was after I came back from Pikeville.

Q. Who went with you?

A. Ed Tackett, Glen Ison, Phillip Dale Moore and myself.

Q. Where did you go to and when did you go?

A. We left about four o'clock that afternoon and went to Winchester and picked the car up and took it to the service station and had tires put on it and he drove it back out there and parked it. Then we went to the Continental Inn in Lexington.

Q. That was on Friday night?

A. Yes.

Q. And where did you go on

Saturday?

A. Saturday I came back to McDowell at the union hall, up at Frasure's Creek.

Q. Did anything occur while you were up at Frasure's Creek on Saturday?

A. I stopped there at Herl's and talked to Herl Stumbo and he told me that helicopter been flying around up there--

Q. (Interrupting) Don't say what somebody else told you.

A. Herl--

Q. (Interrupting) Don't say what someone else told you.

A. I don't know what happened then.

Q. Did you receive something on Saturday?

A. Later on that day.

Q. What did you receive?

A. A subpoena to appear in court on Monday morning.

Q. In Prestonsburg?

A. Yes.

Q. Do you know who served it on you?

A. Harold Johnson and Gillis Conn.

Q. After you got that subpoena what did you do?

A. Went to Wayland and picked up another boy.

Q. And who was that?

A. Reon Slone.

Q. And where did you go?

A. Back to Winchester.

Q. Okay. And who was down in Winchester?

A. Me, Reon, Phillip Dale. And I loaned Ed Tackett one of the cars to go to Ashtabula, Ohio. I bought one up at Paul Miller's the night before..

Q. What did you buy?

A. '79 Thunderbird.

Q. That was on what, Friday?

A. Friday night.

Q. Where, if anyplace, did you go from Winchester?

A. I called home and Pearl and Ruth were starting home.

Q. Called where, Mr. Booth?

A. McDowell and Pearl and Ruth were started down there. And we--I started back up here to bring Reon back up here and I met them in Campton.

Q. You were going which way and they were going which way?

A. I was going towards Floyd County and they were going towards Winchester.

Q. What happened after you met them?

A. Stopped, and let Reon out of the car and me and Phillip rode back down there in the car with Pearl and Ruth.

Q. Where did you go?

A. Winchester to the house.

Q. Did you stay in Winchester on Saturday night?

A. Stayed there Saturday night part of the night. The other part we went out.

Q. When did you come back to McDowell?

A. About three-thirty or four o'clock Sunday--Sunday afternoon.

Q. Who came back with you?

A. Ruth, Pearl and Phillip

Dale Moore.

Q. The four of you?

A. Yes.

Q. Any of the kids with you?

A. No.

Q. And what happened when you got back to McDowell and where did you go?

A. I stopped there at the house at McDowell.

Q. Okay. What happened at the house?

A. Benny Caudill come down and said everything had been blown up or was going to be blown up or something.

Q. Okay, was anybody with Mr. Caudill?

A. No.

Q. What as best you recall did Mr. Caudill say to you?

A. That everything-- I don't know if he said being blown up or gotten blown up.

Q. Is that all he said?

A. He was just talking about where he'd been up in the hollow and he made the

bombs up there in German's barn.

Q. What did Mr. Caudill tell you?

A. Said made one up in a basketball and one up in a inner tube.

Q. Did he say who made them up?

A. He just--he just said they'd been made up up there, Panhandle and Philman was up there and the Postman, that's the only ones he named.

Q. Did he say--did he say where they were made up at?

A. Yes.

Q. Where was that?

A. German's garage.

Q. What, if anything else, did he tell you?

A. That was all at that time.

Q. Did he tell you what they had made them up for?

A. They were taking them back on the hill to blow Ray-Mac's auger or dozer or something up. I don't know what all kinds of equipment they've blown up. The only thing I know is the

auger did.

Q. Pardon me?

A. I said the only thing I know is the auger did.

Q. After Mr. Caudill told you that what, if anything, happened?

A. Well, Pearl's brother come down and we were all sitting down there.

Q. And what happened?

A. I don't know whether it went off while we was there or not, because I couldn't tell you whether it did or not.

Q. Now, you were not upon the hill when the auger blew up, were you?

A. Up where?

Q. Where the auger was at.

A. No, I just got back from Winchester.

****

Q. Anything else occur that day?

A. Not as a bunch - - we all stood around there and drunk beer and listened on the radio to see what happened.

Q. Did you have any discussions that day with any of the Defendants other than Mr. Caudill as to what had gone on up there?

A. No, just Phillip Dale was there and that's about all that was there.

Q. What did Mr. Phillip Dale Moore say?

A. Huh - - he was with me in Winchester.

Q. Did he say anything to you about being up on the hill?

A. No, just that one time he was up on the hill.

Q. No, I'm talking about being up on the hill when the explosion took place.

A. No.

Q. Do you remember talking to any other Defendants though at that time?

A. No, not at that time I don"t.

Q. The next day, Monday the 22nd, February, 1982. Do you remember what you did that morning?

A. We all had to meet at Em Pack Restaurant to get ready to go to Prestonsburg.

Q. How did you come to go to the Em Pack?

A. We just all met up there and drove our car up there.

Q. And who was at the Em Pack when you got there?

A. Edgar, Harry - -

Q. (Interrupting) Harry Wallen.

A. Harry Wallen, Junior Hamilton, Drexil Hall. That was about all that was there. Pearl went there with us, she was there.

Q. Pardon?

A. Pearl went with us.

Q. What, if anything, occurred at the Em Pack?

A. Well, we all sat there and talked to Edgar, me and Pearl and I believe it was Harry and Phillip Dale.

Q. What, if anything, was said

by any of you at that time in regards to Ray-Mac?

A. Edgar said he was just like J. R. Ewing. He was sitting out at South Fork and getting anything he wanted done.

Q. Anything else he say? Did he say anything else?

A. No.

Q. Did you ever hear him use the term South Fork before?

A. No.

Q. Did you ever hear him call himself J. R. Ewing before?

A. No.

Q. Do you understand what he meant by the reference to South Fork?

A. He's got a farm down in Lexington - -

Q. (Interrupting) The State - -

A. (Interrupting) He - -

Q. (Interrupting) Go ahead.

A. Or he had one, I don't know - - at that time he had one, I don't know whether he's still got it.

Q. Now, did you go from there to Prestonsburg?

A. Yeah.

Q. Did you later go back and meet with Edgar Jones?

A. Yes, later that evening.

Q. And what if anything did Mr. Jones tell you at that time?

A. To put the men back to work.

Q. And did you?

A. Yes.

Q. When did your men go back to work?

A. Tuesday morning.

Q. Did Mr. Jones at the time he told you to put your men back to work make any other statement about this situation or anything that occurred the previous week?

A. He said there'd been enough damage done and they'd probably be out of business for a while.

Q. Did he say who they were?

A. Ray-Mac Coal Company.

Q. Now, Tuesday your men went back to work, did they not?

A. Yes.

Q. Did you or your wife obtain

any additional firearms that week?

A. Jason brought some guns down at the house one evening but he brought the wrong guns.

Q. Tell us about the incident and when did this occur?

A. On about Tuesday evening.

Q. What happened?

A. Huh?

Q. What happened that day?

A. He brought the guns down there and he laid them out beside the fence.

Q. What did he bring down, Mr. Booth?

A. A 30.06 and a .243.

Q. What, if anything else did he bring down at that time?

Did he bring anything else back?

