UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

RECEIVED JAN 06 1984

-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, MORRIS RAY HALL, VAN B. PATTON

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PRETRIAL HEARING

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: DECEMBER 15, 1983

VOLUME ONE

DALE SOERGEL MOORE SHAW & ASSOCIATES
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LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U. S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U. S. Attorney
P. O. Box 845
Federal Building
Lexington, Kentucky 40507

RANDALL KEHRLI, ESQ.
Department of Justice
P. O. Box 571
Ben Franklin Street
Washington, D. C. 20044

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.
P. O. Box 845
Prestonsburg, Kentucky 41653

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead:

E. J. WALBOURN, III
P. O. Box 68
Ashland, Kentucky 41105-0068

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.
P. O. Box 127
Prestonsburg, Kentucky 41653

For the Defendant Eugene Tackett:

DAVID THOMAS
101 Court Row
Nicholasville, Kentucky 40356

For the Defendant Pebo Gayheart:

THOMAS K. HOLLEN, ESQ.
P. O. Box 318
Beattyville, Kentucky 41311

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.
P. O. Box 752
Pikeville, Kentucky 41501

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, JR., ESQ.
1112 Main Street
Jackson, Kentucky 41339

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.
P. O. Box 1176
Paintsville, Kentucky 41240

For the Defendant Drexil Hall and Austin "Bo" Moore:

BERNARD PAFUNDA, ESQ.
Deskins and Pafunda
P. O. Box 1199
Pikeville, Kentucky 41501

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.
P. O. Box 606
Louisa, Kentucky 41230

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

WILLIAM D. KIRKLAND, ESQ.
300 State National Bank Bldg.
P. O. Box 1100
Frankfort, Kentucky 40602

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The Captioned Matter was called in open court at about the hour of 9:00 A.M. on Thursday, December 15, 1983; and the following proceedings were heard:

P R O C E E D I N G S

THE COURT: Please call the Matter for Consideration, Madam Clerk.

THE CLERK OF THE COURT: Yes, Your Honor. Pikeville Criminal Action 83-8, the United States of America versus Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin (Bo) Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, Morris Ray Hall.

This Matter is called, Your Honor, for purposes of a pretrial conference.

THE COURT: Please note your appearances, gentlemen.

MR. SELF: May it please the Court, Thomas L. Self, on behalf of the United States.

MR. KEHRLI: Your Honor, Randy

Kehrli on behalf of the United States.

MR. DAUSE: Your Honor, Charles Dause on behalf of the United States.

MR. HARWELL: May the Court please, Aubrey Harwell on behalf of Edgar Jones along with Allen Moore of our firm, and Mr. J. Patton.

MR. BRANSEN: May it please the Court, Mr. Bransen on behalf of Mr. Halbert.

MR. WALBOURN: Good morning, Your Honor, E. J. Walbourn, Ashland, Kentucky, on behalf of Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead, all of whom are present in the courtroom.

MR. SPENCER: May it please the Court, Your Honor, Ed Spencer representing Linville Mosley, and he is present and in the court, Your Honor.

MR. ADAMS: Eldred Adams on behalf of Ranny Blankenship, who is present in the court.

MR. ROWLAND: May it please the Court, Dan Rowland on behalf of Tim Milan.

MR. BURKE: May it please the Court, Francis D. Burke on behalf of Morris Ray Hall.

MR. HOLLON: Good morning, Your Honor. Tom Hollon representing Pebo Gayheart who is present in the courtroom.

MR. THOMAS: Your Honor, David

Thomas on behalf of V. B. Patton.

MR. PAFUNDA: May it please the Court, Bernard Pafunda on behalf of Drexil Hall and Austin "Bo" Moore.

MR. KIRKLAND: If the Court please, William D. Kirkland on behalf of German Stumbo, Raymond Hall, Ted Kinney, Kenneth Rolland, Jason Moore, all of whom are present in the courtroom.

THE COURT: Gentlemen, let me state this: At the beginning, this is a pretrial. Before we consider the motion, I suggest we go through the pretrial mechanics of the exhibits and get this out of the way. Then we can consider the motions.

For the remainder of the day, the volume of the motions here in the last few days has been a little overwhelming, and it is going to take us a while to consider all of these.

I don't know how many of you gentlemen have gone into this kind of trial. At the beginning of a trial, everyone is agreeable and very courteous to each other, and usually they extend all the humanities to each other. But most of us, after days into the thing, a week or so, tempers start getting a little short; and you find

that things which weren't so noticeable before become more irritating as time goes on.

And so let's all remember this is going to be I guess in a sense we can call it a complex trial. It is going to be a complex trial. Let's consider each other's burdens and problems and rights. And I realize that -- well, I realize the Defendants are under stress. To them it isn't enjoyable. To us, we are professionals. Even among professionals, we have a tendency to become overzealous.

I think I made the statement to Mr. Harwell, and I am sure you gentlemen have heard this yourself, we -- we don't want this thing to be -- I want to say overly agonizing except it is going to be agonizing to these gentlemen. It is going to be a stressful thing.

But from time to time, let's pause and reflect and see if we can't make it just as bearable as it possibly can be.

The Court -- in advance, I want to apologize to you if I become overly sharp. Sometimes I might appear to be personal. I hope I don't give that appearance.

Now, because of this

matter, I think you gentlemen have complied with the Orders of the Court. I have received tentative witness lists from all parties which are not shown to anyone else. This is only for the Court's information for the Court to utilize and perhaps suggesting the logistics. But it certainly appears that we aren't going to have room for all of the parties and all of the attorneys, the jury, and all of the witnesses here in this courtroom or in this courthouse. I think all of you realize this isn't the largest courthouse in the world. It is very small.

But I am suggesting that we go from week to week. For the first week, only the government witnesses be here. Then at the conclusion of the first week, we can see where we are, and then we will know. We can call the witnesses in order as it is anticipated that they may be called.

Yes.

MR. SELF: May it please the Court, may I advise with respect to the Court what I have anticipated on planning on doing as far as calling such witnesses.

I have a witness list

which I have submitted to the Court, and it is extremely lengthy. And rather than having the fifty or more witnesses that I anticipate being here for the first week of trial, may I ask the Court permission to do as I have done in other complex trials? And what I anticipate doing at this trial at the time the witnesses are served is to serve them with a letter from our office stating to the witnesses that we don't want them to have to sit for the entire length of the case. That if they will provide us with a telephone number where we can contact them during the day or in the evenings, that rather than appearing on the first day of trial pursuant to the subpoena, that they contact our office or the U. S. Attorney's office and give us their phone number where we can contact them on a day or two days notice to be here for trial. That if any of them don't wish to do that, that we expect them to be here the day of trial and sit here for the entire length of the trial.

This way, Your Honor, has worked in other cases. We are able to schedule a number of witnesses that we anticipate the following day or two days rather than having to take up the court's space in sitting in the courtroom.

There may come times where we run out of witnesses at the end of the day. That is why I want to advise the Court of the procedure I anticipate using.

THE COURT: Well, here is what I don't want to do. I think we are all -- can agree that there is certainly going to be some inconvenience. You want it to be the least inconvenient as we can have without having a delay in the trial.

MR. SELF: Having done this in the past, Your Honor --

THE COURT: (Interrupting) In other words, we could say that you could anticipate the witnesses that you are going to use the first day and the witnesses you are going to use the second day. I would suggest that you have the witnesses here that you are going to use the first day and a half. So you have got a half a day's inconvenience there. But that will prevent as much inconvenience.

MR. SELF: That is exactly what I tried to do.

THE COURT: Let's do this, gentlemen: Bearing in mind the jury is the one we don't want to inconvenience because the jury -- when they are inconvenienced, they have got their backs to the

wall. They are not going to make a decision based on what they hear, gentlemen. They are going to be influenced by being tired and their needs. And we certainly should protect the interests of the jury at all times. I think all of you gentlemen know that. This Court has been in trial at one o'clock in the morning, Saturdays, every day of the week, seen juries go out. It has seen juries here one or two o'clock in the morning. And they certainly don't consider the effort. When they sit all day for long hours subjected to extreme conditions and scheduling and everything -- you know, you hate to say it. When we all read, our eyes don't look continuously across that line. It runs in jerks.

The jury, when they sit there two or three weeks, they don't constantly-- they don't have steady periods of concentration. They go in jerks, too. So the jury is the one who is the star of this whole show. And that is the ones -- because they are the ones that are going to go out -- what we are seeking here is the truth at all times. Let's see that the jury gets a good shot at this thing.

MR. SELF: That's right.

MR. HARWELL: If the Court please, there is one housekeeping matter. Your Honor, from previous experience, we took up the matter concerning daily copy for the trial and expedited copy here. And I thought the Court, very properly the last time we had outside reporters, caused them to be sworn. Your Honor today, we have Mr. Edmondson, Mr. Coulter, and Mr. Kalbfleisch here today. It may be that even though -- I don't know what is going to happen today in terms of evidence. Your Honor may want to cause them to be sworn.

THE COURT: I think we better cause them to be sworn, and I think we better cause their identities to be known very well among the Marshalls because they are passed the rail. These Marshalls better become acquainted with you because you are coming passed the rail. They are supposed to be particularly watchful about anything that happens on this side of the rail.

Madam Clerk, would you administer the oath?

THE CLERK OF THE COURT: Yes, Your Honor. Your Honor, do you want the gentlemen to state their names for the record?

THE COURT: Yes.

THE COURT: Yes.

THE CLERK OF THE COURT: Would you please state your names, gentlemen?

MR. KALBFLEISCH: My name is William Kalbfleisch.

THE COURT OF THE COURT: Your address?

MR. KALBFLEISCH: 1308 Cedarbrook.

MR. EDMONDSON: James Edmondson, 2820 Ashfield Lane, Louisville, Kentucky.

MR. COULTER: Richard Coulter, 5215 Baywood, Louisville, Kentucky.

(Reporter's Note: Whereupon William J. Kalbfleisch, James E. Edmondson, and Richard L. Coulter, Court Reporters, were sworn by the Court.)

MR. ADAMS: If it please the Court, this is another minor housekeeping matter. I assumed that this hearing would also be closed to the public in view of the court's procedures.

THE COURT: No, sir.

MR. ADAMS: No, sir?

THE COURT: No, sir.

MR. ADAMS: Thank you.

THE COURT: All right. Shall we just -- is there anything pending by way of motions

which must be taken up before we go into --

MR. SELF: (Interrupting) Your Honor, there is a lot of them, but I feel probably the most important would be the matter of Mr. Burke's motion to withdraw.

THE COURT: Mr. Burke and Mr. Hollon, we have discussed this matter before the Court. And I believe at one time before in the -- when Mr. Burke wasn't able to be present, I think Mr. Hollon assumed his duties, and I think there was discussed potential conflict between these two defendants. And perhaps, if there is no conflict, Mr. Hollon will represent both of them. Is that correct?

MR. BURKE: That is correct, Your Honor.

MR. HOLLON: That is correct, Your Honor.

MR. BURKE: And we are to file written statements of our clients acknowledging the discussion and acknowledging that there is no conflict if in fact that is what we arrive at. We have discussed the matter and think that that is true. But we are reserving, until we do have a chance to talk to our respective clients together.

THE COURT: Thank you.

MR. SPENCER: Judge, I have got a small problem. I'm going to talk to my client tomorrow for about three hours. I should be in Knox Circuit Court. The case is very important in my opinion. One man has already been shot. It is a boundary line dispute, a motion for summary judgement and arraignment. I'm going to talk to my client and see if I can get someone to sit in for about three hours.

THE COURT: Okay. Anything else, gentlemen?

MR. HARWELL: Judge, there is one other thing that is probably of no benefit to the Court, but better point out that we have reviewed all the motions heretofore filed by all parties included in this matter. And at the appropriate time, I think, Your Honor, that we can advise the Court of the status of these and maybe can shorten the period of time in which the motions are the focal point --

THE COURT: (Interrupting) I think that would be good. The Court has a list of the motions here. But I would imagine perhaps you might have considered them. I am not attempting to

denigrate or lessen the importance of any motion. Perhaps we may group them with regard to bills of particulars or categorize them. And then we can take care of them perhaps then in that order or something. I am sure you have done this before and the Court can't think of -- I can certainly appreciate any suggestions you have.

All right. Are we ready to proceed with the -- I think perhaps the only thing for pretrial is going to be the exhibit list of the various parties. Is that correct, gentlemen?

MR. SELF: Yes, sir.

May it please Your Honor, we would like to provide the Marshall with the following six-page exhibit list and give it to the Clerk at this time. I have provided Counsel for the Defendants copies of this exhibit as it exists prior to the beginning of the hearing this morning.

THE COURT: Let's state this: Madam Clerk, we have -- the Madam Clerk has stated to me she has designated the way the exhibits will be marked for identification so there will be a distinction between the government's list for identification and the Defendants' list.

MR. SELF: What I did in doing this, Your Honor, I followed the Court's standard procedure of going A through Z, AA through ZZ, and up -- I went through ZZZZ.

And then I started with five times A. So I have 5XA through 5XX rather than going all the way across the label. Those exhibits up to 5XX I provided counsel with an exhibit list up to that point in time, Your Honor.

I have additional exhibits that will be introduced this morning pursuant to subpoena duces tecum and the records custodian is to be here this morning. They are not on the exhibit list. I have not had the opportunity to premark those exhibits, Your Honor.

But before we get to those, let me state that in the latter part of last week, Your Honor, and following the suggestion that was made at the last hearing, I had the -- had cause to be prepared essentially a list of the majority of these exhibits to be prepared with a, quote, chain custody set out and provided as to counsel for all of the Defendants. This chain of custody sets forth some hundred and twenty-four exhibits. Of a hundred and twenty-four exhibits,

a hundred and sixteen of them, Your Honor, have been provided to and made available to counsel in this case at the -- at various stages in discovery. At one time when we were here, we had the exhibits. We made them available for inspection at that time, the physical exhibits.

117 -- I think on that list was 124. Part of them are marked for identification today. 117 and 118 on that list, Your Honor, were available at the last hearing when we were here before.

What I did in providing this list to counsel, Your Honor, I requested in that letter and as set forth as best we could what the chain of custody was and who the author of that document would be as far as for purposes of the pretrial. And I requested that counsel notify me by Monday as to any and all objections they may have so that I could have those witnesses here today.

I received response from three attorneys, Your Honor, who at that time stated that at that time they could see no objections to that; but would further have to discuss it with their clients. None of the other ones indicated any objections or problems with any of the other exhibits

or that they wish me to have those here.

In compliance with that, Your Honor, I have some of the witnesses here. They are federal agents. And a lot of them are here for some of these. But those exhibits, essentially, Your Honor, run through exhibit WWW, triple W on our exhibit list. Exhibits from XXX through five triple X, Your Honor are documents that are essentially -- came into the United States hands or became exhibits, Defendant exhibits within the last weeks. Some of these documents on this list are still not in our hands. We have marked copies. The author of those documents is here for production today.

What I would like to request, Your Honor, is the physical documents are in my office downstairs, these physical exhibits. They are marked with stickers as I have done in this court before with the court provided exhibit stickers. Rather than bringing those up to the courtroom today, Your Honor, because I didn't know this hearing was going to be open or closed, they are there. I can bring those up here. I can spread them out here for counsel to examine as to whether they have any further exhibits -- or further

objections, Your Honor, as to additional documents. It may be appropriate, though, and I'm only suggesting, the Court may wish to take -- only providing this exhibit list, the alphabeticalized exhibit list for counsel this morning because up to five minutes before the hearing, I was still adding letters to it --

THE COURT: (Interrupting) Let's have this: They have only got the copy which you have right there.

MR. SELF: They have got a copy, Your Honor, of the exhibit list that I have tendered to the Court. They also have and I have provided to all of them last week since with a chain of custody that provides for some of these exhibits. Some of the exhibits on the chain of custody that I have provided I am not using.

THE COURT: Well, let me ask you this: Would it be appropriate for these gentlemen to have thirty minutes in order to consider this list before we ask them if they have any objections to what they want to examine and what they want.

MR. SELF: I think thirty minutes would be sufficient, Your Honor. The material is downstairs. All of us can't fit into that room at

one time. They may want to go over it with their counsel -- with their clients to look at this. Some of these exhibits were maps on here that are U. S. survey maps. There are area photographs. There are materials here from South Carolina Gas & Electric Company. The records custodian is here. Those materials didn't come into our hands until four o'clock yesterday afternoon. Defense counsel hasn't seen that at all. I am prepared to put the records custodian on or whatever.

THE COURT: We are going to be here all day, gentlemen. So would thirty minutes be --

MR. WALBOURN: Your Honor, may I propose a suggestion, and I think Mr. Self will acknowledge I was one of the attorneys that wrote to him and said I don't think I have any problem. I feel quite a bit of concern binding my clients to something about them without them at least knowing what is going on. If perhaps the Defendant could stay in the courtroom, counsel could stay here, and Mr. Self could have his agents bring the stuff up, hold up what is marked so we can see it, hold it up so the attorneys can see it, the Defendants can see it. And I think -- I see no problem why we can't get a lot of stipulations worked out. I am

just reluctant to do so without my client's knowledge.

THE COURT: Gentlemen, I appreciate any suggestions because many of you counsel have been engaged in criminal trials, as you know, with a number of Defendants and a number of attorneys. We can get to -- just to make this procedure a matter which is going to expedite this trial, I would appreciate it.

MR. HARWELL: If the Court please, with all due respect to Mr. Walbourn, we might modify what he has articulated to Your Honor. To bring in not everything in that we have I think all viewed a lot of this heretofore. But bring in that which we have not seen which is XX on as I understand.

THE COURT: What have you seen and haven't seen?

MR. WALBOURN: I have seen it all. My clients have never been privy to going into the room, particularly at my direction not to go into the room with law enforcement officers present and making comments. I felt that I would be derelict in my duty if I permit him to do that. I think that they would like to see these matters. And I don't -- as I understand it, he shouldn't take long to hold

up and say here is a bag of shells, and here is a photograph.

THE COURT: Mr. Walbourn is playing a little courtroom chess.

MR. HARWELL: I had the benefit of seeing some of this earlier, Judge. The fact of the matter is, speaking only for Edgar Jones, I would like to see all of that which I have not seen which I think commences with TTT.

THE COURT: Well, let me ask you this: How much time are we asking for if we take all of them, you know, and hold them up?

MR. SELF: I think at least an hour. Perhaps we can go through it, a lot of it very rapidly.

THE COURT: Well, let's do that.

MR. HARWELL: If the Court please, given the fact that this is evidence and given the fact I take it, Your Honor was gracious enough to allow them to use this courtroom as an office, would it not be apropos, being that it will be an office and these exhibits will be held up, to clear the courtroom just as if we met in the U. S. Attorney's office.

MR. SELF: Well, Your Honor, we are

principally bringing them into the pretrial conference. That would be if we would go through this as normal pretrial conference. They would be here for everybody's observation.

MR. HARWELL: That being so, I move --

THE COURT: (Interrupting) Well, I am just wondering, by reason of the exhibits along the way, what -- why -- I don't think it is any evidence other than just the exhibits.

MR. HARWELL: Yes, sir, but some of those, sir, but some of these exhibits, Your Honor, involve firearms, explosives, other things that --

THE COURT: (Interrupting) Well, we are saying it right here which is a matter of public record when we are saying firearms and we are saying explosives.

MR. HARWELL: Seeing them, though, if the Court please, is a bit different from observer's standpoint than a colloquy between the Court and counsel, Your Honor.

THE COURT: Well, I believe I will not go along with that. I will let them be public.

MR. SELF: I will bring the things up here and notify the Court since we are furnishing them through this procedure --

THE COURT: (Interrupting) Well, let's do this then: I have another hearing. And I am thinking about having the other hearing in the Grand Jury Room while you gentlemen use the courtroom.

MR. HARWELL: We can use the basement, Judge. That is a big room.

MR. SELF: Judge, we can't get everyone in there.

THE COURT: No, you gentlemen use the courtroom. I will take the reporter. I will permit you to use this as you would an office.

MR. HARWELL: May the Court please, notwithstanding Your Honor's comment, might I verbalize my motion so that the record is clear?

THE COURT: Yes, sir.

MR. HARWELL: May the Court please comes now the Defendant, Edgar Jones, respectfully move the Court in regard to the expedition of exhibits to which the Court has made reference and moves the Court close the courtroom except for court personnel, Defendants, and government attorneys, and defense attorneys, by virtue of the fact that we are less than thirty days away from jury selection. And certainly arguably, there are

those things that might be prone to inflame, cause bias, and cause prejudice.

THE COURT: Let that be overruled. I want the Marshall to stay here, one of you stay here, gentlemen. These exhibits are shown to the counsel. This is on this side of the rail. Any other public is not permitted to come on this side of the rail to examine or pick up any of these exhibits. This is for you gentlemen only. The spectators can sit there. That is perfectly all right.

MR. HARWELL: Judge, I wasn't arguing with you. I just wanted the record clear.

THE COURT: I realize that, certainly.

MR. SELF: There are two exhibits on the list that I would like to explain to the Court and to counsel. I will bring them in today, but I don't want counsel to really handle them. They are two live blasting caps. What I had planned on doing, Your Honor -- and I have marked them for identification. We will introduce them into evidence, but I also have marked for identification photographs of them. So rather than having the Court and jury having to handle those documents, I will introduce them and move to withdraw them at the time.

THE COURT: I think there will be no objections to using the photographs rather than the live blasting caps. The Court doesn't want any live blasting caps in this courtroom.

MR. SELF: I anticipate bringing them in and marking them, showing them to the witness, Your Honor, and perhaps to the jury. But then we will have the photographs themselves retained as part of the court exhibit, Your Honor.

THE COURT: Well, the ATL -- they are experts in this thing. I would say most of the Defendants are experts in blasting caps. But in this courtroom, where there is one of a thousand possible chances of it exploding, I just don't want the jury or anyone else in the courtroom to be subjected to odds such as that.

MR. SELF: The specific exhibits then, Your Honor, are exhibits number N on the exhibit list, and O is the three photographs of that. And exhibit Q, Your Honor.