A. Some ammunition.

Q. And what do you mean - - what did he bring back as far as ammunition?

A. I don't know what all kinds it was, it was in a big box.

Q. And did you talk with him

when he came down there?

A. Yes.

Q. What if anything did you saw or did he say?

A. I asked him how long it would take - - he'd think it would take for them to start back and he said he didn't think they could start back after all that trouble.

Q. And when you asked him how long it would take them to start back who were you referring to?

A. Ray-Mac.

Q. Did you understand him to also be referring to Ray-Mac?

A. Yes.

Q. What else if anything else did you all say?

A. He thanked us for helping him - - them and stuff like that.

Q. Now, what, if anything, did you do with the 30.06 and the .243 and the big box of ammunition that he brought back to you?

A. Left the big box of ammunition there at the house and took the .243 back to Pearl's brother. And took the 30.06 but it was the

wrong gun.

Q. Did you take the gun, the 30.06 that Mr. Moore had brought back to Wendall Ray Newman?

A. Yeah.

Q. When did you take it back to him?

A. I don't know whether it was that night or the next day, I couldn't tell you for sure.

MR. SELF: Mr. Marshall, would you hand the witness the weapon that's previously been introduced, the 30.06 caliber carbine, I'm not sure of the number on it.

It's Government Exhibit No. 108, Mr. Marshall.

(The Marshall complies)

*** *** ***

Q. Mr. Booth, have you ever seen that weapon before?

A. It's Wendall Newman's weapon or one just like it.

Q. When did you see it first?

A. The first night he brought it down to the house.

Q. Who was that?

A. Wendall Ray Newman.

Q. When did you last see it?

A. It was about two weeks before we got this gun back.

Q. Is that one of the guns that Jason Moore brought back?

A. Yes. This is not one of the first ones he brought back.

Q. When did he bring that one back?

A. About two weeks later.

Q. What - - tell us about that incident.

A. He brought it back down there and left it. He talked to Pearl for a while and everything. Him and Edgar was into it over a coal truck at that time.

Q. Now, what did - - did Mr. - - what did you do with that gun after Mr. Moore brought it down there?

A. Called Pearl's mother and had him come down and see if it was his.

Q. Did he take possession of it?

A. Yes.

Q. Did you ever see it again?

A. Right now.

MR. SELF: Thank you, Mr. Marshall.

Q. The one that Mr. Moore brought down on Tuesday along with the .243, is it anything like that one?

A. No.

Q. What kind was it?

A. I don't know what brand it was. It was a real old gun.

Q. What caliber was it?

A. 30.06.

Q. Now, the ammunition that Mr. Moore brought down there that day, what, if anything, did you do with it after he brought it to you?

A. Just put it in the closet in there.

Q. How long did you keep it?

A. I kept it until you'uns - - until the Government took it.

Q. Well, when was that, Mr. Booth; do you remember?

A. August.

Q. Pardon?

A. August of '82.

Q. And what did you do with it specifically?

A. What did I do with it?

Q. What, if anything, happened with that ammunition?

A. The Government got hold of it.

Q. Who got hold of it?

A. The Government. Richard Kemp come and got it.

Q. And what did you turn over to him?

A. A case of Uzi shells, and a bunch of carbines, shells, and some .357 Magnum shells. It was all kinds of them.

MR. SELF: Your Honor, could I ask the witness, rather than the Marshall handing them

to him and the witness stepping down and examining the exhibits that are laying in front of Madam Clerk, or would the Court prefer the Marshall to hand them to him?

THE COURT: I guess you better let the Marshall hand them to him.

MR. SELF: Okay. Mr. Marshall, would you hand the witness what has been introduced into evidence as Government's Exhibit Nos. 63, 64, 65, 66, 67, 68, 69, 70, 73 and 74?

May I approach the Clerk just a moment while they are doing that.

THE COURT: Yes, sir.

(Mr. Self complies)

MR. SELF: Also No. 118, Your Honor.

THE COURT: All right.

REPORTER'S NOTE: At this point the Marshall passes said exhibits to the witness for inspection.

Q. Mr. Booth, ignoring the plastic bags that those are in, have you ever seen the box and the bullets that are in it before?

A. These is 9 millimeter shells. They got them at the house.

Q. Do you know where those

came from?

A. Donahue Halbert's.

Q. How about the other ammunition?

A. The 30.06's, .243's, .38 Special shells.

Q. Is that the shells that you turned over to Special Agent Kemp, Mr. Booth?

A. I don't know whether it's the same ones, but it's a bunch like it.

Q. And where did you get those shells?

A. All of them were bought from Donahue.

Q. Are those the shells that Mr. Jason Moore brought back to you?

A. It wasn't in that same box.

Q. Pardon?

A. It wasn't in that same box.

Q. Is that the box that you turned it over to the ATF in?

A. They must have picked them up and put them all in there there at the house. It was a box like it, but it wasn't the same box it was

brought back to me that time.

Q. Was the one that Mr. Moore brought back some way different than that one.

A. About the same size, only it was about wore out.

Q. These shells brought back to you, were they in boxes or loose or - -

A. Some was in boxes, and some was loose.

Q. Did Mr. Moore say why he brought them back and gave them to you?

A. Because we was the ones that bought them.

Q. When he gave them to you, did he say anything to you about what to do with them?

A. No, just told us "Thanks".

*** *** ***

Q. Now, during that week, the week of February 22nd, 1982, Mr. Booth, did you obtain any additional firearms?

A. '82?

Q. In the week that Jason brought you those ammunition back, did you get any other guns?

A. Do you mean purchased any more?

Q. Yes.

A. Bought two Uzis, two more carbines, a .25 automatic, and a case of shells for each.

MR. SELF: Mr. Marshall, would you hand the witness the -- take those back. I am through with those at this time, Mr. Marshall.

(The Marshall complies)

MR. SELF: Would you hand the witness what has been introduced as Government's Exhibits Nos. 71 and 72.

(The Marshall complies)

Q. Mr. Booth, have you ever seen those weapons before?

A. Yes.

Q. Where did you see them?

A. They was bought. Morris Ray Hall picked them up?

Q. Do you know when you first saw them?

A. That evening when I got home from work.

Q. Do you know when that was?

A. February the 24th.

Q. 1982?

A. Yes.

Q. Do you know how those guns were paid for?

A. By check.

Q. By whose check?

A. Calamity Coal Company.

Q. Why did you purchase those weapons, Mr. Booth?

A. In case anymore trouble was happening.

Q. Did you ever have to use them on the hills?

A. No. These is the same two guns I bought though.

Q. Those guns were seized

by the Bureau of Alcohol, Tobacco and Firearms on August the 28th, 1982, weren't they?

A. I don't know the exact date, but it was in August.

Q. Down at Jenny Wiley?

A. Yes.

Q. Now, the day that you got those weapons, Mr. Booth, they were purchased from whom?

A. Donahue Halbert.

Q. Did you have an occasion to see Donahue Halbert?

A. I seen him one day that week. I don't know whether it was the same day that these guns were bought or not.

Q. Okay. Where did you see him at?

A. My home.

Q. And how did you come to see Donahue down at your house?

A. He come over to the house and said that somebody -- they had picked up a box -- Federal Agents had picked up a box of .35 shells, and wanted to know -- it was on that list where I bought shells.