THE COURT: You can bring those photographs in, but those live exhibits -- either leave them downstairs. If they want to examine them, then they can go downstairs and examine them. Or they can go out if they want to examine them out

there. But I don't want blasting caps brought into the courtroom.

MR. SELF: There are, as part of our exhibits, several hundred rounds of live ammunition.

THE COURT: Well, that is all right.

MR. SELF: All of this is in bags. It is not loose. They are in bags so that they can't be run into or things like that.

MR. KIRKLAND: Your Honor, if the Court please, as the Court knows, I have worked with Mr. E. J. Walbourn for a number of years, and his opinion is very valuable to me. However --

THE COURT: (Interrupting) However, you are looking down.

MR. KIRKLAND: I am looking down at him right now, and I am looking around him, too, I might add.

We have looked at this list that has been submitted by the government. There are only a few items that I have any personal questions about. My clients have looked over the list. They don't have any questions in addition to mine. We don't think it is necessary to hold each

one of these things up in as much as a cursory glance of a report is not going to tell you anymore than what we already know. The true objections to some of those things can not be made now anyway. So we don't see the purpose of looking at some of these items.

THE COURT: Well, let me suggest this: If it is only going to be Mr. Walbourn and his clients, you have what, three clients?

MR. WALBOURN: Four, Your Honor.

THE COURT: He has four. We can just recess and let Mr. Walbourn and his clients go down and look at them. And he can go with them and make sure they don't make any comments that might be prejudicial to them.

Now, do any of you other gentlemen want to take your clients and go on in with him?

MR. HARWELL: If the Court please, I want to look at TTTT through the end of the list, and I do want to go down with my client.

THE COURT: All right. Who else, gentlemen? Maybe that will work out better.

MR. PAFUNDA: Your Honor, Bernard Pafunda on behalf of --

THE COURT: (Interrupting) Keep doing that, gentlemen. It has been suggested that perhaps you keep the same seats all the time so the clerk and the Court when you talk will know you better. But I still think it is better, for purposes of the record, anytime anyone speaks, that he state who he is. Of course, this is the same for the Government, for their attorneys. Anytime you Government attorneys speak, identify yourself for the purposes of the record.

MR. PAFUNDA: Your Honor, on behalf of my client, I am only interested in one additional exhibit not on that list. And I believe it is 5XY. However, to facilitate this matter, I have three exhibits myself. And apparently Mr. Self indicated to the Court by my silence that I have agreed to stipulate to his. If he will stipulate to mine, I will stipulate to his.

THE COURT: Let me do this: So this will facilitate this if each attorney spoke and stated what he wanted to see. And then -- have you got the copy of their exhibit list, Mr. Self?

MR. SELF: If it please the Court, I received one exhibit list, and have been provided one set of exhibits by Aubrey Harwell, counsel to Edgar Jones. I have not been furnished a copy of any

other materials by other counsel. To my knowledge, Mr. Kirkland at the first discovery here showed me some photographs at that time and indicated those were in compliance with the reciprocal discovery.

Mr. Bransen brought in some records of Mr. Hall that we have copies of. Rather than putting the copies in, I have requested only -- request that he bring the originals of those. Those have not beenmmarked and are not in this exhibit list yet.

THE COURT: Let's do this: Do you gentlemen have the exhibit list? Or if you don't have the exhibit list, you can make a statement.

Let's recess for thirty minutes. You gentlemen prepare your exhibit list. Give him a copy of it. Then also state in writing what you want to -- what exhibits of the government you want to examine personally with your client, and then perhaps we can work a schedule out based on this or how you might discuss -- you might go see what you want to see if that can be done during the recess.

MR. SELF: They can come see what they want. And to expedite the problem, if they want, I will bring it all up here right now and they can go through them one by one.

MR. WALBOURN: I'm going to take my

four clients and go down as soon as the adjournment and have them look at the items on the table. I am assuming Mr. McCallister, or Mr. Dause, or Mr. Snabel -- someone will be there so that if they have a question they can say this is such and such taken such and such.

THE COURT: If there is any members of the press or public, I can not order that the public be permitted to go into your offices downstairs. Your offices are your offices.

If something is here in the courtroom, it is a matter before the public. Now, in your offices downstairs -- I can't control that. Do you all understand that?

MR. SELF: Yes, sir.

MR. HARWELL: Yes, sir.

MR. SELF: The exhibits Mr. Harwell has a question are exhibits TT through 5J. The records custodian is prepared to testify about exhibits 5XK through 5XR which are area photographs of the area around the Ray-Mac site.

THE COURT: Let's be in recess, gentlemen until 10:15. At that time, we will come back and see what we need to do by way of the government exhibits. After that, we will get to the

Defendant exhibit list.

THE MARSHALL: All rise. The court is recessed in this case until 10:15.

(Reporter's Note: Whereupon the court was recessed.)

THE MARSHALL: Gentlemen, let's begin.

THE COURT: All right, gentlemen, let's please go down the line of Defendants and each counsel will identify himself and make a statement with regards to the exhibits.

MR. HARWELL: May the Court please, my name is Aubrey Harwell and I represent Defendant Edgar Jones. The records were respectfully made, Your Honor, relating to the evidence exhibit list given to us this morning. Mine goes to 5XX.

May the Court please the government gave -- afforded to us the opportunity to look at those items set forth on that exhibit list. I understand, Your Honor, that we're not here to address the issue of relevancy, materiality, admissability, competency, or appropriate value or rather chain of possession and authenticity.

That being true, may the Court please, the only thing which I have any concern

is 5XU, the mine organizing survey.

5XV and one not on the list I believe is tabbed and labeled 5XA. If Court please, I talked to Mr. Self about these and I understand and believe that he has used total good faith in an effort to have witnesses here sponsor those documents after conversing with him. Without waiving any rights through my client, I think very frankly that that could be done and normally would be done in the course of the trial of this matter. A very short simple presentation of those witnesses. So as far as Mr. Jones is concerned we raise no objection to lack of sponsorship.

MR. SELF: Which exhibit is that?

MR. HARWELL: Well, 6XA I believe it's labeled.

We would also -- Mr. Self, and Your Honor asked that Mr. Self when he finishes with these if he'll go ahead and give us copies since there's probably five or six more downstairs that's not on this list because they came in late.

MR. SELF: Let me explain that, Your Honor.

THE COURT: Sure.

MR. SELF: There is current witnesses that are subpoenaed to be here this morning to produce documents that we did not have and were not able to get the original in the record. As of this morning 5XX was as far as I had gotten. There is witnesses here and additional documents. Mr. Dause is attempting at this time to put additional stickers on the documents and complete witness list. We tried to do that during the break so we could have it completed. He's still working on it at this time. Those essentially -- I'll state to the Court essentially what those are. The records that Mr. Bransen has brought in that we have copies of, Your Honor, they're firearm records of Mr. Halbert. I requested he bring those in rather than us having to get copies. If Your Honor or -- that way the originals can be marked and put in as evidence. Those are not on our list, Your Honor.

They consist of permanent bound firearms records and the ATF forms 4473 that have been previously shown to counsel at the inception of this case. All we're talking about is marking the additional documents themselves.

There is an additional document that is not on the list that was provided

this morning by the officers of Coal-Mac dealing with damage surveys of damage -- economic losses suffered by them as a result of activities in question here.

There's also a permanent bound record book to be offered by the witness Walter Blackburn the recording secretary of the local union. The copies of those have been provided, Your Honor, to counsel in the course of discovery. This is merely the original records which have been subpoenaed here today.

There's also documents from a firearms dealer in Prestonsburg which are under subpoena and I understand the witness is still not here yet this morning. The subpoena was served last night. Those are not on the exhibit list at this time, Your Honor. So, those are here and the witnesses are here to present those and included on the witness list as is.

Mr. Dause has just returned to the courtroom, Your Honor, and may I tender to the clerk an additional witness list beginning with 5XY to 5XZ -- beginning with 5XZ through 6XT, Your Honor, and I have copies here and I'll hand one to the clerk and will provide copies

to counsel for the Defendants at this time, Your Honor.

Will the Marshall assist me in doing that?

MR. HARWELL: May the Court please, also for the record some of those proposed exhibits or lists that have been compiled for which there were underlying documents reflecting quality of coal shipped and quantity of coal received, etcetera. We discussed those lists with the Assistant United States Attorney and he advised us that witnesses that prepared those will be here during the course of the trial and they will have seen in part some of the underlying documents. I want to be sure Your Honor that in an effort to expedite this and to be fair to Mr. Self and the Court that I'm not stepping farther down the line than I believe I am. We're talking about chain the possession and custody and I understand that.

THE COURT: Well, I guess not only are we speaking of chain of custody. Let me use this for example. If you've got pictures, I think all of us know that about the easiest way to produce evidence is through pictures.

Out of an abundance of

costs and concern you brought here the fellow who took the picture and let him sit for three or four days in order to say that. The purpose of a pretrial is if you have any questions as to foundation of this picture make it known now and put the witness on and say that. And then he won't have to be back here for the purpose of a trial.

MR. HARWELL: Your Honor, I may appear somewhat naive or maybe even stupid, but may I get a clarification from the Court with a more complicated proposal. Suppose there are a large volume of shipping records concerning tons of coal shipped from point A to point B --

THE COURT: (Interrupting) Now, is this going to be introduced under the guidelines of regular course of business?

MR. HARWELL: I would suppose so.

THE COURT: Then I would assume that they would have the person that's in charge of preparing those records and he can lay the foundation as to the records and that these were prepared in the regular course of business. He can establish today that this was reported in the regular course of business.

MR. HARWELL: Thank you, Your Honor.

May I take the Court one step down continuing with that point suppose that either at the request of the United States Attorney or in the normal course of business that they prepare a recap --

THE COURT: (Interrupting) A summary?

MR. HARWELL: A summary of all of that.

THE COURT: Which is permissible under the Federal Rules of Evidence.

MR. HARWELL: That's right.

I want to be sure that I am not somehow stipulating that that does come in or arithmatic calculations are correct on that. Am I making myself clear, Judge?

It's one thing to take a business record on shipping, a piece of paper that involves shipping and it's another thing may the Court please to come up with a compilation where the arithmatic computation may have been mistaken and calculated --

THE COURT: (Interrupting) You're right --

MR. HARWELL: (Interrupting) I don't want to waive any rights on that, Judge.

THE COURT: You're right, you're

agreeing to the summary but you're not agreeing to the basis on which the summary is made. It's your right to authenticate that.

MR. HARWELL: I think I understand, Your Honor.

THE COURT: Let's see, under the Rules of Evidence a person can testify that he prepared a summary, of course I believe you must have in evidence the matter from which the summary is prepared.

MR. SELF: No, Your Honor, the underlying documents don't have to be introduced, they have to be available.

THE COURT: They have to be available.

MR. SELF: They don't have to be marked.

THE COURT: Well, you have the original here available -- is this summary available?

MR. SELF: Yes, Your Honor, the witness that prepared them is here and the underlined documents are available.

THE COURT: I assume Mr. Harwell, and I guess the other Defendants -- will have thirty

minutes, will that be enough time to examine the papers?

MR. HARWELL: Your Honor, I'm being awfully technical with regards to these damage reports, I don't think there's any problem that I can't confirm my hunch in thirty minutes.

MR. SELF: Let me understand for the record, they will be here for trial, Your Honor, we will offer and substantiate those records at that time.

THE COURT: Well, if they're going to be here for the trial --

MR. HARWELL: (Interrupting) That's my point, Your Honor. The only thing I was wanting to do rather than taking the time at the trial to examine these things, that's the purpose of a pretrial.

MR. SELF: He's trying to get rid of the middleman, Your Honor. What I'm saying is the middleman is -- the middleman is the main man in this case, he is the one that prepared the documents and the custodian of the documents will be here to offer the documents. And I think he's specifically speaking of the documents from South Carolina Electric and Gas Company. The records

custodian David Padgett is here today and brought the documents that I have marked and made copies of the documents that he has them in his possession at this time. I would like and intend to offer copies of all these documents through him at the trial. Copies that are marked and in existence now, there's some question as to the true and accurate copies of them and who has the original documents here. If we want to look at them we'll be glad to let them do that.

THE COURT: Well, we're going to be here until five o'clock today.

MR. SELF: If he has an objection of going through the true and accurate copies or as to the authenticity or the change of custody of the custodial nature or the business nature of the record, we're prepared to do that today. But his question is how the summary was prepared.

THE COURT: That's what he wants, he just wants to affirm the basis on which the summary was made.

MR. SELF: The summary are based on the documents as marked as exhibits, Your Honor.

MR. HARWELL: That'd be true, Your Honor, if I have a few moments to look through the

underlying documents and summary it might not be necessary for that man to take the stand.

MR. SELF: I just need to lock things up, Judge.

THE COURT: Well, we just want you to have that opportunity, Mr. Harwell.

MR. SELF: Let me make one statement to the Clerk in regards to the exhibits that they have questions on, Your Honor, is 5XU, 5U and 5V. These three documents were obtained from the records of United Mine Workers International office in Charleston, West Virginia, Your Honor. A subpoena was served on the record custodian of that office Tuesday night at Pittsburg, Pennsylvania where he was attending a United Mine Workers' convention and he was unable to return to his office and get those documents and bring them to this courthouse by virtue of his having been at that convention.

What we did, Your Honor, is arrange that an agent of the Bureau of Firearms, Tobacco, and Alcohol go to the Charleston office and get the records and by working with them to bring the documents -- they said at the time that we apply them with the subpoena that they will

produce certain court records and those two documents are copies of the materials furnished to the ATF agents by representatives of the UMWA in Charleston, West Virginia. I do not have a sponsor for those documents here, Your Honor. I was not able to secure his presence because of the convention. He will be here, Your Honor -- the author of the documents will be here, Your Honor, at the time of trial.

THE COURT: All right.

MR. SELF: As to 6A, Mr. Harwell expressed a matter in that, that is a summary of losses prepared by the officers of Coal-Mac reflecting in essence, Your Honor, a summary of damages that was done to them. This is a compilation of various business records by them and prepared by them -- but physically prepared by them for the purpose of this litigation. The author of that document is here today and ready to testify is there are questions. He will be at the trial too, Your Honor, to testify where he got those figures from.

THE COURT: But is he here today ready to testify from which the summary was prepared and does he have the records from which the summary was prepared?

MR. SELF: I think I better ask him, Your Honor.

THE COURT: That's what you're interested in, isn't it, Mr. Harwell?

MR. HARWELL: Yes.

MR. SELF: They're at his office, Your Honor,which is just outside of town, his general ledger and his accounting books.

THE COURT: Well, I think Mr. Harwell wants to see the records on which his summary was prepared and I think he's entitled to it.

MR. SELF: Correct, Your Honor. If he so desires, we'll make those available and have them brought here for his perusal today.

MR. HARWELL: If the Court pleases to correct the record I do so desire to peruse those records.

THE COURT: He'd be remiss if he didn't.

MR. SELF: Yes, Your Honor.

MR. BRANSEN: May it please Your Honor, I'm Hershel Bransen representing Donahue Halbert. I have no questions or objections to the exhibits at all, Your Honor.

THE COURT: Of the United States?

MR. BRANSEN: Yes, Your Honor.

THE COURT: I thank you, sir.

MR. WALBOURN: E. J. Walbourn, Your Honor, on behalf of Mose Mead, Benny Caudill, Hermit Newsome, Harold Moore. I have no questions as to the foundation nor as to the chain of custody. I would be willing to stipulate to those matters. By making those stipulations I want the record to be clear that I am not waiving any objections to the competency, relevancy, materiality, or perhaps even to the best evidence rule, depending on how the testimony proceeds.

MR. SPENCER: Ed Spencer, Your Honor, representing Linville Mosley, Your Honor. I have -- I can stipulate on the same lines that E. J. has previously stipulated on.

MR. ADAMS: Your Honor, Eldred Adams on behalf of Ranny Blankenship and I also stipulate on the same terms of Mr. Harwell and Mr. Walbourn. I assume that we are stipulating only as to the chain of custody of these documents and not necessarily to any statements contained therein as being true, just the documents themselves?

THE COURT: Well, you're stipulating

as to -- not the -- not to materialities or relevancy as stated by Mr. Walbourn, but as to foundation and whether or not it's a regular course of business record.

You're assuming that certainly that's right?

MR. ADAMS: I have no problem with that, Your Honor.

THE COURT: We don't want to have any head of an office to come in here and sit through the whole, we should work it out so he could leave --

MR. ADAMS: (Interrupting) I agree, Your Honor, that would be a waste of time. But I'm saying I would not -- on the case of several agents' reports, I would not want to stipulate -- I have no problem with the report, but I would not stipulate that all the facts contained thereon are true.

THE COURT: Right.

MR. ROWLAND: May it please the Court, Dan Rowland, on behalf of Tim Milan, and we would stipulate to the foundation and also to the chain of custody to the proposed exhibits.

THE COURT: Thank you, sir.

MR. BURKE: Francis Burke for Defendant Morris Ray Hall, we will stipulate, Your Honor. I might say that I conferred with Mr. Hollen and he's in agreement with me on that so far as the Defendant Morris Ray Hall is concerned.

MR. HOLLON: Your Honor, Tom Hollon representing Pebo Gayheart. I will stipulate as to the foundation and chain of custody and agree with Mr. Burke's statement regarding that.

MR. THOMAS: Your Honor, David Thomas on behalf of Eugene Tackett and I likewise will stipulate to foundation and chain of custody.

THE COURT: All right.

MR. PAFUNDA: May it please the Court, Bernard Pafunda on behalf of Drexil Hall and Austin "Bo" Moore. Your Honor, I spoke with Mr. Self during the recess and I have three exhibits, possibly five exhibits and they concern a 1981 national contract of United Mine Workers, a District 30 Constitution as well as a International UMWA Constitution. Mr. Self has indicated to me that he will stipulate as to my exhibits and I will stipulate as to his as Mr. Walbourn has so eloquently stated.

MR. SELF: I have no objections to the purpose of pretrial exhibits that Mr. Pafunda

has agreed to provide us copies of the documents.

MR. PAFUNDA: In addition to that, Your Honor, I would also point out that to Mr. Self that I may introduce as a copy of the local union charter which I did not have an exhibit since the district officials are presently in Pittsburg and I have not been able to secure that today.

THE COURT: What local are we speaking of?

MR. PAFUNDA: The local that I --

THE COURT: (Interrupting) What's their number?

MR. PAFUNDA: I think it's 5967.

MR. SELF: 5966.

MR. PAFUNDA: 5966.

I indicated to Mr. Self that if I secure a copy of that I'll get with him on that.

I would like to have added to my exhibit list also the original survey that Mr. Self has on his list.

THE COURT: You are going to adopt the exhibit --

MR. PAFUNDA: (Interrupting) 5XY.

THE COURT: (Continuing) -- as your

own exhibit?

MR. PAFUNDA: That's correct, Your Honor.

THE COURT: Is that agreeable with the government?

MR. SELF: Provided it's a U. S. District -- if you want to provide your own copy, that's fine, however you want to, that's fine.

THE COURT: Mr. Kirkland?

MR. KIRKLAND: William Kirkland, Your Honor. There's a few little things here.

I understand that the Minutes of the local are down as exhibits, I've not seen those, Mr. Blackburn has those and I've talked to him, of course. He's reluctant to let me look at them until it's explained to him that it's okay for him to show me those Minutes.

THE COURT: Who's Mr. Blackburn?

MR. KIRKLAND: Yes, Your Honor, he's the recording secretary here and he wants to make sure he does not offend the Court or the United States or the marshalls or anybody else. I assured him that I would get some kind of authority for him to show those Minutes to me.

THE COURT: Where is Mr. Blackburn --

MR. SELF: (Interrupting) If it pleases the Court those minutes have been available for inspection by the Defendants since the beginning of discovery. We subpoenaed Mr. Blackburn here today to bring the original and mark them as exhibits. Mr. Kirkland had adequate time to get copies of those since the inception of this case, Your Honor.

THE COURT: I guess -- I would assume -- I guess Mr. Blackburn came here today pursuant to request and brought them with him and I would assume that of the abundance of caution Mr. Blackburn don't want to get in trouble with anybody. And he is going to say let the Court tell me to show them. Would Mr. Blackburn stand?

MR. KIRKLAND: Mr. Blackburn, would you stand and show him the documents?

MR. SELF: I intend to call Mr. Blackburn as a witness and mark those for identification through him and include them with the exhibits that are on this list right now.

THE COURT: Well, that would be fine, but I guess if Mr. Kirkland can look at them he might stipulate to them.

MR. KIRKLAND: I just wanted to look at them. There are certain things that you can't

copy and if I could look at them I think that would be helpful to me and my client, of course Mr. Blackburn has no objection to me looking at this records and I can't imagine the United States having an objection to me looking at the same records.

THE COURT: No, I'm sure Mr. Self has no objection.

MR. SELF: I have no objection, Your Honor, I intend to mark the originals as part of the exhibits in this case.

MR. KIRKLAND: Your Honor, I also need to --

THE COURT: (Interrupting) Let me ask you this, Mr. Blackburn. Do you have -- what is it that you brought with you pursuant to requests today?

MR. BLACKBURN: I have the local union 5967 recording secretary books and also the transfer books.

THE COURT: Okay, do you want him to tell you how he got in possession of it and how it was kept and maintained?

MR. KIRKLAND: No, I know -- I talked to him, I know all about that.

THE COURT: Then there's no -- you

have no question as to foundation?

MR. KIRKLAND: No, none at all.

THE COURT: You're not stipulating as to -- as to the truth and veracity of what's contained in those records. I understand that and you're not stipulating as to the relevancy and materialities?

MR. KIRKLAND: That's correct, Your Honor.

THE COURT: But as to foundation you have no question?

MR. KIRKLAND: Absolutely none, he's explained to me how he kept the records and that's fine.

THE COURT: Well, you're entitled to examine them.

MR. KIRKLAND: Also, Your Honor, I need to file my own witness -- exhibit list, do you want that done in open court, or how do you want that done?

THE COURT: Just hand it to the U. S. Attorney because after you all finish commenting on his exhibit list I'm going to give him the opportunity --

MR. KIRKLAND: (Interrupting) Your Honor,

I have given him a copy. I have not filed the original and I haven't given copies to each defense lawyer. Do you want me to give the copies to the defense lawyers now?

THE COURT: Yes.

MR. KIRKLAND: I'll just pass them around.

THE COURT: Do that, because as you commented on the U. S. Attorney's list I'm going to extend to him the opportunity to comment on your exhibit list.

MR. KIRKLAND: Your Honor, with respect to certain exhibits I think the other comments have covered any comments I have but for example, the tapes, I have no question about the chain of custody, but that of course may not comply with the Starkes requirements.

THE COURT: Well -- let me ask you this: I think he said he was not going to use any tapes, is that right, Mr. Self?

MR. KIRKLAND: (Interrupting) Well, I note that they're listed on the exhibit list, I don't know if he's going to use them or not.

MR. SELF: Mr. Kirkland, if he looked at the exhibit list that I gave you this

morning you'll find there are not tapes on there.

MR. KIRKLAND: I realize that, but also they were contained on the letter and I'm just saying were they of some higher burden to be met by case law or rule or whatever, I'm not waiving any of those objections. I think it's clear here in the hearing today that I want that on the record that my clients as well there's certain things that in my judgement under no circumstances would be admissable even though we have no objection to its authenticity. It simply will not be admissable.

THE COURT: If it isn't relevant or material.

MR. KIRKLAND: And for other reasons, Your Honor.

There are a number of other evidentiary reasons why certain objects may not be admissable. I'm not objecting to the authenticity or the chain of custody of that object between the time it was seized or picked up or located and the present date. That's all I have, Your Honor.

THE COURT: Well, I have to have other reasons.

I guess this is reminding me of a statement a fellow made about his mother-in-

law. He said she always keep me off balance. This statement for other reasons is something that has the tendency of keeping the Court off balance. Let's go a little further and hear some other reasons.

MR. KIRKLAND: Your Honor, like I stated earlier, there may be a common law objection, there may be cases that says you have to do this or have to do that. In that event I would have the benefit of that objection and I don't want to waive that kind of objection. In some instances I note that they have --

THE COURT: (Interrupting) Let me ask you this: Have you examined these exhibits?

MR. KIRKLAND: Yes, Your Honor.

THE COURT: Now, by reason of your examination, do you have any question as to the foundation or as to the -- this includes the chain of custody which is part of the foundation, do you have any objection to the foundation of any of the exhibits which he has on his exhibit list? If you do so, we ask to hear those at this time, please.

MR. KIRKLAND: I have not made myself clear. For example, J. P. McKenzie's Fire Marshall Reports. That report can never be introduced or wheelbarrowed in or for five reasons. So I'm not

waiving any of those objections.

THE COURT: Well, what are those exhibits?

MR. KIRKLAND: Your Honor, Mr. McKenzie can testify as to what he saw and what he did. His report is not admissable. I don't object to the authenticity of his report, it does not matter who has it in his hand so I don't object to that.

THE COURT: Okay, why do you -- let's get it in the record, why do you object to his report being placed in the record in addition to his testimony?

MR. KIRKLAND: It's incompetent, Your Honor.

THE COURT: Why?

MR. KIRKLAND: Because his testimony -- he can not bolster his live testimony with his report.

THE COURT: Well, what you have is a --

MR. KIRKLAND: (Interrupting) It's a hearsay situation.

THE COURT: It's a postconsistent statement.

MR. KIRKLAND: I don't know whether it

will be or not because I have not heard his testimony. I know Mr. McKenzie, he is a very good fire marshall and I assume he will testify totally consistent with his previous report, but if I don't try to impeach him, if I don't -- if there's no reason to bolster his life testimony it simply will be inadmissable.

THE COURT: Well, of course, ordinarily a prior consistent statement or post-consistent statement is inadmissable.

MR. KIRKLAND: That's true.

THE COURT: Ordinarily.

MR. KIRKLAND: Under certain circumstances --

THE COURT: (Interrupting) Unless the credibility of the witness is placed in issue and if the credibility is placed in issue it become admissable.

MR. KIRKLAND: That's right, in some instances that's right, but generally speaking an officer of the court, just like an accident report is not admissable. He can testify as to what he saw and what he did and if that's not consistent with his report that still does not make the report admissable.

THE COURT: Well, that's --

MR. SELF: (Interrupting) May it please the Court.

THE COURT: Yes.

MR. SELF: I don't know what Mr. Kirkland is wasting the Court's time for. That's not marked as an exhibit at this point in time.

MR. KIRKLAND: That's true, but that's in the letter, Your Honor, and I want to make sure that we get all these things covered and there's no surprises later on.

MR. SELF: I think it's premature until the time we attempt --

MR. KIRKLAND: (Interrupting) Oh, I don't think so at all.

MR. SELF: It's not offered.

MR. KIRKLAND: Now, he says that he might want to offer it into evidence, and that's the purpose of this hearing today is to iron out these difficulties.

THE COURT: Yes, of course, we've got this. I think all of us know in so far as what's rebuttal -- we don't know what we're going to use in rebuttal in the sense we don't know what witnesses are going to be used in rebuttal. We can't make any

agreement to that, isn't that correct?

MR. KIRKLAND: Certainly, Your Honor.

THE COURT: I understand what you're saying.

MR. KIRKLAND: The same thing is true, Your Honor, of certain witness statements. I don't know -- I think some are listed on the government's list of exhibits, those witness statements may or may not be admissable. Generally speaking, they are not. If a live witness testifies that live testimony is admitted certainly, but you can not come back and bolster that live testimony by putting an exhibit in in the hopes that the jury will take that testimony -- the written testimony into evidence.

THE COURT: Well, we'll have to rule on that at the time.

MR. KIRKLAND: Well, these are examples of what I'm saying, Your Honor. I have no objection to the authenticity of anything that I've seen, but I think it is what it purports to be in other words. I have no objection to the chain of custody, in my situation it does not matter who has handled or who has possessed these various items. But I'm not waiving any other objections and there might be a variety of those at the time of trial.

THE COURT: Well, I think this is governed by Mr. Walbourn's reasons.

MR. KIRKLAND: I think it is. It might have already been covered, Your Honor, but I want the Court to be aware that there's various considerations.

THE COURT: All right. Now, we've finished with the Defendants, gentlemen?

MR. SELF: If it pleases the Court, let me make a --

THE COURT: (Interrupting) We're finished with the defense except for one thing and that was Mr. Harwell wanted to see the foundation documents from which the summary was prepared.

MR. HARWELL: Yes, Your Honor.

THE COURT: You have the opportunity to do that.

MR. SELF: Do we wish the witnesses to take the stand at this time to authenticate the documents and the foundation documents will be made available later on this afternoon.

THE COURT: I think he said you have all of them here except this one that says his office is at the edge of town?

MR. SELF: Yes, that's the documents he's speaking of.

THE COURT: How many documents -- how many summaries do you have?

MR. SELF: One that he has prepared, Your Honor, and one I think that was prepared from other documents that are listed, Your Honor.

THE COURT: Speaking of two?

MR. SELF: Two underlying documents or one form -- a computerized form. Obviously we're speaking of a lot of documents such as the weight tickets. There's a tremendous amount of material, computerized records of South Carolina Gas & Electric.

THE COURT: Which ones are you prepared to proceed on?

MR. SELF: Any of them, Your Honor.

THE COURT: You're not prepared to proceed on the one where the fellow just said that he had his records in his office?

MR. SELF: I'm prepared to put him on and take the stand and make those records available as required by the rules.

THE COURT: Well, if you put him on you're still going to be leaving something open on that, is that what you're saying?

MR. SELF: He'll be here at the trial, Your Honor.

THE COURT: Well, I was thinking if he could step out now and bring his records here and they can be examined during the noon hour and then maybe a stipulation could be made and that would save putting him on. But if he has someone else here with the records whom you can put on right now -- we have two and if we can resolve one right now, that's fine.

MR. HARWELL: May the Court please there is a proceedings similar to that which you suggested on the second one. The government represents that amongst the exhibits as to the second witness underlying documents from which these figures came from the computation are in there. And they just came in; we have not had a chance to get copies of them and during the noon recess all we need to do is have access to those and satisfy ourselves with a number then that will probably resolve that problem, Judge.

THE COURT: Let's do that.

Now, with that we're through with the Defendants.

Now, what does the government have to say with regards to the Defendants' exhibits?

MR. SELF: Before we get there, I'd like to call Mr. Walter Blackburn to the stand to properly mark for identification and include it on the exhibit list. I'd like to call Walter Blackburn.

MR. BURKE: May it please the Court.

THE COURT: Yes, sir.

MR. BURKE: May I be excused to prepare the necessary documents. We've confered, Mr. Hollen and I with my clients.

THE COURT: Yes.

MR. BURKE: May I be excused to go and prepare those so I can have them read at one?

THE COURT: Mr. Hollen, you can take over in his absence?

Who are the two gentlemen?

MR. HOLLON: Mr. Gayheart and Morris --

MR. BURKE: (Interrupting) Morris Ray Hall.

THE COURT: Will you two gentlemen please stand?

Do you have any objections to Mr. Burke leaving at this time?

MR. GAYHEART: No.

MR. HALL: No.

THE COURT: And you're going to be represented by Mr. Hollon as I understand it.

MR. GAYHEART: Yes.

WALTER BLACKBURN, after having been first duly sworn by the Clerk, was examined and deposed as follows:

THE COURT: Before we start let me explain this. After the Defendants finish then we want to extend you the opportunity of comment on their exhibit list. Once that's completed, then I think we could excuse all the witnesses except for the matter of Mr. Harwell and then this afternoon we could consider the motions which we have in front of us.

MR. SELF: All right.

EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name for the record, please?

A. Walter Blackburn.

Q. Mr. Blackburn, where do

live?

A. Drift, Kentucky.

Q. Are you employed at this time?

A. No, I am not.

Q. Do you hold a position with the United Mine Workers' Local 5967?

A. Yes.

Q. And pursuant to the subpoena that was issued to you by the United States have you brought certain records of that local union with you today?

A. Yes, I have.

Q. And specifically what records have you brought in compliance with the subpoena that was issued to you?

A. I have the recording book which is the Minute Book of the meetings. And also I have the Transfer Book.

Q. What is the Transfer Book, Mr. Blackburn?

A. Well, the Transfer Book is when a member comes into the local union and changes and goes to another local union he has to have a card. So I write up a card to go to the

other union and we see if he's up to date with all the assessments and the dues.

Q. Mr. Blackburn, could I ask you to -- can I ask to see those two documents at this time, please?

A. Yes, you may.

Q. May I see those?

A. They are in my briefcase.

Q. May I get you to get your briefcase at this time?

A. Yes.

THE COURT: Mr. Blackburn take them out and hand them to the Marshall.

You want to hand them to the Clerk so she can mark them for identification.

MR. SELF: May I see the Transfer Book before that, Your Honor. I don't think it's necessary that that document be marked.

Q. Mr. Blackburn, I noticed in the back of the Minute Book is a sheet of paper in there that begins in order to receive financial aid, Local Union 5967 each member must meet the following requirements, and then they're listed there. Is that a document you prepared, Mr. Blackburn?

A. That's the Local Union 5967 committee and myself prepared that document for the people that's out of work.

Q. And when was this prepared, Mr. Blackburn?

A. I don't know the date, but I'd say a couple of months ago.

Q. It looks like it could have been a January or June date at the top.

A. Whatever it says there, that's right.

Q. I can't tell, is that a part of the record from the union?

A. Yes, it is.

MR. SELF: I ask the Court that that also be marked as an exhibit.

Q. The book I have in front of me contains inside some check-off authorization forms 1983, Mr. Blackburn. Those are part of your official books, are they not?

A. Yes.

MR. SELF: Your Honor, I have no intention of marking those, there's one for Mr. Allen, and one for Mr. Jones. I would have no reason for identifying those and I will return them

to Mr. Blackburn. I would like to have the Clerk mark for identification purposes -- purposes for identification of the government exhibit 6U the Record Book and 6V the document in the back of the Minute Book at this time, Your Honor.

THE COURT: All right, let them be marked.

Mr. Marshall, after it's been marked offer it for examination to counsel.

MR. SELF: Your Honor, as to the --

MR. PAFUNDA: Your Honor, if it pleases the Court I believe everyone has stipulated all these matters.

MR. WALBOURN: That's my understanding, Your Honor.

THE COURT: Then the only thing you have to do, Mr. Self, is just identify it for the purposes.

MR. SELF: That's correct, I just didn't identify it for purposes of the record.

I ask also that the Transfer Record be returned to Mr. Blackburn. I don't intend to enter those. Unless defense counsel wants to examine them.

I ask that the other

two documents of 6X and 6V -- 6XU and 6XV, 6U and 6V, those two documents be marked for the purpose of identification, Your Honor.

THE CLERK: Your Honor, the Minute Book or Record Book or Local 5967 has been marked for identification as Government Exhibit 6XU.

The written hand statement which is entitled In Order to Receive Financial Aid From Local 5967 Members Must Meet The Following Requirements has been marked for identification as Government Exhibit 6XV.

THE COURT: And let the record reflect that I think Counsel for the Defendant is -- it's not necessary to show it to them. They have stipulated as to the foundation of these records, is that correct?

MR. HARWELL: It's not necessary.

THE COURT: Anything further?

MR. HARWELL: Just for the record, Your Honor, indicate that we earlier stipulated. My understanding as to my client's stipulation that I made reference to him by earlier statement which was on the list, these are two new exhibits not on the list. Am I making myself clear, Judge?

THE COURT: Yes, I thought they were

on the list, is that what we said, Mr. Pafunda?

MR. PAFUNDA: No, I did not indicate that they were on the list, I stipulated as to the foundation for introduction.

THE COURT: All right, this stipulation only included what was on the list and these two new ones are not on the list. Do you have any objections to the foundation of these two new ones?

MR. HARWELL: Well, I would like to examine the witness and I would like to have before me the for that examination this Minute Book if I might.

MR. SELF: Your Honor, I'd like to clarify, this is one of the exhibits that was provided to counsel -- along with the exhibit list a letter was sent to them on Monday. None of them indicated any objections. If you want me to go through it it's okay --

MR. HARWELL: (Interrupting) Well, I think in three minutes in that book I can establish that which may cause some concern.

CROSS EXAMINATION

BY MR. HARWELL:

Q Mr. Blackburn, I'd like

to ask you a few questions if I might.

When was it, Mr. Blackburn, that you became recording secretary of this local? How long ago?

A. I can't give you that answer. It's right there in that book there.

Q. All right, sir.

A. I don't know for sure.

Q. From the time you became the recording secretary, to the present, are you the one who has kept the Minutes of the meetings as set forth in this book?

A. That's right.

Q. All right, sir. Has anybody else during that period of time made any entries into these Minutes?

A. No.

Q. All right, sir. And from the time you became recording secretary, Mr. Blackburn, until the present have you maintained this book in your possession and custody?

A. Yes.

Q. Haven't given it out to anybody?

A. No.

Q. You kept it, is that right?

A. I gave it out one time when I was before the Grand Jury, to Mr. Self there.

Q. All right, sir. But other than that one time --

A. It's never been out of my possession.

Q. All right. Since you became recording secretary, Mr. Blackburn, whenever that was, have you attended all of the regular meetings of this local?

A. All of them.

Q. Have you attended all of the special meetings of this local?

A. Yes.

Q. All right, sir. Have you prepared Minutes of all of those meetings, the regular and the special meetings, which you've attended?

A. No.

Q. You've not?

A. (The witness responded by shaking his head in the negative.)

Q. Do you recall any

particular meetings where Minutes have not been prepared by you?

A. Well, it was one meeting -- I mean it wasn't actually a meeting, we just got together to give out steps. So, you don't record nothing like that. Other than that, I don't know of any.

Q. All right, sir. Other than that meeting or getting together you have prepared Minutes in this book for all regular and special meetings of that local, am I understanding you, sir?

A. Yes, sir.

Q. All right, sir. Mr. Blackburn, all of the pages in this book are stamped for pagination purposes to show you what page it is up at the top.

A. Right.

Q. Are all the pages in this book or are there some missing?

A. There's one missing.

Q. One page missing?

A. One page was missing in the book and I didn't know it until I sat in on the Grand Jury.

Q. All right, sir. What page is that?

A. I told him I don't -- I didn't know whether the page was missing before I got the book. I didn't even know it was missing at all until they found it.

Q. Until they found it was missing?

A. Until they found it was missing.

Q. All right, sir.

Do you know what page that is?

A. No, I don't know what page it is.

Q. Mr. Self has been kind enough, Mr. Blackburn -- we jump from page 332 over to page 335. So pages 333 and 334 are missing, and it appears that there's been a page cut or torn out. Is that the page you're referring to?

A. That's what they found, but I didn't know nothing about it.

Q. You don't know whether that page was torn out before you got the book or after you got it?

A. I don't even know when it was tore out. It could have been taken out before I got the book or -- that's the only way it could have been.

Q. All right, sir. Then I would take it that you don't know whether those pages were blank or had writing on them, do you?

A. Right.

Q. Let me ask you one or two other questions, Mr. Blackburn, and I will sit down.

Can you tell us, sir, what your policy is when you go to a meeting, be it regular or special, in terms of what you make a point of recording; what you make a point of seeing gets written in this book.

A. Well, in a regular meeting or special meeting the first thing that's done is the President calls the membership to order. Then the next thing that's done is he calls for someone to lead a prayer. So, I go ahead and lead the prayer. From there why we go on with the regular meetings.

Everything that's done and said, all documents and everything, is recorded

by me in this book.

Q. At the top of many of the pages, Mr. Blackburn, there's a date, and in some of those pages that date is written in one kind of pen or pencil and what appears to be Minutes is written in another kind of pen or pencil. How does that -- Excuse me, go ahead.

A. Many times your pencil messes up, and you've got a bunch of them there, and you just reach and grab another one and start writing.

Q. All right, sir. When you're at one of these meetings and you're recording is it your custom and procedure in this book to put down all the folks who are there at the local meeting, or is it your custom to put down just the officers who are present?

A. Just the officers.

Q. Not the rank and file members?

A. No.

MR. HARWELL: All right, sir. Mr. Blackburn, the United States Attorney has seen fit to make this Minute Book an exhibit to tender to the Court, but the Transfer Book he's indicated he's

not going to make an exhibit. May the Court please, given Mr. Kirkland's earlier statement, we would like to see that and we would appreciate it if Your Honor would see fit to tell this gentleman that sometime at his convenience there would be nothing improper about our looking through that.

THE COURT: Mr. Blackburn, let him see the Transfer Book --

THE WITNESS: Any time they can see anything. I want the Court to know that I wanted it from the Court. I didn't want to get mixed up. I wanted to do the right thing.

MR. HARWELL: Sure.

THE COURT: That's understandable.

Q Fair enough. How often, sir, does that local have regular -- not special, but regular meetings? Is that on a monthly basis?

MR. SELF: I'm going to object. Mr. Harwell's getting into discovery.

MR. HARWELL: Sir, I think I can link it up with the next question. I want to be certain as to a prior question, Your Honor.

My next question was going to be; then, therefore, there's nothing unusual when you've got a page February, a page

March, a page April -- there's nothing missing out of this other than that to which the witness testified.

THE COURT: Go ahead.

MR. HARWELL: Okay.

Q. The Judge is saying, sir, you may answer my question. How often, the regular meetings?

A. The second Saturday of each month we have a regular meeting.

Q. All right. And I have asked you this earlier but I'll ask you one more time to satisfy my mind, Mr. Blackburn. You're telling me that from the time you took over as recording secretary in the local that, first of all, you have been to all of the regular and special meetings of this local, is that right?

A. That's right.

Q. And, B, that you are the man who has kept Minutes and you've made Minute entries as to each and every one of those meetings, is that right?

A. That's right.

MR. HARWELL: All right. May the Court please, having that line of testimony I have

no objections and have no desire for Mr. Self to attempt to lay any further foundation on this.

THE COURT: Mr. Bransen.

MR. BRANSEN: May it please the Court; I have no objection, no questions.

MR. WALBOURN: I never had any, Your Honor.

MR. SPENCER: I have no -- no questions or objections, Your Honor.

MR. ADAMS: Albert Adams on behalf of Ranny Blankenship, Your Honor; I have no questions.

MR. ROWLAND: Dan Rowland on behalf of Tim Milan; no questions.

MR. HOLLON: Your Honor, Tom Hollon on behalf of Morris Ray Hall and Pebo Gayheart; no questions.

MR. THOMAS: David Thomas on behalf of Eugene Tackett; no questions.

MR. PAFUNDA: Your Honor, on behalf of Drexil Hall and Austin Moore; no questions.

MR. KIRKLAND: If the Court pleases, William Kirkland, I have no questions.

THE COURT: Thank you, sir. That concluded, what have you to say with regard to the Defendants' exhibit list?

MR. SELF: Let me show this to Mr. Blackburn, Your Honor. I know it may be some inconvenience to him, Your Honor, in us retaining -- there's some other documents in here -- retaining this book. I think the original of this is of such a significance that it be retained as part of the evidence in this case. We will retain it along with the other evidence.

In other cases we have attempted to make copies of documents and return the originals to the author of those, but I think the significance of this document itself is important. I realize Mr. Blackburn may be somewhat inconvenienced not being able to have this book, but I would request that we be allowed to maintain the original documents.

THE COURT: All right, sir. Mr. Blackburn, I'm going to permit the Government to retain this document.

THE WITNESS: Yes, sir.

THE COURT: I'm going to suggest you give to Mr. Blackburn a receipt showing that you've taken possession, and you've got your receipt showing what you've done with it.

MR. SELF: Your Honor, there are

also some loose documents in here dated -- BCLA-UMWAS standardized panel form, which is loose in here. It's dated in June of 1983. I would have no objection to returning those to Mr. Blackburn.

THE COURT: All right.

MR. SELF: I don't need the loose material in here that -- that's not pertinent to this case that he may need.