Q. No. Tell us what you are talking about.

A. I bought some .35 shells -- sent and got some .35 shells.

Q. When did you send and get some .35 shells?

A. During all the shooting on the hill up there at Ray-Mac.

Q. Was that during the same time that Mr. Phillip Dale Moore went down and got them?

A. Yes.

Q. What did Mr. Halbert say to you in regard to those?

A. He said the Government Agents had been over there and found some shells, and was checking his, you know, invoices where he had sold them, and who he had sold them to, you know, and all he had.

And he said that if we took these shells -- if we had any and took them back and put them on the shelf, he could erase that off of his sales sheet.

Q. And did you give him anything?

A. Two boxes or something.

Q. Did he say where he had been before he came to your house?

A. No, he didn't say where he had been. He said where he was going.

Q. Where did he say he was going?

A. To German Stumbo to pick up some more.

Q. Is there anything else Mr. Halbert said to you at that time?

A. I don't -- he was drinking. And he told me that if we needed anything else just to holler.

Q. During this week, Mr. Booth, did you ever have any discussions with Edgar Jones in regard to Ray-Mac?

A. During that week?

Q. Yes.

A. The night after he told us to go back to work, he -- let's see. They had -- one day they was taking an auger off the hill and bringing a new auger on.

Q. Who was taking the auger off?

A. Some of Ray-Mac's trucks.

Q. Bringing it down the McDowell side?

A. No, bringing it down the Mud Creek side.

Q. And what happened at that time?

MR. HARWELL: May the Court please. May counsel approach the Bench.

THE COURT: Yes, sir.

Reporter's Note: At this point a Bench conference was held with all counsel present where the following was heard:

MR. HARWELL: May Your Honor please. I respectfully object to the testimony that I sense, based on the last question, that is coming from this witness.

May the Court please. This is an outside -- at least properly outside of the period of the conspiracy.

Number two, it is certainly not in furtherance of the conspiracy; but most importantly, may the Court please, Your Honor

ruled that we were to be provided, pursuant to Rule 16, with any and all statements that have been made by our respective clients, the Defendants, and this is brand new to me. I never heard anything said in regards to an alleged comment Edgar Jones made in reference to the auger coming off of the hill sometime after the 22nd day of February. I wanted to note an objection, may Your Honor please.

THE COURT: All right.

MR. SELF: That is the first time I heard about it, too, Your Honor.

THE COURT: All right. When was it that Donahue came over there to get the ammunition?

MR. SELF: The 24th, Your Honor.

MR. BRANSON: What?

MR. SELF: The 24th of February, the date the ATF Agents came to the store, as best -- the witness said that it was that week.

The agents were at his store on the 24th of February, Your Honor, and it is reflected in his books, because the agent signed it where they checked his books.

THE COURT: Well, was this before the auger came off the hill, or after the auger came off the hill? Was this before the Uzis were

bought, or after the Uzis were bought, or what?

MR. SELF: The Uzis were bought on the 24th, also. The tipple was burned down the following -- after this, Your Honor. This is before the tipple was burned.

THE COURT: Okay.

MR. SELF: These statements were made before the tipple was burned.

THE COURT: The auger was bought then or --

MR. SELF: I don't know.

THE COURT: See if you can find out when it was. Find out when the statement was made about the auger coming off the hill, and then I will rule.

MR. KIRKLAND: Your Honor, I have a motion to make that is unrelated to Mr. Harwell's.

I move to dismiss the indictment against my clients because of the deliberate use of perjured testimony by the Government.

The Government either knows or should know that much of the testimony of this witness is perjured. It is misleading, and it is deceptive.

As the Court knows, his testimony has been contrary to his prior testimony in this Court, both in the mini-hearing, and before the Grand Jury.

In addition to that, it is contrary to his taped testimony that we have been able to receive, to the extent that we have been able to receive it.

In addition to that, Your Honor, it is totally contrary to our independently obtained evidence about this man and what he knows.

The Government knows or should know that he has changed his testimony dramatically since the mini-hearing. And, obviously, this witness has come under the strong influence of the Government, I assume, because of the power they have over him.

My clients have not received a fair trial, and they can not receive a fair trial because of the knowing use of this perjured testimony.

I, therefore, move to dismiss as to them. They can never get a fair trial. This is prosecutorial misconduct, and it

deserves the worst kind of order that this Court can issue, and that is to simply dismiss.

This is not a mistrial situation. This warrants a total dismissal. I could cite the Court numerous examples of where this witness has fabricated. He has, on numerous occasions, fabricated stories about what people told him; that he knows and that the Government either knows or should know is a total fabrication -- a total fabrication.

The Court probably has picked several of these out. It is not just a slight shading or a slight variation from his earlier testimony -- his earlier testimony, but it is directly contradictory.

I think this is a willful thing on the part of the Government. I move that these -- all of the counts of the indictment -- this indictment be dismissed as to my clients.

MR. WALBOURN: I join in on that on behalf of my clients, Your Honor.

MR. SPENCER: I join in on that motion too, Your Honor.

THE COURT: All right. Let it

be noted and be overruled.

MR. WALBOURN: I have another motion while we are here, Your Honor.

THE COURT: All right.

MR. WALBOURN: At this time the Defendant Benny Caudill would move the Court in limine to exclude from this witness any reference to statements made by the Defendant, Caudill, regarding a tipple.

Your Honor, Mr. Caudill is not named in substantive Count Number Five, which alleges the destruction of the tipple.

He is not alleged in the overt acts of the conspiracy or having anything to do with the tipple.

Your Honor, that matter is irrelevant, immaterial, and it is highly prejudicial, and it is not probative.

The Government presumably presented evidence to the Grand Jury, and the Grand Jury decided that Mr. Caudill did not warrant an indictment on a charge of destruction of the tipple in violation of the Hobbs Act, nor did they list those overt acts on the indictment. It is blatantly prejudicial to permit any reference

to those pertaining to Mr. Caudill.

THE COURT: Mr. Self?

MR. SELF: Yes, Your Honor. Under the law under conspiracy, and under the Hobbs Act under conspiracy, we did not even list even one overt act. Whether it was listed as an overt act or not, if the testimony and the evidence is he was involved in the conspiracy, he is involved in it until he makes a willful withdrawal from it.

Whether it is named as an overt act in the indictment has no relevance to the admissibility of that testimony as long as the statements, the Court determines, is within the scope and the furtherance of the conspiracy.

Whether he is named in the substantive counts, Your Honor, he is still named as an indicted coconspirator and is, therefore, subject to proof that regards his actions while a conspiracy was ongoing, and any acts in furtherance thereof.

MR. WALBOURN: Your Honor, they have not alleged anything that he has done is criminal. While the Government says with one hand that we didn't allege overt acts, they proceed to name in excess of forty.

THE COURT: Is there anything else, gentlemen?

Let it be noted and overruled.

MR. HARWELL: I have another question, Your Honor. You indicated that after the Jury left, and before the noon recess, that Your Honor - - or I understood Your Honor to indicate that you might be interested in some law with regard to the objection.

Whenever the Court is ready, we are ready to present some cases in support of that.