Here's another one; Dues Receipt of 11/18/82.

THE COURT: Hand that to Mr. Harwell so they can see it before it's returned to Mr. Blackburn.

MR. SELF: I'll be glad to assist Mr. Blackburn in making copies of this if he needs copies of it at any time. As I say, being a good bookkeeper he's got all those names and addresses written down in the front and back.

THE COURT: Do you understand that, Mr. Blackburn? Do you want to come back and look at it, make copies?

MR. SELF: We can work with him during the recess.

THE WITNESS: Any way he wants to do it is all right with me.

MR. PAFUNDA: Your Honor, if it pleases the Court, I'd like the original of the book. I know Mr. Blackburn and I don't know if it's within his authority to release the original of that book to the United States Government, but I'd like the original of that book.

I've viewed it on earlier occasions. I've intended to talk to Mr. Blackburn about it. I'll be glad to make an authentic or accurate xerox copy of the book and tender that xerox copy to Mr. Self.

THE COURT: Let's do this, gentlemen, the Clerk will keep it.

MR. PAFUNDA: Thank you, Your Honor.

MR. SELF: May I respond to that, sir?

THE COURT: Yes.

MR. SELF: Let me state for the record in relation to the exhibits that the Clerk already has two exhibits in this case -- previous exhibits; what's been marked for identification as Exhibits C and D. They are already being retained by the Clerk, Your Honor, and will have to be remarked. I'd ask the clerk that they do be remarked for the purposes of identification as Exhibits C and

Exhibit D; Exhibit C being the .38 Derringer and Exhibit D being the .32 automatic.

They were marked for purposes of the suppression hearing that was previously had before the Court in open court, Your Honor.

Let me make one other statement. I'll ask that Mr. Blackburn be excused.

THE COURT: Any objection to Mr. Blackburn being excused?

MR. ROWLAND: As a point of information, I have wondered how Mr. Blackburn feels about giving up a book that he has so carefully kept during that period of time when that book can just as easily be copied and be brought back to court. I think Mr. Blackburn takes a great deal of pride in his work. I doubt that he really wants to give up that book. And I'm not so sure there's any real need to give up that book if it can be copied and brought back to court at the proper time.

THE COURT: I guess under the best evidence rule the original is the best evidence.

MR. ROWLAND: I'm not indicating --

THE COURT: Since it's here and marked for identification I guess it becomes a part

of the court record.

MR. ROWLAND: So you're saying it is a part of the record now and needs to stay?

THE COURT: Yes, sir.

MR. ROWLAND: Okay.

THE COURT: I don't believe Mr. Blackburn objects too much if he can come back and have access to it and make copies of it, do you, Mr. Blackburn?

THE WITNESS: Well, Your Honor, the only thing I need at the present in that book is the last meeting, that last month. Now, that meeting has to be read to the membership.

THE COURT: Let's do this, before you leave, Mr. Blackburn, the Clerk will have one of her deputies xerox the last page and give you that copy.

THE WITNESS: That -- That would be fine, sir.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Thank you.

MR. SELF: One other matter, Your Honor, with relation to the exhibit list to clarify a question that Mr. Kirkland had with relation to

the documents that were marked for identification as Government's Exhibits AA, BB, CC and DD. These are entitled Original Statements or Redacted Statements of Defendant Tim Milan and Eugene Tackett. I marked those for the purposes of identification, Your Honor, not for the purposes of later introduction.

The original statements of Mr. Milan and Mr. Tackett implicate other Defendants in this case, and because of the group problem that does exist I have prepared redacted statements. Those redacted statements appear as Exhibits BB and DD, and I have copies of those before the defense counsel at this time in accordance with the Sixth Circuit requirements on preparing -- admitting confessions of a Defendant.

I have attempted to redact those to eliminate reference to any other individual, Your Honor.

THE COURT: All right.

MR. SELF: I can make those available to defense counsel at this time, Your Honor.

THE COURT: All right. As far as the foundation or the introduction of those exhibits it isn't necessary to lay the foundation, that'll

be done at the trial.

MR. SELF: Yes, Your Honor. As I said, the officer that took the statements will be here to introduce them. I don't plan on the physical introduction to be laid before the jury on these documents. It isn't because of the nature of the statement of Mr. Milan and Mr. Tackett but because it does contain reference to other defendants. I think I run a grave problem in trying to introduce that as it is, but will in accordance with the dictates of the Sixth Circuit have the agent read the redacted statement as if it were the original statement.

THE COURT: All right.

MR. SELF: Mr. Marshall, if you would -- These are copies of Exhibits BB and DD.

THE CLERK OF THE COURT: Mr. Self, your exhibit list shows that this is four letters of the alphabet A; the original statements of Mr. Tim Milan, is that correct?

MR. SELF: Yes, ma'am.

THE CLERK OF THE COURT: And the original statement of Mr. Eugene Tackett is four letters of the alphabet C?

MR. SELF: Correct.

THE CLERK OF THE COURT: Thank you.

MR. SELF: Your Honor, I have one other group of exhibits. The witness was subpoenaed for nine o'clock this morning and is not here. I'd ask to be allowed to present that after the noon recess. I'd move at this time to my question about the Defendants' exhibits.

THE COURT: Yes.

MR. HARWELL: Might we inquire as to what that is and whether it's on this list or not. We might save some time.

THE COURT: It isn't on the list?

MR. SELF: It is not on the list, Your Honor. These are federal firearms records in relation to purchases of -- the purchase of firearms by the Defendant German Stumbo in February of 1982.

THE COURT: Okay. Well, we can take that up I guess at one o'clock.

Gentlemen, the Clerk tells me she has a copy of Mr. Kirkland's, Mr. Harwell's -- their exhibit lists. Mr. Pafunda, do you have yours?

MR. PAFUNDA: Yes, Your Honor. If it please the Court, I'd like to hand the original to

hand the original to the Marshall to hand to the Clerk and --

THE COURT: Let's go down the list. Mr. Bransen, have you an exhibit list?

MR. BRANSEN: No, Your Honor.

THE COURT: Mr. Walbourn?

MR. WALBOURN: No, Your Honor.

THE COURT: Mr. Spencer?

MR. SPENCER: No, Your Honor.

THE COURT: Mr. Adams?

MR. ADAMS: No, Your Honor.

MR. ROWLAND: No, sir.

MR. HOLLON: Your Honor, Tom Hollon, on behalf of Morris Ray Hall. Mr. Burke provided me with an exhibit list, just a list. I don't have any copies now. I do have the original that I'd tender to the Clerk.

THE COURT: All right. The Clerk can make copies.

MR. HOLLON: Thank you.

THE COURT: Mr. Thomas?

MR. THOMAS: No.

MR. PAFUNDA: May it please the Court, Bernard Pafunda. Yes, I do, Your Honor. I'd like the original -- the arshall to hand it to the

Clerk, as well as a copy for the Marshall to hand to Mr. Self. It contains two -- two items that are handwritten in, the local union charter as well as the Government's Exhibit 5XU. I will furnish other defense counsel with a copy of that.

THE CLERK OF THE COURT: Mr. Pafunda, have you attached exhibit stickers to your exhibits?

MR. PAFUNDA: Yes, I have, Madam Clerk.

THE CLERK OF THE COURT: I suggest you mark them with alphabetical letters.

MR. PAFUNDA: All right. The reason I used numbers, if it please the Court, is to differentiate it from -- I anticipated everyone would be using letters and I thought maybe numbers, given the number of Defendants' exhibits, may be easier.

THE CLERK OF THE COURT: In compliance with the Court's standing order on exhibits, we require alphabetical letters for pretrial purposes.

MR. PAFUNDA: I'll substitute the letters A, B, C, D --

THE CLERK OF THE COURT: Thank you.

MR. PAFUNDA: -- accordingly.

THE COURT: I believe, Mr. Self, you

have stated you stipulated as to Mr. Pafunda's exhibits. You agree to those?

MR. SELF: Your Honor, I will agree to the chain of custody and foundation for Exhibits 1 through 4. I don't agree with 5, that's an exhibit that I'm offering.

If he wants to get his sponsors to that document -- I'm not objecting at this time. I've got a copy of it.

THE COURT: That's been remarked as A, B, C, and D, has it not?

THE CLERK OF THE COURT: I think Mr. Pafunda stated A through E, Your Honor. I think he said he had five, is that not correct, Mr. Pafunda?

MR. PAFUNDA: That's correct, Madam Clerk.

THE COURT: All right.

MR. SELF: I'm not agreeing to E, Your Honor, I've marked that as an exhibit. If he wants to get his own author for that and his own -- own sponsor for that document that's fine. That is marked as a Government exhibit. If he has his own copy of that and cares to put that witness on at this time I will not waive it as to that.

THE COURT: Well, of course, if the

Government places it in evidence it isn't necessary for you to place it in evidence.

MR. PAFUNDA: I understand that, Your Honor. That was the reason for that addition to my --

MR. SELF: To the extent that we choose not to use it I will have no objection to him using the one that we have as his without objection to the chain of custody.

THE COURT: Let me state this. For purposes of trial it isn't necessary if he's introducing an exhibit for you to introduce it. For the purpose of making up a record sometimes it -- it is easier if the exhibit is again placed in the record. That saves having to go back three or four more volumes to look for something that they're speaking of at the time.

MR. PAFUNDA: If it please the Court, Mr. Self is -- has just answered my question. His remark was that if he didn't introduce it at trial he would have no objection to my introducing it without laying the foundation. So, it wouldn't be necessary to go through that here today.

THE COURT: Fine.

MR. PAFUNDA: That was the point of

the addition to the exhibit list.

THE COURT: Now, that leaves us with the exhibit list of Mr. Kirkland and Mr. Harwell.

MR. SELF: With respect to Mr. Kirkland, Your Honor, he has shown me -- shown me previously certain -- an exhibit list and he's shown me the check that was involved and another document that I have no objection to. He can call the appropriate -- call the Defendant essentially and ask him if he's the custodian of the record. I make no objections to that.

The photographs he -- He showed me some photographs previously, and I'm sure he can get a witness on the stand to say that's a picture and it sure is a picture of what I took. So, I won't object as to anything like that, Your Honor.

THE COURT: Foundation, okay.

MR. SELF: As to Mr. Burke, Mr. Burke showed me these copies. There are two documents in question that he has marked for identification, Your Honor, and as -- pursuant to our agreement I agreed he could provide them here today, but the witness would have to be at trial to authenticate them. I would make no

objections at this time.

That leaves us, I think, with Mr. -- Mr. Harwell's list as to Mr. Jones. Mr. Harwell provided me last night, Your Honor, a -- for the first time 51 sets of documents in relation to discovery -- response to our request for reciprocal discovery.

May I state for the record, Your Honor, and I'm sure counsel will correct me, we make this request for reciprocal discovery in all cases, that a Rule 16 Motion be granted. Mr. Kirkland at the time we made the discovery available showed me the photographs that I assume he has marked for identification today. Other than what Mr. Harwell provided me last night, that's the only discovery I've received from any of the Defendants in this case.

We've tried to provide them discovery as soon as we can. We gave them lists from the beginning, made it available to them. I want the record to reflect that other than Mr. Harwell and Mr. Kirkland and the matters that have been placed today in evidence as far as the Defendants' exhibit lists, I have been provided no reciprocal discovery other than those.

MR. WALBOURN: Your Honor, if I may, I didn't provide any reciprocal discovery because I didn't have any. Therefore, I don't think I'm obligated to show him anything.

MR. SELF: As I say, to the extent that it was -- if it was requested discovery and we made a motion for reciprocal discovery, no motion was granted by the Court.

I'm trying to find Mr. Harwell's exhibit list, Your Honor.

THE COURT: All right. Gentlemen, I assume -- I think you understand he's asking you if you've got any documents, if there's been any tests made -- it would be just the reverse of what you asked the Government for; he's asking you for it. Mr. Walbourn says he didn't have any. I'm assuming from the silence in the lack of furnishing any that you gentlemen just don't have any. Am I in error?

MR. SPENCER: You're correct, Your Honor.

MR. SELF: Pardon my delay, Your Honor, I'm trying to coordinate letters and numbers with Mr. Jones' exhibit list.

THE COURT: All right.

MR. SELF: What's been marked for Defendant Edgar Jones as E-1 on behalf of Defendant Edgar Jones and F-1 on behalf of Defendant Edgar Jones -- I have objections to those documents as far as the chain of custody.

One is a summary record of JRM Coal Company. The other is shipment records of the C & O Railroad Company for a period of January 15th, '82.

THE COURT: Have you examined those?

MR. SELF: Pardon?

THE COURT: Have you examined them?

MR. SELF: I have examined them, Your Honor. Mr. Harwell provided me copies of them last night, and we went through these.

THE COURT: You're objecting to the foundation?

MR. SELF: Yes, Your Honor.

THE COURT: Mr. Harwell, are you ready to --

MR. HARWELL: No, sir, I'm not. May the Court please, I'm respectfully reminded of Your Honor's comments about people being courteous and gracious in this matter early on and later too, and I don't want to be unfair to Mr. Self but I came in

here early and I brought a box of documents to Mr. Self. We discussed these. I said, "Mr. Self, I understand you have problems with these things and you need to see the underlying documents. My question is, I don't want to get up before Judge Unthank and not have a witness; do I need a witness." Mr. Self said, "No sir, you don't, Mr. Harwell."

So, I'm not prepared. I'm caught with my britches down, Judge, through no fault of my own.

MR. SELF: Let me make my objection clear.

THE COURT: All right.

MR. SELF: Most of these documents -- Mr. Harwell has indicated that the author of that document, be it a bookkeeper or another individual, will be the individual who's going to be sponsoring the document at the trial. In other words, there's no middleman involved, Your Honor.

THE COURT: Is this a summary?

MR. SELF: A summary that I do have questions with.

THE COURT: Is the list -- Is the exhibit a summary or is this the original record?

MR. SELF: It has been led to believe

to me that one of them is a summary, Your Honor.

THE COURT: What is it, Mr. Harwell?

MR. HARWELL: May the Court please, it is a summary, and I have told Mr. Self that subject to my ability to get the underlying document I not only will get them but I'll copy them and provide him with copies of them.

The second document -- exhibit to which he has problems is F-1. Those are shipment records.

I have checked into that since he and I met yesterday, and my understanding is that the originals of those are at the C & O Railroad. Mr. Self had some problem with those documents because I only had copies.

THE COURT: Uh-huh.

MR. HARWELL: I intend to confirm my understanding, that is that they are with the C & O Railroad, and -- and have so advised him; may the Court please.

MR. SELF: I have -- Let me explain this to Mr. Harwell. As long as the original documents are produced here at trial by a records custodian in the case of those C & O documents then I would waive any objection I would have for the

purpose of pretrial to any chain of custody of business records, and that's as long as I get a chance to examine the custodian of the records at trial. The same goes with E-1 and F-1, Your Honor; as long as the author of those documents are here at trial and the underlying documents are made available prior to trial then I am -- I will raise no objections at this time to those being part --

THE COURT: You don't have any question as to C & O's records being the regular course of business records, but you want to examine the originals to authenticate that the copies are true copies of the originals?

MR. SELF: Exactly, Your Honor. I assume that Mr. Harwell has probably provided us his copies of the records of JRM Coal Company.

THE COURT: That's no problem.

MR. HARWELL: No, sir, I don't anticipate it to be.

THE COURT: We have no problems with you examining the underlying documents for E-1.

MR. SELF: He's indicated there was no problem, Your Honor, and I explained to him the Court's procedures. I don't mean, in a sense, for him to be left without a witness today but I have

to make my record as far as these.

THE COURT: Okay.

MR. SELF: That's the same with essentially all of these documents except for the ones that I'll note.

I don't want to waste the -- waste the middleman's time or the jury's time by a middleman having to be here and wait just to say I gave it to so and so, and he gave it to so and so.

THE COURT: Other than E-1 and F-1, what objections do you have?

MR. SELF: One other document, I think, Your Honor. Document N-1 is a purchase order of JRM. Now, that's a long document as opposed to the purchase orders themselves.

THE COURT: Just a moment. Mr. Self, when you lean down and talk the voice is getting --

MR. SELF: I'm sorry. I apologize to the Court Reporters.

The document that's been labeled N-1 is labeled as purchase orders of JRM for February and March, 1982. The document I was shown is a ledger sheet, Your Honor, of -- it's much like a check register listing what the number of

the purchase order is; who it was to. It is not the actual purchase orders.

I would have no objections as long as the custodian or the author of that document is here at trial and I can question the author of the log.

As far as the purchase orders themselves, they -- It's a purchase order log and it's not the purchase orders themselves.

THE COURT: Are you requesting the opportunity to examine the --

MR. SELF: The underlying documents, Your Honor.

THE COURT: The underlying documents.

MR. SELF: Yes, sir.

MR. HARWELL: We have agreed to Mr. Self's request as to underlying documents being reviewed on N-1.

MR. SELF: There are certain documents on Mr. Harwell's exhibit list that may be duplicates, and that's not my concern at this point. He may have certain reasons for different ones. Other than that, Your Honor, with the understanding that some of those records are government records, I will not require the government custodian of those;

to the extent of Articles of Incorporation to be present at trial to authenticate those. He can put them on through an individual involved with that corporation.

I don't have any objections to -- To have the Secretary of State bring Articles of Incorporation, I don't require that, Your Honor.

I do request the opportunity, as I've indicated to Mr. Harwell, that the extent -- before the documents be introduced that the -- a sponsor or someone who is an author substantiate the authenticity of those; and he's indicated essentially who they are. He'll be the witness that -- that's putting the documents in rather than -- than documents being shown to -- told to someone -- some other witness who may have seen them.

I think Mr. Harwell understands my position and where we're going. Other than that -- That's what objections I have, Your Honor.

THE COURT: Well, I assume what he puts in evidence you'll want him to establish the relevance of.

MR. SELF: Yes, Your Honor.

THE COURT: All right. Gentlemen, now I assume at one o'clock we're going to be ready to start on the motions.

MR. HARWELL: Judge, may I make one other comment for purposes of the record, and that is that I can state to this Court that in regard to those objects, documents and bits of physical evidence that we intend or even are contemplating at this point in time using as part of our case in chief, that we have provided full copies of those to the Government. And I state to Your Honor that as of this point in time we believe we're in total compliance with the Court's order of reciprocal discovery.

I also say very candidly, Your Honor, we are not representing that we will as a matter of fact attempt to introduce everything on the exhibit list. As I told Mr. Self, we were -- we were operating under an abundance of caution and if there was a significant possibility it was listed, Judge Unthank.

THE COURT: Gentlemen, it's understood. It's a court tactic where you usually get up at the end of a trial and say, now, they said

so and so to you in the opening statement, and look at what they haven't done.

MR. SELF: Your Honor, could I ask the Marshall to inquire as to the representative of the Thomas Herford Company to see if he has arrived yet?

THE COURT: Yes.

MR. SELF: Mr. Marshall, would you call the halls and see if Mr. Thomas Herford or a representative of the Thomas Herford Company has arrived yet.

MR. WALBOURN: Your Honor, if I might, on a matter that doesn't have anything to do with the evidentiary matter. If we don't complete or finish today are we coming back tomorrow? Some of us have motel accomodations that we need to either confirm or change over the lunch hour.

THE COURT: Well, I am hopeful we'll finish today.

MR. WALBOURN: Okay.

THE COURT: I'm assuming we'll finish the evidentiary matter and we can excuse all those witnesses that were brought in on the evidentiary matter. Let's get that settled and then -- then we can proceed with the motions.

MR. WALBOURN: Okay.

THE COURT: How many motions have we, Madam Clerk, numerically? Give me a number.

THE CLERK OF THE COURT: Twenty-one, Your Honor.

THE COURT: Twenty-one.

MR. HARWELL: A lot of those, Judge, are housekeeping. Your Honor had said earlier to file a written motion to follow up a verbal one.

THE COURT: Okay. So we don't have twenty-one.

MR. HARWELL: Not to be heard, Judge.

THE COURT: Well, if we've got ten motions I -- hopefully we'll finish those this afternoon.

MR. WALBOURN: I'm going to check out and cancel reservations and I may be parked on the courthouse steps tonight, but I run that risk.

MR. THOMAS: Mr. Walbourn can stay with me.

MR. SELF: The witness is here; at this time we'll proceed with him and get him out of the way.

THE COURT: All right.

MR. SELF: David Herford, Your

Honor.

DAVID HERFORD, after having been first duly sworn by the Clerk, was examined and deposed as follows:

EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name.

A. David Herford.

Q. Mr. Herford, how are you employed?

A. I run the Thomas Herford Company.

Q. What is the Thomas Herford Company?

A. A sporting goods store.

Q. Mr. Herford, pursuant to a subpoena that was issued on behalf of the United States have you brought with you certain federal firearms records dealing with the period on or about February, 1982?

A. Yes, I do.

Q. And have you brought with you essentially the documents appearing before

and after that specific record book?

A. I have.

MR. SELF: Mr. Marshall, if you would, would you hand me those record books at this time.

Your Honor, let the record reflect that this is the first time I've seen those to date.

THE COURT: All right.

MR. SELF: Madam Clerk, I would ask that the first document here be marked for identification as 6W's.

THE CLERK OF THE COURT: Excuse me. Mr. Self, you previously asked that these that were previously marked at an evidentiary hearing be also marked as an exhibit, which we did not do, the Derringer and the .32. These, sir, were previously marked as Defendants' Exhibits during I think questioning by Mr. Pafunda at a previous evidentiary hearing.

MR. PAFUNDA: That's correct, Madam Clerk.

MR. SELF: I'd request that the .38 caliber Derringer be marked as Government's Exhibit C.

THE COURT: Whoever gets it into evidence first is going to be the successful one.

MR. PAFUNDA: And I believe to answer the Madam Clerk's next question, I believe number two would be Government's Exhibit D.

THE CLERK OF THE COURT: Yes, the .32 Derringer will bear both the Defendants' Exhibit sticker as One and Government's Exhibit sticker C; and the .38 will bear the Government Exhibit D and Defendant Drexil Hall Exhibit Two.

MR. PAFUNDA: I believe that's backwards. The Derringer you mentioned twice.

THE CLERK OF THE COURT: I'm sorry.

MR. PAFUNDA: The .32 caliber automatic pistol --

THE CLERK OF THE COURT: The Derringer has been marked as Defendants' One and Government C, and the .32 as Defendants' Exhibit Two and Government D.

MR. PAFUNDA: That's correct, Madam Clerk.

THE CLERK OF THE COURT: Thank you.

The first firearms transaction records, Your Honor, will be Government Exhibit 6XW.

CONTINUED EXAMINATION

BY MR. SELF:

Q. Mr. Herford, you've also brought the records appearing immediately before those records and immediately appearing, appearing to me, after those, have you not?

A. Yes, sir.

MR. SELF: Could I ask counsel -- Your Honor, I don't intend to mark those for identification, but I do want to provide them to counsel. They can review them and see that document. It is the first document in that sheet. It falls in line with these others, if they wish to see them.

Mr. Marshall, if they so desire to examine those.

THE COURT: My understanding is you're only going to introduce into evidence the first one. It's for purposes of explanation today to counsel to examine the other three volumes to show they have no bearing whatsoever.

MR. SELF: If they want to examine them to see that they do -- to see that that document -- there is a -- There is a date discrepancy in that document, Your Honor, and that's

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why we're doing that.

Q. While they're doing that, Mr. Herford, the other looseleaf document that you brought to Court today, what is that?

A. Well, we transfer those -- those from those federal books -- Well, let's go back.

When I received a gun from a -- from like say Remington then I enter it in that book; the date I got it and its description and who I received it from.

Q. Okay.

A. Then when it's sold, which is entered into that federal book, we come back and enter it and put who it was sold to.

Q. And are there records in this book relating to the sale to German Stumbo of weapons on about the 16th of February, 1982? Are they in this brown book here?

A. There's a paperclip showing that page.

THE COURT: Who represents Stumbo?

MR. KIRKLAND: I do.

THE COURT: I guess you'd be the one that'd have an interest.

MR. KIRKLAND: I certainly want to look at the records when I get an opportunity, Your Honor.

Q. There's one entry on this page, Mr. Herford, with the star beside it. Did you make that star beside it?

A. No, the Clerk did that yesterday.

Q. At --

A. I assume he did it in the presence of -- I can't recall this man's name.

Q. Mr. Eddie?

A. Huh?

Q. Mr. Frank Eddie?

A. Yes, that's his last name.

THE COURT: Gentlemen, let's do this. If you will, hand that to Mr. Kirkland, and then after Mr. Kirkland's seen it he can hand it back to Mr. Spencer and go down. It's his client at this point. We'll give him priority.

MR. SPENCER: He may need it, Judge.

MR. SELF: Madam Clerk, may I ask that this page be marked for identification purposes as the next Government's Exhibit.

THE CLERK OF THE COURT: The one that has the asterisk or the star on it, Mr. Self?

MR. SELF: Yes.

THE CLERK OF THE COURT: The page within the notebook which is marked at the top as Sold and has an asterisk beside the date of 2/18 has now been marked for purposes of identification as Government's Exhibit 6XX.

Q. While they're examining those, are you the custodian of these records?

A. Yes.

Q. What is your position with Thomas Herford Company?

A. I own it.

Q. And are these records that were maintained by you as custodian of the records in the normal course of business of Thomas Herford Company?

A. I didn't hear you.

Q. Excuse me. Are these records that were maintained by you as the custodian of records in the normal course of business of Thomas Herford Company?

A. Yes.

Q. And were the entries that

were made in those records made on or about the time the event occurred in your business?

A. You mean -- Were they transferred over to the looseleaf notebook?

THE COURT: Did you make these entries at or about the time the event occurred, which you recorded?

Did you write down --

THE WITNESS: Well, of course, that federal book was filled out the day that the gun was purchased.

THE COURT: Fine.

Q. That's the ATF form 4473?

A. Yes.

Q. Is it your testimony that the entries that were placed thereon were placed thereon at or about the time and date that appears on that form?

A. Yes, sir.

Q. And the looseleaf notebook page that's been marked for identification, were the entries made therein, with the exception of the asterisk that's on the one page; were the entries made on those pages at the date or on the date that the firearm was sold?

A. No. We usually wait until we have some slack time and then transfer them over to the looseleaf book.

Q. And those -- The information that goes into the looseleaf is taken from where?

A. From the federal book.

Q. The form 4473's?

A. Right.

Q. Is that the normal course of business to then place those in your looseleaf notebook?

A. (The witness responded by nodding his head in the affirmative.)

Q. And were those then made-- the entries in the looseleaf notebook made in the normal course of business of the Thomas Herford Company?

A. Yes.

Q. Is it the normal course of business to make such records?

A. Yes.

Q. And have those been maintained by you since the records were originated?

A. Yes.

Q. And have you made any alterations, deletions, or additions to those records?

A. No. Now, of course, there was -- there was a wrong date entered there, and I changed it, and I wrote -- wrote wrong date.

Q. When did you change the dates?

A. Well, when this -- What is this man's name again?

Q. German Stumbo?

A. No. No, I don't mean that.

Q. Frank Eddie?

A. Yes. When he was in the store, I guess about a month ago, we were examining these records, and it became apparent then that my salesman had entered in the book wrong.

Q. The records that follow thereafter indicate the transaction was in February of '82 rather than February of 1981, correct?

A. I think a lot of times people -- I know I do myself, you know, when we change over to a new year I'll sometimes go ahead and use the old year, you know. So I think that's

what happened in that case.

MR. SELF: No further questions of Mr. Herford, Your Honor.

I ask the one page be marked -- be taken out and retained and marked for identification as Government's Exhibit 6XX.

THE COURT: Mr. Kirkland?

MR. KIRKLAND: I have no questions, Your Honor.

THE COURT: Do you have any objections as to the Court's findings that these records are records which were made by Mr. Herford in the regular course of business?

MR. KIRKLAND: I have no objections to that determination, Your Honor.

THE COURT: All right.

MR. SELF: I ask that the one page be removed and maintained.

THE COURT: Do you want the entire document, Mr. Kirkland, or do you object to one page being taken from it?

MR. KIRKLAND: I have no objection to taking the relevant pages out.

THE COURT: All right. Let me suggest this. If you will, take the page before that

page and the page after.

MR. SELF: That would be fine.

THE COURT: We'll have the three pages here. Now, of course, when you place it in evidence -- I'm doing that out of an abundance of caution.

Do you want all three pages or do you want the one page only, Mr. Kirkland?

MR. KIRKLAND: I have no suggestions. We have no objection doing it however the Court wants to do it.

THE COURT: All right. Get the three pages.

THE CLERK OF THE COURT: I removed the page preceding the page marked for identification and the page following the page, Your Honor.

THE COURT: All right. Let me suggest this. You retain the originals and let me suggest that you make copies of those and give to Mr. Herford so he can put copies back in his records until such time that the originals may be withdrawn and copies substituted in place thereof.

MR. SELF: Mr. Herford, you correct me if I am wrong, but with the large thick notebook I don't think it's necessary -- if he wants copies

of them we'll assist the Clerk in making those, but those are federal firearms records that the ATF knows where they're at and can come look at them.

THE COURT: I was thinking of the three looseleaf pages.

MR. SELF: Yes, sir. I have no further questions of Mr. Herford, Your Honor.

THE COURT: Does anyone have any questions on Mr. Herford? None. All right, Mr. Herford.

(Witness excused)

THE COURT: Anything else?

MR. SELF: Your Honor, at this point in time, except for additional documents that may evolve, I have no further documents to mark for purposes of identification at this time.

THE COURT: Gentlemen, is there any objection to any of these witnesses being excused?

MR. SELF: With the exception of Mr. McCann with regard to the documents that Mr. Harwell has an objection to.

THE COURT: Fine.

MR. SELF: A lot of these witnesses have planes to catch, Your Honor.

THE COURT: That's what I was

thinking. All right, gentlemen, the remaining gentlemen except for the one we've spoken to may be excused.

This court will be in recess until one o'clock, and then we'll proceed to pick up the motions.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

RECEIVED JAN 0 6 1984

UNITED STATES OF AMERICA

-vs-

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, MORRIS RAY HALL, VAN B. PATTON

*** *** ***

PRETRIAL HEARING

*** *** ***

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: DECEMBER 15, 1983

VOLUME II

Dale Soergel Moore Shaw & Associates
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LOUISVILLE, KENTUCKY 40206
(502) 587-6006

A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
P.O. Box 845
Federal Building
Lexington, Kentucky 40507

RANDALL KEHRLI, ESQ.
Department of Justice
P.O. Box 571
Ben Franklin Street
Washington, D.C. 20044

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.
P.O. Box 845
Prestonsburg, Kentucky 41653

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead:

E. J. WALBOURN, III.
P.O. Box 68
Ashland, Kentucky 41105-0068

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.
P.O. Box 127
Prestonsburg, Kentucky 41653

For the Defendant Eugene Tackett:

DAVID THOMAS
101 Court Row
Nicholasville, Kentucky 40356

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.
P.O. Box 318
Beattyville, Kentucky 41311

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.
P.O. Box 752
Pikeville, Kentucky 41501

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, JR., ESQ.
1112 Main Street
Jackson, Kentucky 41339

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.
P.O. Box 1176
Paintsville, Kentucky 41240

For the Defendant Drexil Hall and Austin "Bo" Moore:

BERNARD PAFUNDA, ESQ.
Deskins & Pafunda
P.O. Box 1199
Pikeville, Kentucky 41501

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.
P.O. Box 606
Louisa, Kentucky 41230

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

WILLIAM D. KIRKLAND, ESQ.
300 State National Bank Bldg.
P.O. Box 1100
Frankfort, Kentucky 40602

*** *** ***

(Met pursuant to luncheon recess at 1:00 P.M., when the following was heard.)

THE COURT: Let's see. Madam Clerk, what are the pending motions?

Well, first, let's see. Mr. Harwell maybe might have categorized these motions.

MR. HARWELL: If the Court please, I will take a shot at it. I am not sure I will be totally accurate, but I think I can be relatively accurate.

If the Court please, first off the list is the Court has under advisement motions of Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland, and Raymond Hall for order of suppression by reason of the Court and under a provision of tortuous circumstances. That was continued when you were here on the 18th of November by the Court.

THE COURT: All right. Then here is what we are doing is this:

The Court, having been advised that it is not going to use this according

to evidence, the motion is overruled.

MR. SELF: I thought we were using it at that point as a case in chief, your Honor. As I advised the Court at the time, it may be - - those tapes may be played in rebuttal or on cross examination.

THE COURT: At this point, I overrule the motion. At the point where it comes into evidence, I may rule because of other circumstances, how they were, such as that.

MR. HARWELL: May the Court please, in addition to that, Defendants, Drexil Hall, Austin Moore, and my client, Edgar Jones have filed separate motions in regard to additional peremptory challenges.

The Court has likewise taken that under advisement.

THE COURT: All right. Now, I have in a sense - - the motion - - I am not saying it is overruled. I am not saying it is granted. But I will state - - have the Clerk state how the Court has allocated the number of challenges the Court will allow, and then have - - let the Clerk tell you.

THE CLERK OF THE COURT: Yes, your Honor. Per your instructions, each Defendant will be given

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two challenges as to the panel of petit jurors individually, two per Defendant; and they were given ten challenges collectively.

The United States, as to petit jury panel will be given eighteen challenges.

Each party, both Plaintiff and Defendant, will be given an additional challenge as to the selection of alternates, and there will be a total of four alternates selected.

MR. SELF: Is there one for the defense collectively and one for the United States collectively?

THE COURT: I believe there is going to be - - we are having four alternates. That would be four additional challenges.

Instead of having the ten, they will have fourteen. Isn't it two each?

MR. SELF: You are speaking only as to the alternates?

THE COURT: They are allowed two each per Defendant, plus ten collectively. Now, that is for the regular panel.

They are going to have four alternates. They will be allowed four collective challenges for the alternates.

MR. SELF: The United States is given how many as to the alternates?

THE COURT: They will be given four additional for their alternates.

MR. HARWELL: May I proceed, Judge.

THE COURT: Yes, sir.

MR. HARWELL: May the Court please, the initial pretrial motions filed in this matter on behalf of Mr. Edgar Jones, we have filed motions and fairly exhaustive briefs in regard to dismissing, or the alternative, requiring that the government elect in regards to counts two, three, four, and five. The Court took that under advisement; and though it is not on the minute entry, my recollection is your Honor indicated that he would advise us of the ruling either now or on January 9th, Judge.

THE COURT: I will now. I will overrule the motion.

MR. HARWELL: All right, sir. Both as to ordering the government to compel and to dismissing, Judge?

THE COURT: Yes, sir.

MR. HARWELL: All right, sir.

If the Court please, next

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on my list, and I am actually reading from Ms. England's list at this point. It is a motion by Ranny Blankenship joined by Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland, and Raymond Hall in regard to whether the prosecution should be barred under the theory set forth in the United States versus Enmons.

My handwritten notes on that reflect, if the Court please, that at one time in the mini-hearing, you indicated that that was a matter addressed by Court and possibly the Jury during the course of the trial.

That you didn't intend to take it up before that. That is my written note. I haven't reviewed the transcript to confirm that, your Honor.

THE COURT: All right. Let that motion per se be overruled at this point.

MR. HARWELL: All right, sir.

THE COURT: I assume from the conclusion of Plaintiff's motion - that will be renewed.

MR. HARWELL: Yes, sir, I suspect that would be true, your Honor.

MR. SELF: May I ask for further clarification. The Court therefore indicated in

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pleadings as alleged are such that a motion to dismiss based on the Enmons' case at this time is overruled based on the pleadings themselves.

THE COURT: Yes, sir.

MR. SELF: They are sufficient?

THE COURT: Right.

MR. WALBOURN: My recollection, your Honor - - E. J. Walbourn - - is that the Jury, of course, be given Enmons' instructions at the appropriate time.

THE COURT: Right.

MR. KIRKLAND: Your Honor, the Enmons' motion, bearing in mind - - I am not sure I understood.

Are you saying in your overruling my motion that the pleadings themselves were sufficient to overrule Enmons, or that after having heard testimony at the mini-trial of one week's duration that you are overruling.

THE COURT: I don't think I want to get into the mini-trial, what I heard in mini-trial.

MR. KIRKLAND: Are you then saying that you are overruling Enmons - - Enmons' motion - -

THE COURT: (Interrupting) Well, let's just say this: I will take Enmons under advise-

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ment until the conclusion of the evidence.

MR. HARWELL: May your Honor please, in addition, I reflect that there is still hanging in the bosom of the Court the question of co-conspirators' statements pursuant to our motion, that is of Edgar Jones; and I think some of the other Defendants for discovery and inspection.

If you recall, that was briefed and argued in the Court and entered into a colloquy with counsel as to whether we would, under Rule Sixteen, allow the co-conspirators' statements giving the exception to the hearsay rule and the agency principle involved in that.

I don't believe your Honor has ruled on that at this point.

MR. SELF: If it please the Court, it went to the - - we have attempted during the course of the mini-hearing, to bring forth the majority of those statements.

That was the purpose of the mini-hearing. Now statements that may have been made to agents, to grand jurors, whatever, are not - - may be statements of co-conspirators, but they are not within the co-conspirator section of the rules, and therefore not agency binding on the individual.

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Therefore the mini-hearing satisfied that statement I would assume to the majority and extent that those statements exist.

MR. HARWELL: Well, I can't respond, Judge. We may or may not have. I don't know what the government's files consist of. I will have to rely on your Honor in that aspect. I don't know whether that is all of them or not all of them.

THE COURT: Are you recitating to the Court that those statements were disclosed in the mini-hearing?

MR. SELF: Your Honor, I am stating to the Court that that is the majority of them that I am aware of. There may be statements made by co-conspirators to other individuals that we have learned of since then or may learn of before the trial.

But we offered those for the purposes of the mini-hearing. And I think that satisfies the statements that he is requesting.

Otherwise, your Honor, we still object to it as not being appropriate.

THE COURT: Well, of course, the Court finds that under the theory of agency or such as

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that, if you have to give your own statement and the other fellow is treated the same as you, then they ought to have to reveal that, too.

I think that perhaps, as he said, the majority of them have been given.

Now, let me state this: When you become aware of something which wasn't disclosed at the mini-hearing, at that time you become aware of it, you advise the appropriate ones of that.

MR. SELF: Yes, your Honor.

MR. HARWELL: Thank you, your Honor.

May the Court please, there was an oral motion made in open - -

THE COURT: (Interrupting) I guess succinctly stated, it might be this - - and I don't want to be biblical and bring in the Bible.

But it says me and the father are one. Under the co-conspirators thing, you and the co-conspirator are considered as one. That is the theory of the Court.

If you made a statement and he makes a statement, and vice versa, he would be entitled.

MR. SELF: I view that as statements

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made during the course of the conspiracy. But a recitation of a statement after the conspiracy, after the course of it, a statement by - - I will give the Court an example.

A statement by a co-conspirator to the Grand Jury where he tells what all - - essentially what he told us about, am I required to furnish that?

THE COURT: If it wasn't made in the course of and in the furtherance of the conspiracy - - if it is a statement made by a co-conspirator made in the course of the conspiracy or the furtherance of the conspiracy, he is entitled to it.

MR. SELF: Yes, your Honor.

MR. HARWELL: If it is a statement by A that is binding on B, it is a co-conspirator's statement in the furtherance of and during the course of, we get it.

THE COURT: Right.

MR. HARWELL: If it is another articulation down the road outside of those parameters, I assume we don't get it.

THE COURT: Right. You get it if it is during the conspiracy.

MR. HARWELL: Yes, sir. But I am

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referring, your Honor, to that group as a sequence.

Judge Unthank, we have filed a motion recently asking leave of Court to file additional pretrial motions; and simultaneously therewith, we filed additional pretrial motions.

But I would like to make reference to one of those; and that is the one where we asked the Court to direct the government to see that all agents maintain all of their notes and preserve the investigator's notes.

Your Honor ruled on that in open Court. I don't think it needs to be addressed here given the fact that you have already directed them to do that.

MR. SELF: Your Honor, the agents have been directed to preserve any and all notes that as of the time - - at the time that the order of the Court came down. And all supervisors and all are aware of it and are preserving such.

MR. HARWELL: Judge, in our written motion, unlike the one made orally to this Court during November 14 and November 18, we also ask that the government be directed by the Court to Produce all notes that have any exculpatory materials, and all notes reviewed exculpatory material, and if

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there is any question in regards to exculpatory material, they submit to the Court for in camera inspection such ambiguous notes or memorandum.

We also ask that the Court direct the government to file a written response to our initial Brady request so that the record stay clear on that, Judge.

THE COURT: Now, of course, I don't think this Court has to order them. I am sure if the U.S. Attorney has anything exculpatory, he would turn it over.

MR. SELF: Yes, your Honor.

THE COURT: That there is anything in question, the Court will consider it in camera.

MR. SELF: I think that has always been the procedure. That during the course of the trial, if it becomes aware to the Court that something is exculpatory has been withheld by the United States, the United States as such will sanction the Court to withhold it.

THE COURT: Mr. Harwell, I think that is a standing order of the Court and accepted by the U.S. Attorney.

Now, there is a second part of that.

MR. HARWELL: Judge, the second part of that was to - - to require the government to file a written response. Or actually the third part was to require the government to file a written response to the Brady request that was made so that the record might be clear on this.

THE COURT: Well, isn't this sufficient to you?

MR. HARWELL: Judge, I guess it is. I did that, keeping in mind that when oral motions have been made in the Court, your Honor has often-times asked that we please do so in writing.

THE COURT: Right.

MR. HARWELL: And in the same tenor, that was the suggestion that the government file a written response.

THE COURT: Haven't I ruled on the Brady ? I think somewhere in writing, isn't there an order sustained as to the Brady material. I believe the record will reflect one of the initial discovery motions.

We have - -

MR. HARWELL: (Interrupting) The question of when was never specified, your Honor.

THE COURT: Well, here is what I am

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thinking.

I am thinking maybe Mr. Spencer's client, Mr. Rowland's client, or someone's -- they filed -- each of them have filed a discovery motion wherein your responses admit, deny, admit and deny -- I think somewhere in there that this exculpatory matter has been covered.

MR. SELF: I think, your Honor, to the extent that any material that it has become aware of or any Brady material that we would have on any Defendant, we would make that available at the appropriate time.

THE COURT: All right. Well, Mr. Harwell is trying to make up the record.

MR. HARWELL: Judge, might I respectfully ask the Court to ask the U.S. Attorney to define the appropriate time on that, his thoughts as to an appropriate time?

He just says he is going to give the Brady material, and I would be interested in, your Honor, what his thoughts are on time because the Defendant might probably very well want to address the Court for relief.

THE COURT: I assume he is just stating that, as all of us do when we look over at the Jury

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and say ladies and gentlemen of the Jury; and part of this time there is only gentlemen sitting. It is just stated as a matter of fact.

I would assume that if he has some Brady material, that he has already turned it over.

MR. SELF: No, your Honor. The standing procedure of the Court on Brady has to made available - - some Courts even say in the middle of the trial. If I may have a moment, I will discuss it, and Mr. Harwell - - let me find out if there is anything they don't know of already.

May I have just a moment here?

THE COURT: While you are discussing it, let me state this, gentlemen: If he is going to use any Brady thing in his defense, he is certainly entitled to know about it in time to use it.

MR. SELF: We are coming on the holidays. I would think the first week in January would be sufficient. The week before trial. We are not talking about any extensive material, your Honor.

We will attempt to turn that over no latter than the Tuesday before trial. We

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will start working on it.

MR. HARWELL: January 3.

MR. SELF: Yes, your Honor. If we start working on it, we may have it next week. Keep in mind, your Honor, that Brady material as defined by the Court is material which is not otherwise available to the Defendant.

I think that is the interpretation that has been placed on the Brady material.

MR. HARWELL: That is true, your Honor; although I think the use and the Court used, and I was told this morning to have an abundance of caution usually is the normal procedure and well advised.