THE COURT: I will be glad to get them, sure.

MR. HARWELL: Do you want us to do it now, Judge?

THE COURT: Yes.

MR. SELF: At the end of the day or - -

THE COURT: It will be fine at the end of the day. I walked down during the noon hour,

and I think I found a Sixth Circuit case which - -

MR. HARWELL: (Interrupting) Was it the Wilson case, Your Honor?

THE COURT: No. What is it?

MR. KEHRLI: It is a case of the United States versus Kendrick. The citation of the case is 623F, Section 1165, which states the standard where the Government states evidence of coconspirators not being available to testify on the trial.

MR. WALBOURN: Your Honor, where did you go down and look at noon?

THE COURT: In the Court's library.

MR. HARWELL: May I have that cite, Your Honor? I didn't hear it 609 - -

THE COURT: It just stated that - - is it 8-D what?

MR. KEHRLI: Your Honor, the rule is Rule 801D2-E.

MR. HARWELL: What is the citation on the case, Your Honor.

MR. KEHRLI: The citation, Mr. Harwell, is 623F 2nd, 1165. It is a 1980 case.

MR. HARWELL: Thank you, Your Honor.

MR. WALBOURN: Of course, that case does not deal with the confrontation clause. That case

deals specifically with the Federal Rules of Evidence.

THE COURT: No, it deals with the confrontation clause.

MR. WALBOURN: The Sixth Amendment?

THE COURT: Yes.

MR. WALBOURN: I don't recall that.

MR. PAFUNDA: The Court may wish to look at the case of Dutton versus Evans.

THE COURT: All right.

MR. PAFUNDA: Dutton versus Evans, 400 U.S.. It is either '74 or '76.

THE COURT: All right.

MR. SELF: Does the Court wish me to finish my direct before we take a break.

THE COURT: Yes.

Let the record reflect that the motions are overruled.

REPORTER'S NOTE: At this point the Bench Conference was concluded.

MR. SELF: May I proceed, Your Honor.

THE COURT: Yes, sir. Please do.

Q Mr. Booth, the statements that you were mentioning just before, the conversations you just stated before occurred at the time an

auger was brought off the hill; can you be more specific as to when that conversation occurred?

A. On about a Wednesday - - Wednesday or Thursday. I don't know the exact date.

Q. Was it the Wednesday or Thursday following the auger betting blowed up?

A. Yes.

Q. And who was the conversation between ?

A. I think - -

Q. (Interrupting) No, not what was said, but who was talking and who was present?

A. Me and Edgar Jones.

Q. Where did it occur?

A. In his office.

Q. What, if anything, did you and Mr. Jones say?

MR. HARWELL: Now, Your Honor, for the purposes of the record consistent with the Bench Conference, I note an objection.

THE COURT: What was that? Run that - - what was the time on that again?

Q. Mr. Booth, when, again, did this conversation occur?

A. On Wednesday or - - Wednesday

or Thursday one.

Q. The Wednesday or the Thursday following the Sunday explosion at the Ray-Mac Mining site?

A. Yes.

Q. It was not a week later or two weeks later or anything like that then?

A. No. It was after it was blowed up.

MR. SELF: Let me ask again, Your Honor.

Q. In point of reference, was it before the tipple was burned down?

A. I don't know exactly - - I don't know exactly when the auger got blowed up that the tipple got burned down.

Q. To your knowledge, was this conversation before the tipple was burned down?

A. I couldn't say for sure whether it was or not.

THE COURT: Well, let the objection be noted and be overruled. This is tentative evidence. This was on the Wednesday after the explosion?

THE WITNESS: I couldn't say exactly when it was.

MR. SELF: Let me withdraw the question

at this time, okay, subject to the right to recall it at a later date.

THE COURT: Okay.

Q. Did you have any discussions apart from this one with regard to a tipple that Ray-Mac had under lease?

A. That was on Wednesday after we returned to work.

Q. And who did you have the discussion with?

A. Edgar Jones.

Q. What did Mr. Jones state to you?

A. That Ray-Mac had leased a tipple off of a - - Julius Martin and Cobb Turner.

Q. What did he say about the tipple?

A. The one that was down at Stephens Branch, take - - bring the coal off of that - - off the hill off of Ray-Mac up there, and save theirselves about two dollars and something on a haul bid.

Q. Well, if anything else, did he say about that tipple?

A. There will never be a lump

of coal run across it.

Q. Is there anything else he said about it?

A. He just said there would never - - there would never be no coal run across his tipple. I don't know the name of the hollow up there. It's in Drift over there.

Q. It is right down below McDowell?

A. Yes.

Q. Was anyone else present there when that conversation took place?

A. Not at that time.

Q. When you normally talked to Mr. Jones, where were you at when you talked with him in his office?

A. In his office, he's got a - - as you go through the office door, it is the first office on the right.

Q. And when you talked with him, what - - how is your - - is his office wide open?

A. You shut the door as you go in.

Q. Is that normal or unusual

in your discussions with Mr. Jones?

A. No, you always have to shut the door.

Q. Pardon?

A. You always had to shut the door.

Q. Did you have any discussions later on or during that week with any of the Defendants in regard to the tipple?

A. Benny Caudill.

Q. When did this conversation occur?

A. The first time it occurred was on a Thursday.

Q. What - - and where did the conversation take place?

A. Benny was running an end loader up at the mines, loading trucks, and I would always go down and talk to him.

Q. What did Benny say to you?

A. He said - - asked me if I know Ray-Mac had leased a tipple down there right below his house. I told him, "Yeah, Edgar told me that." And he said, "They will never run no coal down there." And he said that they had a big bunch of coal leased in Jeff Miller's hollow.

Q. Where's Jeff Miller's hollow?

A. Right below Drift, about a mile below Drift.

Q. Near Simpson's Branch?

A. Real close to Simpson's Branch.

Q. What, if anything else, did Mr. Caudill say about that tipple or that coal lease?

A. He said he's going to see it got done away with.

Q. Anything else he said at that time?

A. Might need me to pay some money out.

Q. What did you tell him?

A. I told him I'd give him some if he needed it.

Q. Did you ever talk with him later on that week about that?

A. Talked to him on a Saturday.

Q. Okay. What did he tell you on Saturday?

A. He was going to his-- take his wife out. It was her anniversary. He was going to take her out to dinner and stop at his brother Rod's, Rodney Caudill. This is where, you know, he'd have an alibi of where he'd been at.

Q. Did he state why he wanted to have an alibi?

A. He didn't want to be involved in it.

Q. Did he say why he needed to not be involved with whatever he was talking about?

A. They'd already served all the summonses on us all.

Q. Did Mr. Caudill specify as to why he needed an alibi?

A. He didn't want to have the tipple blamed on to him.

Q. What did he say about the tipple at that time?

A. It was going to be burnt down that night.

Q. This was Saturday?

A. Yes.

MR. PAFUNDA: May I approach the Bench,

please?

THE COURT: Yes.

(Reporter's Note: At this time Mr. Self, Mr. Pafunda, Mr. Harwell, Mr. Hollon and Mr. Branson approached the Bench; whereupon the following was heard.)

MR. PAFUNDA: Your Honor, this--at this time I move--I object and move to strike that--the witness's answer with regard to summonses and subpoenas. He's mentioned subpoena on several occasions and now he's mentioning summonses.

I think the jury needs to be admonished that he's talking about a civil process during this particular week where Ray-Mac filed a civil action against several individuals. The connotation is that it appears to be some type of criminal court proceeding.

MR. SELF: May I ask him to clarify it?

THE COURT: Yes.

MR. SELF: I'll--

MR. HARWELL: We'd respectfully move the Court to admonish the jury.

THE COURT: He'll clear it up.

MR. HARWELL: I'd ask that you admonish them, Judge, that it's irrelevant, ladies and gentlemen,

and it's a civil action that has nothing to do with this directly; just as you've done with other witnesses.

THE COURT: All right.

MR. HARWELL: Thank you, Judge.

MR. PAFUNDA: Thank you.

(Reporter's Note: End of conferenee at the Bench.)

Q. Mr. Booth, the summonses that you mentioned previously at this time, were those in a civil action?

A. Yes.

Q. Were those in some kind of civil case--

A. Yes.

Q. --down in Floyd Circuit Court?

A. Yes.

THE COURT: Ladies and gentlemen of the jury, you know I've previously admonished you that civil actions which were in the other court has no bearing on this case. Do you understand?

All right. Proceed.

Q. Now, Mr. Booth, you said that you had a discussion with Benny Caudill on

Saturday--I think it's the 27th --following Sunday that the auger was blown up.

A. Yes.

Q. That would have been February 27, 1982?

A. Yes.

MR. WALBOURN: Your Honor, I'm going to object to the leading of the witness. I think he can ask the question and this witness can answer.

MR. SELF: Your Honor, it's just a date for a point of reference.

THE COURT: Let it be noted and overruled. Go ahead.

Q. What did Mr. Caudill say was going to happen while he was doing whatever he was supposed to be doing?

A. They was going to do away with the tipple that night.

Q. Did he tell you who was going to do away with it, at that time?

A. Panhandle Moore.

Q. Did he mention any other individuals?

A. No.

Q. Did you see Benny Caudill

that evening?

A. Later that night, about twelve--eleven-thirty, twelve o'clock.

Q. And who was he with?

A. His wife and two kids.

Q. And where did you see them at?

A. They come to my house.

Q. And what did Mr. Caudill say to you at that time?

A. Said that the--the hollow was lit up.

Q. Did he say which hollow?

A. Where the tipple's at, down there--there in Drift.

Q. Mr. CAudill tell you where he had been that evening?

A. He'd taken his wife out to eat, and then stopped at his brother's house and stayed a while. He'd just been fooling around, he said.

Q. Did you have an occasion to see Mr. Caudill the next day?

A. Yes.

Q. ON Sunday?

A. (Nodded his head in the affirmative.)

Q. Where did you see him at?

A. My house.

Q. What, if anything, did Mr. Caudill state to you at that time?

A. The tipple never burned all the way up at that time.

Q. What did he say?

A. He said it hadn't burned all the way up. He was going up to talk to Ed--Panhandle Moore.

Q. Did he say why he was going to talk to Panhandle Moore.

A. See how much it costed him and everything; talk to the rest of them.

Q. Did he mention money to you?

A. He said he might have to have some. He didn't know yet.

Q. Did you see him later on that day or the next day?

A. I seen him later on that afternoon.

Q. Okay. What, if anything,

did Mr. Caudill say to you at that time?

A. I asked him did he need any money. He said, no. He said that he'd done had it took care of.

Q. Did he say anything else?

A. Said he'd got the money off of Teddy Kinney and--and German Stumbo.

Q. Did he say what he did with that money?

A. Give it to Ed Moore.

Q. Mr. Booth, to your knowledge, was there any other acts of violence that occurred up at Ray-Mac?

A. No, sir.

Q. Now, at this period of time-- I'd asked you yesterday about German Stumbo. Did Mr. Stumbo become employed immediately after this?

A. He'd come employed. I don't know exactly what month it was.

Q. What do you mean by that?

A. Well, as quick as his permit come in they started to open his mines.

Q. And do you know when his mines were opened up?

A. Not the exact date or

month.

Q. Do you know what year it was?

A. It was in '82.

Q. Okay. And do you know who he was contract mining for when the permits came in?

A. JRM Mining.

Q. And where was this mine located?

A. Spewing Camp.

Q. And do you know how long they'd been-- Do you know when the permits were applied for?

A. No. I don't know nothing about it.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: All right.

Q. Calling your attention back, Mr. Booth, to the meeting that you had on Tuesday, February 16, 1982, at Edgar Jones' office, immediately after the shooting on the hill at Ray-Mac, you stated that you and Pearl and some other individuals were there.

A. Yes.

Q. You stated that Phillip and Earl Adkins were there, is that true?

A. I think they was, but I couldn't swear for sure whether they was or not.

Q. Well, you previously testified that they were there, didn't you?

A. Yes, I did.

Q. This morning?

A. Yes, I did, and then I said--

MR. WALBOURN: Your Honor, I recall Mr. Self oftentimes objecting when we say didn't you testify to something or didn't you say that earlier. So, I'm going to impose the same objection.

THE COURT: Sustained.

Q. Is it your testimony now that they were there, Mr. Booth?

A. I can't say for sure whether they was there or not.

Q. Why?

A. I thought they was, and then I don't know where they went to when they come off the hill that day. They might have stayed around at the tipple for a while. I don't know

whether Edgar sent for them to come into the office.

MR. SELF: Your Honor, rather than wasting the Court's time in me looking through my notes, can we take a break at this time so I can review them and make sure I've finished? I think I have finished with my direct examination.

THE COURT: Yes, sir. We'll have-- How much time do you want?

MR. SELF: I think during the normal break I can look through my notes and make sure I've gone over everything.

THE COURT: We're going to be in recess fifteen minutes. During this recess--well, during this recess you're under the not now admonition. Do you understand that?

(The jury left the courtroom at 2:25 p.m.)

THE COURT: You may excuse the witness.

THE MARSHAL OF THE COURT: Mr. Booth, you are excused for fifteen minutes.

The jury's out of the courtroom, Your Honor.

THE COURT: Which one of you gentlemen want to cross-examine first?

MR. HARWELL: With the Court's permission.

THE COURT: Well, I just was wondering

which one of you wanted to cross-examine first.

MR. HARWELL: I don't sense they would object, may the Court please.

MR. THOMAS: In fact, I'll go last.

THE COURT: Do you object, Mr. Kirkland?

MR. KIRKLAND: Your Honor, I've given it careful consideration and I do not object.

THE COURT: All right. We'll be in recess for fifteen minutes.

MR. HARWELL: While we're in recess may I move some files and have Mr. Moore behind me at the podium?

THE COURT: Yes, sir.

THE MARSHAL OF THE COURT: This court will be in recess for fifteen minutes.

(Reporter's Note: Court recessed at 2:27 p.m.)

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Reporter's Note: The Court was called to order at 2:47 P.M..

THE MRASHALL: Your Honor, all of the defendants, counsel and the jury members are present.

THE COURT: All right, we are going to be in recess. We are going to extend the recess until 3:00. During this extention the not now admonition is in effect, do you understand?

You may excuse the jury til 3:00.

THE MARSHALL: The jury is out of the courtroom.

THE COURT: Thank you. Mr. Justice you and Mr. Booth - - you can take him back to the consultation room and talk.