And if the government has any doubt about the availability and if they have got Brady material, they turn it over.

MR. SELF: Yes, your Honor.

MR. HARWELL: I think I understand the Court's position.

Judge, on Ms. England's list, there is noted as having been taken under advisement during the mini-hearing November 14th or 18th, oral motions of Defendant, Drexil Hall and Austin "Bo" Moore to suppress.

And that the Court review the notes of Agent Frank Eddie on an in camera basis.

And that was taken under advisement. I don't have a standing on that.

THE COURT: Okay. Overruled.

MR. HARWELL: All right.

MR. PAFUNDA: May it please the Court, Drexil Hall and Austin "Bo" Moore are my clients. And just for the record, I am Bernard Pafunda on their behalf.

For the record, Agent Eddie as well as Mr. Self have represented to me since that time, and in fact this morning, that there is in fact no statements of Austin "Bo" Moore. Is that a correct representation?

MR. SELF: To my knowledge, your Honor, that is a correct representation. As far as the agent - - the notes of Mr. Eddie, I think we have provided those to all counsel, your Honor.

MR. HARWELL: May your Honor please, next on the checklist for addenda is an entry that your Honor took under advisement during the week of November 14 and 18, an oral motion by Defendant, Linville Mosley to dismiss.

THE COURT: Let me see. Let's pass that, and let's keep that remaining.

MR. HARWELL: All right, sir. May the Court please, you also directed counsel to prepare briefs concerning the conspiracy issue; more precisely, the length or duration thereof.

Mr. Self and I have talked. I don't have a brief at this time, your Honor. Mr. Self doesn't. The truth of the matter is, the transcript is some thousand pages more or less. And we are pretty far along, and we'll have that in the Court's hands in the very near future as far as we are concerned.

And I think Mr. Self anticipates a reasonably near term of delivery of his brief on that issue, but I can't speak for them.

THE COURT: I will rule on that question.

MR. SELF: As to a specific time, your Honor, we are willing to have the Court set a specific time.

If the Court wishes to set a specific time, because I, like Mr. Harwell, would like to move so that we will know whether

certain evidence is going to be suppressed as not being within the scope of the conspiracy prior to the time the Jury is impaneled on this case.

THE COURT: What about - - what about the 27th of December.

MR. SELF: We will have it.

MR. HARWELL: That is agreeable to us.

THE COURT: Are you going to be able to produce that?

MR. SELF: I will be up here for the beginning of that trial. Whether I will be here for the duration I don't know. But I will be here at least for the selection of the Jury and possibly part of it.

MR. WALBOURN: Your Honor, if I might - - excuse me. E. J. Walbourn. The original order on dealing with additional memorandums concerning the conspiracy was dealing with statements made after some point in time.

THE COURT: Right.

MR. WALBOURN: Subject to that order, the Court withdrew its previous order in which they found there was a conspiracy.

Exactly what you want the memorandum to address.

THE COURT: The memorandum should address the - - I guess the possible relevance of statements. I think that was after the 22nd of February, wasn't it?

MR. HARWELL: Your Honor, you earlier referred to the 22nd versus the 26th, for the ending period, having focused and articulated the 15th of February as the beginning period.

I think the Court's question was what is the opinion of counsel versus the ending date being 22 February and 26 February.

THE COURT: Well, let's say - - let's hypothesize this thing. In the event a determination is made that the conspiracy ended on what date, the conspiracy if any?

MR. WALBOURN: I guess that is my concern, your Honor. The Court, from the bench, ruled that there existed, but was unclear of the ending date.

That opinion and order was subsequently withdrawn.

Are we back to the point of debating whether or not a conspiracy starting at any point ever existed?

Is that still for determination?

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THE COURT: Let's consider it two ways. One - - let's hypothesize and consider the two choices: One, if there is no conspiracy; and the other, if there is a conspiracy. Will that resolve the problem?

MR. HARWELL: Yes, sir. And if as a matter of fact there is, a little A under that would be the ending date, the 22nd or the 26th of February.

THE COURT: That is correct.

MR. HARWELL: I understand.

If the Court please, there is an ambiguity by my interpretation - I may be wrong - in a regard to motion that was filed and was earlier ruled upon by the Court.

That motion was filed on behalf of our client, Edgar Jones. And that requested the Court's approval for inspection and copying of Grand Jury selection materials.

On October 20th, the Court entered a written order providing that the motion of Defendant, Edgar Jones, quote, for administrative review considered by the Court as a request to review the records of Grand Jurors occurring when returning the indictment was sustained.

And the Clerk's office has

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been kind enough to let us do that.

By the same token, our motion, may the Court please, was much broader than that.

We believe, your Honor, that we are entitled to all information or documents that show or tend to show the name, race, national origin, and gender of all Grand Jury foremen and deputy foremen who served in the Eastern District of Kentucky since 1970, including but not limited to foremen, deputy foremen of Grand Jury 83-8.

We rely, your Honor, on Supreme Court case of Hest versus The United States.

THE COURT: Well, I assume the purpose of that is to show that over a period of time, they haven't excluded anyone.

And how do you want to work that, Madam Clerk?

THE CLERK OF THE COURT: As I informed the representative from Mr. Harwell's office, the only thing that we have available pertaining to his Grand Jury that were impaneled or were here is a list of names and addresses.

Now, the - -

THE COURT: (Interrupting) You don't

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have the race and sex?

THE CLERK OF THE COURT: The qualifications for this matter the Court - -

THE COURT: (Interrupting) Or the color or religion.

THE CLERK OF THE COURT: I do not have it in my office. The qualifications questionnaire is returned to Lexington.

THE COURT: It is available for you at Lexington, and you are entitled to see it.

MR. HARWELL: Thank you, your Honor. Might we respectfully prepare in order for the Court to sign so that we might use that in getting access in Lexington.

THE COURT: Well, I think she will have that as part of the Court's order today, will you not, Madam Clerk.

THE CLERK OF THE COURT: Yes, your Honor.

THE COURT: All right.

MR. HARWELL: Thank you.

THE COURT: All right.

MR. HARWELL: May the Court please, moving along, your Honor, there was not a motion by the government, but in regard to the issue of daily copy, the Court asks that we submit a memorandum in

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regard to whether we would provide a copy of the daily copy to the government at our expense. And the Court indicated it would advise us of his directives I think at this hearing, Judge.

THE COURT: Well, you have agreed to furnish the Court a copy.

MR. HARWELL: Yes, sir.

THE COURT: If you don't, I will let the government have my copy.

MR. HARWELL: Judge, you put me on a spot because I don't want to take away from your Honor.

THE COURT: Right.

MR. HARWELL: By the same token, I don't want to turn to my client, Mr. Jones, and say Mr. Jones I am going to spend your money to give the government ammunition.

Might I address that issue and get back to you?

THE COURT: Let me ask this: Does the government have any funds by which it can pay for this?

MR. SELF: I'm sure there are funds, your Honor. But whether there are sufficient funds within the budget of the U.S. Attorney's office to

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handle such an expenditure, I would have to consult with the appropriate administrative officers with an idea of what it is going to cost and how long it is going to need - -

THE COURT: (Interrupting) Advise him of the cost and see.

MR. HARWELL: All right, sir. I might also respectfully suggest that given the fact that Mr. Kehrli, trial attorney for the Department of Justice - - that is a secondary source to tap for funds in that I have mitigated against those who come from his area; and they, at least historically, have been able to acquire funds for this sort of thing.

MR. KEHRLI: Your Honor, we may not have enough funds. Maybe they do things differently down here. I don't know.

THE COURT: Well, let's state this, gentlemen: I think we are all aware of the fact that when we are spending government money, we are spending our own money, too.

MR. KIRKLAND: Your Honor, in connection with this - - my name is William Kirkland. If the Court orders Mr. Harwell to spend his client's money to give the government a transcript. I would like

the Court to order him to give me a transcript.

I see no reason why the government should be allowed to have a transcript free of charge if I don't get one free of charge.

And I am serious. The government is just another party just like we are. And I am a taxpayer and you're a taxpayer and we all are taxpayers. We all ought to be treated alike.

THE COURT: Well, let me ask you this, gentlemen: How many are in this thing? I mean let's look at it in both lights. I can understand what is ordered for one you want ordered for you.

Of course, how many appointed attorneys have we here? Raise your hand. Each of those, as just being appointed attorneys - - they are entitled to ask the government to pay for theirs. Isn't that correct, gentlemen?

MR. SPENCER: I don't know about the daily copy or not.

THE COURT: I don't think on the daily copy, but you are entitled to a copy of the transcript.

MR. HARWELL: And I think it is the discretion of the Court to make a factual finding that

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it is a beneficial and necessary tool to litigation in a criminal justice trial, you can direct it be paid for.

THE COURT: Well, let's see what they come up with.

MR. HARWELL: May I proceed, your Honor.

THE COURT: Yes.

MR. KIRKLAND: Your Honor, might I ask for clarification on that. If the Court determines that Mr. Harwell's client is to pay for a free copy to the government, will the Court also - -

THE COURT: (Interrupting) I haven't made that determination yet, Mr. Kirkland. The way I have resolved it, I have said let the government see if they can pay for it.

MR. KIRKLAND: I do want to point out additionally that that would give the government an unfair advantage over those of us who can't afford to pay for daily copy.

My people are very poor people. They cannot afford daily copy. If Mr. Harwell has to provide it free to the government, that gives them an unfair advantage which I don't care to give up.

THE COURT: Well, I have taken your

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statements and realized the validity of it. That is why I am asking him first to decide whether or not they can afford it before I make a decision as to whether or not I am going to order what the government will do.

MR. KIRKLAND: Yes, your Honor.

MR. HARWELL: Judge Unthank, there is - - there has been a motion filed by counsel for the Defendant, Ranny Blankenship, asking for voir dire of prospective jurors with a panel of twenty.

I have filed a motion as to the voir dire in panels of six. The Court earlier ruled against my motion asking for one on one individual voir dire.

THE COURT: And I am overruling Mr. Blankenship's motion.

Here is what we do, gentlemen: All Defendants and all attorneys will come on this side of the rope during the voir dire.

The Jury, all hundred of them or now is it going to be a hundred or a hundred and eight, Madam Clerk?

THE CLERK OF THE COURT: I am anticipating, of course, that the Court will be expecting some of these to be impaneled.

But we expect approximately a hundred and twenty-five to a hundred and thirty jurors.

THE COURT: All right. We are going to have a hundred and thirty-five jurors.

Somewhere or the other, we are going to get a hundred and thirty-five jurors seated on the other side of this rope and those seats where you gentlemen are now sitting.

Initially the Court will state a bunch of questions to these potential jurors. After I finish stating my questions, then each attorney will be given an opportunity to talk to the hundred and thirty-five jurors and ask them anything that I haven't asked.

Now, I don't want repeating what I am asking. But if I haven't asked questions, then they can ask it.

After that is done, then we - - and this is going to be a problem.

We will consider any challenges which you may have for cause as to the individual jurors.

And the Court will rule upon that; and the remaining jurors, which haven't

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been challenged for cause, will be put into the box. And the list will be prepared, that will be the Jury from which - - that will be the panel from which the Jury will be selected.

You gentlemen will be given an opportunity to exercise your individual and collective challenges as to the remaining ones.

MR. HARWELL: May I ask for a clarification, Judge?

THE COURT: Yes, sir.

MR. HARWELL: Suppose we have a hundred and thirty in the Court Room. And suppose thirty are challenged for cause and ten are legitimately excused because of medical reasons.

Then we have got, after they are excused, ninety jurors or ninety members of the venire.

THE COURT: Right.

MR. HARWELL: Now, then, your Honor will put twelve in the box?

THE COURT: No.

MR. HARWELL: No?

THE COURT: She calls those ninety names.

MR. HARWELL: Yes, sir.

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THE COURT: From those ninety names that will be put on the list, the Court will be in recess.

Out of those ninety names, the government will - - they have how many challenges?

MR. SELF: Eighteen, your Honor.

THE COURT: They will strike eighteen. You gentlemen will strike two each plus your collectives.

Let's assume that in the course of doing that, you do strike the same ones. So we end up with having twenty-five or thirty jurors left.

She takes twenty-five or thirty jurors left, puts them in a box, and she draws out the twelve names. And that is the Jury.

MR. PAFUNDA: Your Honor, if it please the Court, Bernard Pafunda.

In the Court's scenario, there is no question we will have a crowded Court Room when we try to select the Jury.

It will be packed to the gills, your Honor.

I was wondering if we may

try - - this may expedite matters - - initially on voir dire, a smaller panel, say a panel of thirty.

See how the voir dire goes at that particular point.

The reason I suggest this as re-review the proposed voir dire questions, the main thrust of them to concern the publicity and so on, there may be an undue or overconcern about the publicity that may have surrounded this particular matter.

So if we try initially with a panel of say thirty jurors out of a hundred or a hundred and thirty that would be called to Court, and see how the voir dire is conducted.

That will serve two purposes: That will serve, number one, motions that have been filed for voir dire on smaller counts; number two, it will also help the Court direct the voir dire as it goes along where there is a smaller group, keeping the larger group out of the Court Room.

So if a question should arise during the voir dire of the panel, the Court can properly address that without the whole panel - - risking the danger of tainting the whole panel.

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The only loss to the Court would be is we have the smaller panel come in say in a group of thirty, and they have to run through a voir dire.

And it may go through another one, too. I think there may be dangerous questions that would render this idea in terms of a smaller panel more acceptable to the Court just to see how it proceeds.

We may have to take several hours with a smaller panel, but it may in the long run, save an awful lot of time.

And if a smaller panel works, then the Court in its discretion could then bring in say a similar panel, say again thirty people again. And we would know at that time, when we each exercise our challenges to the thirty member panel, to see how many we would have to call back in and go through it.

MR. KIRKLAND: In keeping with what Mr. Pafunda said, I would ask for some method by which we can seat a smaller number than a hundred and thirty; these are the reasons:

Number one, there is no way that I will be able to see the expressions and

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responses of a hundred and thirty people unless I join you on the bench or stand on the table.

And even then, I doubt seriously if I could see the expressions and responses, if any, of all the hundred and thirty people **are whatever.**

Secondly, my limited experience dictates to me that there is an intimidation factor.

When there are a hundred and thirty people sitting out there, they will not respond individually as well as if there were twelve or ten or fifteen in the Jury box when you can look at them clearly in the face and almost ask them individually.

You cannot do that from a position out here in the floor, looking back at the hundred and thirty people.

They will feel intimidated but they will not answer as forthrightly.

Thirdly, along with Mr. Pafunda's position, if you ask a person if he has heard about, quote, all this publicity, you are almost tainting that group in advance.

If nobody has heard any-

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thing, you can ask ten or twelve of them, and they have heard nothing, then clearly they are very untainted from that position.

Another thing, your Honor, I have noticed a few times that a lot of jurors together, prospective jurors - - that they will start hearing answers made by other jurors that elicit a particular response from the Court that either gets them out of Jury service or has some other desired effect which if they weren't in such a large group, they wouldn't start parroting one to the other.

And I certainly wouldn't want a person in the prospective group to say something that gets a particular response from your Honor, and they all start parroting that response.

I think we can keep the voir dire clean and individualized as it should be.

Since we are looking at individual people to sit in judgement of our clients we should have some individualized means of determining whether they are fit or not.

MR. WALBOURN: Your Honor, with all due respect to the Court, I do not believe that I can effectively represent my clients if I have to voir dire the one hundred and

thirty-five individuals at the same time.

Of course, the purpose of voir dire is to seek individuals who may for some reason or another be challenged for cause if they can not in their own minds give the Defendants and the United States what most parties are entitled to a fair trial.

The other purpose of voir dire is merely to find subjective observations, subjective opinions as to why a person may be a good juror or why a person may not.

Mr. Kirkland is considerably taller than I am; and I venture if he can't see everyone, I can't.

But I need to see the expressions on the person in the far corner of the Court Room over there as well as the person that sits up here to see how they are responding to certain questions.

I simply cannot do that with the panel that long - - large. I probably wouldn't be able to see everyone if we have those in there.

And again, we may taint the panel by asking questions.

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I just simply do not feel that I could render effective service to my clients if I didn't have a smaller panel.

MR. PAFUNDA: May it please the Court.

THE COURT: You want to go around a second time, Mr. Pafunda?

MR. PAFUNDA: Yes, your Honor.

The only reason I mention this is not because it happens I may be the smallest on this side of the room, but that it also makes the citizens of this area who are coming in and who may be selected as jurors - - it may be more comfortable for them to come in here say with a group of thirty individuals rather than to be in a Court Room with a hundred and thirty.

I think it allows the Court a certain degree of discretion if after an hour, hour and a half - and the Court certainly has the experience to tell after a period of time when the voir dire is beginning how it is going to go.

And then the Court can then recess and decide if a thirty member panel is not going to work, wrap it up quickly with these thirty people, and let's bring in the remainder.

It is just merely a suggestion. The Court has indicated the desire to move along this line, and I thought possibly if provided in that manner it started out, and see how it works.

It might provide useful.

THE COURT: Gentlemen, you understand that a motion made by one is extended to all. So all of this is in favor of all.

MR. HARWELL: May I add one - -

THE COURT: (Interrupting) Yes, sir.

MR. HARWELL: My two cents worth.

Mr. Self has just done some arithmetic, and I think he is probably right, Judge.

You can't get that many folks in here I don't think, a hundred and thirty, given this seating.

I point that out on his behalf, though I tend to agree.

The second thing, of course, Judge, that bothers me, is you have got a hundred and thirty in here; and somebody says I know about this case, Judge.

These Defendants are totally innocent, the government is going to scream tainted

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panel.

On the other hand, if you have a hundred and thirty in, and somebody stands up and says I know these Defendants are guilty, you are going to have a tainted panel which might back-fire and cause the Court to see fit to clear the panel and have the Marshall's service bring in a new panel.

THE COURT: The Clerk advises me we have had as high as a hundred and fifty sitting back there.

Well, gentlemen, let your motions for the individual voir dire or in smaller groups be considered, and it is overruled.

MR. HARWELL: May the Court please, moving on, on behalf of Mr. Edgar Jones - - excuse me, sir.

MR. ROWLAND: Might I inquire as to one more problem in the selection of the Jury before we go further.

I believe your Honor indicated that out of the people who were not challenged for cause, all of those people will be called around, and we make our strikes from those?

THE COURT: Yes, sir.

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MR. ROWLAND: Has the Court in the past called a sufficient number to reduce the panel to the proper size by everybody exercising their strikes?

I think that would amount to eighty-two people. I would feel more comfortable if theoretically we got the Jury when everybody exercised his challenges rather than drawing names out.

And I realize there may be duplications there.

THE COURT: I can't make everybody exercise a different person.

MR. ROWLAND: I guess what I am saying is if we called around I believe about eighty-two people, and if we actually struck the number of people that it would take to get that panel, we would then be reduced to the number that we needed.

You are subjecting the

- -

THE COURT: (Interrupting) Well, no. The Clerk will call a sufficient number only to cover the challenges.

MR. ROWLAND: Okay. I thought you meant that there were a hundred people left off, we would choose from all of those. But you are saying

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that - -

THE COURT: (Interrupting) The Clerk - -the Clerk draws all - - we first ascertain who is going to be excused for cause.

The Jurors, gentlemen, are not going to know who are excused for cause.

The Clerk then takes the number of those who haven't been excused for cause.

And then she draws out a sufficient number to cover the challenges. Is that correct, Madam Clerk?

THE CLERK OF THE COURT: Well, your Honor, that, your Honor, is to cover the challenges plus the twelve for the panel.

THE COURT: Right.

THE CLERK OF THE COURT: That is correct.

THE COURT: Then that is what goes on in the selection. Then, in case there is duplicate strikes, then the remaining number is in there. It goes into box twice.

MR. ROWLAND: Okay. Thank you, sir.

MR. WALBOURN: E. J. Walbourn, your Honor.

Again, with all due respect to the Court and not to beat a dead horse, might I inquire and ask the Court - - or articulate

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on the record the reasons for denying our request for smaller voir dire groups and the fact that there are eighteen Defendants and at least eleven counsel who would be questioning these jurors.

THE COURT: Well, the Court is of the opinion that it will be more expeditious to select the Jury in the manner in which the Court has stated, and that I don't think any - - I am not anticipating any prejudice - - prejudicial remarks coming up.

If we do, we will deal with them at the time.

MR. KIRKLAND: Your Honor, in keeping with the Court's Rule, I have a request or a motion to make. And that is that I be given some kind of seating chart to know where each individual prospective juror is seated.

Judge, if you do it in the manner in which you have indicated, then it would be unlike the usual system of calling a person to the box one at a time at which time we can put that person's name in a block, and we know who is seated in which particular block.

If the people simply file into the Court Room and sit at random, there is no

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way that I would know certainly, and none of my clients would know, the names of all the people and where they are seated.

THE COURT: All right, let's do it this way: You will be given a list of potential Jury with their Jury number.

Mr. Marshall, when you seat them back there, have them seated in numerical order.

THE MARSHALL OF THE COURT: Yes, sir.

MR. KIRKLAND: We will know what that is in advance - - we will know how they are to be seated?

THE COURT: Well, you'll be given the Jury panel, and you will have their numbers two, three, four, five - the jurors are identified. And we will start from the front here with the lowest number and go it that way so you can check your list and see who is who.

MR. KIRKLAND: A potential difficulty with that, your Honor, is if one person doesn't show up, I have got these people listed, I am going to the one number off which is going to throw my chart completely off.

THE COURT: Then do this: When

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Madam Clerk calls the roll of the Jury and you are sitting here, and when she calls the number, they are going to stand and say here. And you can update your chart.

MR. KIRKLAND: May I ask - - it would appear that five rows that would hold about eight each or about forty on each side of the Court Room, total of eighty. How many people are going to be in each row so I will know how many blocks to make up in advance.

THE COURT: I don't know how many.

MR. KIRLAND: You see, I need to make up my chart in advance so I will be able to put the names down as fast as those people are identified.