MR. HARWELL: Judge, could I be heard on a brief motion at this point?

THE COURT: Yes.

MR. SELF: Let me interrupt in that. I have a few additional question Your Honor - -

THE COURT: (Interrupting) All right, that's fine, you can ask him the additional question. Mr. Justice has informed me that he's feeling ill. So he can take his client outside and will grant him fifteen minutes to talk to him.

MR. HARWELL: May the Court please if he feels the way I did yesterday I can appreciate that.

Your Honor, this is premature in that Mr. Self has just advised the Court that he has a couple of more questions. But for the sake of judicial economy I would like to make this motion at this point in time.

I would respectfully renew and ask the Court again to focus on our Jencks request or our request for Jencks material. And as a basis for that Your Honor, I have not come to the Bench after every witness because that had been handled in the pre-trial conferences, but may the Court please in the Grand Jury testimony provided by Mr. Self to defense counsel. The Grand Jury testimony of Phillip Booth on November 1, 1982 there is a statement by the witness in response to a question, "Well whatever I told you is down there on that paper". We have been given two Grand Jury testimonies may the Court please as to this witness that being representative of Jencks. And also a September 1, 1982 statement the contents of which has nothing to do with that Judge.

THE COURT: All right.

MR. SELF: Your Honor, the only thing

that I'm aware of of Jencks like material on Phillip Booth are the two statements before the Grand Jury and the handwritten statement that was furnished to counsel. It is my understanding that that statement by Mr. Booth when I was questioning him at the Grand Jury I was using my notes that I had taken in an interview with him if that's what he is referring to Your Honor.

THE COURT: I'm sure we'll get that cleared up if and when they get to cross examination of this witness.

MR. SELF: I state for the record those notes were not read back to him Your Honor nor were they shown to him or asked him to verify them. They were my notes that I had made.

THE COURT: All right, gentlement let's be in recess until 3:00.

Reporter's Note: The Court was called to recess at 2:49 P.M.

Reporter's Note: Let the record show that Court was called to order at 3:00 P.M.

THE MARSHALL: Your Honor, all defendants, counsel, and jury members are in the courtroom.

THE COURT: All right. Mr. Justice.

MR. JUSTICE: Yes, Sir.

THE COURT: Did you talk to - -

MR. JUSTICE: (Interrupting) I have Your Honor.

THE COURT: Okay, that's fine.

MR. SELF: May I ask him a few additional questions on direct examination?

THE COURT: Yes, please do.

MR. SELF: Mr. Marshall, if you would would you hand the witness what's been marked for identification as Government's Exhibit 117. The far right hand side there Mr. Marshall.

(The Marshall complies)

Q. Mr. Booth, have you ever seen those shells before?

A. Yes.

Q. Where did you first see them?

A. I got them off Panhandle Moore.

Q. And what caliber are those shells?

A. 8 mm.

Q. 8 milimeters?

A. Yes.

Q. When did you get those from Panhandle Moore?

A. About - - let's see, February.

Q. During the violence at Ray-Mac?

A. Yes.

Q. Did you get anything else from him at the time you got those shells?

A. There was a big box of other shells.

Q. And how'd you get them from him?

A. When I bought the two guns he had a big box of shells they were all mixed up.

Q. Does that appear to be part of the shells you purchased from him at that time?

A. Yes.

Q. And what happened to those shells after you got there?

A. I give them to - - well, I took them - - most of them and give them to Jason and them. And some of them, you know, were left down at the house and the agents conviscated them.

Q. And were they turned over to the agents from the Bureau of Alcohol, Tobacco, and Firearms?

A. Yes.

MR. SELF: Your Honor, at this time I move for the introduction of what's previously been marked in this case as Government's Exhibit 117.

THE COURT: Let that which has been marked as Government Trial Exhibit 117 be finally be admitted into evidence as Government's Trial Exhibit 117.

MR. SELF: Thank you, Your Honor.

Q. Mr. Booth, do you know an individual by the name of Special Agent Richard Kemp?

A. Yes.

Q. When did you first meet him?

A. The day after the bombing.

Q. And by what name did you know him at that time?

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A. Rick Kemper.

Q. And who introduced him to you?

A. Phillip Dale Moore.

Q. And did Mr. Kemp tell you who he was or what he was?

A. He said he was down there from Cleveland Ohio and he wanted to make some money.

Q. Did he say how he wanted to make some money?

A. He didn't say nothing about it at that time. He was just introduced as a hit man.

Q. Who introduced him as a hit man?

A. Phillip Dale.

Q. And during what period of time did you have any discussions with him when he was Rick Kemper?

A. The whole time I knowed him up until August.

Q. And you - - did you or did you not know up until August that he was a Special Agent of the ATF acting undercover?

A. No, sir.

Q. Did you have any various discussions with him?

A. Yes.

Q. And did you ever make any statements to him at that time while he was acting undercover in regards to Ray-Mac?

A. Yes.

Q. Did you tell him what you did at Ray-Mac?

A. I told him I shot everything all to pieces.

Q. Did you tell him the truth?

A. No, sir.

Q. Why?

A. I thought he was a hit man.

Q. Why would you not tell him the truth?

A. I wanted to make a big show in front of him, I guess.

Q. Why?

A. I don't know why.

Q. Pardon?

A. I don't know, just be doing it.

Q. Did you lie to him?

A. Yes.

Q. And when you talked to him, you weren't under oath, were you?

A. No.

MR. SELF: No further questions, Your Honor.

THE COURT: All right.

Mr. Marshall, take the Jury to the Jury Room and you can stay with them just for about three or four minutes.

THE MARSHALL OF THE COURT: Your Honor, the Jury is out of the Courtroom.

THE COURT: Mr. Booth, I understand, You've been on the stand quite a while and your attorney told me you weren't feeling too well.

THE WITNESS: No.

THE COURT: But you understand you are going to have to be cross-examined.

THE WITNESS: Yes, Your Honor.

THE COURT: You're going to have to get it over with.

Let me ask you this, do you think it would help you to have a brief recess before you start or do you want to try it and see how far you can go and advise us when you feel you can't go any

farther?

THE WITNESS: I'm real sick to my stomach right now, Your Honor.

THE COURT: Sir?

THE WITNESS: I'm sick to my stomach right now.

MR. HARWELL: May the Court please, in that cross-examination is very valuable right, if this witness feels poorly and sick to his stomach to such a degree that it might likely be interrupted that we would like to wait until Monday. If he feels well enough notwithstanding this reason if he thinks he can go on for an hour or two, then we would like to continue. I don't know how - - obviously - -

THE COURT: (Interrupting) Well, it's on him.

MR. HARWELL: Yes, sir.

THE COURT: You want to wait till Monday before you start this or do you want to go on?

THE WITNESS: I'm awful sick to my stomach, Your Honor. I've done been to the bathroom throwing up.

THE COURT: You have?

THE WITNESS: Yes.

THE COURT: What says the United States?

MR. SELF: We'll leave it to the discretion of the Court, Your Honor. We don't want to infringe on any Defendant's rights on this matter of cross-examination.

THE COURT: Well, they're going to have cross-examination when we get to it. They're not wanting and I'm not wanting - - we don't want to see you sick here in front of the Jury.

THE WITNESS: I'm already sick.

THE COURT: Mr. Justice?

MR. JUSTICE: Your Honor, I think I am obliged to renew my motion to allow Mr. Booth to go home and continue Monday. He has asked me twice after a lot of discussions, I know that he was throwing up downstairs and I want to renew my motion.

MR. WALBOURN: Your Honor, might I just inquire when the witness first got sick if it's not too personal?

THE COURT: When was it?

THE WITNESS: About 1:00 o'clock.

MR. WALBOURN: Thank you.

THE COURT: All right, bring the Jury up.

Now, we'll be in recess until Monday at 9:00 o'clock.

MR. HARWELL: May I go get my stuff Your Honor, before the Jury comes back?

THE COURT: Yes. You're not against getting an early start to Nashville, are you?

MR. HARWELL: No, sir, Your Honor. Although -- although I state, for the record I am ready if the Court wishes to move forward on this.

THE COURT: Well, we're all ready if the witness is physically up to it, that's the only thing.

MR. HARWELL: We would respectfully Your Honor ask again for an order on the theory in the U.S. versus Geders that any conversation that this witness have be according to the authority in that case only with his counsel.

THE COURT: Let it be noted and overruled.

You gentlemen stay here, we want to discuss this confrontation a little bit.

Mr. Justice.

REPORTER'S NOTE: The Court is conferring with Mr. Justice.

THE MARSHALL OF THE COURT: The Jury is back in the Jury box, Your Honor.

THE COURT: The Court has been advised that the witness states that he's -- he mentioned about one o'clock that he had an intestinal problem. It's after three, rather than get started into cross examination and have to interrupt this Court will be in adjournment until nine o'clock.

During the adjournment you understand that you're not to discuss the case among yourselves and not to permit anyone to discuss the case with you or in your presence. You're not to finally make up your mind upon the issues of this trial until you get all of the evidence together with the Court's instructions. No radio, no television, no newspapers, nothing. Do you understand?

Is there any objections or corrections --

MR. WALBOURN: (Interrupting) None, may Your Honor please.

THE COURT: You may excuse the jurors until nine o'clock Monday.

THE MARSHALL OF THE COURT: The jurors are excused until nine o'clock Monday.

The jury is out of the courtroom, Your Honor.

MR. HARWELL: May I go over here, Your Honor?

THE COURT: Yes.

MR. HARWELL: Thank you, Judge.

THE COURT: All right, Mr. Pafunda.

MR. PAFUNDA: Yes, Your Honor.

THE COURT: I read your Woods case, and I don't believe your Woods case said what you said it did --

MR. PAFUNDA: (Interrupting) The Woods case, Your Honor. If I gave the Court the name of the Woods case I don't think it has anything to do with what's gone on. It's Dutton versus Evans 400 U.S. 70 --

THE COURT: (Interrupting) Right, that's the one I read. That's the Dutton case where the coconspirator's statement during the concealment --

MR. PAFUNDA: (Interrupting) Right, the only reason, Your Honor, I cited that case to the Court is it concerns the unavailability of the client that made certain statements.

There's another case I have been informed -- Mr. Al Moore cited another case to me also after I showed him that one, and maybe it would be more on point.

MR. HARWELL: May the Court please, may Mr. Moore be heard?

THE COURT: Yes.

MR. MOORE: May I use the podium?

THE COURT: Yes, you certainly may.

MR. MOORE: Your Honor, I think probably the best way for us to approach this is only to move the Court for an order excluding all statements allegedly made by Ed "Panhandle" Moore. Also for an order striking the statements that have been attributed to him and asking the Court for an admonition to the jury to disregard those statements.

We'd be happy to prepare a written motion if the Court would like one, and a brief to the Court.

On behalf of Edgar Jones, we submit, to allow these statements allegedly made by Ed Moore into evidence violates the confrontation clause of the Sixth Amendment.

Briefly, the Sixth Amendment states that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him.

In Dutton versus

Evans the principal in that case is that the confrontation clause and the Hearsay Rule stems from the same roots but the Court declined to equate the two. The Court I think in that case stated that the confrontation issue and the evidentiary issue must be separately analyzed and the Sixth Amendment may require the exclusion of hearsay evidence even though it may be admissible under another rule -- an exception to the Hearsay Rule.

A recent case cited by the Supreme Court is Ohio versus Roberts which is located at 448 U.S., page 56. In that case the Supreme Court identified two restrictions that the confrontation clause places on the use of hearsay evidence in a criminal proceeding.

First, the prosecution must generally establish that the hearsay evidence is necessary because the declarant is unavailable.

Second, that the hearsay statements must be reliable. The Court stated and I'm quoting, reflecting its underlying purpose to augment accuracy in the fact-finding process by ensuring the Defendant in an effective means to test adverse evidence. The clause countenances only hearsay marked with such

truthworthiness that there is no material departure from the reason of the general rule.

In this case, we submit that the Government can not meet the second requirement as stated in Ohio versus -- excuse me.

As stated in Ohio versus Roberts which requires that the hearsay statements be reliable.

In United States versus Layton --

THE COURT: (Interrupting) Is this hearsay?

MR. MOORE: Pardon me?

THE COURT: Is this hearsay?

MR. MOORE: These statements by Ed "Panhandle" Moore, yes, I think they are. They're extrajudicial statements.

THE COURT: Doesn't 801 or 80 something say that it isn't hearsay?

MR. MOORE: Well, I think it would be hearsay except for that rule.

The United States versus --

THE COURT: (Interrupting) You don't interrupt, Mr. Pafunda.

MR. PAFUNDA: Yes.

MR. MOORE: Your Honor, I think two cases that I'm about to cite to the Court addresses that problem.

THE COURT: All right, go ahead.

MR. MOORE: United States versus Layton, which is located at 549 Federal Supplement 903. It's a Northern District of California case, provides and I'm quoting from the case. Unlike many other exceptions to the Hearsay Rule, the coconspirator exception is not based upon the adherent reliability of the statement. Rather, it's based on the legal fiction of agency. The agency theory of conspiracy is at best a fixture and ought not to serve as a basis for admissibility beyond that already established.

THE COURT: Who is the Judge on that?

MR. MOORE: I'm not sure who the Judge was. I don't have a copy of the case before me.

THE COURT: All right.

MR. MOORE: I would also like to cite to the Court United States versus Cambindo -- C-A-M-B-I-N-D-O.

THE OFFICIAL COURT REPORTER: Could you spell that again?

MR. MOORE: It's the United States versus Cambindo, C-A-M-B-I-N-D-O, Valencia, V-A-L-E-N-C-I-A 609 Fed. 2nd, page 603. It's a Second Circuit case, 1979.

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THE COURT: Do you know what the case is about?

MR. MOORE: I am not--I can't give you all the facts, Your Honor.

THE COURT: Okay.

MR. MOORE: We're relying on it simply for the proposition that's stated in the Layton case, which is the unreliability of a hearsay statement.

Your Honor, in the United States v. Gibbs, which is located at 703 F.2d--

THE COURT: That's 703 F.2d?

MR. MOORE: Yes, sir; page 683.

THE COURT: All right.

MR. MOORE: That's a Third Circuit case. It's a 1983 case.

In that case there was a statement made by an alleged coconspirator who was available but not called to testify at trial. The Court allowed the statements to come in through an agent, a law enforcement agent. An objection was made based on the hearsay rule.