It looks like there is about eighty seats for about a hundred and thirty-five people. And if you put an extra row in, that will mess up whatever chart the various lawyers make.

And certainly I would want to note the names of each person as I look at them.

THE COURT: Well, you have got your Jury list. They have got their number. And I told you that the Marshall is going to set them in numerical order. She is going to call the roll, and you are going to fix your chart at that time.

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MR. KIRKLAND: Well, you can understand I will need to draw off blocks for names well in advance because I can't do that the first morning.

I will need to either mark off five rows of eight people or five rows of sixteen people or twenty people.

See, I don't know. The Marshall may get up to twenty, and then start back over here on the second row. Or he may elect to go to twenty-four.

THE COURT: You check with the Marshall.

MR. KIRKLAND: How soon before the trial will that be decided, your Honor, so we can - - I seriously need to get with him so I will know how many blocks to have and how many rows.

THE COURT: Well, Mr. Marshall, when can you do that?

THE MARSHALL OF THE COURT: Anytime.

THE COURT: Has the Jury list been prepared?

She advised me that we don't have it final yet, the Marshall will advise you, that's the only thing I can say.

When he gets in a position to advise you he will.

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MR. KIRKLAND: My thought was your Honor, that in advance the Marshall or whoever decided where each person would sit that we could have that drawn up in advance and we would know, we would be able to say look at that particular slot and know who that person was just as if they were called in the box.

THE COURT: I assume this is something - - I assume we are going to have to - - be some chairs moved in the room on the first row, I assume. These are housekeeping things that are going to have to be worked out.

MR. KIRKLAND: I understand, as long as I have time in order to deal with them and effectively represent my client.

They are housekeeping matters that affect my client's rights.

THE COURT: Of course - - you know, I keep hearing this word effectively represent the clients. Of course, the government wants to effectively represent too. The Court is just going to have to do the best with the facilities that we can.

I'm sure - - I'm sure in the eyes of each attorney what is being done is not going to be sufficient. We'll just have to do the best we can.

MR. KIRKLAND: Your Honor, there is an additional problem, once you get a hundred and thirty-five people in here and you move all of the Defendants into the pit area, there's not going to be enough room for anybody to carry out a function.

THE COURT: We are going to give it a try.

MR. WALBOURN: Your Honor, might I inquire as to when the Jury list will be ready?

THE COURT: Madam Clerk?

THE CLERK OF THE COURT: The first week of January your Honor.

MR. WALBOURN: And second of all are all those individuals that are going to be on the Jury list already being qualified by the Court to set as jurors?

THE CLERK OF THE COURT: No, not yet.

MR. WALBOURN: Is this a completely new panel coming in?

THE COURT: I believe it's fifty new ones - - fifty new ones.

MR. WALBOURN: And the other or remaining eighty-five or whatever has already been on there?

THE CLERK OF THE COURT: Yes.

MR. WALBOURN: Will we be entitled to

get that list today?

THE CLERK OF THE COURT: Yes.

MR. WALBOURN: Thank you.

MR. HARWELL: May your Honor please in that the Court has indicated on a very tentative basis their thoughts on voir dire during the previous hearing.

I have now filed and bring to the attention of the Court a motion for the use of a Jury questionnaire that is a little longer than that this Court I am told customarily uses.

It's made an exhibit to my motion.

Judge, it's going to be tough giving the number of Defendants and the number you are going to bring into the Court Room to take care of a lot of volar plated information, spouses, children, grandchildren, parents, union affiliations, employment and so forth and so on.

We spent some significant amount of time to devise a fairly terse questionnaire.

May the Court please we feel strongly that it would be in the best interest of your Honor, the government attorneys and the

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Defendants if it's a matter of fact that the Court will require each individual on that panel to fill out the questionnaire that is made Exhibit A to our motion.

Your Honor, there is going to be a lot of questioning on volar plate stuff at least by some of the attorneys including myself.

If as a matter of fact those individuals on the panel have provided that information then that should expedite the selection of the Jury in this matter.

I have had several of our personnel to set down and fill it out and that took anywhere from five to twenty minutes depending on the sophistication of the panel members.

THE COURT: Let me ask you this. Assuming that's done, I assume you would like for them to answer that yesterday and you have the information in your hand right now.

MR. HARWELL: Judge, yes, but in light of Ms. England's comment my thought is whenever the panel members are brought in that the Court would give them that and give them their direction and excuse them for an hour until the next day and have them bring that back. I don't - - I respect your Honor's

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wishes but I do think it would really help your Honor.

THE COURT: That's interesting, it's certainly interesting.

And now, Mr. Kirkland when I mention the word effectively I think he and I understood. Sometimes - - I want it to be clear that I don't want to deny counsel effective defense.

I guess what is effective defense is a personal opinion. I think what one person considers to be effective and another person doesn't.

I think you understand what I am saying, Mr. Kirkland. We can't give every person what they want, but I don't want to get to the point where we don't give constitutes a sufficient room to present an effective defense, then you're being denied.

MR. KIRKLAND: I understand the word effective. It's defined in many different ways in many different Courts including this one.

I realize that we have limited facilities here by square feet. But I did not bring the indictment and I did not indict all these people.

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And I think that we should-n't limit the rights of these Defendants who have been brought together against their own will just merely because there's a lot of them, and merely because this is a small Court Room.

In fact, this is not nearly as small as most of the new Court Rooms. This is probably twice as large as most of the D.C. Court Rooms and it is twice as large as the new Court Room in Lexington, but that should not be a factor in the selection of Juries.

I think we still have the same obligation to look at the jurors and to exercise our best judgement on behalf of our clients. It's my statement and my motion, your Honor, was to the effect that I don't feel that I can effectively look at a hundred and thirty-five jurors at one time who are crammed into this eighty person area and try to make a meaningful decision about what twelve are best to serve.

THE COURT: Of course, you said that.

MR. KIRKLAND: Well, what I'm saying is that I agree with you there's many definitions of effectiveness as respect to counsel.

But my opinion is under

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these circumstances I could not render an effective system.

Now, of course, I have to accept what the Court does. But I am not agreeing with that decision.

THE COURT: Well, I'm certain of that, you have it on the record.

MR. KIRKLAND: Well, I'm also trying to persuade the Court to change its mind I might add.

MR. HARWELL: The truth boils up.

MR. KIRKLAND: You've always been open-minded in the past, your Honor and I'm sure you'll continue to be so.

THE COURT: Now, don't think the manner in which we're going to pick the Jury will deny the effective assistance of counsel.

I'm interested, however in the instructions by Mr. Harwell in regards to the Jury filling out the questionnaire as to whether any other members of family, etcetera, etcetera, etcetera.

MR. HARWELL: Judge, I realize that given the fact that the holidays are now upon us that there could be a Court Rule that the Jury questionnaire could be used that would be logistic problem.

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We checked in Nashville through a client we could get these made up in any run and a sufficient number of them shipped up here where the logistic problem I don't think will be near as great.

THE COURT: Well, I first - -

MR. HARWELL: (Interrupting) I beg your pardon?

THE COURT: I first have to see what you're suggesting for them.

MR. HARWELL: Your Honor, it's a motion that was filed, let me give you my file copy - -

THE COURT: (Interrupting) No, just let the Clerk tell me.

MR. HARWELL: Right.

Three two one.

THE COURT: Yes, I have it.

The Court would have to perceive something in its mind and fill this out and how far in advance would you get - -

MR. HARWELL: (Interrupting) Can I throw out an idea, your Honor?

THE COURT: (Continuing) What's required after the Jury is selected all of these be returned to the Court?

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MR. HARWELL: My thought, your Honor probably the most simple way to do it is once the panel members are selected they could be mailed with the return envelope to be sent back.

That would probably get eighty plus percent of them. The Clerk would not be in a position of having to copy them.

The Court would direct they be available in the Clerk's office for counsel's review so she does not have to make the copies.

As to the number of prospective jurors that don't a matter of fact get it filled out which I suspect is relatively few that could be done when they're initially brought in or the alternative I suspect some of them might bring it with them.

I've done this before Judge, and it's my opinion it's not as big a logistic problem as it might appear at first flash.

THE COURT: In other words this is filled out by the Jury and retained in the Clerk's office?

MR. HARWELL: Yes, with access by the government attorneys and defense attorneys during their normal working hours that the Clerk's office

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opens.

THE COURT: That's fine, that's all right. But it's given back to the Jurors after the trial?

MR. HARWELL: Judge, I don't know how various - - I don't know whether District Courts have kept them, I don't know of any that have been given back. I think they're disposed of when that panel is finished with its Jury service, but I don't know.

THE COURT: Well, you say that you can provide a hundred and thirty-five of them?

MR. HARWELL: I'm saying if the Court deems it appropriate to use these we will take it upon ourselves to provide them.

We understand that we're on a very short time frame.

THE COURT: Well, provide the Clerk with a hundred and thirty-five of them.

MR. HARWELL: All right, sir.

THE COURT: Of course we're getting into a problem here, how is the Court going to get these hundred and thirty-five jurors. If we have to qualify fifty we have a problem of bringing fifty in at a time.

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I guess it would require mailing it to them.

All right, Mr. Harwell will you deliver those to the Court?

MR. HARWELL: Will do, it will be in the course of next week.

Your Honor let me touch on some things which are purely housekeeping matters if I might.

I think I mentioned earlier that we had filed a motion for leave to file additional pretrial motions brought about which occurred in the mini-hearing and my recollection is that your Honor was alerted to that and indicated that that would be agreeable and I merely caused it to be filed a written motion on that issue.

We also had if the Court please that a follow-up motion to an oral motion in regard to sealing the transcripts and a legal memorandum and my recollection is the Court has put out an order as to the memorandum and the transcript of the mini-hearing, am I correct, Judge?

THE COURT: The mini-hearing, let's say yes.

MR. HARWELL: Thank you, your Honor.

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THE COURT: Until the conclusion of the trial on which it can be made public.

MR. HARWELL: The Court please we have filed a new motion for Brady material and I think in the colloquy between the Court and Counsel that the Court has ruled on that from a practical standpoint.

There's also a matter may the Court please of Mr. Stratton's motion to quash the 17C subpoena and my motion to compel pursuant to 17C subpoena and am advised by the Court that that will be heard sometime the week of January 9, after the Jury is selected in this case and not until that time.

THE COURT: Let me ask you, is the Court's characterization of the 17C a documentary of the Jenckx Act?

MR. HARWELL: Judge in part it is and part it's merely the good faith belief that there is evidence, physical evidence that's needed that is exclusive the parties receive in this subpoena, it's confidential.

THE COURT: No, I understand that there is documentary evidence and you all have subpoenas to bring it in for use, and that's why I have set

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it up.

MR. HARWELL: I understand your Honor. I just wanted, for the purpose of the record since my understanding came up and it was not on the record I wanted to mention that.

MR. SELF: May it please the Court, let the record reflect that in regards to Mr. Harwell's 17C subpoena the United States was not served with copies of those, we accidentally became aware of them.

But let the record further reflect that it is the standing orders of this Court that documents be produced at the pretrial.

That subpoena powers of the Court exist, the production of documents at the pretrial both by the United States and by the Defendants.

And if Mr. Harwell was seeking to produce documents before the Court that he subpoena those people to the Court at the time when the Court is in session such as today rather than to a hotel room at some other time.

If he had reason to believe that those documents were in existence and those

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people had them is perfectly acceptable for these Court's Rules to issue subpoenas to have them bring them to the proceedings today or in the course of the mini-hearing and have them marked for identification; not to be produced at some place and time where the Court is not in session which is not talked about in 17C without the expressed approval or orders of the Court.

MR. HARWELL: May the Court please. I am compelled to respect the response of Mr. Self. I have been around the tree before and I am a little bothered in that the implication of his comment is that I am not doing what's right.

If I wanted to do differently Judge I could have made this obfuscative, hidden. The truth is I realize that we had a hearing set today and these subpoenas are not answerable until tomorrow giving folks ample time, that is the parties ample time if they wanted to do what the law allowed, that is to come in and bring this matter to the Court's attention and seek relief if they could.

The truth of the matter is I think that I properly handled my 17C subpoena. I filed a motion to compel when I realized they weren't going to come in and they filed a motion

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to quash. I'm not aware your Honor that I'm under any obligation to tell Mr. Self who I'm subpoenaing no more than he's under an obligation to tell me who he's subpoenaing.

But nonetheless for the record I understand that you'll take that up.

THE COURT: Once the Jury has been selected then we'll consider these matters of subpoenas.

MR. SELF: Your Honor, I don't mean to reflect any animosity toward Mr. Harwell. I don't mean to intimidate or to state that Mr. Harwell's doing something wrong. It's just a motion of the United States in this matter that the production of documents pursuant to Rule 17C and the Rule reads and this district has constrictly followed for a number of years the issue of subpoenas to bring them to Court and if you don't do that you get the Court's approval before you issue subpoenas to bring them somewhere else.

That's the way the Rule reads and the annotations provided under it. I realize it was dated and set for tomorrow and in all likelihood, I still don't know who he subpoenaed for tomorrow, but is it now the ruling of the Court

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that those subpoenas, whatever fashion they are issued are quashed until the motion is heard on the 17th?

THE COURT: No, they are not quashed, they just will not be heard. The people that are named in the subpoena - -

MR. HARWELL: (Interrupting) They don't have to do what's contained in the subpoena until his Honor rules i.e. they don't have to bring their documents tomorrow.

May your Honor please, we're nearing the end of this list, I have a note from Ms. England that number 310 is a motion for Mr. Burke, for him to withdraw his counsel for Morris Ray Hall.

MR. HOLLON: Your Honor, I have here with me a statement that Mr. Brooks draw up in his office, it's been signed by myself and Mr. Burke and Mr. Morris Ray Hall and Mr. Pebo Gayheart.

THE COURT: All right, will Morris Ray Hall and Pebo Gayheart please stand?

Now, Mr. Hall and Mr. Gayheart, you understand the effect of this. These attorneys have stated that they don't see any conflict in your gentleman's defense in that Mr.

Hollon may represent both of you, do you understand that?

MR. GAYHEART: Yes.

MR. HALL: Yes.

THE COURT: Is that agreeable to both of you?

MR. GAYHEART: Yes.

MR. HALL: Yes.

THE COURT: Do you acknowledge the signature contained on this writing to be your signature?

MR. GAYHEART: Yes.

MR. HALL: Yes.

THE COURT: All right, let them be filed in the record and let Mr. Burke's motion to be withdrawn sustained and let the record reflect pursuant to the request of counsel that Mr. Hollon is now the attorney of record for both of them.

MR. HOLLON: Thank you, your Honor.

THE COURT: Does that take care of it, your Honor?

MR. HARWELL: If the Court please may I just take a moment to look over these two lists.

Judge, there is a note on the Court's docket or calendar that they sealed

ex parte motion tendered 11-21-1983 apparently by Eugene Tackett and I have no indication what that is.

THE COURT: All right, here is what we have, it's this.

There was a thing filed with the Court regarding a matter - - regarding a potential and the Court has proceeded as a potential - - for the issue of competency of Mr. Tackett.

The Court has requested or has granted a request of counsel that Mr. TAckett be examined by a psychiatrist and the psychiatrist's report will be filed in the record. At that time the Court will make a finding as to the competency of Mr. Tackett.

MR. HARWELL: May your Honor please number 328 a motion apparently filed on December 14th, 1983 filed by Morris Ray Hall to strike all evidence of Mr. Frank Eddie which combines motion 329 of Morris Ray Hall to dismiss.

THE COURT: Now, his motion to strike testimony of Mr. Eddie is overruled. I will consider his motion for dismissal.

I will take that under advisement.

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MR. HARWELL: Might I inquire of the Clerk your Honor as to whether or not I have covered everything that she indicates was pending or not pending?

THE CLERK OF THE COURT: I show that everything has been ruled on your Honor.

THE COURT: Is there anything else?

MR. HARWELL: May it please the Court there's a couple of housekeeping matters and I understand Mr. Self has a motion that he wants to bring to the Court's attention.

May your Honor please, given the fact that this is going to be a long and protracted litigation at this point in time we respectfully move that the Court's schedule non the United States versus Edgar Jones matters on Friday and go through a Monday thru Thursday afternoon four day trial week.

THE COURT: Well, I think what at this time I perceive gentlemen is that we will start Monday and we will conclude at noon Friday.

MR. WALBOURN: Your Honor, my only thoughts on that matter is - - the Court's been very liberal in trying to accommodate counsel, but those of us that are not residents of this locale by the time

we pack up and get going and get back to our office where we are without secretarial staff - - we have accomplished nothing but if we finish up on a Thursday evening we can go to our various - -

THE COURT: (Interrupting) Let's do this. We'll start out Monday thru Thursday but if need be we'll use a half day Friday and if it need be we will use all day Friday. But we'll start out with Monday thru Thursday.

MR. HARWELL: That helps your Honor in light of the fact that the people have addressed me that they've only got three hours on Friday morning and that would just mess up that day.

THE COURT: Well, of course you know the other side of the coin is as soon as you get this over the sooner you can get back.

The longer you string it out, the longer you are going to be here.

MR. WALBOURN: Well, if we're going to go I would like to go five days. If we're going to break, we need to make the break worthwhile.

THE COURT: Do you think we can do this in six weeks?

MR. HARWELL: Well, I believe, your Honor that we can go on a four day trial week.

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THE COURT: What says the United States?

MR. SELF: Well, going by my track record of pretentious Courts, your Honor I think it will take six weeks to try this case, it may take a little longer but I think to be thinking less than six weeks it would be optimistic thinking and unfair to the Court your Honor.

THE COURT: Is there anything else?

MR. HARWELL: May the Court please. There's one other thing which probably should be brought to the Court's attention by written memorandrum but I will touch on it now and will get the motion filed.

Your Honor I suspect given the hearing in this matter the government intends to have attorneys Mr. Kehrli from Justice and Mr. Assistant U.S. Attorney sitting in the Court Room during the course of this case as well as a number of agents that are designated not withstanding the fact that they will testify.

THE COURT: I assume it's going to be the same ones that are setting at the table now.

MR. HARWELL: If that being true we would like the Court's permission for our investigator, which is a retired F.B.I. agent to also be allowed

to set in the Court Room with the exception of the - - to the Rule to the inception of the witnesses.

MR. WALBOURN: We have no objection, your Honor.

THE COURT: Let me ask you this, Mr. Harwell, you're with a member of the firm, how many members of the firm other than yourself is going to be here trying this case?

MR. HARWELL: Mr. Moore and I are going to be trying the case, along with a law clerk.

THE COURT: Well, Mr. Patton is with you now?

MR. HARWELL: Yes, but he is not going to testify, Judge.

THE COURT: I know that, but I'm thinking of space. Where is your law clerk?

MR. HARWELL: Mr. Stone, would you stand up. And this is Mr. Frank Hillman, your Honor, who - - this was a gentleman that was the case agent in charge of the Ray Blanton case who recently left the F.B.I.

THE COURT: Now, do you have any objection to him setting right beside Mr. Stone?

MR. HARWELL: Not at all, your Honor.

THE COURT: Now, let's do this, you

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won't need him during voir dire?

MR. HARWELL: No.

THE COURT: So, during voir dire we're going to need all the extra space we have.

MR. HARWELL: I understand your Honor.

Your Honor, in light of what you just said, do you want us to prepare a written motion to follow up what I orally moved and the Court responded to?

THE COURT: No, no.

MR. HARWELL: May the Court please I think that covers Ms. England's checklist and my checklist of the matters that needed to be brought.

THE COURT: Let's see, do any of you other gentlemen have anything?

MR. PAFUNDA: Yes, sir.

In reviewing the Court minutes last night I believe there is several things that had my client's Drexil Hall, and Austin Moore that are still open, specifically the Court has directed government to identify the weapon that allegedly Austin "Bo" Moore had taken into the hills on February 16th, 1982.

Mr. Self has indicated to me this morning downstairs that the government

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is unable to identify that weapon at this time, is that right, Mr. Self?

MR. SELF: To my knowledge, your Honor.

MR. PAFUNDA: More your Honor I made an oral motion that we be allowed, that being Drexil Hall and myself to listen to the tapings of Drexil Hall's Grand Jury testimony, we believe there is an error, a typographical error in that Grand Jury testimony and the Court so directed.

Mr. Self up until today had not had enough time to get together and we need to set aside a time prior to the trial which the government, myself and Drexil Hall can set down and listen to the tape recording of that Grand Jury testimony.

MR. SELF: I'll be in here the first Tuesday in January your Honor and the Grand Jury Court Reporter will be here to help me identify that. Mr. Pafunda has not contacted me to try to make arrangements.

The Grand Jury Court Reporter will be here also the first Tuesday in January, so sometime later that afternoon, Mr. Pafunda.

MR. PAFUNDA: Well, one question. Will she also be here on January 3rd, since you have to be here on January 3rd for another matter at 10:00 o'clock?

MR. SELF: I'll be here that whole week your Honor.

MR. PAFUNDA: She'll also be available that week so we can do it that week, is that correct?

MR. SELF: She will be available in here on the first Tuesday in January.

MR. PAFUNDA: That would be fine, your Honor.

MR. KIRKLAND: Your Honor, with respect to the motion on co-conspirator report statements I didn't hear or understand the Court's Ruling. I thought that we were going to get enumeration of statements that were during and furtherance of conspiracy.

Now, we have not gotten that yet.

THE COURT: You got that at the mini-hearing.

MR. KIRKLAND: Well, we had a hearing I heard everything and all the stuff that was said but surely everything that was said was not in furtherance of or during the conspiracy.

Or, did the Court rule

everything that was said for that week is a co-conspiratory statement.

THE COURT: Well, the Court has not made a finding there of co-conspiracy.

MR. KIRKLAND: Will we get an enumeration of those statements in the event - - in the unlikely event that the Court finds a conspiracy?

THE COURT: I doubt it.

MR. KIRKLAND: Well, don't we have to know that in advance, before the trial.

THE COURT: Well, you've heard the statements, you're aware of the statements you heard them.