The Third Circuit held that the confrontation clause required the exclusion of that evidence because that witness was available

but couldn't be called. The proposition which that case stands for is that the confrontation clause may reuire the exclusion of evidence even though evidence is admissible under the coconspirator's exception to the hearsay rule.

THE COURT: So, apparently the Third Circuit and the Sixth Circuit are contrary, aren't they?

MR. MOORE: Yes, sir. I have read the Kendrick's case, Your Honor, and we feel like it is distinguishable.

In the first place, we think that Ohio v. Roberts has injected a new element in dealing with a confrontation clause problem where you have an exception to the hearsay rule; that is, there has to be some reliability to that statement. Since the coconspirator's exception to the hearsay rule, under Rule 801, is not based upon reliability but rather on an agency theory, we think that that case is distinguishable.

The Kendricks Court did not have the benefit of being able to review Ohio v. Roberts. Ohio v. Roberts was decided seven days before Kendricks. And there is no discussion in the Kendricks case of Ohio v. Roberts, or what we believe

to be a new requirement in dealing with this particular problem.

THE COURT: That wouldn't be the first time the Sixth Circuit is different than the other circuits, is it?

MR. MOORE: I agree with you, yes, sir.

THE COURT: The Sixth Circuit requires-- The Sixth Circuit permits the coconspirator's statement to be evidence of a conspiracy. I believe the other circuits don't.

MR. MOORE: Yes, sir. I believe that's a minority view. There are some other circuits, I think, that follow that now.

THE COURT: Which?

MR. MOORE: We feel that Kendricks is also distinguishable because in that case the statements made by the alleged coconspirator--by her mother--came into evidence. Ms. Bracey, who was the person that made these extra-judicial statements, didn't testify at trial. However, there is no indication in that case that she was not availble for the defendant to subpoena to come to trial. If this witness were available and could have been subpoenaed to testify there would have been no confrontation problem.

is dead. Here Ed Panhandle Moore is dead. These statements which are attributed to him we have no way of examining, except to--to examine the witness who says I heard him say these statements.

For that reason we feel like Kendricks simply doesn't apply in this case, Your Honor.

THE COURT: What about the person who's testifying?

MR. MOORE: That's all we can test. We can test their credibility. We can cross-examine about where these statements allegedly took place and the circumstances surrounding the statement, but we can't cross-examine the person that made them.

THE COURT: All right. Anything further?

MR. MOORE: Thank you.

THE COURT: Does the United States want to respond to that?

MR. KEHRLI: Yes, briefly, Your Honor.

Your Honor, the Government contends what the defendants are attempting to do with their argument here is essentially rewrite the Federal Rules of Evidence. As Rule 801(d)(2)(E)

clearly states; "A statement by a coconspirator of a party during the course of and in furtherance of a conspiracy is not hearsay."

It's not an exception to the Hearsay Rule, it is not hearsay. It's explicitly excluded from the hearsay -- the definition of hearsay by Rule 801.

Furthermore -- Just two more points. The situation in the United States versus Kendricks is similar to the situation where the declarant is often unavailable; that being that the declarant or coconspirator is a codefendant and is not -- is not available to testify at trial because the Defendant chooses under his Fifth Amendment right not to take the stand.

As the Court noted in Kendricks, in that situation where there is a determination that -- that the evidence is a statement of a coconspirator, whether a conspiracy is even charged or not, once the determination is made and the Government makes the following requirements then Bruton, or the Sixth Amendment right to confrontation, does not apply.

Those requirements

are under Rule 801 (d) (2) (E). These statements must have been made by the coconspirator or the Defendant; they must have been made during the tenancy of the conspiracy; they must have been made in furtherance of the conspiracy and the existence of the conspiracy; and the Defendant's participation must be established at trial. We submit that that is the basis under which this evidence is being offered by the United States.

Furthermore, in another recent Sixth Circuit case, United States versus Hamilton, the Defendants in that case -- the citation of that case, Your Honor, is 698 F.2d 1262.

The Defendants in that case also argued on appeal that because no coconspirator elected to testify at trial then the admission of some tapes which contained coconspirators statements deprived each Defendant of their Constitutional right of confrontation under Bruton.

The Court stated -- The Hamilton Court stated at page 1271 in footnote 5; "That, however, as this Court pointed out in the United States versus Kendricks, Bruton was limited to inadmissible statements and was motivated by concern over the credibility of confessors. Thus

Bruton does not prohibit the use of evidence of coconspirators' statements against other coconspirators."

It also cites the Fifth Circuit decision of the United States versus Arch Bold-New Ball. And the citation to that, again, is 554 F.2d, 665.

Finally, the United States would note the decision cited by Defendants Dutton versus Evans and Ohio verus Roberts did not prohibit coconspirators' statements. Those decisions are strictly limited to when hearsay should be admitted because of its irreliability when the declarant is not available. That is not the situation we have here.

We believe that the citations that the United States have cited to the Court are the applicable decisions.

THE COURT: All right. Mr. Moore, your motion is taken under advisement. You understand that the Court has advised the jury that all of this evidence is tentative evidence. And until the Court makes a finding that the four bases of the coconspirators' statement has been met that all of the statements of coconspirators are still

tentative evidence.

MR. MOORE: Yes, Your Honor. Would Your Honor like the benefit of a written brief from us?

THE COURT: Yes, sir. That would be fine.

MR. MOORE: Yes, sir.

THE COURT: Is there anything further?

MR. SELF: Your Honor, just as far as planning. Are we going to go next Friday or not?

THE COURT: Well, let's do this. All that wants to go next Friday raise your hand?

Let me ask you this, do you think you can be finished by next Friday if we use the additional day? Do you think you could be finished next Friday?

MR. SELF: Your Honor, before I answer that let me say one thing that the Court needs to consider. We do have Grand Jury coming up Friday. It's scheduled for Friday. I don't know whether it's coming in or not. I'm not handling it.

THE COURT: If that Grand Jury is

bringing anymore criminal business then we can put that off a while.

MR. SELF: It's a logistical matter as to where they can meet.

THE COURT: Right.

MR. SELF: The thing is, Your Honor, in all reality, I don't think we'll be finished next week one way or the other.

THE COURT: Okay. If I thought the additional day could -- could be for the U.S. to conclude its proof then I would go the additional day.

Mr. Justice --

MR. JUSTICE: Yes, Your Honor.

THE COURT: -- Have your client bright-eyed and bushy-tailed.

MR. JUSTICE: I've informed him to be here at 8:30.

THE COURT: All right. We'll be in adjournment until nine o'clock Monday morning.

THE MARSHALL OF THE COURT: All rise. This Honorable Court will be in adjournment until Monday morning at nine o'clock.

(Reporter's Note: Court adjourned at 3:30 P.M.)

STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

We, JAMES E. EDMONDSON, RICHARD L. COULTER, & GEORGE R. CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by us in the presence of the Court; that the foregoing is a full, true and correct transcript of the said proceedings so given; that the appearances were as stated in the caption.

We further certify that we are neither of counsel nor of kin to either of the parties to this action, and are in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURES this 1st day of March, 1984.

Richard L. Coulter
Notary Public

George R. Cameron
Notary Public

James E Edmondson
Notary Public