MR. KIRKLAND: I heard a week of statements, some of which were clearly not in furtherance of and some of which were not during, so I need to know what the Court thinks in the event that you find there is a conspiracy which ones were during and which ones were in furtherance of and which was not otherwise inadmissible.

THE COURT: Well, I'm not going to pass such a thing as that.

MR. KIRKLAND: Well, for example your Honor it was some testimony that somebody came off the hill and said that he had been shot above

his head and buck fell on him and he thought he was shot.

Now, that is during perhaps or arguably, but it does not further anything in my judgement that would not be in an admissible co-conspirator's statement though it was said during that week and there's other such examples.

But don't we at some point have some entitlement to know what statements of other Defendants are admissible against our Defendants that we represent in advance? If you recall in the Sterling Hamilton case we only had a question of those statements made on certain tapes. The Court heard those in ruled that those specific statements were made during and in the course of or in furtherance of rather.

And here that sort of ruling has not been made and I need to know that in advance to know what to object to during the trial.

THE COURT: We will resolve that before the trial time.

MR. SELF: Your Honor, if Mr. Kirkland wants to make statements that might lead to arguments, he can do that in the form of a brief that's to be filed by the 27th.

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THE COURT: He's putting the burden over, we wants you and me to tell him what is and what isn't.

MR. SELF: Well, I did your Honor for a week.

MR. KIRKLAND: Well, certainly nobody thinks that those thousand pages of transcripts which were all made during and in furtherance of, I didn't know - - I need to know which of those statements and which of those pages were during and in furtherance of.

A lot of it had nothing to do with the events of those few days.

THE COURT: Well, the Court will make - - once the Jury has been sworn the Court will make a ruling.

MR. SELF: I would request that the Court make that ruling prior to the Jury being sworn, your Honor.

The Court's excluding or suppressing that material that's a matter which the United States needs to know prior to the impaneling for the jeopardy attached to all the Defendants in this case.

THE COURT: Well, the Court will make

a ruling and the Court will seal that ruling.

MR. SELF: I have no objection to that, your Honor but for the matter of the Court there's certain evidence that would be excluded or against certain Defendants, that's a matter that the United States needs to know before the jeopardy attached - -

THE COURT: (Interrupting) Well, I'll make their ruling when the Jury has been sworn.

You're coming back Mr. Self a manner of speaking when the gentlemen were coming in this Court is disclosing the ruling by way of its answer without answering.

I don't want to get the Court in that bind.

MR. SELF: I had made those admissions to the Defendants in this case.

THE COURT: Anything else gentlemen?

MR. SELF: Yes, your Honor two procedural matters.

In the motion in limine of Morris Ray Hall - - motion in limine of Morris Ray Hall to strike evidence of Frank Eddie, I am not aware of such a motion.

I did not receive such a

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motion nor the motion for dismissal, I'm not aware of that motion and I have not seen it.

If it was mailed to the Lexington - -

THE COURT: (Interrupting) Mr. Hollon, will you see that he gets a copy of that?

MR. HOLLON: Yes, sir, your Honor, there's a certificate of service - -

MR. SELF: (Interrupting) If it was mailed to the Lexington office, I've been here this week.

MR. HOLLON: I'll see that he gets a copy.

MR. SELF: Another is the ex parte motion in regards to Eugene Tackett, it was an ex parte motion, your Honor?

THE COURT: It was an ex parte motion but after considering the ex parte the Court felt that better to disclose that to the Defendants.

MR. SELF: Your Honor, I have a substantive motion to make at this time and I apologize for making it orally, but really did not become a matter of issue until certain matters that are heard on the 12th of December, 1983 here in this Court Room.

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At this time on behalf of the United States, the United States will move the Court to disqualify the defense counsel Bernard Pafunda from representation of Dexil Hall and Bo Moore in this case for reasons that he has stated and admitted conflict of interest in the representation of those Defendants in this case.

The representation of District 30 United Mine Workers of America for Plaintiff's Civil Action Number 82-310 filed at District 30 United Mine Workers versus Atkins and Atkins Incorporated, D & E Coal Company Incorporated who are Defendants in that Civil Action, your Honor.

I would like to be heard on that motion at this time.

THE COURT: All right, who are your clients, Mr. Pafunda?

MR. PAFUNDA: Drexil Hall and Austin "Bo" Moore, your Honor.

THE COURT: All right, Drexil Hall and Austin Moore, will you please stand - -

MR. PAFUNDA: (Interrupting) As well as District 30 United Mine Workers has been pointed out by Mr. Self not only in that case he just enumerated but in several other cases that are pending before

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this Court as well as one that will be filed tomorrow.

THE COURT: The Court is aware that you also represent the Union, the Court's aware of that.

You understand the motion which was made with regards to Mr. Pafunda?

MR. HALL: Yes, your Honor.

MR. PAFUNDA: I informed my clients this morning, your Honor that an ugly rumor was about such a motion would be made.

THE COURT: Are your gentlemen satisfied with his services?

THE GENTLEMEN: Yes.

THE COURT: You still want him to represent you?

THE GENTLEMEN: Yes.

MR. PAFUNDA: I'm going to object to the Court's questions to my clients for the reason, Mr. Self has not articulated yet an argument whether I have a conflict of interest - -

THE COURT: (Interrupting) That's what we're getting ready to hear.

MR. SELF: May it please the Court I started a rumor, I don't know how ugly it is. I

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will file this motion by advice of Mr. Harwell that such a motion - - let me state the transactions which resulted in this motion.

Last week while talking with officials from Coal-Mac Incorporated at their offices getting ready for the pretrial and the documents your Honor, one of the officers were served with a subpoena in the case of District 30 versus Atkins and Atkins Coal Company Incorporated requiring that these officials of Coal-Mac that are not parties to the Civil Action Number 83-210 appear in the offices of John W. Mann in Prestonsburg for depositions on notice of Mr. Pafunda --

MR. PAFUNDA: (Interrupting) Excuse me, your Honor, that was to be in my offices at 9:00 o'clock on Monday - - 9:00, 10:00 and 11:00, I believe.

MR. SELF: That's correct, your Honor.

The material that's - - that subpoena was served, I'm not sure what date it was, but it was approximately ten to fifteen minutes after this subpoena was served there was Mr. Harwell's subpoena was also served on officer of Coal-Mac and that subpoena required - - this is the subpoena that the Court has taken under advisement.

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The language in those two subpoenas your Honor, the first two paragraphs of Mr. Pafunda's subpoena and the first two paragraphs of Mr. Harwell's subpoena were word for word verbatim, identical documents.

Mr. Pafunda requested those documents in a Civil Action. Mr. Harwell requested them as part of Rule 17C to be produced in this Criminal Action.

Verbatim language your Honor it's not - - I'd like to tender to the Court for consideration to ask the Court to take notice of its own files and I think the subpoena and Pikeville number 82-310 is a matter of Court records and this is the subpoena that Mr. Harwell has served and this is a matter of record and it's his motion.

So both matters are before the Court. A - - That's how we became aware of it your Honor.

THE COURT: I believe we had a hearing.

MR. SELF: A hearing was held in this Court on December 12th, 1983 on a motion to - - in civil terminology, a motion to restrict discovery filed on behalf of Coal-Mac by the Honorable

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Henry Stratton. I was present during that hearing at the request of the Court.

During that hearing your Honor Mr. Pafunda made numerous statements as to why he wanted this material.

The argument was made based on the case law and the rights of various scholars that in the civil case it's improper to use civil discovery for criminal purposes.

The Court did not. Mr. Pafunda then admitted that his request in oral testimony and the Court indicated at that time that they were going to allow the depositions to go forward with counsel for Coal-Mac being authorized to object to questions and that Mr. Pafunda was required to certify those questions to the Court.

During that hearing, your Honor, it became perfectly clear at which time was to me and I think it was to the Court that it was the intent of Mr. Pafunda in that hearing and he would not state to the Court his intention or purpose - - intended purposes. That he was using the Civil Actions and civil procedures before the Court to - - for criminal purposes.

He never did deny that,

your Honor. And I doubt if he can deny it in the record here today.

He stated during the course of that proceedings that I still want to go ahead and take discovery.

I have intended - - indicated to Mr. Stratton that I only want to ask a very few limited questions which I do not want to tell him now what they are because of Mr. Self's presence which may reveal my defense in a criminal case.

Those statements made by Mr. Pafunda indicated along with the other ones that it was his purpose in that civil case and gathering information for the criminal case.

District 30 United Mine Workers of America who Mr. Pafunda has indicated is a client, officers of that Union will be subpoenaed and anticipated witnesses.

And I will advise the Court at this time that there is a possibility that Mr. Pafunda may be subpoenaed as a witness in this case.

He represents clients with conflicting, very conflicting interest, your Honor in this matter. He may be representing Mr. Drexil

Hall and Bo Moore in this case but he's placed himself before this Court in a situation where he is representing conflicting interest of the United Mines District 30 and these Defendants.

I submit to you that the positions are totally opposite your Honor, to my knowledge of what they are.

That Mr. Pafunda has placed himself in a situation where he cannot actively represent - - he cannot effectively represent his own - - both clients, the Plaintiff in one suit and the Defendants in the other.

And evidence of it, your Honor is the fact that he has issued a subpoena in the - - as the Plaintiff in this civil case asking for documents which go to the defense in this case.

I ask the Court to move the Court at this time to require Mr. Pafunda to step down as the counsel for Mr. Austin "Bo" Moore and Mr. Drexil Hall in that apparent definite conflict of interest exist in his representing these Defendants and the Plaintiffs in this other case.

A conflict which cannot be remedied by any other action, your Honor.

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THE COURT: Go ahead, Mr. Pafunda.

MR. PAFUNDA: May I use the podium, your Honor?

THE COURT: Yes.

MR. PAFUNDA: May it please the Court much of what Mr. Self has said here today has already been argued on December 12th, 1983 at 4:00 o'clock and lasting approximately an hour before this Honorable Court which concerned deposition notices which I had served on Frank Justice, James McGee, Gene Adams.

Mr. Stratton, their attorney appeared on a motion - - filed a motion for protective order pursuant to the Civil Rule I obtained a hearing in that motion for protective order and again pursuant to the Civil Rules, Mr. - - the burden is on Mr. Stratton to show that my purpose of taking those depositions was for a completely collateral matter that being a criminal action pending before this Court and for discovery in that Criminal Action solely.

Mr. Stratton having failed in that burden, the Court directed that Mr. Stratton produce his clients and the witnesses that I had scheduled for depositions to be in my office on

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December the 21st beginning at the hour of 9:00 o'clock. Mr. Self was present at that hearing on Mr. Stratton's motion for production order.

However here today Mr. Self has raised a different question. He raised a question of conflict of interest and he comes before the Court number one he's indicated to the Court that because I represent District 30 and the United Mine Workers of America I have a conflict of interest in representing Austin "Bo" Moore and Drexil Hall as well as District 30 at the same time, even though I represent District 30 United Mine Workers of America in a Civil Action Drexil Hall and Austin "Bo" Moore in a criminal matter.

Mr. Self in his argument to the Court then skips without any reasoning why there is a conflict between representing District 30 United Mine Workers of America as well as Austin "Bo" Moore and Drexil Hall in a Criminal Action, why there is a conflict there is no conflict, your Honor unless District 30 United Mine Workers of America is a target of a Grand Jury investigation.

Secondly, Mr. Self here today for the first time has indicated that I may be called as a witness in the trial of this matter.

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I may be, I guess I could be I wouldn't know that. Mr. Self would and I asked Mr. Self here today to make a statement as to whether I'm going to be called as a witness in the trial of this matter.

If I am called as a witness then there will be a conflict of interest but it's not a conflict of interest that would arise because I represent District 30 United Mine Workers of America.

More importantly your Honor I think the "conflict of interest" has arisen because there's a conflict over this deposition that I scheduled on December 21st.

There's no conflict of interest in regards to the deposition being scheduled.

I at first when I heard this this morning I took it rather lightly.

However when an attorney stands up and point a finger and says there's a conflict of interest and continues along that line I think it should be taken seriously in an inquiry should be entered into to determine if a lawyer, in fact, has a conflict of interest, because it's not only the lawyer, but ultimately it's the client

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that suffers if an attorney has a conflict of interest that number one the attorney is not aware of nor is his client aware of.

Mr. Self here today in this one short moment indicated that I may be called as a witness in this case. I think that matter needs to be resolved.

But more importantly at the outset I believe it was the first hearing in this matter, Mr. Self also indicated to another lawyer Mr. Jerry Patton that he had a conflict of interest and he should withdraw.

My point here being that if Mr. Self has a legitimate argument and is able to articulate where I have a conflict of interest then myself, the Court as well as my clients need to address that argument.

And then put forth other than a possibility that I may be called as a witness.

But if Mr. Self is raising this matter simply as an intimidation technique to get me to withdraw from the case because I have depositions scheduled then we must take it one step further.

I would like to take up

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with the Court today, maybe ask Mr. Self whether I will be called as a witness in this case. Where the conflict of interest is presently and address that issue and then move on to the second part of the matter.

THE COURT: Well, I think the order of the Court that witnesses appear pursuant to depositions and any inquiry that's made of the witnesses as to the activities which might be a part or a subject of this suit certainly Mr. Self would certify that.

If I'm not mistaken, Mr. Pafunda you stated that fact and you were going to certify the question?

MR. PAFUNDA: Your Honor, if I recall my statements correctly, number one, once the depositions are scheduled in a civil matter it's up to Mr. Stratton who will represent the deponent to object to any questions I may direct to those individuals, then it's my burden to certify the questions to the Court, not Mr. Stratton's burden.

But if and Mr. Self was asked by the Court to be present in my office during the taking of these depositions and I believe I even extended to Mr. Self the invitation to come in order to be cordial to Mr. Self.

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THE COURT: Well, the Court is satisfied about the depositions.

MR. PAFUNDA: The depositions don't bother me either, your Honor, but it's the possibility that I may be called as a witness in this matter. If that's just thrown out offhandedly in order to get me to withdraw, that's an entirely different subject.

These individuals, Drexil Hall and Austin "Bo" Moore are entitled to an attorney under the Sixth Amendment.

They selected me to represent them. I represented them now for months, this is the first day this has come up.

THE COURT: They're entitled to counsel of their choice.

MR. PAFUNDA: That's correct, but it raises a much more serious question, your Honor and at first - - I think the Court is well aware that at sometime I treat things lightly, but the more I look at this situation and what I just heard from Mr. Self bothers me.

It bothers me extremely, if it's an attempt to intimidate a lawyer so that he will withdraw from the representation of his clients with no basis and fact for it then that needs to be

explored.

And if it proves out that it's so then it's simply a matter of intimidation of Mr. Self's part I would as I have directed to my thirteen year old son with his first argument with his mother the other night number one demand an apology and number two ask for a hug, but it needs to be addressed.

THE COURT: Well, I can see that in three or four weeks from now I am going to have my hands full.

MR. SELF: Your Honor may I make a remark to Justice like the picture hanging on the wall I did not in any way bring this motion in an attempt to have Mr. Pafunda - - force Mr. Pafunda to withdraw.

I welcome him as an attorney in this case - -

THE COURT: (Interrupting) Is he going to be called as a witness?

MR. SELF: I have discussed with one witness and I am aware that he was at a meeting with District 30 and other individuals where matters in relation to this matter were discussed.

If he was and this was

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during that time period I would subpoena him as a witness.

At this point I'm not sure whether the meeting was before or after the violent activity of Ray-Mac, your Honor.

THE COURT: I hear Mr. Walbourn jumping up to say attorney client privilege.

MR. WALBOURN: Not only that, your Honor.

THE COURT: Let me Pafunda argue - -

MR. PAFUNDA: (Interrupting) If it pleases the Court, your Honor, I see Mr. Walbourn on his feet and since he and I are about the same size if he wants to do it for free let him go ahead and do it.

MR. WALBOURN: Your Honor, my obligation is to represent my clients in this matter and I cannot get into a situation where counsel for Co-Defendant is certainly called to testify on behalf of the United States.

Now, what appearances does that give to the Jury. We're entitled to know right now if Mr. Pafunda is going to be called as a witness, because if he is there's going to be a lot of severance motions being filed starting right now.

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I can show you about ten of them right now.

MR. SELF: Your Honor, I will state to the Court that I will not subpoena Mr. Pafunda if in any way to attempt to delay this trial or prevent him from being a representative of these clients.

But my obligation in representing the United States and I intend to go into it much more before I do issue a subpoena if I do. If I find that such a meeting did occur and he was present at it where matters in relation to this were discussed then I will issue a subpoena for him your Honor.

I have the requirements to do so. I will not do it and I would not even think about doing it in an attempt to try to kick him out of this case. I love him in this case, I've always enjoyed trying a case against Mr. Pafunda - -

THE COURT: (Interrupting) At this point the motion to disqualify him is overruled. At the point you perceive you are going to subpoena him, you will notify the Court of your intent - -

MR. SELF: (Interrupting) Yes, your

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Honor.

THE COURT: He can raise his attorney client privilege.

MR. SPENCER: Your Honor, I'm generally quiet but that's too serious to call an attorney as a witness. We're entitled to know now, not closer to trial when we can't do anything.

MR. SELF: I can state for the Court that his clients are going to be subpoenaed, your Honor. If he can sit there and defend Austin "Bo" Moore and represent them as clients in this witness stand, then that's a matter he has to determine with other organizations other than this Court.

MR. PAFUNDA: They will be subpoenaed. Mr. Self is right, they'll be by the government, which I already know, but they'll be subpoenaed by myself, also.

Just because I happen to represent an individual in a civil matter and he's called as a witness in a criminal matter, and he's not my client in the criminal matter, it doesn't raise a conflict of interest.

THE COURT: No, it doesn't.

MR. PAFUNDA: But I think the point that's being made here today is that my presence at a parti-

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cular local union meeting, or possibly two of them. If Mr. Self intends to hit me with a subpoena, tender me my witness fee and my mileage, have me present at the trial; but in all fairness to Austin "Bo" Moore and Drexil Hall we need to know that now.

He knows who his witnesses are going to be. He knows everything that's happened. We need to know that now, not January 3rd, because Drexil Hall and Austin "Bo" Moore have to make arrangements.

I need to know now. Other counsel needs to know it now. This is a critical matter.

It's not a question of just a bluff. I'm calling his hand. I want to know today.

THE COURT: Well - -

MR. PAFUNDA: One additional thing too, your Honor. These men that I represent, both of them are working men. One of them is out of work. Austin "Bo" Moore has gone through some personal difficulties. I'm not going to make any money in the trial of this case. I'd love to stand up and say to Mr. Self, thank you very much; hit me with your subpoena; I withdraw. I don't want to spend six

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weeks down here in a losing proposition in terms of money. But these two men have retained me.

I have an obligation to them, an obligation that's paramount. I think I need to know today if Mr. Self is going to call me as a witness on behalf of the United States Government.

MR. SELF: Today I am not going to call you.

MR. PAFUNDA: I need to know today.

MR. SELF: As of today I will not call you, Mr. Pafunda.

MR. PAFUNDA: And there we go. I want that on the record because if he comes back on January 8th and says, yes, I'm going to call you, I withdraw; then we're looking at a continuation of this trial.

THE COURT: All right.

MR. SELF: I realize that.

THE COURT: The Court has advised him before a subpoena is issued he is to notify the Court of his intentions to subpoena you, and then at the time we'll consider the matter.

MR. PAFUNDA: Thank you, your Honor. I appreciate it.

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MR. SELF: Your Honor, I brought this to the Court's attention as an ethical responsibility that I have as an officer of this Court.

THE COURT: Right.

MR. SELF: And I ask that a copy of this transcript be provided to the Federal Bar Association because I think Mr. Pafunda has an ethical conflict of interest by virtue of the issuance of those subpoenas in the other suit, and an ethical conflict that goes beyond this matter. I don't say that in any bad respect but I think he knows what I am talking about. He knows of the conflict of interest that exists, your Honor.

THE COURT: All right. Okay. But the motion to disqualify is overruled.

Anything else, gentlemen?

MR. PAFUNDA: Yes, your Honor. It's interesting to note, and I believe it was yesterday or today's newspaper, that Judge Monohan just allowed an attorney who represented five or six individuals before the Grand Jury that were brought before his Court to go ahead and represent another individual, even though those people were called as witnesses before the Grand Jury.

THE COURT: The Court noted that.

All right. Anything else, gentlemen?

MR. LINVILLE MOSLEY: Your Honor - -

THE COURT: Yes, sir.

MR. LINVILLE MOSLEY: - - Linville Mosley. I'd like to know if - - if my lawyer is going to be subpoenaed.

THE COURT: He is your lawyer.

MR. LINVILLE MOSLEY: Is he going to be subpoenaed ? Is he going to object to me? What are we going to do?

THE COURT: He is not going to reject you.

MR. LINVILLE MOSLEY: Okay.

THE COURT: When it comes to the point of where he is going - - And no decision has been made to subpoena him. When it comes to the point of the decision of being made to subpoena him the Government - -

MR. LINVILLE MOSLEY: I want twenty-four hours notice.

THE COURT: - - The Government is going to know it, I'm going to know it, Mr. Pafunda is going to know it and you're going to know it.

MR. LINVILLE MOSLEY: Okay.

THE COURT: Anything else?

MR. HARWELL: Well, your Honor, only one other thing. It's nine days before Christmas and on behalf of we various bench lawyers we'd like to wish the Court and your staff a happy holidays. On behalf of the Government they'll want to make some other comments, I'm sure.

THE COURT: On behalf of my staff, may we extend everyone here, the Defendants, counsel, Government, everyone a Merry Christmas and a Happy New Year. See you on January the 9th.

(Court Adjourned)

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STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

WE, WILLIAM J. KALBFLEISCH, JAMES E. EDMONDSON, and RICHARD L. COULTER, a 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 witnesses; that the foregoing is a full, true and correct transcript of the said proceeding so given; that the appearances were as stated in the caption.

I further certify that I am neither of counsel nor of kin to either of the parties to this action, and am in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURE this 20th day of December, 1983.

_____
Notary Public

_____
Notary Public

_____
Notary Public
State at Large, Kentucky